

2/4/2/1/10/9

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

STRUCTURE OF GOVERNMENT

ELECTORAL SYSTEMS

RESEARCH DOCUMENTATION

ELECTORAL SYSTEMS

Introduction

The type or types of electoral systems that are appropriate to the work of the Theme Committee will obviously depend on the correct interpretation of the applicable Constitutional principles and will emanate from the political and historical reality of the country.

For reasons of convenience, the Constitutional Principles that directly concern elections and electoral systems, as well as the provisions of the Interim Constitution thereon, are set out in the next below.

Constitutional Principles

- VIII There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' role, and, in general, proportional representation.
- XVII At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XIII (dealing with traditional leadership)
- XIV Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.
- XXXIII The Constitution shall provide that, unless Parliament is dissolved on account of its passing a vote of no confidence in the cabinet, no national election shall be held before 30 April 1999.

Sections of the Interim Constitution relevant to elections and electoral systems:

Sections 6; 21; 39; 40; 93; 127; 129; 154; 249; 250; schedule 2

The "basic elements" of electoral systems

What is an electoral system? In legal terms, an electoral system is the body of rules which regulates the voting process. These rules deal with a wide range of matters, including, for example, the criteria for voter eligibility; the voting mechanisms to be used; the election of representatives to the legislature; the election of the president in presidential systems; the frequency of elections; party registration and the announcement of election results. Not all of these matters will be dealt with in the text of a Constitution, many will be addressed in a law of general application, depending on the approach adopted by the country concerned. A Constitution might simply set out the broader principles of the electoral system and leave the operational details to later legislation.

The choice of a particular electoral system will have a material effect on a

country's political culture, inasmuch as the type of electoral system will influence the number of political parties in a country and will determine the nature of voters' choice, as is explained herein. The choice of an electoral system thus has important consequences for the operation of representative democracy.

Electoral systems come in all shapes and sizes and there are many features which distinguish one electoral system from another. Perhaps one of the most important aspects of any electoral system, and one which is widely used by scholars and theorists to distinguish between different electoral systems, is the **'manner whereby the number of votes cast is translated into a number of seats in the legislature and seats are allocated to political parties who have contested the election.'** (Faure M at p103) This is one important way in which **majoritarian** electoral systems (also called "winner-take-all" systems) are distinguished from electoral systems which are based on **proportional representation**.

I have outlined four "main types" of electoral systems which, in my opinion, characterise most of the world's electoral systems. Although the distinction between majoritarian and proportional representation systems is the standard divide between electoral systems, different scholars will have divergent views on whether one or more of the other "types" actually exist.

Identifying "types" in this way is not meant to be prescriptive. They have been taken from the general literature on the subject and, in my opinion, reflect the basic themes that for convenience sake can be dealt with as distinct from each other. It should be borne in mind that there can be considerable variation within each "type." The four "types" of electoral systems are (1) **majoritarian**; (2) **semi-proportional**; (3) **proportional**; and (4) **mixed (partly majoritarian and partly proportional)**.

(1) **ELECTORAL SYSTEMS BASED ON MAJORITARIAN REPRESENTATION**

The hallmark of the majoritarian system is that the "winner-takes-all." The candidate who receives the required majority of the total votes is elected. There are two types of majority: the **largest or relative majority** and the **absolute majority**

1. *Largest or relative majority*

The system is commonly associated with the **British model of single member constituencies** (ie. voters elect one member to represent them). A candidate is elected, or a seat is won, if s/he wins a majority of the vote (ie, one more vote than the other candidate in an election)

Positive aspects of the system:

1. The personal attributes of the candidate, rather than membership of a party, are accentuated by the closeness of the candidate to the electorate, even though candidates are chosen by their party.

2. It fosters strong government by eliminating the need for coalitions
3. The number of parties is reduced and bi-partyism promoted

Negative aspects of the system:

1. The votes cast for the losing candidate are wasted and those voters thus have no representative in the legislature.
2. Larger political parties are overrepresented and smaller political parties underrepresented
3. A candidate might be elected but only represent a minority of the total number of votes.

2. ***Absolute majority***

A candidate in a single member constituency is required to win a true majority, or 50% + 1 of the vote in order to be elected.

Positive aspects of the system:

1. It sponsors greater representivity than a relative majority, as there is a true majority, thereby preventing a candidate with minority support from being elected

Negative Aspects of the system:

1. Although the system prevents a candidate with minority support from being elected, the winning party might nevertheless still not have the majority of the voter support
2. An absolute majority is extremely unlikely where there are three or more candidates, and the risk of deadlock is high.

The requirement of an absolute majority is often combined with other electoral mechanisms, such as **the second ballot** or **the alternative ballot**, which are designed to ensure that there will be an absolute majority.

- the second ballot

Where an absolute majority has not been reached on the first ballot, the voters vote a second time on a different ballot. Only persons who were on the first ballot are entitled to stand on the second ballot. Candidates who do not reach a certain percentage of the total vote or receive the least number of votes are eliminated. In the second ballot, voters vote for candidates who have not been eliminated.

Professor Sartori argues that the double ballot is itself a distinct type of electoral

system. His point is that it is the only system where voters revote. The second vote is thus a more focused vote because voters will have a much clearer indication of where electoral support resides than they did at the time of the first ballot. The final outcome therefore reflects the combined electoral will and voters whose candidates were not elected cannot blame the result on the iniquities of the voting system when their candidate loses (see Sartori at p63). The French presidential elections and elections to Australia's House of Representatives are by second ballot.

Although not widely used today, the double ballot has been used in the past in both single and multi-member constituencies. Professor Sartori offers these further examples (at pp61-62):

Single member constituencies: **Netherlands (1906-18); Germany (1906-19); Austria (1906-19); Norway (1906-21)**

Multi-member constituencies: **Belgium (until 1900); Italy (between 1882-1891); Switzerland (until 1919); Spain (before 1870 and between 1931 and 1936)**

- alternative/preferential ballot

Voters cast their single vote for candidates whom they rank in order of preference on the ballot paper. All first preferences are then counted and if a candidate wins 50% + 1 of the first choice s/he wins the seat. 'Those candidates with the fewest first preferences are eliminated and preferences are redistributed until an absolute majority winner emerges (Sartori at p.6).'

(2) SEMI-PROPORTIONAL ELECTORAL SYSTEMS

These are multi-member constituency based systems which can be said to be proportional because they assist smaller or minority political parties to be represented. There are a number of variations:

- block vote

'Every voter has as many votes as there are vacancies. The voter must, however, cast one vote per vacancy - that is, he may not cast three or two votes for one candidate (where there are three vacancies) and the party members vote for each of the candidates. The candidates who obtain relative majorities are elected (SALCR Project 77 at p931)

- limited vote

A voter is given one vote fewer than the number of candidates for a multi-member constituency and may not cast all of his/her votes for one candidate.

- **single-non transferable vote**

A voter is given only a single vote in a multi-member constituency. (eg. elections to the Japanese House of Representatives)

- **cumulative vote**

Each voter has the same number of votes as the number of seats. A voter is permitted to combine his/her votes for one or more candidate as s/he chooses. In other words, s/he can give all of his/her votes to one candidate or split them evenly or unevenly between the various candidates. Candidates who obtain the largest majorities are elected.

- **Points system**

This is similar to the cumulative vote. A voter is given more votes (points) than the number of candidates in a multi-member constituency and can award the points to candidates as s/he chooses, ranking candidates in order of preference.

(3) **ELECTORAL SYSTEMS BASED ON PROPORTIONAL REPRESENTATION**

Proportional representation ensures that seats are allocated to a party in proportion to the votes cast for a party. Whereas in majoritarian systems the candidate with the required majority wins outright, with proportional representation winning is 'shared between candidates who obtain a sufficient share of the vote (generally the electoral quotient (Sartori at p3)).' It attempts to obtain a fair, equitable allocation of seats and to avoid vote wastage.

Proportional representation is generally used in multi-member constituencies. There might be considerable differences in the number of constituencies and the size of constituencies. It can be a more **personalised vote** - ie. voting for the person rather than the party - where voters are permitted to vote for any of the candidates on a party list irrespective of their order on the list or can vote across party lines. Proportionality is not however measured simply according to how votes translate into seats but is also a product of the size of constituencies. Generally, the larger the constituency the greater the proportionality. The system is often criticised for allowing small parties to proliferate and because it fosters weak coalition government. There are two main systems of proportional representation, though there is great diversity within these systems. They are the **party list system** and the **single transferable vote**.

- **the party list system:** A system which is prevalent on the European continent. Votes are cast for parties rather than for individuals and various technical formulae can be employed to allocate seats to parties. These formulae are used to determine an average number of votes required by a party to win one seat.

Electoral systems based on party lists can differ widely (see Faure M at p107 for a detailed discussion):

* **Lists might be national or regional**

Israel and the Netherlands both use national lists in one national constituency. Other European systems employ regional or sub-regional lists together with multi-member constituencies. Germany, commonly regarded as a mixed system uses regional lists in combination with relative majoritarianism in single member constituencies.

* **Seats might be allocated at national level or in terms of multi-member constituencies**

'States that use national candidate lists use the method of national allocation. In some states there exists the choice to allocate seats either nationally or regionally. West Germany, Denmark, and Italy are examples of states that use regional or local constituencies, but which allocate seats proportionally on a national basis. The general rule in this regard is that national allocation leads to higher proportionality than regional allocation. With regional allocation small parties may be disadvantaged because of the fact that their support is restricted to certain regions (Faure, M at p108).'

* **Different thresholds**

Systems of proportional representation will often provide that a party must receive a minimum percentage of the total vote in order to qualify for a seat at all. Thresholds, otherwise known as exclusion barriers, can be markedly different depending on the country. Too high a threshold will pander to larger parties and too low a threshold is ineffective at preventing party fragmentation. Some examples of thresholds are Germany (5%); Israel (1.5% in 1992); Turkey (10% 1983-1991)

* **Voter choice**

Systems of proportional representation also differ according to whether or not voters' choice

- (a) is confined to a predetermined party list of candidates ranked by the party in the order they will be elected (the so-called "closed list"). Israel
- (b) extends to choosing from various candidates on a list (the so-called "flexible list") Belgium, Denmark, Italy.

- (c) extends to choosing among the various candidates on the list or across party lines to candidates on different party lists (the so-called "free list"). Switzerland and Luxembourg

- single transferable vote

This is a highly personalised system of proportional representation in multi-member constituencies. It is used in Ireland. Party lists are eliminated entirely. In each district, voters rank the candidates in order of preference. A quota of votes, determined by dividing the total number of valid votes by the number of seats + 1 adding 1 (the so-called "Droop formula"), must be reached for a candidate to be elected. Vote surpluses over and above the quota are then reallocated to other candidates who did not make the quota, according to the lower preferences. Candidates with the least number of votes are eliminated. The system can be a complex one and is described in the context of Ireland in the extract from Steiner's book annexed hereto.

(4) SYSTEMS THAT ARE A MIXTURE OF PROPORTIONAL REPRESENTATION AND MAJORITARIANISM

Germany is commonly thought of as having a mixed electoral system. Each voter is given two votes on his/her ballot paper. Each voter casts his/her first vote in a winner-take-all election and his/her second vote in a proportional representation election. The votes are cast at the same time, not on separate occasions. Half of the seats in the Bundestag seats are elected on the basis of single-member constituencies with a relative majority and the other half according to closed party lists. In Professor Sartori's view, 'the overall distribution of seats turns out to be (for the parties that pass the 5% barrier) **entirely proportional**. This is so because the allocation of the Federal parliamentary seats is calculated exclusively on the basis of the list votes obtained by the parties on the 2nd ballot) (see p19).' The basis for this view is evident in the extract on the German electoral system taken from Steiner's book attached.

A READING LIST OF SELECTED MATERIALS AVAILABLE IN PARLIAMENT'S LIBRARY OR ON INTER-LIBRARY LOAN

- * Basson, DA, Kiesstelsels van proporsionele voortenwoordiging (Report pol 6)(HSRC PTA 1984)
- * de Villiers, D An Electoral System for the New South Africa Year 2 no 2 (HSRC Centre for Constitutional Analysis Pta 1991)
- * Faure, AM 'Kiesstelsels in die Demokrasie' in Faure, AM et al (eds), Suid Afrika en die Demokrasie 1988
- * Faure, M, 'The Electoral System' in de Villiers B, Birth of a Constitution 1994 at 104

- * Frost, M, 'Choosing an Electoral System' Die Suid Afrikaan 43 1993 p.22
- * Johnson, RW 'PR at Work: A case study' Die Suid Afrikaan 43 1993 p.21.
- * Lijphart, A & Grofman, B (eds) Choosing an Electoral System: Issues and Alternatives 1984
- * Reynolds, A, Voting for a New South Africa 1993
- * Sartori, G, Comparative Constitutional Engineering 1994 chapters 1-4.(dealing with electoral systems)
- * Sisk, TD, 'Choosing an Electoral System: South Africa Seeks New Ground Rules' 1993 4(1) Journal of Democracy 79
- * South African Law Commission, Chapter 20 'The Electoral System Under a New Constitution' Project 77: Constitutional Models 1991 vol 3 pp. 926-966.
- * Steiner, G, Ch 10 'Parliamentary Election Systems' in European Democracies 1995 pp 29-54
- * UWC/CDS wksp Electoral Systems: A Discussion Document 1990

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Parliamentary Election Systems

Americans are accustomed to simple rules for parliamentary elections. For the U.S. Senate, whoever receives the most votes in his or her state is elected. The same rule applies to the U.S. House of Representatives: Whoever wins the most votes in his or her congressional district is elected. In Europe, the simple "winner-take-all" system in its pure form is used only in Great Britain, where it is called "first-past-the-post." The other European countries use a wide variety of rules to elect their parliaments. To illustrate this variety, I describe, in addition to Great Britain, the cases of the Netherlands, Switzerland, Ireland, France, and Germany. Election rules are not interesting for their own sake, but because they influence the way the political game is played. The connection between rules of the game and the game itself is well known from sports. Changes in the rules of a sport often influence the kinds of players who are able to make the team. As we see in this chapter, the same holds true for politics. A politician who is successful under one set of rules may not be successful under another set of rules.

Like the U.S. Congress, most European parliaments have two chambers (bicameral systems). There are, however, some exceptions. Sweden, for example, has a single chamber of parliament (unicameral). In the U.S. Congress, the Senate and the House have roughly equal power overall. In most European countries, the pattern is different, with one chamber having a dominant position. The more important chamber is often called the lower house, the less important chamber the upper house. These two terms originated from Great Britain. There the House of Lords consists mainly of members of the hereditary nobility and some members who receive titles merely for their lifetime. The House of Commons is democratically elected on the basis of one person, one vote. In former times, the House of Lords had more prestige and power, hence the term *upper house*. But over the centuries, the House of Commons, the "lower" house,

became more and more important, and today it is the dominant chamber. Thus, contrary to what one may logically expect, the term *lower* connotes more power than *upper*.

GREAT BRITAIN: WINNER-TAKE-ALL

Both the House of Commons and the House of Lords meet in Westminster Palace on the river Thames (photo 2.1). From about 1340, Parliament began to meet in Westminster, which can be considered the birthplace of modern parliaments. In 1941, during World War II, the chamber of the House of Commons was destroyed by German air attacks. After the war, the chamber was rebuilt based on the old designs. Buildings can be an important part of the tradition of institutions, and this was well understood when Westminster was rebuilt according to the old plans.

PHOTO 2.1 Great Britain's House of Parliament, Westminster, London. Courtesy British Embassy, Bern, Switzerland.



For the election of the members of the House of Commons, the country is divided into as many electoral districts as there are parliamentary seats—currently 651—and in each district the candidate who has the most votes wins the seat. As in the United States, there is no requirement that the winner reach a majority; a mere plurality of the votes is sufficient. Thus, with three candidates in a district, the winner may receive only 40 percent of the vote, with perhaps the two other candidates each getting 30 percent.

The winner-take-all system is strongly biased in favor of the two largest parties in a country. In the U.S. Congress, no third parties have been represented to any significant extent in recent times. Is this due to the electoral system? Yes, most likely. But U.S. third parties get so few votes in congressional elections that at first glance it may not be clear how their lack of success could possibly be due to the electoral system. This chapter should make clear that under a different electoral system U.S. third parties would at least have a better chance of representation in Congress. In presidential elections circumstances are somewhat different, so third-party candidates have a better chance—as the candidacy of Ross Perot in the 1992 election illustrates. In this chapter, however, we are concerned only with parliamentary not with presidential elections.

In British parliamentary elections, third parties are numerically stronger than in American congressional elections. As a consequence, and paradoxically, it is easier to demonstrate with the British case how a winner-take-all system works against third parties. If third parties get a fair amount of voter support, it is easier to see how this support fails to translate into parliamentary representation. The discrimination against third parties can best be illustrated with the 1983 general election.

Comparing voter support and seats in the House of Commons in Table 2.1, we can make several points. First, with 42.4 percent voter support, the Conservatives—also called Tories—won a plurality but not a majority of the electorate; this support, however, gave them a landslide 61.1 percent of parliamentary seats. This large victory was caused by the fact that the opposition was badly divided. We saw in Chapter 1 how moderate Labour members split from the party to form

TABLE 2.1 Voter support and parliamentary seats in 1983 general election to the British House of Commons

Party	Voter Support (%)	Seats	
		%	N
Conservatives	42.4	61.1	397
Labour	27.6	32	209
Alliance of Liberals and Social Democrats	25.4	3.5	23
Others	4.6	3.2	21
Total	100.0	100.0	650

SOURCE: *European Journal of Political Research* 12 (September 1984): 342.

their own Social Democratic party (SDP). The SDP entered into the so-called Alliance with the Liberals, which meant the two parties agreed to have only one candidate in each district—either a Social Democrat or a Liberal. Before the 1983 election, the Liberals were the perennial third party in British electoral history. They achieved sizable voter support but hardly any seats because they were “first-past-the-post” in only a very few districts. In the 1974 election, for example, the Liberals won a substantial share of voter support (18.6 percent) but managed to win only 13 seats (2.0 percent). Uniting their forces in 1983 in the Alliance, Liberals and Social Democrats hoped to win not only voters but also seats. But this hope was disappointed; their voter support of 25.4 percent translated into a mere 3.5 percent of the seats. The Alliance was punished by an electoral system wherein only winning matters and a good showing in second or third place counts for nothing.

With only a slightly higher voter support of 27.6 percent, Labour won nearly 10 times as many parliamentary seats (32.3 percent) as the Alliance. The reason was that Labour voters were concentrated in working-class districts, where in many cases the party was able to come in first. The Alliance voters, in contrast, were spread more evenly over all districts. This distribution made for a good showing overall in the country but resulted in very few district victories. And with the winner-take-all system, only victories count.

In addition to Conservatives, Labour, and the Alliance, some smaller parties together won 3.2 percent of the seats, a surprisingly high number, given voter support of only 4.6 percent. But these were all local parties in Scotland, Wales, and Northern Ireland, where they were able to carry quite a few districts. Outside their region, these parties did not even have candidates.

To understand fully the winner-take-all system, we also must consider anticipatory effects. Many voters do not like to “waste” their vote on a party that is expected to have no chance of victory. In the 1983 election, this mechanism worked strongly against the Alliance. Many voters seriously considered voting for it but—according to a study by Ivor Crewe—eventually did not, because they anticipated that the Alliance candidates had no chance of winning their district.¹ In recent elections, this anticipatory effect always hurt the third party. In the 1992 election, for example, the “throwing-one’s-vote-away” argument was used very successfully by the Conservatives against the Liberal Democrats, the successors of the Alliance. The Conservatives’ claim was that a vote for the Liberal Democrats was a vote for Labour.

The British case also should help us understand that election rules are not simply a given but are themselves an outcome of the political game. Because it was at a serious disadvantage under the winner-take-all system, the Alliance advocated a change to proportional representation. But Conservatives and Labour, which both greatly profited from the existing system, were opposed to such a change, and given the distribution of the seats in the House of Commons, the Alliance had no chance to have its way.

With the winner-take-all system continuing to prevail, it is no wonder that the fortunes of the Alliance went downhill after the 1983 election. Because it

became clear that the Alliance had no chance of overcoming Labour for second place, voters increasingly feared that a vote for the Alliance was a wasted vote. As Table 2.2 shows, in the 1987 election support for the Alliance dropped to 22.5 percent and its parliamentary representation to 22 seats. For the 1992 election (see Table 2.3), the Alliance of Liberals and Social Democrats had united into a single party, the Liberal Democrats. But its voter support dropped further to 17.0 percent and its parliamentary representation to 20 seats. This story tells vividly how difficult it is for a third party under the winner-take-all system. Voters tend to vote for the incumbent or for the candidate who has the greatest chance of unseating the incumbent. Although it is very difficult for a third party to become one of the two major parties, such a development is not entirely impossible. Early in the twentieth century, Labour became one of the two large parties, relegating the Liberals to third place.

Let us now take a look at the fate of the Conservatives over the three elections from 1983 to 1992. They won each time, but their parliamentary representation dropped from 61.1 percent in 1983 to 57.8 percent in 1987 to 51.0 percent in 1992. Yet their voter support held virtually steady (42.4%, 42.3%, and 41.9%). So why the sharp drop in parliamentary representation? The only reason is that over the three elections the opposition was less and less divided. Labour was always in second place, but it could increase its voter support from 27.6 percent to 30.8 percent and 34.4 percent. If the opposition to the Conservatives could have united into a single party, the Conservatives would have lost all three elections!

Until now, we have focused on the negative effects on smaller parties of the winner-take-all system. On a more positive note, we also could argue that the type of electoral system helps to prevent the fragmentation of parliaments and, in particular, to exclude small extremist parties, thus making governance easier. The American and British cases seem to support this argument, as extremist parties are not represented in either country’s legislature. This moderating effect, however, is likely to occur only for a unimodal distribution of voter preference where the most voters are in the middle and the fewest at the extremes so that

TABLE 2.2 Voter support and parliamentary seats in 1987 general election to the British House of Commons

Party	Voter Support (%)	Seats	
		%	
Conservatives	42.3	57.8	3
Labour	30.8	35.2	2
Alliance of Liberals and Social Democrats	22.5	3.4	
Others	4.4	3.6	
Total	100.0	100.0	6

source: *European Journal of Political Research* 16 (September 1988): 584.

TABLE 2.3 Voter support and parliamentary seats in 1992 general election to the British House of Commons

Party	Voter Support (%)	Seats	
		%	N
Conservatives	41.9	51.6	336
Labour	34.4	41.6	271
Liberal Democrats	17.9	3.0	20
Others	5.8	3.6	24
Total	100.0	100.0	651

SOURCE: *Keesing's Record of World Events* 38 (London: Longman, 1992): 38868.

their distribution looks like a bell-shaped curve. The United States and Great Britain have, by and large, such unimodal distributions of voter preferences on most important dimensions, and therefore approach the situation depicted in Figure 2.1. Under these conditions, we would indeed expect a moderating effect, because, to win, the most rational strategy for a candidate is to advocate a middle-of-the-road position. Most voters, after all, are located in the middle.

Figure 2.2 represents an extremist distribution of voter preferences, with the highest number of voters at the two extremes. We can easily see that in such a situation a moderate position has little appeal. Let us assume that the voters at the left of our political dimension in Figure 2.2 are Catholics and those at the right are Protestants, with the two groups far apart on all important issues. With a winner-take-all system, one candidate is likely to appeal to Catholics; the other, to Protestants. The election then corresponds more to a census, in the sense that the size of the two groups is counted. The campaign will have a polarizing effect, because each candidate will do everything to *mobilize* the members of his or her group. This is basically the situation in Northern Ireland. The only difference between that situation and the situation represented in Figure 2.2 is that

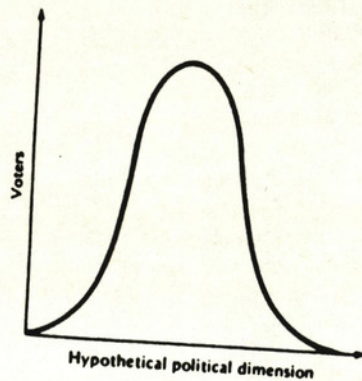


FIGURE 2.1 Unimodal distribution of voter preferences on a hypothetical political dimension.

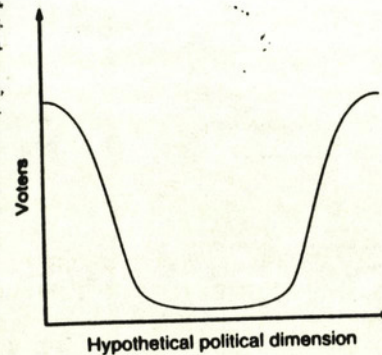


FIGURE 2.2 Extremist distribution of voter preferences on a hypothetical political dimension.

one group in Northern Ireland, the Protestants, is about twice the size of the Catholic group, which further exacerbates the problem, because in most districts Catholics have no chance of winning. London is slowly beginning to recognize the unfairness of the winner-take-all system under these circumstances and has imposed proportionality rules for local elections in Northern Ireland and for elections of Northern Ireland representatives to the European Parliament. For the crucial elections to the House of Commons, however, Northern Ireland continues to use the winner-take-all system (more on the troubles in Northern Ireland in Chapter 15).

The difficulties that the winner-take-all system encountered in Northern Ireland also can be seen in many Third World countries. If, for example, the electorate comprises two historically hostile ethnic groups, under a winner-take-all system each group will be highly motivated to use all legal—and, sometimes, illegal—means to turn out more voters than the other group, and elections will tend to be polarizing.

THE NETHERLANDS: PARTY LIST PROPORTIONAL REPRESENTATION

The basic principle of party list proportional representation (hereafter PR) is quite simple: A party receives parliamentary seats in proportion to its share of the total vote. If a parliament has 100 members and a party wins 10 percent of the total vote, then that party will be awarded 10 parliamentary seats. If the party wins 1 percent of the vote, it receives 1 seat. How about if a party in this situation wins 1.5 percent of the vote? Will it receive 1 or 2 seats? This will depend on what fractions of seats other parties get. Mathematically this is not an easy problem, and there are different formulas to find a solution.²

The Netherlands uses party list PR in its most simple form. The Dutch parliament has 150 members, who are elected from a single, nationwide electoral district. The political parties submit lists of their candidates, and the voters

simply choose one of these lists.³ The votes are tallied in a two-step process. First, the number of votes nationwide for each party is counted and is converted into a percentage of the total vote cast. In the 1989 election, for example, the Christian Democrats received the most votes (35.3 percent), the Labour party came in second (31.9 percent), and the Liberals finished third (14.6 percent). According to the PR system, the Christian Democrats were awarded 54 seats, the Labour party, 49; and the Liberals, 22. The other 25 seats were awarded to 6 smaller parties. The smallest party receiving parliamentary representation, the Center Democrats, was awarded a single seat for its 0.9 percent of votes cast (see Table 2.4).

We now know how the first step of the Dutch electoral system—the distribution of parliamentary seats to the political parties—works. The second step is to consider how the individual parties determine which of their candidates will be elected. Each party lists its candidates in the order in which they will be awarded the seats won by the party. For example, the Labour party's first 49 ranked candidates became its parliamentary representatives. This system of having the parties rank their candidates provides an important means of controlling the behavior of party members.

How is the ranking done? Who gets the favorable ranks at the top? Who would be so foolish as to enter the race last on a list? The ranking is done by the party organizations, without the help of primaries. A small group, such as the party's executive committee, usually prepares the party list. A party convention then approves the list, usually without making major changes. A young party

TABLE 2.4 Voter support and parliamentary seats in 1989 general election to the parliament of the Netherlands

Party	Voter Support (%)	Seats	
		%	N
Christian Democratic Appeal	35.3	35.9	54
Labour party	31.9	32.7	49
Liberals (People's Party for Freedom and Democracy)	14.6	14.7	22
Democrats '66	7.9	8.0	12
Green Left	4.1	4.0	6
Political Reformed party	1.9	2.0	3
Reformed Political Union	1.2	1.3	2
Reformed Political Federation	1.0	0.7	1
Center Democrats	0.9	0.7	1
Others	1.2	0.0	0
Total	100.0	100.0	150

source: Royal Netherlands Embassy, Washington, D.C.

member beginning his or her career would feel honored just to be placed on the list, even if the actual rank gave absolutely no chance of election. By working hard for the party, a candidate expects to move up the list to finally receive a rank that assures him or her of election to a parliamentary seat. Prominent party leaders and successful members of parliament are usually given those places on the list that virtually guarantee reelection to parliament. This system strengthens the parties by giving them the opportunity to reward loyal party members with good rankings and to punish less loyal ones with bad rankings.

The Dutch system of party ranking stands in sharp contrast to American practice. An American candidate need only receive the most votes in a district. This voter support often depends only slightly on the candidate's party loyalty, and it is sometimes even advantageous for an American candidate to demonstrate some independence from the official platform of his or her party.

The lack of party discipline in the United States, however, cannot be due solely to the system of election, because Great Britain combines the same winner-take-all system with a fairly high party discipline. Although it is certainly true that party list PR as practiced in the Netherlands contributes to strong party discipline, it is not true that strong party discipline is impossible under a winner-take-all system. Whether party discipline is strong or weak in a winner-take-all system also depends on other factors; in particular, on whether a country has a presidential or a parliamentary system of government. As we will see in Chapter 3, Great Britain has a parliamentary system, and in such systems the formation of a government and the vote of confidence in parliament strengthen party discipline. In the absence of a parliamentary system, the United States can afford low party discipline. Thus, the winner-take-all electoral system in combination with the absence of a parliamentary system explains to a large extent why American political parties have low party discipline.

In the Netherlands, party list PR has contributed to a diverse multiparty system, because small fringe parties have a chance of winning parliamentary representation. With an electoral system similar to the Dutch one, any group receiving as little as 0.25 percent of votes cast would win a seat in the U.S. House of Representatives (1 out of 435 seats). How many groups could receive at least so much support? How many votes could a party win stressing environmental issues, as the Green party does? Note in this context a letter to the editor from the chairman of the New York Green party advocating a change to proportionality in the United States (Box 2.1).

The introduction of party list PR in the United States might allow the election of representatives from a great variety of parties. Under such a system, congressional membership would more closely reflect the diversity of the American population, and many voters would find a party closer to their preferences than under the current two-party system of Democrats and Republicans. What would be the major disadvantages of using a proportional representation system for American congressional elections? Americans often say they would miss voting for a particular candidate whom they know personally and consider their own representative. This weakness, however, can be remedied without abandoning the

BOX 2.1 Green Party of New York Demands Proportional Representation

To the Editor:

As a minority party, what we most strongly urge is some form of proportional representation. In West Germany, for instance, once a political party has achieved 5 percent of the vote, it can designate an equal percentage in the Bundestag. Thus, though in perhaps no election district has a particular party achieved a majority, it will still be represented in an at-large seat.

While politically in the United States we are not used to such a concept, we do have, in that other most potent form of social organization in the Western world, the publicly held corporation, directors who are elected by minority shareholders and represent their interests.

Would proportional representation require a constitutional amendment? At a local level, not necessarily, depending on each state's own constitution, but it would appear to need one on the national level. So be it. The United States must take some fairly drastic steps if it is going to rearouse the electorate from the torpor that was reflected in the barely 50 percent turnout in the Presidential election of 1988.

Peter Hirsch
Chairman, Green Party of N.Y.

SOURCE: *New York Times*, February 2, 1989.

principle of proportionality. Party list PR as practiced in the Netherlands is not the only way to implement the principle of proportionality. More personalized forms of proportionality are also feasible. We turn next to Switzerland as an illustration of a more personalized system of proportional representation.

SWITZERLAND: PERSONALIZED PROPORTIONAL REPRESENTATION

For the election of the National Council, the lower house of Parliament, the Swiss modify party list PR in two important ways. Both modifications have the consequence of personalizing relations between voters and candidates. The first Swiss modification is that—rather than a single, national electoral district—they have 26 electoral districts, corresponding to the 26 Swiss cantons. The 200 National Council seats are divided among the cantons according to population. The largest canton, Zurich, elects 35 representatives, and the smallest cantons, only 1. The parties submit candidate lists in each canton containing the names of their candidates for that canton's seats. The results are counted separately for each canton.

Having 26 electoral districts instead of a single national district works against the smaller parties. If Switzerland were treated as a single electoral district, only one-half of 1 percent of the vote would be needed to win 1 of the 200 National Council seats. With elections taking place in 26 separate districts, however, a higher percentage of votes is needed to win. In Zurich, a party must win about 5 percent of the vote to win 1 of the canton's 35 seats. In a canton with 10 seats, 10 percent is necessary to receive 1 seat. In the small cantons with only 1 seat, the party with the most votes wins the seat. Thus, if the number of seats per district is reduced to 1, the proportionality system becomes a system of winner-take-all.

If this system were applied to the United States, the 50 states could be the electoral districts, and within each state the congressional delegation would be elected according to proportional representation. In this way, some of the disadvantages of pure proportional representation could be alleviated. Very small parties would be able to win seats only in the largest states, such as California and New York.

The second Swiss modification is that the voters, not the parties, rank the candidates. The parties merely submit a list of names without rank. The number of names cannot be more than the number of seats to be filled from each respective canton. In ranking the individual candidates the voters have three options: (1) Leave the candidate unchanged a single time on the list, (2) put the candidate on the list a second time, or (3) drop the candidate from the list. The only condition is that the overall number of names is not greater than the number of seats to be elected from the canton. A voter also can decide to make no changes at all on the list. In this case, no preference is given to any of the candidates, but the ballot counts for the number of seats attributed to the party.

Voters may further complicate their list by writing in candidates from other parties. Thus, a Socialist voter may put a Free Democratic candidate on his or her list, either once or twice. With this write-in possibility, computation of the results becomes very complicated. In the above example, the Free Democratic write-in candidate counts for the Free Democratic party and detracts from the Socialist party strength; the voter has split his or her vote between the two parties. Voters can go even further and write in candidates from as many parties as they wish, but, again, the total number of names is not allowed to exceed the number of seats in the canton.

The computation of the results proceeds in principle in the same manner as in the Netherlands. First, for each canton, the number of seats each party receives is determined. Second, candidates win these seats in order of their ranking. This ranking is based on the number of times a candidate's name appears on all the lists, including write-ins on other parties' lists.

The freedom of choice that the Swiss system permits the voter weakens the party's control over its candidates, and thus party discipline is as low as in the United States. Although a Swiss party still controls whether or not a candidate gets listed, it cannot determine a candidate's chances of election through rank on the list. Once candidates are listed, they are on their own and must try to

get a maximum number of voters to write them in twice, and a minimum to cross them out. Although this system seems to give great power to the electorate, it also increases the influence of interest groups. These groups inform their members about the candidates who favor their interests and for whom two votes should be cast, as well as about candidates who should be crossed out because they do not favor the group's interests. A teachers' group, for example, will inform its members which candidates are sympathetic to teachers' needs and which are not. Letters are sent out by a large number of groups ranging from businesspeople to fishing workers. Candidates depend on political parties only for getting listed on the ballot; to be elected, they must obtain the support of a large number of different interest groups.

The Swiss still vote for party lists, but their electoral system allows them to express preferences for and against particular candidates. The election also takes place in relatively small districts, where voters feel more at home than in a single national district. These factors together personalize the relations between voters and candidates. With this electoral system the Swiss currently have 12 parties in the National Council. I discuss the party structure in the Swiss Parliament in the next chapter in connection with cabinet formation in Switzerland.

IRELAND: SINGLE TRANSFERABLE VOTE

Personalized proportional representation also can be attained through the single transferable vote (STV) system, as practiced in the Republic of Ireland. The reason this electoral system is called single transferable vote should become clear as we proceed. Ireland's Parliament, with a total of 166 seats, is elected from 41 districts, with the number of seats per district ranging from 3 to 5. In each district, voters rank the candidates in order of preference. To be elected, a candidate needs a quota of the total votes according to the so-called Droop formula:

$$\frac{\text{total valid votes}}{\text{seats} + 1} + 1$$

At first, only the first ranked candidates on each ballot are considered. If a district has 100,000 valid votes and five seats to be elected, the quota is 100,000 divided by 6 + 1 = 16,667. Candidates who reach this quota with their first rankings are elected. A little arithmetic shows that it is impossible for more than 5 candidates to attain the quota.

Let us take an example in which two candidates attain the quota: candidate A with 20,000 and candidate B with 17,000 first rankings. Candidate A has 3,333 surplus votes above the quota; candidate B, 333. At this point, the concept of single transferable vote comes into play. The ballots not needed by the two top candidates are transferred by the counting officials to the candidates who appear as second choices on their ballots. Let us assume there is a candidate C with 16,000 first votes, 667 short of the quota. Let us further assume that out of the

total of 3,666 surplus votes for A and B combined, there are 700 with candidate C on second place. These 700 ballots are now transferred to C, who hereby reaches the quota and is also declared elected. He even has 33 surplus votes that in a next step are transferred to the third-ranked candidates on the respective ballots. Candidates A and B still have 2,996 surplus votes combined, which are transferred to all other candidates ranked second place on the ballots of A and B. This also allows candidate D, who had 15,800 first rankings, to reach the quota. But no other candidate attains the quota, and there is still a fifth seat to be filled.

Now the counting officials begin from the bottom, declaring as defeated the candidate with the least votes. Let this be candidate Z with a total of 500 votes, first and transferred votes together. These 500 ballots are transferred to the next ranked candidates. If these candidates are A, B, C, or D, they do not need the votes, because they are already elected. So these ballots are transferred to the candidates one rank lower. If a transferred ballot contains no further preferences, it becomes "nontransferable" and plays no further part in the count. Candidate Y is the second lowest with 1,000 votes. The counting officials declare him or her next as defeated, and his or her votes are also transferred. This allows candidate E to reach the quota, which means the end of the computation process, because all 5 seats are filled. The system works like runoffs, in which voters are called to the ballot a second time. With STV, however, voters make their choices in a single ballot, hence the term *single transferable vote*.

One problem still remains: How exactly do the counting officials decide which ballots to keep in the quota and which others to transfer? There is a potential for abuse in the sense that the officials could choose those ballots for transfers that have rankings they like. Different rules exist to prevent such abuse in making the system work as randomly as possible.

What are the optimal strategies for candidates with STV? The electoral game is certainly much more complex and subtle than with winner-take-all, where you simply need more votes than any other candidate. With STV you may do well even if you are not the first choice of many voters, but if you are ranked second or third—perhaps even fourth or fifth—by a large number of people. On the other hand, you may do badly with a core of dedicated supporters, if outside this group not many others are willing to rank you. As Michael Gallagher summarizes, "a candidate with relatively little first preference support but with wide acceptability to many voters may fare better in terms of seats than one with more hardcore support but with little ability to attract lower preferences from supporters of other parties or candidates."⁴

As Table 2.5 for the 1989 Irish election shows, STV had a proportional effect on the distribution of seats in the sense that the smaller parties also received representation. Thus, although candidate centered, STV does not work as much against smaller parties as the winner-take-all system. The two large parties in the table, Fianna Fáil and Fine Gael, have both grown out of the Irish struggle for independence.

The single transferable vote has strong supporters. Election expert Enid Lakeman states, "STV will force [the voter] to recognize that there are degrees

TABLE 2.5 Voter support and parliamentary seats in 1989 general election to the Irish parliament (Dáil)

Party	Voter Support (%)	Seats	
		%	N
Fianna Fáil	43.7	46.4	77
Fine Gael	29.6	33.2	55
Labour party	8.0	9.0	15
Worker's party	5.6	4.2	7
Progressive Democrats	5.0	3.6	6
Others	8.1	3.6	6
Total	100.0	100.0	166

SOURCE: *Keesing's Record of World Events* 35 (London: Longman, 1989): 36739.

of excellence among the candidates of his preferred party and will further invite him to consider candidates of other parties and indicate any with whom he has a measure of agreement." With regard to the United States, experts on electoral systems agree that a change from the current winner-take-all system to the principle of proportionality would only be possible if the new system were based not on party lists but on the single transferable vote. An advocate of STV for America, George H. Hallett, Jr., argues that "it can transform our legislative elections from contests to win all the spoils of victory for one group and keep other people out to invitations to all citizens to come in and take part in a great cooperative democracy."⁶ Hallett even expects that STV eventually may be required by the courts in the United States, because it gives adequate representation to such minorities as Hispanics and African Americans.

The STV system is not unknown in the United States. In New York City, the local school boards are elected according to this system; in Cambridge, Massachusetts, the city council. A story in *The New York Times* makes fun of the complicated nature of the system, but it refers also to its beneficial effects (Box 2.2).

FRANCE: DOUBLE-BALLOT SYSTEM

In 1985, the French changed their double-ballot system to the principle of proportionality, but in 1986 they changed back to the double-ballot system. Before the 1993 election, there was talk of a renewed change to proportionality, although this time no change occurred. These events illustrate that political rules are not a given but are the result of the political game.

France practiced proportional representation under its Fourth Republic (1946-1958). With the change to the Fifth Republic in 1958, General Charles de Gaulle and his supporters introduced a system whose most visible feature is that two separate elections take place a week apart; hence it is called the two-ballot

BOX 2.2 Single Transferable Vote in Cambridge, Massachusetts

CAMBRIDGE, Mass.—By the time the votes from Tuesday's City Council and School Committee elections are counted, many voters may have long since lost track of which candidates they voted for. For Cambridge, a city known for the intellectual giants of Harvard University and Massachusetts Institute of Technology, uses a controversial voting system that challenges even the strongest intellect. "Probably five people in the city understand it from A to Z," said Kevin P. Crane, a former city councilor whose father was a four-term Mayor under the system. . . . First promoted at the beginning of the century by the progressive "good government" movement, P.R. is designed to insure the representation of political and racial minorities—in Cambridge's case, Italians, Irish, Jews and blacks. "It's the reason Cambridge didn't burn during the years of the demonstrations, the reason desegregation of the schools was achieved without any significant community disruption," said Glenn S. Koocher, a former School Committee member. Under P.R., all candidates run at-large. Voters number the candidates according to their preferences, omitting any candidate they oppose.

SOURCE: *New York Times*, November 4, 1987.

system. For the purpose of parliamentary elections, France is divided into the same number of electoral districts as there are seats in the National Assembly—the lower house of the French parliament, which meets in the Palais Bourbon on the river Seine (photo 2.2). To be elected on the first ballot, a candidate has to receive an absolute majority (50 percent plus 1) of votes cast in his or her district. In addition, a candidate's share of the vote has to constitute no less than one-fourth of registered voters. Because the first ballot usually lists candidates from several parties, there are relatively few districts where a candidate receives the votes necessary to win election at that point. In the 1993 election, for example, there were only 80 such districts out of a total of 577 districts. In the other 497 districts, a second ballot was necessary, and then a plurality of the vote was sufficient for election. Only candidates who appear on the first ballot can be listed on the second ballot, and all candidates who receive less than 12.5 percent of the first ballot are eliminated.

The main parties of the Left are the Socialists and the Communists, and the parties of the Right are the Union for French Democracy (UDF) and the Rally for the Republic (RPR). The two parties of the Right are specific to France; their characteristics are explained in the next chapter. Sometimes parties make electoral alliances even before the first ballot. In the 1993 election, for example, the UDF and RPR agreed in many districts on a common candidate. The normal pattern in the first ballot, however, is that candidates from all four major parties and in many districts also from several minor parties enter the competition. The

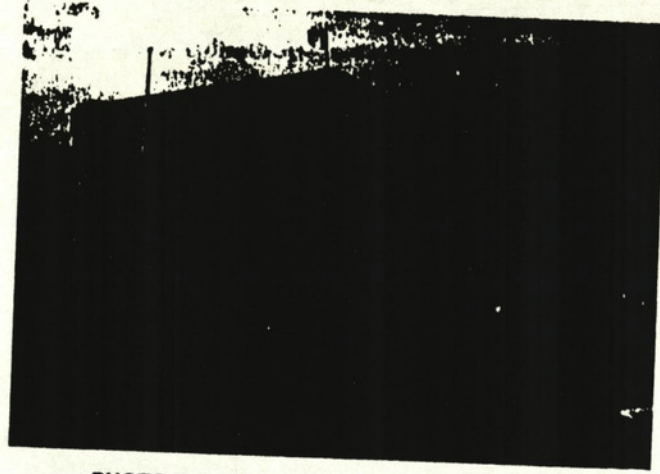


PHOTO 2.2 French National Assembly, Palais Bourbon, Paris. Courtesy French Embassy, Washington, D.C.

main function of the first ballot is to check the voting strength of each individual party. Thus, the first ballot functions in some ways like an American primary. The main competition occurs on the one hand within the Left and on the other hand within the Right. On the Left, the question is whether the Socialist or the Communist candidate receives more votes. Similarly, UDF and RPR candidates compete for the first place on the Right.

For the second ballot, the usual situation is that the weaker candidates on both the Left and the Right withdraw. The purpose of withdrawing is to increase the chance that one's side of the spectrum will win. If, for example, the UDF candidate in a district receives 30 percent on the first ballot and the RPR candidate receives 25 percent, the chance of the Right to win can be increased if their forces are combined so only the stronger candidate remains in competition. If the Right unites behind the UDF candidate, it would be suicidal for the Left to continue the race with both a Communist and a Socialist candidate. The logic of the electoral system is for the Left, too, to withdraw its weaker candidate.

This device of voluntary withdrawals works best if in the country as a whole both parties on either side have about equal strength. Thus, if the RPR candidate withdraws in the above example, this could easily be compensated for by the withdrawal of a UDF candidate in another district. The situation is more complicated when one party is clearly stronger than the other party of the same side. In the history of the Fifth Republic, this was often the situation of the Socialists vis-à-vis the Communists. In the 1981 parliamentary election, for example, the Socialists received nationally 37.8 percent voter support on the first ballot; the Communists, merely 16.1 percent. If the Communist candidate was required to withdraw in every district where the Socialist candidate was

longer on the first ballot, there would have been very few districts where the Communist candidate could have represented the Left on the second ballot. Recognizing this difficulty, and in an effort to ensure maximum Communist voter turnout on the second ballot, the Socialists withdrew some of their own first ballot candidates, even though these candidates ran ahead of the Communist candidates. With the support of the Socialist voters, the Communist candidates in these districts then had a chance to win the second ballot. Which candidate withdrew in a particular district was decided in negotiations between national and local party headquarters. The goal of this political maneuvering was to ensure that both sides got parliamentary seats in approximately the same proportion as their national strength on the first ballot.

Sometimes, however, this goal is not attained because voters do not follow the recommendations of their party leaders. This is especially a problem for the Communist party, which is considered by many Socialist voters as too extreme. As a consequence, such voters often do not follow their party leaders' recommendations and abstain on the second ballot or even vote for the candidate of the Right. This mechanism can be demonstrated by comparing the seats received by the Communist party in the 1981 election with its voter support. Although the voter support was 16.1 percent, the party received only 9.1 percent of the seats. For Domenico Fisichella, "the general conclusion that emerges from the French experience is that its Communist party is always—and almost always to a marked extent—underrepresented under the double-ballot system."⁷ The Socialists, on the other hand, profited from the Communist support in the second ballot and received 59.3 percent of the seats, although their voter support in the first ballot was "only" 37.8 percent (see Table 2.6).

This discussion shows that the French double-ballot system demands a great amount of skill on the part of the political parties and their leaders. The game has to be played very differently in the two ballots. On the first ballot, the main competition is within the coalition of the Left and within the coalition of the Right; on the second ballot, the competition changes to the battle between the

TABLE 2.6 Voter support and parliamentary seats in the 1981 election for the French National Assembly

Parties	Voter Support (%)	Seats	
		%	N
Socialists	37.8	59.3	281
Communists	16.1	9.1	43
Rally for the Republic (RPR)	20.8	16.9	80
Union for French Democracy (UDF)	19.3	13.3	63
Others	6.0	1.4	7
Total	100.0	100.0	474

SOURCE: *European Journal of Political Research* 10 (1982): 334.

Left and the Right. As George Tsebelis explains in Box 2.3, political parties must make sure that the first-ballot competition within their coalition is not too fierce if the coalition as a whole wants to win in the decisive second ballot. The same idea is expressed by Joseph A. Schlesinger and Mildred Schlesinger, who argue that "the French dual-ballot election . . . does invite parties to approach voters so as to allow them to express either their first or compromise choices."⁸

Why did the French change in 1985 from the double-ballot system to proportionality? It was the Socialist party—in particular its leader, François Mitterrand—who pushed for the change. Why did the Socialists replace an electoral system from which they so obviously had benefited? The answer is that the electoral situation had greatly changed since 1981, and the Socialists feared that they would be hurt by the double-ballot system in the 1986 election. Opinion surveys and local elections had revealed such a loss of voter support for both Socialists and Communists that the parties of the Right were expected to take over control of the National Assembly. This situation would be difficult for Mitterrand, whose first term as president did not end until 1988. As we will see in Chapter 3, a French president under the Fifth Republic has much power, and Mitterrand used this power to pass the change in the electoral system in parliament.

Mitterrand hoped that proportional representation would increase the number of parties in the National Assembly, thus making the parliamentary situation more fluid and allowing him and his party more room to maneuver. This is exactly what happened in the March 1986 election. Splinter parties of the Right distracted so much voter strength from the RPR and the UDF that the two parties' combined seats fell short of an absolute majority in the National

Assembly. The two parties were particularly hurt by the entry of 35 members of the National Front to parliament (Table 2.7). This interpretation of the reason for the change to proportionality is shared by Peter Mair, who writes:

Indeed, the main reason why Socialist President Mitterrand pressed for the introduction of a proportional system in the French legislative elections of 1986 was in order to help insure that the *National Front* would win representation in parliament, so reducing the share of the seats won by the traditional parties of the Right, and thereby reducing the likelihood that a strong government of the Right could be formed.⁹

Immediately after the 1986 election, the newly elected parliament changed the electoral rules back to the double-ballot system. This time, the push came from the RPR and the UDF. They did not like the fact that the National Front could challenge them at the extreme Right. Returning to the double-ballot system was anticipated to weaken the National Front, which indeed it did. When, after the 1988 presidential election, early parliamentary elections were called, the National Front virtually disappeared from parliament, although it remained at about the same level in voter strength (Table 2.8).

In the 1988 election, the Socialists had recovered their 1981 voter strength, but before the 1993 election they were back in deep electoral trouble. Once again, there was talk that Mitterrand might change the electoral system back to proportionality. As *The New York Times* reported,

Mitterrand's endorsement of a plan to introduce an element of proportional representation to France's constituency-based system of choosing legislators in time for the 1993 parliamentary elections has therefore immediately stirred suspicion among the two main conservative parties.¹⁰

BOX 2.3 Strategic Considerations in the French Double-Ballot System

In France, each party has to do two things: It must affirm its own political line (otherwise it will lose its supporters in the first round), but in the second round it has to promote the coalition. . . . If the two partners of a coalition go too far criticizing each other in the first round, they will not have the time to change their strategies in the second round, even if they wish to. The votes of the loser within each coalition will not be transferred to the winner, and, therefore, in the decisive second round the coalition might lose because it has been too competitive in the first round. On the other hand, if a party is not critical enough towards its partner in the first round, it might lose the crucial votes which would make it the frontrunner in that round and thereby give it the right to represent the coalition in the decisive second round (and maybe win the seat).

SOURCE: George Tsebelis, "Nested Games: The Cohesion of French Electoral Coalitions," *British Journal of Political Science* 18 (April 1988): 148.

TABLE 2.7 Voter support and parliamentary seats in the 1986 election for the French National Assembly

Parties	Voter Support (%)	Seats	
		%	N
Socialists	31.4	36.6	211
Communists	9.8	6.1	35
Rally for the Republic (RPR)			277
Union for French Democracy (UDF)	41.0	48.0	
National Front	9.7	6.1	35
Others	8.1	3.2	19
Total	100.0	100.0	577

NOTE: Besides RPR lists and UDF lists, there were also joint RPR—UDF lists.
SOURCE: *European Journal of Political Research* 15 (1987): 719.

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TABLE 2.8 Voter support and parliamentary seats in the 1988 election for the French National Assembly

Parties	Voter Support (%)	Seats	
		%	N
Socialists	37.6	48.5	280
Communists	11.3	4.7	27
Rally for the Republic (RPR)	19.2	22.2	128
Union for French Democracy (UDF)	18.5	22.4	129
National Front	9.6	0.2	1
Others	3.8	2.0	12
Total	100.0	100.0	577

SOURCE: *European Journal of Political Research* 17 (1989): 749.

But this time no change occurred, mainly because, contrary to 1985, the Socialists had no majority in the National Assembly to ram through a change in the electoral law (compare Tables 2.6 and 2.8). The 1993 elections were then a real catastrophe for the Socialists. Not only did their voter support drop from 37.6 percent to 17.6 percent (Table 2.9). Their parliamentary representation had nearly a free fall from 280 to 53 seats. This severe drop in seats was clearly a result of the double-ballot system. Had the electoral system been changed to proportionality, the Socialists also would have lost many seats, but with a 17.6 percent voter support they still would have kept about 100 seats (17.6% of 577 seats).

It is also interesting to see how the electoral system influenced the parliamentary representation of the National Front. In 1993 it had its best showing in any parliamentary election, with voter support of 12.5 percent. Yet the National Front won not a single district, neither on the first nor on the second ballot. In

TABLE 2.9 Voter support and parliamentary seats in 1993 general election for the French National Assembly

Party	Voter Support (%)	Seats	
		%	N
Rally for the Republic (RPR)	20.4	41.9	242
Union for French Democracy (UDF)	19.2	35.9	207
Socialists	17.6	9.2	53
Communists	9.2	4.2	24
National Front	12.5	0.0	0
Others	21.1	8.8	51
Total	100.0	100.0	577

SOURCE: *Le Monde*, March 23, 1993.

1986, by contrast, its electoral support was only 9.7 percent, but with proportionality then in force, it gained 35 seats in the National Assembly.

France of the Fifth Republic is a classical example that demonstrates how changes in electoral rules can strongly influence the strength of various parties in parliament. Further examples of changes in electoral rules are discussed in Chapter 3 with regard to Italy and in Chapter 14 with regard to Poland. Are changes in electoral rules democratic? What is the meaning of *democratic* in this context? Who should decide about rule changes: a simple majority of parliament, as in France? In the United States, basic changes of the rules are much more difficult to obtain. Most changes would need a constitutional amendment, which in the U.S. context is very difficult to obtain. The issue raised here is the problem of so-called meta-rules: rules about how to establish rules.

GERMANY: TWO VOTES FOR EACH VOTER

The main feature of the German electoral system is that each voter has two votes on his or her ballot—the so-called first and second vote. Surveys indicate that most German voters do not fully understand how their complicated electoral system operates. Whether or not it is understood, however, the system's results have been reasonable compared to the extreme party fragmentation of the pre-Hitler Weimar Republic. In the Bundestag, the lower house of parliament, there are two major parties, the Christian Democrats and the Social Democrats, but some smaller parties also have representation. Very tiny parties, however, are excluded from parliamentary representation.

When the constitution of the Federal Republic of Germany—then West Germany—was written in 1949, the Western powers, especially Great Britain and the United States, urged the adoption of a winner-take-all system that they hoped would prevent severe party fragmentation. Many German leaders argued, however, that a winner-take-all system could not adequately represent the political diversity of the country. The innovative solution was to elect one half of the Bundestag by the winner-take-all system and the other half by proportional representation. Each voter votes twice, once in the winner-take-all election and once in the proportional representation election. The former is called the voter's first vote; the latter, his or her second vote. Both votes are cast the same day, on the same ballot. For the first, or winner-take-all, vote, the country is divided into small electoral districts that correspond in number to half of the parliamentary seats. In each district the candidate with the most votes is elected. For the proportional part of the election, the Germans use party list PR, with the candidate ranking done by the parties. The electoral districts are the individual German *Länder* (states) such as Hamburg, Bavaria, Saxony, and so on.

Voters are allowed to split their two votes. In the winner-take-all election, they may vote for one party and in the party list PR election, for another. This provision creates the opportunity for some highly sophisticated voting behavior. Members of the small Free Democratic party might cast their first vote for the

Christian Democratic candidate knowing that their own candidate has virtually no chance of winning the winner-take-all election, but they can still cast their second vote for their own party list. Candidates may run in both parts of the election, further complicating the voting situation. If they win their single district, they give up their place on the party list.

The most difficult task for the voter is to understand how the results are computed. According to Max Kaase:

surveys have repeatedly shown that even at the height of any given campaign, less than half of the voters know the precise meaning of the two ballots. . . . Shortly after an election, even this percentage drops, to roughly one-fifth of the voting population.¹¹

The crucial point of the system is that only the second vote determines the total number of seats a party gets in parliament. Each party receives the same proportion of seats as its nationwide proportion of second votes. With the first vote, the voters merely determine which specific candidate should represent their district; how many candidates from the various parties enter the Bundestag is determined solely by the second vote.

The 1987 election—the last one before German unification—helps to illustrate how the system operates. The Social Democrats (SPD) won 37.0 percent of the second vote, giving them a total of 186 seats in the Bundestag. Based on the first votes, 79 Social Democrats won in their single districts. These 79 candidates were declared elected from the onset, and their number was subtracted from the 186 total number of seats won by the party. This left 107 seats to be filled from the top of the party lists. The results for the Christian Democratic Union (CDU)—called the Christian Social Union (CSU) in Bavaria—contain an interesting complication. The party received 44.3 percent of the second vote, entitling it to 222 seats. In the single districts, 169 CDU/CSU candidates won, which left 53 candidates to be elected from the party lists. As Table 2.10 indicates, the total for the CDU/CSU was not 222 but 223 seats. Where did the extra seat come from? It was a so-called surplus seat, which the party won in the state of Baden-Württemberg. The reason for this was that in this state the number of single districts won by the party was higher by one district than the proportional share won by the party based on the party lists. In such cases, the strict principle of proportionality is broken, in the sense that the party can keep as surplus mandate the additional seat(s) won in single district(s).

In the electoral history of the Federal Republic, the number of surplus mandates has ranged from one to six, so the issue may appear to be a technicality with little significance. Max Kaase, however, makes the interesting comment that "if two parties in a coalition advise their supporters to strategically split their ballots between the two partners, or if one large party were to formally split into two parties, then a large number of surplus mandates could be artificially created." For Kaase, the issue of surplus seats "points to a definite deficiency, a fault in the present electoral system that could be used for a manipulation

TABLE 2.10 Voter support and parliamentary seats in the 1987 general election to the Bundestag of the Federal Republic of Germany

Party	Voter Support (%)	Seats	
		%	N
Christian Democratic Union/Christian Social Union (CDU/CSU)	44.3	44.9	223
Social Democratic Party (SPD)	37.0	37.4	186
Free Democratic Party (FDP)	9.1	9.3	46
Greens	8.3	8.5	42
Others	1.4	0.0	0
Total	100.0	100.0	497

SOURCE: *European Journal of Political Research* 16 (September 1988): 577.

of the electoral outcome because it allows for different weights of individual voters."¹²

We now turn to the smaller parties for the 1987 election. Both the Free Democrats (FDP), with 9.1 percent of the second vote and 46 seats, and the Greens, with 8.3 percent of the second vote and 42 seats, did not win any single districts and thus filled all their seats from their party lists.

The German system also contains a provision for a threshold against tiny parties. This threshold denies parliamentary representation to parties that win less than 5 percent of the second vote and are also unable to win 3 single districts. To get any parliamentary seats, at least one of these two criteria must be met. The threshold is defended on the grounds that parties failing to cross it are so tiny that they have no real parliamentary legitimacy. Extremist parties at the left and the right were so far excluded from the Bundestag on the basis of this threshold. The actual electoral disadvantage for tiny parties is even greater, because most voters do not expect them to cross the threshold and therefore tend to vote for other parties that they know will win seats. Such anticipatory effects were already discussed earlier in the chapter with regard to Great Britain.

The writers of the constitution for the Federal Republic tried to set up an electoral system that would lead to greater political stability than Germany had in the Weimar Republic. So far, their complicated system seems to have provided stable, democratic government. This has not changed with German unification. The results for the first election after unification are presented in Table 2.11. The Bundestag still has no more than five parties, with two of them in a dominant position. The Party of Democratic Socialism (PDS) consists of the former Communists in East Germany. They did not reach the 5-percent threshold, but because they reached the threshold in former East Germany, they still entered the Bundestag thanks to a special rule for this first election in the unified Germany. The same was true for Alliance '90/Greens, also a party of East German origin. I discuss the German party system after unification in Chapter 16, which deals with the German question in general and the process of unification in particular.

TABLE 2.11 Voter support and parliamentary seats in 1990 general election to the Bundestag of the Federal Republic of Germany

Party	Voter Support (%)	Seats	
		%	#
Christian Democratic Union (CDU)/ Christian Social Union (CSU)	43.8	48.2	370
Social Democrats (SPD)	33.5	36.1	230
Free Democrats (FDP)	11.0	11.9	79
Party of Democratic Socialism (PDS)	2.4	2.6	17
Alliance '90/Greens	1.2	1.2	8
Others	8.1	0.0	0
Total	100.0	100.0	662

SOURCE: *European Journal of Political Research* 21 (April 1992): 324.

VOTER TURNOUT

Voter turnout in Europe is generally much higher than in the United States. Richard S. Flickinger and Donley T. Studlar have calculated the mean turnout for all Western European democracies for the 1979-1989 period.¹³ The mean for the 18 countries studied ranged from 94 to 72 percent with the notable exception of Switzerland whose mean was only 48 percent. The highest mean turnouts were registered for Belgium (94%), Austria (92%), and Italy (90%). The trend was either fluctuating or slightly declining.

Why is there so much more interest in parliamentary elections in Europe than in the United States? Many factors come into play, such as differences in the system for voter registration, size of the countries, and education. In the context of the present chapter, it is interesting to discuss the possible influence of electoral rules on voter turnout. Generally speaking, electoral rules as used in Europe give the voter more influence on the outcome of parliamentary elections than in the United States. In most U.S. congressional districts, the incumbent is so firmly established that a challenger has very little chance. Usually, competition only works when there is no incumbent or when the incumbent is just a freshman. Even if a district is truly contested, voters with somewhat extreme views may feel left out because both the Democratic and Republican candidates tend to run on a platform that is pretty much in the middle. If a voter has a Green preference, for example, he or she may not feel represented by either candidate and may stay home.

In parliamentary elections in Europe, it is not so unrealistic that a single vote may make a difference. In a proportional election system, just one more vote may secure an additional seat for a party. This argument also helps to explain

the notable European exception of Switzerland. As we see in Chapter 7, in Switzerland the most important issues are decided in a referendum. Therefore, it is less important who sits in the Swiss parliament. Furthermore, all major parties are represented in the seven-member Swiss executive (see Chapter 3), which also diminishes the importance of parliamentary elections.

Why do the British have a much higher turnout than the Americans, although both practice the winner-take-all system? Contrary to the United States, Great Britain has a parliamentary, not a presidential, system for selecting its executive. As a consequence—as we see in the next chapter—party discipline in Parliament is much more important, which in turn helps to mobilize voters on election day.

In this chapter we have seen how voter preferences are translated into parliamentary seats. Using illustrations from six countries, we have encountered a wide variety of electoral rules. Such variation does not occur randomly but has to be seen in a historical context. Those who make the rules have the power. Rules are also important once a parliament is elected and begins to operate. In the next chapter, we turn to these internal operations of Western European parliaments and in particular to their selection of cabinets out of their midst.

NOTES

1. Ivor Crewe, "Why Labour Lost the British Election," *Public Opinion* 6 (June/July 1983): 60.
2. For a recent interesting discussion of this problem, see Matthew Soberg Shugart, "Electoral Reform in Systems of Proportional Representation," *European Journal of Political Research* 21 (1992): 207-24.
3. Parties submit different lists in different administrative districts. These lists are then linked at the national level.
4. Michael Gallagher, "Comparing Proportional Representation Electoral Systems: Quotas, Thresholds, Paradoxes and Majorities," *British Journal of Political Science* 22 (October 1992): 480.
5. Enid Lakeman, "The Case for Proportional Representation," in Arend Lijphart and Bernard Grofman, eds., *Choosing an Electoral System: Issues and Alternatives* (New York: Praeger, 1984): 49.
6. George H. Hallett, Jr., "Proportional Representation with the Single Transferable Vote: A Basic Requirement for Legislative Elections," in Lijphart and Grofman, *Choosing an Electoral System*, 125.
7. Domenico Fisichella, "The Double-Ballot System as a Weapon against Anti-System Parties," in Lijphart and Grofman, *Choosing an Electoral System*, 183.
8. Joseph A. Schlesinger and Mildred Schlesinger, "The Reaffirmation of a Multi-Party System in France," *American Political Science Review* 84 (December 1990): 1077-1101.
9. Peter Mair, "The Question of Electoral Reform," *New Left Review* 94 (July/August 1992): 95.
10. *New York Times*, November 12, 1991.

11. Max Kaase, "Personalized Proportional Representation: The 'Model' of the West German Electoral System," in Lijphart and Grofman, *Choosing an Electoral System*, 163.
12. *Ibid.*, 163-164.
13. Richard S. Flickinger and Donley T. Studlar, "The Disappearing Voters? Exploring Declining Turnout in Western European Elections," *West European Politics* 15 (April 1992): 1-16.

chapter 3

Cabinet Formation

In the United States, the relationship between the legislative and the executive branches of government is characterized by a system of checks and balances. The president, as chief executive, is elected not by Congress but directly by the people—if we disregard the aspect of the electoral college. Congress cannot oust the president with a vote of no-confidence. The only exception, impeachment, is very different from a vote of no-confidence. On the other hand, the president cannot dissolve Congress and call for early elections.

Most European democracies have a parliamentary system with rules fundamentally different from those of the American presidential system. (The major exception is France, which combines a presidential with a parliamentary system under the constitution of the Fifth Republic.) The most important characteristic of the parliamentary system is that the executive is selected by the parliament and depends on the confidence of parliament for survival. The voters elect the parliament, which is therefore the sole body that can claim to represent the will of the people in a direct way. The ways in which presidential and parliamentary systems relate voters to the legislative and executive branches of government are presented in Figure 3.1.

The executive branch in a European parliamentary system is the cabinet, which is headed by a prime minister whose role is very different from that of the U.S. president. In the United States, cabinet members are appointed by the president, and serve at his pleasure. Some cabinet members may come from the Congress. But if they accept a cabinet position, they must give up their seats in Congress.

In a parliamentary system, leading members of parliament form the cabinet. The prime minister is merely the first of the team—hence the term *prime minister*. The rule is that the prime minister and the other ministers retain the

regulated by law and only pertaining to acts of public authorities and judicial matters.

Art. 24. No prior authorization is necessary to bring an action against civil servants with regard to their administrative acts, except as elsewhere specified for Ministers.

TITLE III THE POWERS

Art. 25. All powers emanate from the nation.
They are exercised in the manner established by the Constitution.

Art. 25bis. The exercise of given powers may be conferred by a treaty or by a law on institutions coming under international public law.

Art. 26. Legislative authority is exercised collectively by the King, the House of Representatives and the Senate.

Art. 26bis. The laws enacted in the implementation of Art. 107^{quater} determine the judicial force of the rules, which are enacted by organs created by them in matters which they determine.

They may confer upon these organs the power to enact decrees having the force of law in the area and the manner which they establish.

Art. 27. The right of initiative is vested in each of the three branches of the legislative power.

Art. 28. The authoritative interpretation of laws belongs only to the law. The authoritative interpretation of decrees belongs only to the decree.

Art. 29. The executive power belongs to the King as set forth by the Constitution.

Art. 30. The judiciary power is exercised by the courts and tribunals.

Their decisions and judgments are executed in the name of the King.

Art. 31. Interests which are exclusively municipal or provincial are regulated by the municipal or provincial councils in accordance with the principles laid down by the Constitution.

CHAPTER I THE CHAMBERS

Art. 32. The members of both Chambers represent the nation, and not merely the province or the subdivision of a province which elected them.

Art. 32bis. For those cases determined in the Constitution, the elected members of each Chamber are divided into a French-language group and a Dutch-language group in the manner established by the law.

Art. 33. The sessions of both Chambers are public.

Nevertheless, each Chamber may go into secret committee at the request of its president or of ten members.

It then decides, on the basis of an absolute majority, whether the sitting is to be resumed in public on the same subject.

Art. 34. Each Chamber verifies the powers of its members and pronounces judgment on any contestations that may arise on this subject.

Art. 35. No one may be a member of both Chambers at the same time.

Art. 36. The member of either Chamber who is appointed by the government to any salaried post other than that of Minister, and who accepts, ceases to sit immediately and does not resume his functions save as the result of a new election.

Art. 37. At each session, each Chamber nominates its president, its vice-presidents and makes up its bureau.

Art. 38. Every resolution is passed on the basis of an absolute majority of votes cast, except as shall be prescribed by the rules of the Chambers with respect to elections and candidatures.

In the event of an equal number of votes on both sides, the proposal under discussion is rejected.

Neither of the two Chambers may adopt any resolution without the majority of its members being present.

Art. 38bis. Except in the case of budgets and laws requiring a special majority, a reasoned motion, signed by at least three quarters of the members of one of the linguistic groups and introduced after the report has been presented and before the final voting in public session, may declare that the provisions of a draft or proposed bill which it specifies are of such a nature as to have a serious effect on relations between the communities.

In such cases, parliamentary procedure is suspended and the motion is referred back to the Council of Ministers which, within a period of thirty days, gives its reasoned findings on the motion and invites the Chamber to reach a decision either on those findings or on the draft or proposed bill in such form as it may have been amended.

This procedure may only be applied once by the members of a linguistic group in respect of one and the same draft or proposed bill.

Art. 39. Voting is exercised by sitting and standing or by the calling of names; the text of laws are always voted on by the calling of names. The elections and presentation of candidates are voted by secret ballot.

Art. 40. Each Chamber has the right of investigation.

Art. 41. No bill may be passed by either Chamber except after voted on article by article.

Art. 42. The Chambers have the right to amend and to divide up the articles and amendments proposed.

Art. 43. It is prohibited to present petitions to the Chambers personally.

Each Chamber has the right to refer the petitions addressed to it back to the Ministers. The Ministers are bound to provide explanations regarding their contents whenever the Chamber demands it.

Art. 44. No member of either of the two Chambers may be prosecuted or sought out as a result of the opinions and votes expressed in the exercise of his functions.

Art. 45. No member of either of the two Chambers may, during the session, be prosecuted or arrested as a punishment save with the permission of the Chamber to which he belongs, except in the case of *flagrante delicto*.

No bodily constraint may be used towards a member of either of the two Chambers during the session, save with the same authorization.

The detention or prosecution of a member of either of the two Chambers is suspended during the session and throughout its duration if the Chamber demands it.

46. Each Chamber, through its own rules, shall determine the way in which it shall exercise its powers.

SECTION I.—The Chamber of Representatives

Art. 47. Members of the Chamber of Representatives are directly elected by all citizens aged 18 years and over, resident for at least six months in the same commune, and who do not come under any of the causes of exclusion laid down by the law.

Each elector is entitled to only one vote.

Art. 48. The constitution of the electoral bodies is regulated for each province by the law.

Elections are held on the basis of the system of proportional representation as determined by the law.

Voting is compulsory and secret. It takes place in the commune save in exceptional cases to be determined by law.

Art. 49. §1. The Chamber of representatives comprises 212 members.

§2. Each electoral district has as many seats as result from dividing its total population by the national divisor, obtained by dividing the total population of the Kingdom by 212.

The remaining seats are allocated to those districts with the largest surplus population not yet represented.

§3. The distribution of members of the Chamber of representatives as between the districts is effected by the King in proportion to the population.

For this purpose, a population census whose results He publishes within six months is carried out every ten years.

Within three months following such publication, He determines the number of seats allocated to each constituency.

Within three months following such publication, He determines the number of seats allocated to each constituency.

The new distribution applies with effect from the next general election.

§4. The law determines electoral districts; it determines also the necessary qualifications to be on the electoral list and how the electoral procedure shall be carried out.

Art. 50. To be eligible, it is necessary:

1. to be a Belgian by birth or to have been granted full naturalization;
2. to enjoy civil and political rights;
3. to have attained the age of twenty-five years or over;
4. to be domiciled in Belgium.

No other condition of eligibility may be required.

Art. 51. The members of the Chamber of representatives are elected for a term of four years.

The Chamber is renewed every four years.

Art. 52. Each member of the Chamber of representatives is entitled to an annual indemnity of 12,000 francs.

He is furthermore entitled to travel free on all lines of communication that are operated or contracted out by the State.

The law specifies those means of transportation which members may use free of charge apart from those mentioned above.

An annual indemnity, chargeable to the endowment destined to cover the expenses of the Chamber of representatives, may be attributed to the president of that assembly.

The Chamber determines the amounts that may be levied on the indemnity under the heading of contributions to the retirement or pension funds it has deemed appropriate to establish.

SECTION II.—The Senate

Art. 53. The Senate is composed:

1. of members elected on the basis of the population in each province, in accordance with article 47. The provisions of article 48 are applicable to the election of those senators;

2. of members elected by the provincial councils in the proportion of one senator to every 200,000 inhabitants. Every surplus of at least 125,000 inhabitants confers the right to elect an additional senator. However, every provincial council shall nominate at least three senators;

3. of members elected by the Senate on the basis of half the number of senators elected by the provincial councils. If the number is an odd one, it is increased by one digit. These members are designated by the senators who were elected according to the provisions of numbers 1. and 2. of the present article.

The election of senators who are elected according to the provisions of numbers 2. and 3. of the present article, is carried out according to the system of proportional representation as determined by the law.

Art. 54. The number of senators directly elected by the electorate is equal to half the number of members of the Chamber of representatives.

Art. 55. The senators are elected for a term of four years. The Senate is entirely renewed every four years.

Art. 56. To be elected senator, it is necessary:

1. to be Belgian by birth or to have been granted full naturalization;
2. to enjoy civil and political rights;
3. to be legally resident in Belgium;
4. to be at least forty years of age.

Art. 56bis. [Abrogated June 3, 1985; *Moniteur Belge* of August 6, 1985.]

Art. 56ter. Senators elected by the provincial councils may not belong to the assembly which elects them, nor have been a member thereof during the two years preceding the date of their election.

Art. 56quater. In the event of a dissolution of the Senate, the King may dissolve the provincial councils.

The act of dissolution contains a summons to the provincial electors within forty days and to the provincial councils within two months.

§ 1º — The law shall define which services or activities are essential and shall provide for meeting the community's non-postponable necessities.

§ 2º — The responsible parties shall be subject to the penalties of the law for commission of abuses.

Art. 10. Participation of workers and employers is assured in the collegiate governmental agencies in which their professional or social security interests are the subjects of discussion and deliberation.

Art. 11. In firms with more than two hundred employees, election of an employee representative for the exclusive purpose of promoting direct discussions with employers is assured.

CHAPTER III

NATIONALITY

Art. 12. Brazilians are:

I — by birth:

- a) persons born in the Federative Republic of Brazil, even though of foreign parents, provided that they are not in the service of their country;
- b) persons born abroad of a Brazilian father or mother, so long as either is in the service of the Federative Republic of Brazil;
- c) persons born abroad of a Brazilian father or mother, so long as they are registered at a proper Brazilian department, or come to reside in the Federative Republic of Brazil before reaching the age of majority and, having reached majority, opt for Brazilian nationality at any time;

II — by naturalization:

- a) those who, as set forth by law, acquire Brazilian nationality; for persons whose country of origin is Portuguese-speaking, only one uninterrupted year of residence and moral integrity are required;
- b) foreigners of any nationality, resident in the Federative Republic of Brazil for over thirty uninterrupted years and without any criminal conviction, provided they request Brazilian nationality.

§ 1º. The rights inherent to native born Brazilians shall be attributed to Portuguese permanently resident in the Country if Brazilians are afforded reciprocal treatment, except in the cases provided for in this Constitution.

§ 2º. The law may not establish any distinction between Brazilians by birth and naturalized Brazilians, except in the cases provided for in this Constitution.

§ 3º. The following positions are restricted to native born Brazilians:

- I — President and Vice President of the Republic;
- II — President of the Chamber of Deputies;

III — President of the Federal Senate;

IV — Minister of the Supreme Federal Tribunal;

V — the diplomatic career;

VI — officer of the Armed Forces.

§ 4º. Loss of nationality shall be declared for a Brazilian:

- I — whose naturalization cancelled by judicial decision of a court because of an activity obnoxious to the national interest;
- II — acquires another nationality through voluntary naturalization.

Art. 13. Portuguese is the official language of the Federative Republic of Brazil.

§ 1º. The symbols of the Federative Republic of Brazil are the flag, anthem, coat of arms and seal.

§ 2º. The States, the Federal District and the Counties may have symbols of their own.

CHAPTER IV

POLITICAL RIGHTS

Art. 14. Popular sovereignty shall be exercised by universal suffrage, and by direct and secret vote, with equal value for all, and, in the terms of the law, by:

I — plebiscite;

II — referendum;

III — popular initiative.

§ 1º. Voter registration and voting are:

I — compulsory for persons over eighteen years of age;

II — optional for:

- a) illiterate persons;
- b) persons over seventy years of age;
- c) persons over sixteen and under eighteen years of age.

§ 2º. Neither foreigners nor conscripts during their period of compulsory military service may register to vote.

§ 3º. The conditions for eligibility, according to the law, are the following:

I — Brazilian nationality;

II — full exercise of political rights

III — voter registration;

IV — electoral domicile in the district;

V — party affiliation;

VI — minimum age of:

- a) thirty-five years for President and Vice President of the Republic and Senator;
- b) thirty years for Governor and Vice Governor of a State and of the Federal District;
- c) twenty-one years for Federal, State or District Representative, Prefect (*Prefeito*)⁹, Vice Prefect and Justice of the Peace;
- d) eighteen years for County Legislator (*Vereador*).

§ 4°. Persons that cannot register to vote or are illiterate are not eligible.

§ 5°. The President of the Republic, the Governors of the State and Federal District, Prefects and those that have succeeded them or replaced them during the six month preceding the election, are not eligible for the same offices in the subsequent term.

§ 6°. In order to run for other offices, the President of the Republic, the Governors of the State and Federal District and the Prefects must resign from their respective offices at least six months prior to the election.

§ 7°. The spouse and relatives by blood or marriage up to the second degree, or by adoption, of the President of the Republic, of the Governor of a State, Territory, or the Federal District, or a Prefect, or those replacing them during the six months preceding the election, are ineligible in the jurisdictional territory of the incumbent, unless they already hold elective office and are candidates for re-election.

§ 8°. A member of the armed forces who can register to vote is eligible under the following conditions:

- I — if he has served for less than ten years, he shall be on leave from military activities;
- II — if he has served for more than ten years, he shall be discharged from military duties by his superiors and, if elected, he shall be automatically retired upon taking office.

§ 9°. A complementary law shall establish other cases of ineligibility and the periods for which it shall remain in force, in order to protect normality and legitimacy of elections from the influence of economic power or abuse from holding an office, position or job in the direct or indirect administration.

§ 10°. An elective mandate may be challenged in the Electoral Courts within a period of fifteen days after certification of election, with the suit determining evidence of abuse of economic power, corruption or fraud.

§ 11°. A suit challenging a mandate shall be conducted in secrecy, and the plaintiff shall be liable, in the form of the law, if he is reckless or shows bad faith.

⁹ *Prefeito*, usually translated as mayor, is actually the chief executive officer of the *município*, an administrative unit more like a county than a city. Hence, the civil law term "prefect" is used throughout this translation.

Art. 15°. Deprivation of political rights is forbidden; loss or suspension of such rights may occur only in cases of:

- I — cancellation of naturalization by a judgment that has become nonappealable;
- II — absolute civil incapacity;
- III — while the effects of a criminal conviction that has become nonappealable remain in force;
- IV — refusal to comply with an obligation imposed upon everyone or an alternative obligation, in terms of art. 5, VIII;
- V — administrative impropriety, in terms of art. 37, §4.

Art. 16. A law altering electoral procedure shall enter into force only one year after its promulgation.

CHAPTER V

POLITICAL PARTIES

Art. 17. The creation, merger, incorporation, and dissolution of political parties is free, with due regard for national sovereignty, the democratic regime, multiplicity of political parties and fundamental human rights, observing the following precepts:

- I — national character;
- II — prohibition of the receipt of financial resources from foreign entities or governments or from subordination to them;
- III — rendering of accounts to the Electoral Courts;
- IV — legislative functioning in accordance with the law.

§ 1°. Political parties are assured autonomy in defining their internal structure, organization and operation, and their by-laws shall establish rules of party loyalty and discipline.

§ 2°. After they have acquired legal capacity, in the form of the civil law, political parties shall register their by-laws with the Superior Electoral Tribunal.

§ 3°. Political parties have the right to resources from the party fund and to free radio and television time, in the form of the law.

§ 4°. Political parties are forbidden to utilize paramilitary organizations.

VIII — administer the Country's foreign exchange reserves and supervise financial transactions, especially credit, exchange, and capitalization, as well as insurance and private pension plans;

IX — prepare and execute national and regional plans for ordering the territory and for economic and social development;

X — maintain the postal service and national air mail;

XI — operate, either directly or through concessions to companies whose stock is government-controlled, telephone, telegraph, data transmission, and other public communications services, assuring the rendering of information services by entities of private law through the public telecommunications networks operated by the Federal Government;

XII — to operate, either directly or through authorization, concession or permission:

a) radio and television broadcasting services and other telecommunication services;

b) services and installations of electric energy and utilization of hydroelectric power, in cooperation with the States in which the hydroelectric sites are located;

c) air and aerospace navigation and airport infrastructure;

d) railway and waterway transportation services among Brazilian ports and national frontiers, or which cross State or Territorial boundaries;

e) passenger services for interstate and international highway transportation;

f) sea, river and lake ports;

XIII — organize and maintain the Judiciary, the Public Ministry¹⁰ and the Public Defender's Office in the Federal District and the Territories;

XIV — organize and maintain the federal police, the federal highway and railway police, as well as the civil police, the military police and the military fire brigades of the Federal District and the Territories;

XV — organize and maintain official national statistical, geographical, geological and mapping services;

XVI — classify, for purposes of viewer discretion, public amusements and radio and television programs;

XVII — grant amnesty;

XVIII — plan and promote permanent defenses against public calamities, especially droughts and floods;

¹⁰ The Public Ministry is a civil law career institution that has no precise counterpart in common law, although the Justice Department and public prosecutor share certain common features. The Public Ministry not only prosecutes criminal offenses, but it also represents the public interest in law and justice in civil matters. The Public Ministry may intervene in all cases involving incompetents, status of persons, guardianship, marriage, and any other cases of public interest.

XXIX — institute a national system for management of hydraulic resources and define criteria for granting rights to the use thereof;

XX — institute directives for urban development, including housing, basic sanitation and urban transportation;

XXI — establish principles and directives for the national transportation system;

XXII — carry out maritime, air and border police services;

XXIII — operate nuclear services and installations of any nature and exercise governmental monopolies over research, mining, enrichment, reprocessing, industrialization, and commerce in nuclear ores and their by-products, in accordance with the following principles and conditions:

a) all nuclear activity within the national territory shall be allowed for peaceful purposes and shall be subject to approval by the National Congress;

b) via concession or permission, authorization may be granted for the use of radio isotopes for research and use in medicine, agriculture, industry and similar activities;

c) civil liability for nuclear damages does not depend on the existence of fault;

XXIV — organize, maintain and carry out inspection of working conditions;

XXV — establish the areas and conditions for the conduct of prospecting and mining (*garimpagem*)¹¹ in the form of associations.

Art. 22. The Federal Government has exclusive power to legislate on:

I — civil, commercial, penal, procedural, electoral, agrarian, maritime, aeronautical, space and labor law;

II — expropriation;

III — civilian and military requisitioning, in the event of imminent danger and in times of war;

IV — waters, energy, informatics, telecommunications and radio broadcasting;

V — postal service;

VI — the monetary system, measuring systems, and certifications and guarantees of metals;

VII — policies of credit, foreign exchange, insurance and transfer of valuables;

VIII — foreign and interstate commerce;

IX — directives of national transportation policy;

¹¹ *Garimpagem* is a Brazilian term for the kind of rudimentary prospecting and mining done by individuals who pan for gold or seek to uncover precious gems with picks and shovels.

TITLE IV

ORGANIZATION OF THE BRANCHES

CHAPTER I

LEGISLATIVE POWER

SECTION I

THE NATIONAL CONGRESS

Art. 44. The Legislative Power is exercised by the National Congress, which is composed of the Chamber of Deputies and the Senate.

Sole Paragraph. — Each legislature shall last for four years.

Art. 45. The Chamber of Deputies consists of representatives of the people, elected by a system of proportionality in each State, Territory and the Federal District.

§ 1°. The total number of Deputies, as well as the representation of each State and the Federal District, shall be established by a complementary law in proportion to the population. The necessary adjustments shall be made in the year prior to the elections, so that none of those units of the Federation has fewer than eight nor more than seventy Deputies.

§ 2°. Each Territory shall elect four Deputies.

Art. 46. The Federal Senate consists of representatives of the States and the Federal District, elected by majority vote.

§ 1°. Each State and the Federal District shall elect three Senators, with mandates of eight years.

§ 2°. The representation of each State and the Federal District shall be renewed every four years, alternately reelecting one-third and two-thirds.

§ 3°. Each Senator shall be elected along with two alternates.

Art. 47. Except where there is a constitutional provision to the contrary, the decisions of each Chamber and its Committees shall be taken by a majority vote when an absolute majority of its members is present.

SECTION II

POWERS OF THE NATIONAL CONGRESS

Art. 48. The National Congress has the power, with the approval of the President of the Republic (not required for subjects specified in arts. 49, 51 and 52), to provide

for all matters within the jurisdiction of the Federal Government, especially concerning:

I — the tax system, tax collection and income distribution;

II — multiyear plans, budgetary directives, annual budgets, credit transactions, public debt and issuance of legal tender;

III — determination and modification of the number of troops in the Armed Forces;

IV — national, regional and sectorial development plans and programs;

V — national territorial boundaries, air and maritime space and property owned by the Federal Government;

VI — incorporation, subdivision or dismembering of areas of Territories or States, after hearing from the respective Legislative Assemblies;

VII — temporary transfer of the seat of the Federal Government;

VIII — granting of amnesty;

IX — organization of the Federal Government's and the Territories' administration, Judiciary and Public Defender's Office, and the organization of the Judiciary, Public Ministry and Public Defender's Office of the Federal District;

X — creation, transformation and abolition of public offices, employment and positions;

XI — creation, structuring and powers of the Ministries and organs of public administration;

XII — telecommunications and radio broadcasting;

XIII — financial matters, foreign exchange, monetary matters, and financial institutions and their operations;

XIV — money, limits on currency issuance and the amount of secured federal indebtedness.

Art. 49. The National Congress shall have exclusive powers:

I — to decide definitively on international treaties, accords or acts that involve serious charges or commitments on the national patrimony;

II — to authorize the President of the Republic to declare war, to make peace, to allow foreign forces to pass through national territory or to remain therein temporarily, with the exception of cases provided for in a complementary law;

III — to authorize the President and the Vice President of the Republic to leave the country for more than fifteen days;

IV — to approve a state of defense or federal intervention, to authorize a state of siege or to suspend any of these measures;

V — to stay normative acts of the Executive that exceed regulatory authority or the limits of legislative delegation;

§ 1º. If the explanations are given or if considered insufficient, the Committee shall ask the Tribunal to decide the matter conclusively within a period of thirty days.

§ 2º. If the Tribunal regards the expense as irregular and the Committee determines that it may cause irreparable damage or serious injury to the public economy, the Committee shall propose to the National Congress that the expenditure be suspended.

Art. 73º. The Federal Tribunal of Accounts, composed of nine Ministers, sits in Federal District, with its own staff and with jurisdiction throughout the entire Brazilian territory, and where appropriate, shall exercise the powers provided in art. 96.

§ 1º. Ministers of the Federal Tribunal of Accounts shall be nominated from Brazilians who satisfy the following requirements:

- I — more than thirty-five and less than sixty-five years of age;
- II — moral integrity and unblemished reputation;
- III — widely acknowledged understanding of law, accounting, economics and finances or government administration;
- IV — more than ten years of practice or of actual professional activity requiring the understanding mentioned in the preceding subparagraph.

§ 2º. Ministers of the Federal Tribunal of Accounts shall be chosen:

I — one-third by the President of the Republic, with the approval of the Senate, two being alternately chosen from among auditors and members of the Public Ministry assigned to the Tribunal from lists of three candidates suggested by the Tribunal, in accordance with the criteria of seniority and merit;

II — two-thirds by the National Congress.

§ 3º. Ministers of the Federal Tribunal of Accounts shall have the same guarantees, prerogatives, impediments, compensation and privileges as the Ministers of the Superior Tribunal of Justice and may retire with the benefits of the office only if they have actually served for more than five years.

§ 4º. When substituting for a Minister, an auditor shall have the same guarantees and impediments as the holder of the office, and when exercising other judicial duties, as a judge of a Regional Federal Tribunal.

Art. 74. The Legislature, Executive and Judiciary shall maintain integrated systems of internal control in order to:

- I — evaluate achievement of targets established in the multiyear plan, execution of governmental programs and of the budgets of the Federal Government;
- II — determine the legality and evaluate the efficacy and efficiency of budgetary, financial and patrimonial management by the agencies and entities of the federal administration, as well as of the application of public resources by entities of private law;

III — exercise control over credit transactions, *avals*,¹⁹ and guarantees, as well as over the rights and property of the Federal Government;

IV — support external control in the performance of their institutional missions.

§ 1º. Upon learning of any irregularity or illegality, those responsible for internal control shall notify the Federal Tribunal of Accounts thereof, upon penalty of being jointly liable.

§ 2º. Any citizen, political party, association or syndicate has standing, in the form of the law, to denounce irregularities or illegalities to the Federal Tribunal of Accounts.

Art. 75. The rules established in this section shall apply, where appropriate, to the organization, composition and supervision of the Tribunals of Accounts of the States and the Federal District, as well as the Tribunals and Councils of Accounts of the Counties.

Sole Paragraph.— The State Constitutions shall provide for their respective Tribunal of Accounts, which shall be staffed by seven Councilors.

CHAPTER II

THE EXECUTIVE BRANCH

SECTION I

PRESIDENT AND VICE PRESIDENT OF THE REPUBLIC

Art. 76. The powers of the Executive are exercised by the President of the Republic, assisted by the Ministers of State.

Art. 77. The President and the Vice President of the Republic shall be elected simultaneously ninety days prior to termination of the current presidential mandate.

§ 1º. Election of the President of the Republic shall signify election of his running mate as Vice President.

§ 2º. Once registered by a political party, the candidate who obtains an absolute majority of votes, not counting those left blank or void, shall be considered the President-elect.

§ 3º. If no candidate attains an absolute majority on the first ballot, another election shall be held within twenty days after announcement of the results between the two candidates who obtained the greatest number of votes, and the one who obtains a majority of valid votes shall be deemed elected.

¹⁹ An *aval* is a civil law form of guaranty. It is an independent suretyship contract under which a person not a party to a bill of exchange or promissory note guarantees its payment.

§ 4º. If, before the runoff election is held, a candidate dies, withdraws or is legally impaired, the candidate with the greatest number of votes among the remaining candidates shall be called.

§ 5º. In the hypothesis in the preceding paragraphs, if more than one candidate with an equal number of votes remains in second place, the older shall be qualified.

Art. 78. The President and the Vice President of the Republic shall take office at a session of the National Congress, taking an oath to maintain, defend and comply with the Constitution, to observe the laws, to promote the well being of the Brazilian people, and to sustain the union, integrity and independence of Brazil.

Sole Paragraph. — If within ten days from the date scheduled for assuming office, the President or Vice President, except for *force majeure*, has not assumed the office, it shall be declared vacant.

Art. 79. The Vice President shall replace the President in the event of impediment and shall succeed him in the event of vacancy.

Sole Paragraph. — The Vice President of the Republic, in addition to other powers conferred on him by complementary laws, shall assist the President whenever called on by the President for special missions.

Art. 80. In the event of impediment of the President and of the Vice President, or a vacancy in the respective offices, the President of the Chamber of Deputies, the President of the Federal Senate, and the President of the Supreme Federal Tribunal shall be called successively to serve as President.

Art. 81. If a vacancy occurs in the offices of President and Vice President of the Republic, an election shall be held ninety days after the last vacancy occurred.

§ 1º. If the vacancy occurs during the last two years of the President's term of office, the election for both offices shall be made by the National Congress within thirty days after the last vacancy occurred, in the form of the law.

§ 2º. In any event, those elected shall complete the terms of office of their predecessors.

Art. 82. The mandate of the President of the Republic is five years, and he may not be reelected for the subsequent term. The term of office shall begin on January 1st of the year following his election.

Art. 83. Under penalty of loss of office, the President and Vice President of the Republic may not leave the country for a period of more than fifteen days without authorization from the National Congress.

SECTION II

POWERS OF THE PRESIDENT OF THE REPUBLIC

Art. 84. The President of the Republic has the exclusive powers to:

I — appoint and dismiss Ministers of State;

II — exercise, with the assistance of the Ministers of State, the higher management of the federal administration;

III — initiate legislation, in the manner and cases provided for in this Constitution;

IV — approve, promulgate and order publication of laws, as well as to issue decrees and regulations for their faithful execution;

V — veto bills, either, wholly or partially;

VI — provide for the organization and functioning of the federal administration, in the form of the law;

VII — maintain relations with foreign States and to accredit their diplomatic representatives;

VIII — enter into international treaties, conventions and acts, subject to the approval of Congress;

IX — decree a state of defense or a state of siege;

X — decree and enforce federal intervention;

XI — send a message and plan of a government to Congress at the opening of the legislative session, describing the Country's situation and requesting the actions he deems necessary;

XII — grant pardons and commute sentences, after hearing, if necessary, from the organs instituted by law;

XIII — exercise supreme command over the Armed Forces, promote its generals and appoint them to positions that are exclusively theirs;

XIV — appoint, after approval by the Federal Senate, the Ministers of the Supreme Federal Tribunal and of the Superior Tribunals, the Governors of the Territories, the Procurator-General of the Republic, the president and directors of the Central Bank and other civil servants, when determined by law;

XV — appoint, observing the provisions of art. 73, the Ministers of the Federal Tribunal of Accounts;

XVI — appoint magistrates, in the cases provided for in this Constitution, and the Advocate-General of the Federal Government;

XVII — appoint members of the Council of the Republic, according to the terms of art. 89, VII;

XVIII — convoke and preside over the Council of the Republic and the National Defense Council;

XIX — declare war, in the event of foreign aggression, when authorized by Congress or, upon its subsequent ratification if the aggression occurs between legislative sessions, and decree full or partial national mobilization under the same conditions;

SECTION V

LABOR TRIBUNALS AND LABOR JUDGES

Art. 111. The Labor Court System consists of:

- I — the Superior Labor Tribunal;
- II — the Regional Labor Tribunals;
- III — the Boards of Conciliation and Judgment (*Juntas de Conciliação e Julgamento*).

§ 1°. The Superior Labor Tribunals shall be composed of twenty-seven Ministers, chosen from Brazilians over thirty-five years and under sixty-five years old, appointed by the President of the Republic after approval by the Federal Senate, with:

- I — seventeen professional judges with life tenure, of which eleven shall be chosen from career labor judges, three from lawyers and three from members of the Labor Public Ministry;
- II — ten temporary class members, with equal representation of labor and management.

§ 2°. The Tribunal shall send to the President of the Republic lists of three names, observing the provisions of art. 94, for vacancies destined for lawyers and members of the Public Ministry Office, and, for the temporary class members, the results of elections by the directorates of national confederations of labor and management, as the case may be; the lists of three names for filling the positions destined for career labor judges shall be prepared by the professional Ministers with life tenure.

§ 3°. The law shall set out the jurisdiction of the Superior Labor Tribunal.

Art. 112. There shall be at least one Regional Labor Tribunal in each State and in the Federal District, and the law shall set up the Boards of Conciliation and Judgment. In those judicial districts in which they are not set up, the law may confer their jurisdiction on judges of law.

Art. 113. The law shall provide for the constitution, investiture, jurisdiction, guarantees and conditions for performance for the organs of the Labor Court System, assuring equal representation for workers and employers.

Art. 114. The Labor Court System has the power to conciliate and adjudicate individual and collective labor disputes between workers and employers, including foreign public entities and those of the direct and indirect public administration of the Counties, the Federal District, the States and the Federal Government, and, in the form of the law, other controversies stemming from labor relations, as well as litigation resulting from compliance with their own decisions, including collective decisions.

§ 1°. If collective bargaining negotiations are frustrated, the parties may appoint arbitrators.

§ 2°. If any of the parties refuses to negotiate or to arbitrate, the respective syndicates may litigate a collective labor dispute, and the Labor Courts may establish rules and conditions respecting the contractual provisions and the legal minimums for the protection of labor.

Art. 115. The Regional Labor Tribunals shall be formed by judges appointed by the President of the Republic, two-thirds of which shall be professional judges with life tenure and one-third of which shall be temporary class representatives, observing, with respect to the professional judges, the proportions established in art. 111, § 1°, I.

Sole Paragraph. The judges of the Regional Labor Tribunals shall be:

- I — labor judges chosen by promotion, alternately on seniority and merit;
- II — lawyers and members of the Labor Public Ministry, obeying the provisions of art. 94;
- III — class representatives nominated in lists of three names by the directorates of the federations and syndicates with their territorial base in the region.

Art. 116. A Board of Conciliation and Judgment shall consist of one labor judge, who shall preside, and two temporary class representatives, representing labor and management.

Sole Paragraph. The temporary class representatives of the Boards of Conciliation and Judgment shall be appointed by the President of the Regional Labor Tribunal, in the form of the law, with one reappointment being permitted.

Art. 117. The mandate of the temporary class representatives in all cases is three years.

Sole Paragraph. The temporary class representatives shall have alternates.

SECTION VI

ELECTORAL TRIBUNALS AND JUDGES

Art. 118. The Electoral Justice System consists of:

- I — the Superior Electoral Tribunal;
- II — the Regional Electoral Tribunals;
- III — the Electoral Judges;
- IV — the Electoral Boards.

Art. 119. The Superior Electoral Tribunal shall be composed of at least seven members, chosen:

- I — through election, by secret ballot, with:
 - a) three judges from among the Ministers of the Supreme Federal Tribunal;

b) two judges from among the Ministers of the Superior Tribunal of Justice;

II — two judges by appointment of the President of the Republic from six lawyers of notable legal knowledge and good moral character, indicated by the Supreme Federal Tribunal.

Sole Paragraph. The Superior Electoral Tribunal shall elect its President and Vice President from the Ministers of the Supreme Federal Tribunal, and an Electoral Inspector General from the Ministers of the Superior Tribunal of Justice.

Art. 120. There shall be a Regional Electoral Tribunal in the Capital of each State and in the Federal District.

§ 1º. The Regional Electoral Tribunals shall be formed:

I — through election, by secret ballot:

- a) of two judges from the justices of the Tribunals of Justice;
- b) of two judges from the judges of law, chosen by the Tribunal of Justice;

II — by one judge of the Federal Regional Tribunal that sits in the Capital of the State or in the Federal District, or in the absence thereof, by a federal judge chosen in any case by the respective Federal Regional Tribunal;

III — by two judges appointed by the President of the Republic from six lawyers of notable legal knowledge and good moral character, nominated by the Tribunal of Justice.

§ 2º. The Regional Electoral Tribunal shall elect its President and Vice President from among the justices.

Art. 121. A complementary law shall provide for the organization and jurisdiction of the electoral tribunals, judges of law and boards.

§ 1º. The members of the tribunals, the judges of law and the members of the electoral boards, while exercising their functions and to the extent applicable to them, shall enjoy full guarantees and shall be irremovable.

§ 2º. Except for a valid reason, the judges of the electoral tribunals shall serve for at least two years and never for more than two consecutive two-year periods, and their alternates shall be chosen at the same time and through the same procedure, in equal numbers for each category.

§ 3º. The decisions of the Superior Electoral Tribunal are not appealable, with the exception of those contrary to this Constitution and those denying *habeas corpus* or a writ of security.

§ 4º. Decisions of the Regional Electoral Tribunals may only be appealed when:

- I — they contravene an express provision of this Constitution or law;
- II — a divergence in the interpretation of a law between two or more electoral courts exists;

III — they deal with ineligibility or issuance of certificates of election in federal or state elections;

IV — they annul certificates of election or decree loss of federal or state elective offices;

V — they deny *habeas corpus*, writ of security, *habeas data* or a mandate of injunction.

SECTION VII

MILITARY COURTS AND MILITARY JUDGES

Art. 122. The Military Justice System consists of:

I — the Superior Military Tribunal;

II — the Military Tribunals and Military Judges instituted by law.

Art. 123. The Superior Military Tribunal shall be composed of fifteen Ministers with life tenure, appointed by the President of the Republic after approval of their nominations by the Federal Senate, with three from admirals of the Navy, four from generals of the Army, three from generals of the Air Force, all in active service and in the highest career rank, and with five from among civilians.

Sole Paragraph. The civilian Ministers shall be chosen by the President of the Republic from Brazilians more than thirty-five years old, with:

I — three from lawyers of notable legal knowledge and unblemished conduct, with more than ten years of actual professional activity;

II — two, by equal choice, from military judges and members of the Military Public Ministry.

Art. 124. The Military Justice System shall have jurisdiction to try and adjudicate the military crimes defined by law.

Sole Paragraph. The law shall provide for the organization, operation and jurisdiction of the Military Justice System.

SECTION VIII

TRIBUNALS AND JUDGES OF THE STATES

Art. 125. The States shall organize their Justice Systems, observing the principles established in this Constitution.

§ 1º. The jurisdiction of the courts shall be defined in the State Constitution, and the law of judicial organization shall be proposed by the Tribunal of Justice.

§ 2º. It is the responsibility of the States to institute an action of unconstitutionality of state or county laws or normative acts contrary to the State Constitution, it being prohibited to confer standing to act on only one organ.

Art. 53

Everyone shall contribute to public expenditure in proportion to his resources.
Fiscal levies shall be on a progressive scale.

Art. 54

All citizens have the duty of fealty to the Republic and shall respect the Constitution and the laws.

Citizens to whom public functions are entrusted shall execute them in a disciplined and honourable manner swearing an oath to fulfill such conditions in those cases prescribed by law.

PART TWO

ORGANIZATION OF THE REPUBLIC

Title I

PARLIAMENT

Section I - The Two Chambers

Art. 55

Parliament consists of the Chamber of Deputies and the Senate of the Republic.

Parliament holds joint meetings of members of the Chamber of Deputies and the Senate only in cases laid down by the Constitution.

Art. 56 (1)

The Chamber of Deputies is elected by universal and direct suffrage, and is composed of six hundred and thirty Members.

All persons who have reached the age of twenty five years on the day of the elections are eligible for membership.

Division of seats among the constituencies is obtained by dividing the number of inhabitants registered at the last census by six hundred

(1) Amended under Constitutional Law, No. 2, Article 1, of February 9, 1963.

and thirty and distributing the said seats in proportion to the population of each constituency, on the basis of the quotients and the highest figures below these quotients.

Art. 57 (1)

The Senate of the Republic is elected on a regional basis.

Senators number three hundred and fifteen. No region may have less than seven Senators but Molise is attributed two and Valle d'Aosta one. Division of seats among the Regions, on the basis of the terms set out above, is made according to the proportion of the population of the Regions at the last census, with quotients and the highest figures below these quotients.

Art. 58

Senators are elected by direct universal suffrage by voters over twenty-five years of age.

Voters over forty years of age are eligible for election to the Senate.

Art. 59

Any person who has held office as President of the Republic is by right a Senator for Life, unless he refuses to accept the nomination.

The President of the Republic may nominate, as Senators for Life five citizens, who have brought honour to the Nation through their exceptional merits in social, scientific, artistic and literary fields.

Art. 60

The Chamber of Deputies and the Senate are elected for a period of five years.

The term of each Chamber may not be extended save by law and only in the event of war (2).

(1) Amended under Constitutional Law, No. 2, Article 2, of February 9, 1963.

The first General Elections for the Chamber of Deputies and the Senate were held on April 18, 1948 in accordance with the norms contained in Law No. 6 of January 20, 1948 and Presidential Decree No. 26 of February 5, 1948. These stated that Members of the Chamber of Deputies should number 574, to be elected under the proportional system.

The first General Elections for the Senate were held in accordance with the norms contained in Law No. 29 of February 6, 1948.

(2) Amendment under Constitutional Law No. 2, Article 3 of February 9, 1963.

Art. 61

Election of the new Chambers must take place within seventy days of the dissolution of the preceding Parliament. The first sitting must be held not later than twenty days after the elections.

The powers of the preceding Chambers shall continue until the newly elected Parliament shall meet.

Art. 62

The Chambers shall meet on the first day of February and October which is not a holiday.

Each Chamber may be convened in extraordinary session on the initiative of its Speaker or of the President of the Republic or of one third of its members.

When one Chamber is called upon to meet in extraordinary session, the other Chamber is also convened *ipso jure*.

Art. 63

Each Chamber elects its Speaker and the members of the Speaker's Office from among its own members.

The Speaker of the Chamber of Deputies and members of the Speaker's Office shall preside whenever Parliament meets in joint session (1).

Art. 64

Each Chamber drafts its own Standing Orders by an absolute majority of its members.

Sittings are open to the public; nevertheless each of the two Chambers and Parliament in joint session may decide to assemble in private.

The decisions of each Chamber and of Parliament are not valid unless the majority of the members are present, and unless they are voted by a majority of the members present, save where the Constitution provides for a special majority.

Members of the Government, even if they are not members of the Chambers, are entitled to attend meetings and are obliged to be present if called upon. They have a right to be heard whenever they request this right.

(1) The Constituent Assembly made this decision because the Speaker of the Senate acts on behalf of the President of the Republic whenever the latter is unable to carry out the duties assigned to him (Art. 86).

The law determines cases of ineligibility or incompatibility with the position of Deputy or Senator (1).

No person may be a member of both Chambers at the same time.

Art. 66

Each Chamber decides as to the validity of the admission of its own members and as to cases subsequently arising concerning ineligibility and incompatibility.

Art. 67

Each Member of Parliament represents the Nation and carries out his duties without restraint of mandate.

Art. 68

Members of Parliament may not be proceeded against for opinions expressed or votes given in the exercise of their duties.

No member of Parliament may, without the authority of the Chamber to which he belongs, be subjected to criminal proceedings, nor be arrested or otherwise deprived of his personal liberty, nor subjected to search warrants on his person or in his home unless he be caught in the act of committing an offence for which an order of arrest is compulsory.

A similar authority is required to arrest or keep in a state of detention a member of Parliament in the execution of a sentence even if it be irrevocable.

Art. 69

Members of Parliament receive an allowance as laid down by law.

(1) Basic law on the election of the Chamber of Deputies (Presidential Decree No. 20 of February 5, 1948) under Articles 6, 7, 8 and 93, and the law on the election of the Senate (Law No. 29 of February 6, 1948) under Article 5, deal with all cases of ineligibility for the first general elections.

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admitted in evidence

No person shall be convicted or punished in cases where the only proof against him is his own confession.

ARTICLE 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

ARTICLE 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

CHAPTER IV. THE DIET

ARTICLE 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

ARTICLE 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

ARTICLE 43. Both Houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

ARTICLE 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

ARTICLE 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

ARTICLE 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

ARTICLE 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

ARTICLE 48. No person shall be permitted to be a member of both Houses simultaneously.

ARTICLE 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

ARTICLE 50. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

ARTICLE 51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

ARTICLE 52. An ordinary session of the Diet shall be convoked once per year.

ARTICLE 53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation.

ARTICLE 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election.

When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

ARTICLE 55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

ARTICLE 56. Business cannot be transacted in either House unless one-third or more of total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

ARTICLE 57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

Each House shall keep a record of proceedings. This record shall be published and given general

circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

ARTICLE 58. Each House shall select its own president and other officials.

Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

ARTICLE 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councillors.

ARTICLE 60. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

ARTICLE 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

ARTICLE 62. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

ARTICLE 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

ARTICLE 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted. Matters relating to impeachment shall be provided by law.

CHAPTER V. THE CABINET

ARTICLE 65. Executive power shall be vested in the Cabinet.

ARTICLE 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.

The Prime Minister and other Ministers of State must be civilians.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

ARTICLE 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

ARTICLE 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet.

The Prime Minister may remove the Ministers of State as he chooses.

ARTICLE 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

his purpose by the President. shall preside at meetings of the

Functions of the Prime Minister

Minister shall be the leader of Government business in Parliament, shall direct the work of the Cabinet and shall advise and assist the President in the exercise of the functions of Government.

Deputy-Ministers

The President may appoint from the members of the National Assembly, including Ministers designated under Article 46(1)(b) hereof, and the National Council such Ministers as he or she may consider expedient, to exercise or perform on behalf of Ministers any of the powers, functions and duties which may have been assigned to such Ministers.

Oath or Affirmation

Before entering office, a Minister or Deputy-Minister shall make and subscribe to a solemn affirmation before the President or a person designated by the President for this purpose, in the terms set out in Schedule 2 hereof.

Vote of No Confidence

The President shall be obliged to terminate the appointment of any member of the Cabinet if the National Assembly by a majority of all its members resolves that it has no confidence in that member.

Duties and Functions

Members of the Cabinet shall have the following functions:

to direct, co-ordinate and supervise the activities of Ministries and Government departments including para-statal enterprises, and to review and advise the President and the National Assembly on the desirability and wisdom of prevailing subordinate legislation, regulations or orders pertaining to para-statal enterprises, regard being had to the public interest;

to introduce bills for submission to the National Assembly;

to formulate, explain and assess for the National Assembly the budget of the State and its economic development plans, and to report to the National Assembly thereon;

to carry out such other functions as are assigned to them by law or are incidental to such assignment;

to attend meetings of the National Assembly and to be available for the purposes of any queries and debates pertaining to the legitimacy, wisdom, expediency and direction of Government policies;

to take such steps as are authorised by law to establish such economic institutions, institutions and para-statal enterprises on behalf of the State as may be directed or authorised by law;

to formulate, explain and analyse for the members of the National Assembly the content of Namibian foreign policy and its relations with other States and to report to the National Assembly thereon;

to formulate, explain and analyse for the members of the National Assembly the content and content of foreign trade policy and to report to the National Assembly thereon;

thereon;

- (j) to advise the President on the state of national defence and the maintenance of law and order and to inform the National Assembly thereon;
- (k) to issue notices, instructions and directives to facilitate the implementation and administration of laws administered by the Executive, subject to the terms of this Constitution or any other law;
- (l) to remain vigilant and vigorous for the purposes of ensuring that the scourges of apartheid, tribalism and colonialism do not again manifest themselves in any form in a free and independent Namibia and to protect and assist disadvantaged citizens of Namibia who have historically been the victims of these pathologies.

Article 41 Ministerial Accountability

All Ministers shall be accountable individually for the administration of their own Ministries and collectively for the administration of the work of the Cabinet, both to the President and to Parliament.

Article 42 Outside Employment

- (1) During their tenure of office as members of the Cabinet, Ministers may not take up any other paid employment, engage in activities inconsistent with their positions as Ministers, or expose themselves to any situation which carries with it the risk of a conflict developing between their interests as Ministers and their private interests.
- (2) No members of the Cabinet shall use their positions as such or use information entrusted to them confidentially as such members of the Cabinet, directly or indirectly to enrich themselves.

Article 43 Secretary to the Cabinet

- (1) There shall be a Secretary to the Cabinet who shall be appointed by the President and who shall perform such functions as may be determined by law and such functions as are from time to time assigned to the Secretary by the President or the Prime Minister. Upon appointment by the President, the Secretary shall be deemed to have been appointed to such office on the recommendation of the Public Service Commission.
- (2) The Secretary to the Cabinet shall also serve as a depository of the records, minutes and related documents of the Cabinet.

CHAPTER 7

THE NATIONAL ASSEMBLY

Article 44 Legislative Power

The legislative power of Namibia shall be vested in the National Assembly with the power to pass laws with the assent of the President as provided in this Constitution subject, where applicable, to the powers and functions of the National Council as set out in this Constitution.

Article 45 Representative Nature

The members of the National Assembly shall be representative of all the people and shall in the performance of their duties be guided by the objectives of this Constitution, by the public interest and by their conscience.

Composition

composition of the National Assembly shall be as follows:

- (a) seventy-two (72) members to be elected by the registered voters by general, direct and secret ballot. Every Namibian citizen who has the qualifications described in Article 17 hereof shall be entitled to vote in the elections for members of the National Assembly and, subject to Article 47 hereof, shall be eligible for candidature as a member of the National Assembly;
- (b) not more than six (6) persons appointed by the President under Article 32(5)(c) hereof, by virtue of their special expertise, status, skill or experience; provided that such members shall have no vote in the National Assembly, and shall not be taken into account for the purpose of determining any specific majorities that are required under this Constitution or any other law.

Subject to the principles referred to in Article 49 hereof, the members of the National Assembly referred to in Sub-Article (1)(a) hereof shall be elected in accordance with procedures to be determined by Act of Parliament.

Article 47 Disqualification of Members

No persons may become members of the National Assembly if they:

- (a) have at any time after Independence been convicted of any offence in Namibia, or outside Namibia if such conduct would have constituted an offence within Namibia, and for which they have been sentenced to death or to imprisonment of more than twelve (12) months without the option of a fine, unless they have received a free pardon or unless such imprisonment has expired at least ten (10) years before the date of their election; or
- (b) have at any time prior to independence been convicted of an offence, if such conduct would have constituted an offence within Namibia after Independence, and for which they have been sentenced to death or to imprisonment of more than twelve (12) months without the option of a fine, unless they have received a free pardon or unless such imprisonment has expired at least ten (10) years before the date of their election; provided that no person sentenced to death or imprisonment for acts committed in connection with the struggle for the independence of Namibia shall be disqualified under this Sub-Article from being elected as a member of the National Assembly; or
- (c) are unrehabilitated insolvents; or
- (d) are of unsound mind and have been so declared by a competent Court; or
- (e) are remunerated members of the public service of Namibia; or
- (f) are members of the National Council, Regional Councils or Local Authorities.

For the purposes of Sub-Article (1) hereof:

- (a) no person shall be considered as having been convicted by any Court until any appeal which might have been noted against the conviction or sentence has been determined, or the time for noting an appeal against such conviction has expired;
- (b) the public service shall be deemed to include the defence force, the police force, the prison service, para-statal enterprises, Regional Councils and Local Authorities.

Article 48 Vacation of Seats

(1) Members of the National Assembly shall vacate their seats:

- (a) if they cease to have the qualifications which rendered them eligible to be members of the National Assembly;
- (b) if the political party which nominated them to sit in the National Assembly informs the Speaker that such members are no longer members of such political party;
- (c) if they resign their seats in writing addressed to the Speaker;
- (d) if they are removed by the National Assembly pursuant to its rules and standing orders permitting or requiring such removal for good and sufficient reasons;
- (e) if they are absent during sittings of the National Assembly for ten (10) consecutive sitting days, without having obtained the special leave of the National Assembly on grounds specified in its rules and standing orders.

(2) If the seat of a member of the National Assembly is vacated in terms of Sub-Article (1) hereof, the political party which nominated such member to sit in the National Assembly shall be entitled to fill the vacancy by nominating any person on the party's election list compiled for the previous general election, or if there be no such person, by nominating any member of the party.

Article 49 Elections

The election of members in terms of Article 46(1)(a) hereof shall be on party lists and in accordance with the principles of proportional representation as set out in Schedule 4 hereof.

Article 50 Duration

Every National Assembly shall continue for a maximum period of five (5) years, but it may before the expiry of its term be dissolved by the President by Proclamation as provided for in Articles 32(3)(a) and 57(1) hereof.

Article 51 Speaker

- (1) At the first sitting of a newly elected National Assembly, the National Assembly, with the Secretary acting as Chairperson, shall elect a member as Speaker. The National Assembly shall then elect another member as Deputy-Speaker. The Deputy-Speaker shall act as Speaker whenever the Speaker is not available.
- (2) The Speaker or Deputy-Speaker shall cease to hold office if he or she ceases to be a member of the National Assembly. The Speaker or Deputy-Speaker may be removed from office by resolution of the National Assembly, and may resign from office or from the National Assembly in writing addressed to the Secretary of the National Assembly.
- (3) When the office of Speaker or Deputy-Speaker becomes vacant the National Assembly shall elect a member to fill the vacancy.
- (4) When neither the Speaker nor the Deputy-Speaker is available for duty, the National Assembly, with the Secretary acting as Chairperson, shall elect a member to act as Speaker.

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ELECTION OF MEMBERS OF THE NATIONAL ASSEMBLY

For the purpose of filling the seventy-two (72) seats in the National Assembly pursuant to the provisions of Article 46 (1) (a) hereof, the total number of votes cast in a general election for these seats shall be divided by seventy-two (72) and the result shall constitute the quota of votes per seat.

The total number of votes cast in favour of a registered political party which offers itself for this purpose shall be divided by the quota of voter per seat and the result shall, subject to paragraph (3), constitute the number of seats to which that political party shall be entitled in the National Assembly.

Where the formula set out in paragraph (2) yields a surplus fraction not absorbed by the number of seats allocated to the political party concerned, such surplus shall compete with other similar surpluses accruing to any other political party or parties participating in the election, and any undistributed seat or seats (in terms of the formula set out in paragraph (2)) shall be awarded to the party or parties concerned in sequence of the highest surplus.

Subject to the requirements pertaining to the qualification of members of the National Assembly, a political party which qualifies for seats in terms of paragraphs (2) and (3) shall be free to choose in its own discretion which persons to nominate as members of the National Assembly to fill the said seats.

Provision shall be made by Act of Parliament for all parties participating in an election of members of the National Assembly to be represented at all material stages of the election process and to be afforded a reasonable opportunity for scrutinising the counting of the votes cast in such election.

SCHEDULE 5

PROPERTY VESTING IN THE GOVERNMENT OF NAMIBIA

All property of which the ownership or control immediately prior to the date of independence vested in the Government of the Territory of South West Africa, or in any Representative Authority constituted in terms of the Representative Authorities Proclamation, 1980 (Proclamation AG 8 of 1980), or in the Government of Rehoboth, or in any other body, statutory or otherwise, constituted by or for the benefit of any such Government or Authority immediately prior to the date of independence, or which was held in trust for or on behalf of the Government of an independent Namibia, shall vest in or be under the control of the Government of Namibia.

For the purpose of this Schedule, "property" shall, without detracting from the generality of that term as generally accepted and understood, mean and include movable and immovable property, whether corporeal or incorporeal and wheresoever situate, and shall include any right or interest therein.

All such immovable property shall be transferred to the Government of Namibia without payment of transfer duty, stamp duty or any other fee or charge, but subject to any existing right, charge, obligation or trust on or over such property and subject also to the provisions of this Constitution.

The Registrar of Deeds concerned shall upon production to him or her of the title deed to any immovable property mentioned in paragraph (1) endorse such title deed to the effect that the immovable property therein described is vested in the Government of Namibia and shall make the necessary entries in his or her registers, and thereupon the said title deed shall serve and avail for all purposes as proof of the title of the Government of Namibia to the said property.

THE NATIONAL FLAG OF THE REPUBLIC OF NAMIBIA

The National Flag of Namibia shall be rectangular in the proportion of three in the length to two in the width, tierced per bend reversed, blue, white and green; the white bend reversed, which shall be one third of the width of the flag, is charged with another of red, one quarter of the width of the flag. In the upper hoist there shall be a gold sun with twelve straight rays, the diameter of which shall be one third of the width of the flag, with its vertical axis one fifth of the distance from the hoist, positioned equidistant from the top edge and from the reversed bend. The rays, which shall each be two fifths of the radius of the sun, issue from the outer edge of a blue ring, which shall be one tenth of the radius of the sun.

SCHEDULE 7

IMPLEMENTATION OF THIS CONSTITUTION

1. On the day of Independence, the Secretary-General of the United Nations shall administer to the President, elected in terms of Article 134 hereof, the oath or affirmation prescribed by Article 30 hereof.
2. The President shall appoint the Prime Minister and administer to him or her the oath or affirmation set out in Schedule 1 hereof.
3. The President shall administer to the first Judges of Namibia, appointed under Article 138 (1) hereof, the oath or affirmation set out in Schedule 5 hereof.
4. On the day determined by the Constituent Assembly the National Assembly shall first meet, at a time and at a place specified by the Prime Minister.
5. The members of the National Assembly, with the Prime Minister as Chairperson, shall:
 - (a) Take the oath or affirmation prescribed by Article 55 hereof before the Judge-President or a Judge designated by the Judge-President for this purpose;
 - (b) Elect the Speaker of the National Assembly.
6. The National Assembly, with the Speaker as Chairperson, shall:
 - (a) Elect a Deputy-Speaker;
 - (b) Conduct such business as it deems appropriate;
 - (c) Adjourn to a date to be determined by the National Assembly.
7. The rules and procedures followed by the Constituent Assembly for the holding of its meetings shall, *mutatis mutandis*, be the rules and procedures to be followed by the National Assembly until such time as the National Assembly has adopted rules of procedure and standing orders under Article 59 hereof.

SCHEDULE 8

REPEAL OF LAWS

South-West Africa Constitution Act, 1968 (Act No. 39 of 1968)

Rehoboth Self-Government Act, 1976 (Act No. 56 of 1976)

- (n) for the imposition or enforcement of any tax, rate or duty;
- (o) for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence;
- (p) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;
- (q) relating to the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of being wound-up;
- (r) relating to the execution of judgments or orders of courts;
- (s) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
- (t) relating to enemy property;
- (u) relating to trusts and trustees;
- (v) relating to limitation of actions;
- (w) relating to property vested in bodies corporate directly established by any law in force in Nigeria;
- (x) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;
- (y) providing for the carrying out of work on land for the purpose of soil conservation; or
- (z) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.

(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

43-(1) Nothing in sections 36, 37, 38, 39, and 40 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedom of other persons.

(2) An Act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 32 or 34 of this Constitution; but no such measures shall be taken in pursuance of any such Act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency.

Provided that nothing in this section shall authorise any derogation from

Special
jurisdiction
of High Court
and legal aid.

the provisions of section 32 or 34 of this Constitution resulting from acts of war or authorise any derogation from the provisions of section 35 (7) of this Constitution.

(3) In this section, a "period of emergency" means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 317.

44-(1) Any person who alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in any State or in the Federal Capital Territory, Abuja, in relation to him may apply to a High Court having jurisdiction in that area for redress.

(2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State or in the Federal Capital Territory, Abuja, of any rights to which the person who makes the application may be entitled under this Chapter.

(3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section.

(4) The National Assembly-

(a) may confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section; and

(b) shall make provisions-

(i) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and ensure that opportunities for securing justice are not denied, and

(ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

(5) In this section, reference to a High Court includes a reference to the Federal High in the Federal Capital Territory, Abuja.

CHAPTER V

THE LEGISLATURE

PART I

NATIONAL ASSEMBLY

A - Composition and Staff of National Assembly

45. There shall be a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.

46. The Senate shall consist of 3 Senators from each State and one from the Federal Capital Territory, Abuja.

Establishment of the National Assembly.

Composition of the Senate.

Restriction on and derogation from fundamental right.

47. Subject to the provisions of Chapter IX of this Constitution, the House of Representatives shall consist of 433 members.

48.-(1) There shall be-

(a) a President and a Deputy President of the Senate, who shall be elected by members of that House from among themselves; and

(b) a Speaker and a Deputy Speaker of the House of Representatives who shall be elected by members of that House from among themselves.

(2) The President or Deputy President of the Senate or the Speaker or Deputy Speaker of the House of Representatives shall vacate his office-

(a) if he ceases to be a member of the Senate or of the House of Representatives, as the case may be, otherwise than by reason of a dissolution of the Senate or the House of Representatives; or

(b) when the House of which he was a member first sits after any dissolution of that House; or

(c) if he is removed from office by a resolution of the Senate or of the House of Representatives, as the case may be, by the votes of not less than two-thirds majority of members of that House.

49. There shall be a Clerk to the National Assembly and such other staff as may be prescribed by an Act of the National Assembly, and the method of appointment of the Clerk and other staff of the National Assembly shall be as prescribed by that Act.

B - Procedure for Summoning and Dissolution of National Assembly

50.-(1) Every person elected to the Senate or the House of Representatives shall, before taking his seat, declare his assets and liabilities as prescribed in this Constitution and subsequently take and subscribe the Oath of Allegiance and the Oath of Membership prescribed in the Seventh Schedule to this Constitution before the President of the Senate or, as the case may be, the Speaker of the House of Representatives, but a member may before taking the oaths take part in the election of a President and a Deputy President of the Senate or, as the case may be, of a Speaker and a Deputy Speaker of the House of Representatives.

(2) The President and Deputy President of the Senate and the Speaker and the Deputy Speaker of the House of Representatives shall declare their assets and liabilities as prescribed in this Constitution and subsequently take and subscribe the Oath of Allegiance and the Oath of Membership prescribed as aforesaid before the Clerk of the National Assembly.

51.-(1) At any sitting of the National Assembly-

(a) in the case of the Senate, the President of the Senate shall preside, and in his absence the Deputy President shall preside; and

(b) in the case of the House of Representatives, the Speaker of that House shall preside, and in his absence the Deputy Speaker shall preside.

(2) At any joint sitting of the Senate and the House of Representatives-

(a) the President of the Senate shall preside, and in his absence the Speaker of the House of Representatives shall preside; and

(b) in the absence of the persons mentioned in paragraph (a) of this subsection the Deputy President of the Senate and in his absence the Deputy Speaker of the House of Representatives shall preside.

(3) In the absence of the person mentioned in subsections (1) and (2) of this section, such member of the Senate or the House of Representatives as the Senate or the House of Representatives may elect for that purpose shall preside.

52.-(1) The quorum of the Senate or the House of Representatives shall be one-half of all the members of the legislative house concerned.

(2) The quorum of a joint sitting of both the Senate and the House of Representatives shall be one-half of all the members of both Houses.

53. The business of the National Assembly shall be conducted in English, and in Hausa, Igbo and Yoruba when adequate arrangements have been made therefor.

54.-(1) Except as otherwise provided by this Constitution, any question proposed for decision in the Senate or the House of Representatives shall be determined by the required majority of the members present and voting; and the person presiding shall cast a vote whenever necessary to avoid an equality of votes but shall not vote in any other case.

(2) Except as otherwise provided by this Constitution, the required majority for the purpose of determining any question shall be a simple majority.

(3) The Senate or the House of Representatives shall by its rules provide -

(a) that a member of the House shall declare any direct pecuniary interest he may have in any matter coming before the House for deliberation;

(b) that the House may by resolution decide whether or not such member may vote or participate in its deliberations on such matter;

(c) the penalty, if any, which the House may impose for failure to declare any direct pecuniary interest such member may have; and

(d) for such other matters pertaining to the foregoing as the House may think necessary; but nothing in the foregoing provisions shall enable any rules to be made to require any member who signifies his intention not to vote or participate in such matter, and who does not so vote or participate to declare such interest.

55. Any person who sits or votes in the Senate or the House of Representatives knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and shall upon conviction be liable to such punishment as shall be prescribed by an Act of the National Assembly.

56.-(1) The power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and the House of Representatives and, except as otherwise provided by subsection (5) of this section, assented to by the President.

(2) A bill may originate in either the Senate or the House of Representatives and shall not become law unless it has been passed and, except as otherwise provided by this section and section 60 of this Constitution, assented to in accordance with the provisions of this section.

(3) Where a bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented to the President for assent when it has been passed by that other House and agreement has been reached between the 2 Houses on any amendment made on it.

Staff of the National Assembly.

Declaration of assets and liabilities: oaths of members.

Seventh Schedule.

Presiding at sittings of the National Assembly and at joint sittings.

(4) Where a bill is presented to the President for assent, he shall within 30 days thereof signify that he assents or that he withholds assent.

(5) Where the President withholds his assent and the bill is again passed by each House by two-thirds majority, the bill shall become law and the assent of the President shall not be required.

57.-(1) The provisions of this section shall apply to-

(a) an appropriation bill or a supplementary appropriation bill including any other bill for the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of the Federation of any money charged thereon or any alteration in the amount of such a payment, issue or withdrawal; and

(b) a bill for the imposition of or increase in any tax, duty or fee or any reduction, withdrawal or cancellation thereof.

(2) Where a bill to which this section applies is passed by one of the Houses of the National Assembly but is not passed by the other House within a period of 2 months from the commencement of a financial year, the President of the Senate shall within 14 days thereafter arrange for and convene a meeting of the joint finance committee to examine the bill with a view to resolving the differences between the two Houses.

(3) Where the joint finance committee fails to resolve such differences then the bill shall be presented to the National Assembly sitting at a joint meeting, and if the bill is passed at such joint meeting, it shall be presented to the President for assent.

(4) Where the President within 30 days after the presentation of the bill to him fails to signify his assent or where he withholds assent, then the bill shall again be presented to the National Assembly sitting at a joint meeting, and if passed by two-thirds majority of members of both Houses at such joint meeting, the bill shall become law and the assent of the President shall not be required.

(5) In this section "joint finance committee" refers to the joint committee of the National Assembly on finance established pursuant to section 60 (3) of this Constitution.

58. Subject to the provisions of this Constitution, the Senate or the House of Representatives shall have power to regulate its own procedure, including the procedure for summoning and recess of the House.

59. The Senate or the House of Representatives may act notwithstanding any vacancy in its membership, and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

60.-(1) The Senate or the House of Representatives may appoint a committee of its members for such special or general purposes as in its opinion would be better regulated and managed by means of such a committee, and may by resolution, regulation or otherwise, as it thinks fit, delegate any functions exercisable by it to any such committee.

(2) The number of members of a committee appointed under this section, their terms of office and quorum shall be fixed by the House appointing it.

(3) The Senate and the House of Representatives shall appoint a joint committee on finance consisting of an equal number of members appointed by each House and may appoint any other joint committee under the provisions of this section.

(4) Nothing in this section shall be construed as authorising such House to delegate to a committee the power to decide whether a bill shall be passed into law or to determine any matter which it is empowered to

determine by resolution under the provisions of this Constitution, but the committee may be authorised to make recommendations to the House on any such matter.

61. The Senate and the House of Representatives shall each sit for a period of not less than 181 days and not more than 181 days in a year.

62.-(1) The Senate and the House of Representatives shall each stand dissolved at the expiration of a period of 4 years commencing from the date of the first sitting of the House.

(2) If the Federation is at war in which the territory of Nigeria is physically involved and the President considers that it is not practicable to hold elections, the National Assembly may by resolution extend the period of 4 years mentioned in subsection (1) of this section from time to time but not beyond a period of 6 months at any one time.

(3) Subject to the provisions of this Constitution, the person elected as the President shall have power to issue a proclamation for the holding of the first session of the National Assembly immediately after his being sworn in or for its dissolution as provided in this section.

C - Qualifications for Membership of National Assembly and Right of Attendance

63.-(1) Subject to the provisions of section 65 of this Constitution-

(a) a person shall be qualified for election as a member of the Senate if he is a citizen of Nigeria and has attained the age of 30 years;

(b) a person shall be qualified for election as a member of the House of Representatives if he is a citizen of Nigeria and has attained the age of 25 years.

(2) A person shall be qualified for election under subsection (1) of this section only if he has been educated up to at least the School Certificate level or its equivalent.

64.-(1) No person shall be qualified for elections to the Senate or the House of Representatives if-

(a) he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, has made a declaration of allegiance to such a country;

(b) under any law in force in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind;

(c) he is under a sentence of death imposed on him by any court of law in Nigeria or a sentence of imprisonment for an offence involving dishonesty (by whatever name called) imposed on him by such a court or substituted by a competent authority for any other sentence imposed on him by such a court;

(d) he has been convicted and sentenced by a court of law or tribunal established by law for an offence involving dishonesty or he has been found guilty of a contravention of the Code of Conduct;

(e) he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Nigeria;

(f) he is a person employed in the public service of the Federation or of any State; or

(g) he is a member of any secret society.

Sittings.

Dissolution and issue of proclamations by President.

Qualifications for election.

Disqualifications.

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Sub of
meeting
shall
negative
power
any bill.

Regulation of
procedure.

Vacancy not
to invalidate
proceedings.

Committee.

(2) Where in respect of any person who has been adjudged to be a lunatic, declared to be of unsound mind, sentenced to death or imprisonment or adjudged or declared bankrupt, any appeal against the decision is pending in any court of law in accordance with any law in force in Nigeria, subsection (1) of this section shall not apply during a period beginning from the date when such appeal is lodged and ending on the date when the appeal is finally determined or, as the case may be, the appeal lapses or is abandoned, whichever is earlier; and for the purposes of this subsection, an "appeal" includes any application for an injunction or an order of certiorari, mandamus, prohibition or habeas corpus, or any appeal from any such application.

65.-(1) The President shall address annually a joint meeting of the National Assembly on the state of affairs of the nation.

(2) The President may attend any joint meeting of the National Assembly or any meeting of either House of the National Assembly, either to deliver an address on national affairs including fiscal measures or to make such statement on the policy of government as he considers to be of national importance.

(3) A Minister of the Government of the Federation shall attend either House of the National Assembly if invited to explain to the House the conduct of his ministry, and in particular when the affairs of that ministry are under discussion.

(4) Nothing in this section shall enable any person who is not a member of the Senate or of the House of Representatives to vote in that House or in any of its committees.

66.-(1) A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if-

(a) he becomes a member of another legislative house;

(b) any other circumstances arise that, if he were not a member of the Senate or the House of Representatives, would cause him to be disqualified for election as a member;

(c) he ceases to be a citizen of Nigeria;

(d) he becomes President, Vice-President, Governor, Deputy Governor or a Minister of the Government of the Federation or a Commissioner of the Government of a State, a Chairman or Councillor of a Local Government Council;

(e) save as otherwise prescribed by this Constitution, he becomes a member of a Commission or other body established by this Constitution or by any other law;

(f) without just cause he is absent from meetings of the House of which he is a member for a period amounting in the aggregate to more than one-sixth of the total number of days during which the House meets in any one year;

(g) being a person whose election to the House was sponsored by one political party, he resigns from that political party or becomes a member of the other political party before the expiration of the period for which that House was elected;

(h) he becomes a member of a secret society; or

(i) the President of the Senate or as the case may be the Speaker of the House of Representatives receives a certificate under the hand of the Chairman of the National Electoral Commission stating that the provisions of section 68 of this Constitution have been complied with in respect of the recall of that member.

Attendance of
President and
Ministers.

Tenure of
seat of
members.

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(2) The President of the Senate or the Speaker of the House of Representatives as the case may be, shall give effect to subsection (1) of this section, so however that the President of the Senate or the Speaker of the House of Representatives or a member shall first present evidence satisfactory to the House concerned that any of the provisions of that subsection has become applicable in respect of that member.

(3) A member of the Senate or of the House of Representatives shall be deemed to be absent without just cause from a meeting of the House of which he is a member, unless the person presiding certifies in writing that he is satisfied that the absence of the member from the meeting was for a just cause.

Remuneration.

67.-(1) A member of the Senate or of the House of Representatives shall receive sitting allowances and such other allowances as the National Revenue Mobilisation Commission may recommend.

(2) A member of the Senate or of the House of Representatives shall be paid for only the number of days he sits.

Recall.

68. A member of the Senate or of the House of Representatives may be recalled as such a member if-

(a) there is presented to the Chairman of the National Electoral Commission a petition in that behalf signed by more than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member; and

(b) the petition is thereafter in a referendum conducted by the National Electoral Commission within 90 days of the date of receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member's constituency.

D - Elections to National Assembly

69. Subject to the provisions of section 70 of this Constitution, the National Electoral Commission shall-

(a) divide each State of the Federation into 3 Senatorial districts for purposes of elections to the Senate; and

(b) subject to the provisions of Chapter IX of this Constitution, divide the Federation into 453 Federal constituencies for purposes of elections to the House of Representatives.

Senatorial
district and
Federal con-
stituencies.

Size of Senatorial
districts and
Federal constituen-
cies.

Periodical
review of Senatorial
districts and
Federal consti-
tuencies.

70. No Senatorial district or Federal constituency shall fall within more than one State, and the boundaries of each district or constituency shall be as contiguous as possible such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable.

71.-(1) The National Electoral Commission shall review the division of States and of the Federation into Senatorial districts and Federal constituencies at intervals of not less than 10 years, and may alter the districts or constituencies in accordance with the provisions of this section to such extent as it may consider desirable in the light of the review.

(2) Notwithstanding subsection (1) of this section, the Commission may at any time carry out such a review and alter the districts or constituencies in accordance with the provisions of this section to such extent as it considers necessary, in consequence of any amendment to section 3 of this Constitution or any provision replacing that section, or by reason of the holding of a census of the population, or pursuant to an Act of the National Assembly.

Time when
Senatorial
districts or
Federal constitu-
encies takes
effect.

72. Where the boundaries of any Senatorial district or Federal constituency established under section 69 of this Constitution are altered in accordance with the provisions of section 71 of this Constitution that alteration shall come into effect after it has been approved by each House of the National Assembly and after the current life of the Senate (in the case of an alteration to the boundaries of a Senatorial district) or the House of Representatives (in the case of an alteration to the boundaries of a Federal constituency).

Ascertain-
ment of
population.

73. For the purposes of section 70 of this Constitution the number of inhabitants of Nigeria or any part thereof shall be ascertained by reference to the 1963 census of the population of Nigeria or the latest census held in pursuance of an Act of the National Assembly after the coming into force of the provisions of this Part.

Time of
election to
the National
Assembly.

74.-(1) Elections to each House of the National Assembly shall be held on a date to be appointed by the National Electoral Commission.

(2) The date mentioned in subsection (1) of this section shall not be earlier than 90 days before and not later than the date on which the House stands dissolved, or where the election is to fill a vacancy occurring more than 90 days before such date not later than 30 days after the vacancy occurred.

Direct
election and
franchise.

75.-(1) Subject to the provisions of this Constitution, every Senatorial district or Federal constituency established in accordance with the provisions of this Part shall return one member who shall be directly elected to the Senate or the House of Representatives in such manner as may be prescribed by an Act of the National Assembly.

(2) Every citizen of Nigeria, who has attained the age of 18 years residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election.

Supervision
of election.

76. The registration of voters and the conduct of elections shall be subject to the direction and supervision of the National Electoral Commission.

Power of
National
Assembly
as to
determination
of certain
questions.

77. The National Assembly shall make provisions as respects -

(a) persons who may apply to an election tribunal for the determination of any question as to whether-

(i) any person has been validly elected to the office of President or Vice-President,

(ii) any person has been validly elected as a member of the Senate or of the House of Representatives,

(iii) the term of office of any person has ceased, and

(iv) the seat in the Senate or in the House of Representatives of a member of that House has become vacant;

(b) circumstances and manner in which and the conditions upon which such applications may be made; and

(c) powers, practice and procedure of the election tribunals in relation to any such application.

E - Powers and Control over Public Funds

Establishment
of Consolidated
Revenue Fund.

78.-(1) All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.

(2) No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the fund by this Constitution or where the issue of those moneys has been authorised by an Appropriation Act, Supplementary Appropriation Act or an Act passed in pursuance of section 79 of this Constitution.

(3) No money shall be withdrawn from any public fund of the Federation other than the Consolidated Revenue Fund of the Federation unless the issue of those moneys has been authorised by an Act of the National Assembly.

(4) No money shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation, except in the manner prescribed by the National Assembly.

Authorisation
of expenditure
from Consolidated
Revenue Fund.

79.-(1) The President shall cause to be prepared and laid before each House of the National Assembly not later than 60 days before the expiration of each financial year estimates of the revenues and expenditure of the Federation for the following financial year.

(2) The heads of expenditure contained in the estimates (other than expenditure charged upon the Consolidated Revenue Fund of the Federation by this Constitution) shall be included in a bill, to be known as an Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

(3) If in respect of any financial year it is found-

(a) that the amount appropriated by the Appropriation Act for any purpose is insufficient; or

(b) that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act, a supplementary estimate showing the sums required shall be laid before each House of the National Assembly and the heads of any such expenditure shall be included in a Supplementary Appropriation Bill.

Authorisation
of expenditure
in deficit of
appropriations.

80. If the Appropriation Bill in respect of any financial year has not been passed into law by the beginning of the financial year, the President may authorise the withdrawal of moneys from the Consolidated Revenue Fund of the Federation for the purpose of meeting expenditure necessary to carry on the services of the Government of the Federation for a period not exceeding 3 months or until the coming into operation of the Appropriation Act, whichever is the earlier.

Provided that the withdrawal in respect of any such period shall not exceed the amount authorised to be withdrawn from the Consolidated Revenue Fund of the Federation under the provisions of the Appropriation Act passed by the National Assembly for the corresponding period in the immediately preceding financial year, being an amount proportionate to the total amount so authorised for the immediately preceding financial year.

Contingencies
Fund.

81.-(1) The National Assembly may by law make provisions for the establishment of a Contingencies Fund for the Federation and for authorising the President, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the Fund to meet the need.

(2) Where any advance is made in accordance with the provisions of this section, a Supplementary Estimate shall be presented and a Supplementary Appropriation Bill shall be introduced within 30 days for the purpose of replacing the amount so advanced.

Assembly for a period amounting in the aggregate to more than one-sixth of the total number of days during which the House meets in any one year;

(g) being a person whose election to the House of Assembly was sponsored by one political party he resigns from that political party or he becomes a member of the other political party before the expiration of the period for which that House was elected;

(h) he becomes a member of a secret society; or

(i) the Speaker of the House of Assembly receives a certificate under the hand of the Chairman of the National Electoral Commission stating that the provisions of section 108 of this Constitution have been complied with in respect of the recall of that member.

(2) The Speaker of the House of Assembly shall give effect to subsection (1) of this section, so however that the Speaker or a member shall first present evidence satisfactory to the House that any of the provisions of that subsection has become applicable in respect of that member.

(3) A member of a House of Assembly shall be deemed to be absent without just cause from a meeting of the House of Assembly unless the person presiding certifies in writing that he is satisfied that the absence of the member from the meeting was for a just cause.

108.-(1) A member of the House of Assembly shall receive sitting allowance and such other allowances as the National Revenue Mobilisation Commission may recommend.

(2) A member of the House of Assembly shall be paid for only the number of days he sits.

109. A member of the House of Assembly may be recalled as such a member if:

(a) there is presented to the Chairman of the National Electoral Commission a petition in that behalf signed by more than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member; and

(b) the petition is thereafter in a referendum conducted by the National Electoral Commission, within 90 days of the date of the receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member's constituency.

D - Elections to a House of Assembly

110. Subject to the provisions of section 111 of this Constitution, the National Electoral Commission shall divide every State in the Federation into such number of State constituencies as is equal to two times the number of Federal constituencies within that State.

111. Each State constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable.

112.-(1) The National Electoral Commission shall review the division of every State into constituencies at intervals of not less than 10 years, and may alter such constituencies in accordance with the provisions of this section to such extent as it may consider desirable in the light of the review.

(2) The National Electoral Commission may at any time carry out such a review and alter the constituencies in accordance with the provisions of this section to such extent as it considers necessary in consequence of any alteration of the boundaries of the State or by reason of the holding of a census of the population of Nigeria in pursuance of an Act of the National Assembly or in consequence of any amendment to section 3 of this Constitution or any provisions replacing that section.

Time when alteration of State constituencies takes effect.

Time of election to House of Assembly.

Direct election and franchise.

Supervision of election.

Power of National Assembly as to determination of certain questions.

113. Where the boundaries of any State constituency established under section 110 of this Constitution are altered in accordance with the provisions of section 112 of this Constitution, that alteration shall come into effect after it has been approved by each House of the National Assembly and after the current life of the House of Assembly of the State.

114.-(1) Elections to a House of Assembly shall be held on a date to be appointed by the National Electoral Commission.

(2) The date mentioned in subsection (1) of this section shall not be earlier than 90 days before and not later than the date on which the House of Assembly stands dissolved, or where the election is to fill a vacancy occurring more than 90 days before such date not later than 30 days after the vacancy occurred.

115.-(1) Subject to the provisions of this Constitution, every State constituency established in accordance with the provisions of this Part shall return one member who shall be directly elected to a House of Assembly as may be prescribed by an Act of the National Assembly.

(2) Every citizen of Nigeria, who has attained the age of 18 years residing in Nigeria at the time of the registration of voters for purposes of election to any legislative house, shall be entitled to be registered as a voter for that election.

116. The registration of voters and the conduct of elections shall be subject to the direction and supervision of the National Electoral Commission.

117. The National Assembly shall make provisions as respects:

(a) persons who may apply to an election tribunal for the determination of any question as to whether:

(i) any person has been validly elected to the office of Governor or Deputy Governor,

(ii) any person has been validly elected as a member of a House of Assembly,

(iii) the term of office of any person has ceased, and

(iv) the seat in the House of Assembly of a member of that House has become vacant;

(b) circumstances and manner in which, and the conditions upon which such application may be made; and

(c) powers, practice and procedure of the election tribunals in relation to any such application.

E - Powers and Control over Public Funds

118.-(1) All revenues or other moneys raised or received by a State (not being revenues or other moneys payable under this Constitution or any Law of a House of Assembly into any other public fund of the State established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the State.

(2) No moneys shall be withdrawn from the Consolidated Revenue Fund of the State except to meet expenditure that is charged upon the Fund by this Constitution or where the issue of those moneys has been authorised by an Appropriation Law, Supplementary Appropriation Law or Law passed in pursuance of section 119 of this Constitution.

Immersion.

Recall.

State constituencies.

Size of State constituencies.

Periodical review of State constituencies.

Establishment of Consolidated Revenue Fund.

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(6) In the exercise of his functions under this Constitution, the Auditor-General of a State and the Auditor-General of the Local Government of a State shall not be subject to the direction or control of any other authority or person.

124.-(1) The Auditor-General of a State and the Auditor-General for the Local Governments of a State shall be appointed by the Governor of the State on the recommendation of the State Civil Service Commission subject to confirmation by the House of Assembly of the State.

(2) Power to appoint persons to act in the office of the Auditor-General shall vest in the Governor.

(3) Except with the sanction of a resolution of the House of Assembly of a State, no person shall act in the office of the Auditor-General for a period exceeding 6 months.

125.-(1) A person holding the office of the Auditor-General under subsection (1) of section 124 of this Constitution shall be removed from office by the Governor of the State acting on an address supported by two-thirds majority of the House of Assembly praying that he be so removed for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct.

(2) The Auditor-General shall not be removed from office before such retiring age as may be prescribed by Law, save in accordance with the provisions of this section.

126.-(1) Subject to the provisions of this Constitution, a House of Assembly shall have power by resolution published in its journal or in the Gazette of the Government of the State to direct or cause to be directed an inquiry or investigation into-

- (a) any matter or thing with respect to which it has power to make laws; and
- (b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for-

(i) executing or administering laws enacted by that House of Assembly, and

(ii) disbursing or administering moneys appropriated or to be appropriated by such House.

(2) The powers conferred on a House of Assembly under the provisions of this section are exercisable only for the purpose of enabling the House-

- (a) to make laws with respect to any matter within its legislative competence and to correct any defects in existing laws; and
- (b) to prevent and expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

127.-(1) For the purposes of any investigation under section 126 of this Constitution and subject to the provisions thereof, a House of Assembly or a committee appointed in accordance with section 101 of this Constitution shall have power-

(a) to procure all such evidence, written or oral, direct or circumstantial, as it may think necessary or desirable, and to examine all persons as witnesses whose evidence may be material or relevant to the subject-matter;

(b) to require such evidence to be given on oath;

(c) to summon any person in Nigeria to give evidence at any place or to produce any document or other thing in his possession or under his

document or other thing in his possession or under his control, all just exceptions; and

(d) to issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails, refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the House of Assembly or the committee, and to order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his failure, refusal or neglect to obey the summons, and also to impose such fine as may be prescribed for any such failure, refusal or neglect; and any fine so imposed shall be recoverable in the same manner as a fine imposed by a court of law.

(2) A summons or warrant issued under this section may be served or executed by any member of the Nigeria Police Force or by any person authorised in that behalf by the Speaker of the House of Assembly of the State.

CHAPTER VI THE EXECUTIVE

PART I

FEDERAL EXECUTIVE

A - The President of the Federation

128.-(1) There shall be for the Federation a President.

(2) The President shall be the Head of State, the Chief Executive of the Federation and Commander-in-Chief of the Armed Forces of the Federation.

129. A person shall be qualified for election to the office of President if-

- (a) he is a citizen of Nigeria by birth; and
- (b) he has attained the age of 35 years.

130.-(1) An election to the office of President shall be held on a date to be appointed by the National Electoral Commission.

(2) An election to the said office shall be held on a date not earlier than 90 days and not later than 60 days before the expiration of the term of office of the last holder of that office.

(3) Where in an election to the office of President-

(a) at the close of nomination only one candidate has been nominated, the National Electoral Commission shall extend the time for nomination; or

(b) at the close of nomination one of the two candidates nominated for the election is the only candidate by reason of disqualification, withdrawal, incapacitation, disappearance or death of the other candidate, the National Electoral Commission shall extend the time for nomination, so however that where after the extension only one candidate remains validly nominated there shall be no further extension and section 131 of this Constitution shall apply.

(4) For the purpose of an election to the office of President, the whole country shall be regarded as one constituency.

Appointment of Auditor-General of a State.

Term of office of Auditor-General.

Power to conduct investigations.

Power as to matters of evidence.

45

(6) Every person who is registered to vote at an election of a member of a legislative house shall be entitled to vote at an election to the office of President.

Election:
single candidate.

131. A candidate for an election to the office of President shall be deemed to have been duly elected to such office where, being the only candidate nominated for the election-

(a) he has a majority of "Yes" votes over "No" votes cast at the election; and

(b) he has not less than one-third of the votes cast at the election in each of at least two-thirds of all the States in the Federation, but where the only candidate fails to be elected in accordance with this section, then there shall be fresh nominations.

Election:
more than one
candidate.

132.-(1) A candidate for an election to the office of President shall be deemed to have been duly elected where, there being two candidates for the election-

(a) he has a majority of votes cast at the election; and

(b) he has not less than one-third of the votes cast at the election in each of at least two-thirds of all the States of the Federation.

(2) In default of a candidate duly elected under subsection (1) of this section, the National Electoral Commission shall within 7 days of the result of the election arrange for another election between the two candidates and a candidate at such election shall be deemed to have been duly elected to the office of President if-

(a) he has a majority of the votes cast at the election; and

(b) he has not less than one-third of the votes cast at the election in each of a majority of all the States of the Federation.

(3) In default of a candidate duly elected under subsection (2) of this section, the National Electoral Commission shall within 7 days of the result of the election constitute an electoral college consisting of all the members of the National and State Assemblies sitting in their respective legislative houses and voting on the same day, and a candidate shall be deemed to have been duly elected to the office of President if he has a simple majority of the votes cast by all the members of the National and State Assemblies present and voting.

(4) In the event of an equality of votes following election by an electoral college under subsection (3) of this section, another election or further elections shall be conducted by the electoral college until the emergence of a candidate elected as provided in subsection (3) of this section.

Computation
of fractions
in certain cases.

133. For the purposes of sections 131 (b), 132(1)(b) and (2)(b) of this Constitution, where the computation of two-thirds of all the States of the Federation or one-third of the votes cast in a State, as the case may be, results in a fraction, the figure obtained shall be rounded up to the next higher whole number.

Tenure of
office of
President.

134.-(1) Subject to the provisions of this Constitution, a person shall hold the office of President until-

(a) when his successor in office takes the oath of that office;

(b) he dies whilst holding such office;

(c) the date when his resignation from office takes effect; or

(d) he otherwise ceases to hold office in accordance with the provisions of this Constitution.

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(2) Subject to the provisions of subsection (1) of this section, the President shall vacate his office at the expiration of a period of 4 years commencing from the date, when-

(a) in the case of a person first elected as President under this Constitution, he took the Oath of Allegiance and the Oath of Office; and

(b) in any other case, the person last elected to that office under this Constitution took the Oath of Allegiance and the Oath of Office or would, but for his death, have taken such oaths.

(3) If the Federation is at war in which the territory of Nigeria is physically involved and the President considers that it is not practicable to hold elections, the National Assembly may by resolution extend the period of 4 years mentioned in subsection (2) of this section from time to time; but no such extension shall exceed a period of 6 months at any one time.

135. If a person duly elected as President dies before taking and subscribing the Oath of Allegiance and Oath of Office, the person elected with him as Vice-President shall be sworn in as President and a new Vice-President shall be appointed as provided under section 143 (3) of this Constitution.

136.-(1) A person shall not be qualified for election to the office of President if-

(a) he has not been educated up to at least the School Certificate level or its equivalent;

(b) he does any act, acquires any status or suffers any disability which, if he were a member of the Senate, would have disqualified him from membership of that House; or

(c) he had been elected to such office at any 2 previous elections.

(2) The President shall not, during his tenure of office, hold any other executive office or paid employment in any capacity whatsoever.

137.-(1) A person elected to the office of President shall not begin to perform the functions of that office until he has declared his assets and liabilities as prescribed in this Constitution and has subsequently taken and subscribed the Oath of Allegiance and the Oath of Office as prescribed in the Seventh Schedule to this Constitution.

(2) The oaths aforesaid shall be administered by the Chief Justice of Nigeria or the person for the time being appointed to exercise the functions of that office.

138. There shall be for the Federation a Vice-President.

Death of
President-
elect before
Oath of
office.

Disqualifi-
cation.

Declaration
of assets and
liabilities:
oaths of
President.
Seventh
Schedule.

Establishment
of the office
of Vice-President.

Nomination
and election
of Vice-
President.

139.-(1) In any election to which the foregoing provisions of this Part of this Chapter relate, a candidate for an election to the office of President shall not be deemed to be validly nominated unless he nominates another candidate as his associate for his running for the office of President, who is to occupy the office of Vice-President; and that candidate shall be deemed to have been duly elected to the office of Vice-President if the candidate for an election to the office of President who nominated him as such associate is duly elected as President in accordance with the provisions aforesaid.

(2) The provisions of this Part of this Chapter relating to qualification for election, tenure of office, disqualifications, declaration of assets and liabilities and oaths of President shall apply in relation to the office of Vice-President as if references to President were references to Vice-President.

Chapter 2
THE SEJM AND THE SENATE

POLAND CONSTITUTIONAL ACT OF 1992

Article 3

1. The Sejm shall be composed of 460 Deputies chosen by secret ballot in general, equal, direct and proportional elections.
2. The Senate shall be composed of 100 Senators chosen by voivodeship* for the term of the Sejm, by secret ballot, in free, general and direct elections.

Article 4

1. The term of the Sejm shall be 4 years beginning with the date of its election.
2. The President of the Republic of Poland shall order the elections to the Sejm and the Senate to be held on a day which is not a day of work and which shall be within the month prior to expiry of the current term of office.
3. The Sejm may be dissolved by its own resolution carried by a two-thirds majority vote of the number of Deputies required by law.
4. In cases specified by this Act, the President may, after consultation with the Marshal of the Sejm and the Marshal of the Senate, dissolve the Sejm.
5. The term of office of the Sejm and the Senate shall expire on the day of proclamation of such resolution of

* Voivodeship — a unit of central governmental administration covering a specified geographical area. At present, there are 49 such voivodeships in Poland.

the Sejm, or of the order of the President on a dissolution of the Sejm.

6. In the event of dissolution of the Sejm by the President, or by virtue of a resolution of the Sejm, the President shall order the elections on a day which is not a day of work and which shall be no sooner than 3 months and no later than 4 months after expiry of the term of office of the Sejm.

Article 5

The validity of elections or any complaint laid against the validity of the election of a Deputy shall be adjudicated upon by the Supreme Court.

Article 6

A Deputy shall be a representative of the whole Nation. He* shall not be bound by any instruction of the electorate nor shall he be subject to recall.

Article 7

1. A Deputy shall not be held accountable for his activities resulting from the exercise of his mandate within the period of such mandate or after its expiry, unless he has violated the personal rights of other persons.

* Whenever the male term is used in the text, it should be understood to refer also to the female.

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2. An interpellation shall be submitted in writing and shall be answered within a period of 21 days. If the interpellator is not satisfied with the response, he may move to the Marshal of the Sejm for an additional answer and may request that it be given at a sitting of the Sejm.

3. Questions shall be submitted orally, during each sitting of the Sejm, to be answered immediately.

4. Detailed principles of submitting interpellations and questions, and the method of answering them shall be defined by Rules of Procedure of the Sejm.

Article 26

Articles 5-10 and Articles 12-14 shall apply, respectively, to the Senate and Senators.

Article 27

In cases specified in the Constitutional Act, the Sejm and the Senate sitting jointly, presided over by the Marshal of Sejm, shall constitute the National Assembly.

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THE PRESIDENT OF THE REPUBLIC OF POLAND

Article 28

1. The President of the Republic of Poland shall be the supreme representative of the Polish State in internal and international relations.

2. The President shall ensure observance of the Constitution, safeguard the sovereignty and security of the State, the inviolability and integrity of its territory, as well as upholding international treaties.

Article 29

1. The President shall be elected by the Nation.

2. The President shall be elected, by secret ballot, in general, equal and direct elections by an absolute majority of valid votes.

3. If no candidate has gained an absolute majority, a second ballot shall be held on the fourteenth day following the first ballot. The two candidates who have gained, sequentially, the largest number of votes in the first ballot, and have not withdrawn their candidature, shall take part in the second ballot. The person who gains the largest number of valid votes shall be considered elected.

4. The President shall be elected for a term of five years, and may be re-elected President only for one more term.

5. Only a person who is a citizen of the Republic of Poland, holding a full electoral franchise and who

community representative body is composed of deputies to the representative body. Elections of deputies to community representative bodies are held by secret ballot, on the basis of a general, equal, and direct right to vote.

The mayor is elected by citizens of the community by secret ballot, on the basis of a general, equal, and direct right to vote. The mayor of a community constitutes the community's executive body. He executes community administration and represents the community outwardly.

Article 70

The prerequisites for a community to be declared a town, and the method of doing so, will be defined by law, which will also designate the names of town bodies.

Article 71

(1) The execution of designated tasks of local state administration can be transferred by law to the community. The cost of the execution of state administration transferred in this manner will be covered by the state.

(2) In executing state administration, the community may, on the basis of the law, issue decrees that are generally binding within its area of jurisdiction, if empowered to do so by the law. The execution of state administration transferred to the community is steered by law and controlled by the Government. Details will be specified in a law.

CHAPTER FIVE

Legislative Power

Part One

The National Council of the Slovak Republic

Article 72

The National Council of the Slovak Republic is the sole constituent and legislative body of the Slovak Republic.

Article 73

(1) The National Council of the Slovak Republic has 150 deputies who are elected for a four-year period.

(2) Deputies are representatives of citizens. They execute their mandate personally according to their conscience and conviction and are not bound by orders.

Article 74

(1) Deputies are elected by secret ballot in general, equal, and direct elections.

(2) A citizen who has the right to vote, has reached the age of 21, and is permanently resident on the territory of the Slovak Republic can be elected deputy.

(3) Details concerning the election of deputies will be set out in a law.

Article 75

(1) The deputy is sworn in at the first meeting of the National Council of the Slovak Republic in which he participates, by taking the following oath:

"I promise by my honor and conscience to be faithful to the Slovak Republic. I will fulfill my duties in the interest of its citizens. I will observe the Constitution and other laws and work toward their translation into life."

(2) Refusing to take this oath, or taking it with reservations, results in the loss of mandate.

Article 76

The validity of the election of deputies is verified by the National Council of the Slovak Republic.

Article 77

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Article 62

It is incumbent upon the King:

- a) to approve and promulgate the laws.
- b) to convoke and dissolve the Cortes Generales and to call elections under the terms provided for in the Constitution.
- c) to convoke a referendum in the cases provided for in the Constitution.
- d) to propose the candidate for the President of the Government and to appoint him, or when required, to terminate his functions under the terms provided in the Constitution.
- e) to appoint and dismiss the members of the Government at the proposal of its President.
- f) to issue the decrees approved in the Council of Ministers, confer civilian and military positions and award honors and distinctions in accordance with the law.
- g) to be informed of the affairs of state and for this purpose, preside over the sessions of the Council of Ministers when he deems it appropriate at the request of the President of the Government.
- h) to exercise supreme command of the Armed Forces.
- i) to exercise the right of clemency pursuant to law, which cannot authorize general pardons.
- j) to be the High Patron of the Royal Academies.

Article 63

1. The King accredits ambassadors and other diplomatic representatives. Foreign representatives in Spain are accredited before him.
2. It is incumbent on the King to express the consent of the State to obligate itself internationally through treaties in conformity with the Constitution and the laws.
3. It is incumbent on the King, after authorization by the Cortes Generales, to declare war and make peace.

Article 64

1. The actions of the King shall be countersigned by the President of the Government and, when appropriate, by the competent ministers. The nomination and appointment of the President of the Government and the dissolution provided for in Article 93 shall be countersigned by the President of the Congress.
2. The persons who countersign the acts of the King shall be responsible for them.

Article 65

1. The King receives an overall amount from the State budget for the maintenance of his Family and Household and disposes it freely.
2. The King freely appoints and relieves the civilian and military members of his Household.

Concerning the Cortes Generales

CHAPTER I
Concerning the Chambers

Article 66

1. The Cortes Generales represent the Spanish people and are formed by the Congress of Deputies and the Senate.
2. The Cortes Generales exercise the legislative power of the State, approve its budgets, control the action of the Government and have the other competences granted them by the Constitution.
3. The Cortes Generales are inviolable.

Article 67

1. No one may be a member of the two Chambers simultaneously nor be a member of an Autonomous Community Assembly and a Deputy to Congress at the same time.
2. The members of the Cortes Generales are not bound by an imperative mandate.
3. The meetings of parliamentarians, which are held without the regulatory convocation, shall not be binding on the Chambers and they may not exercise their functions nor exercise their privileges.

Article 68

1. The Congress is composed of a minimum of 300 and a maximum of 400 Deputies elected by universal, free, equal, direct and secret suffrage under the terms established by law.
2. The electoral district is the province. The cities of Ceuta and Melilla shall be represented by one deputy each. The law shall distribute the total number of deputies, assigning a minimum initial representation to each district and distributing the remainder in proportion to the population.
3. The election in each district shall be conducted in keeping with the criteria of proportional representation.
4. The Congress is elected for four years. The term of deputies ends four years after their election or on the day of the dissolution of the Chamber.
5. All Spaniards who have full use of their political rights are voters and eligible for office.
The law recognizes, and the State shall facilitate, the exercise of the right to vote of Spaniards who are outside the territory of Spain.
6. Elections will take place between thirty and sixty days after the termination of the mandate. The elected Congress must be convoked within twenty-five days after the holding of elections.

Article 69

1. The Senate is the chamber of territorial representation.

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2. In each province, four senators will be elected by universal, free, equal, direct and secret suffrage by the voters of each of them under the terms established by an organic law.

3. In the island provinces, each island or grouping of them with "Cabildo" or insular council shall be a voting district for the purposes of the election of senators, three of them going to each of the major islands - Grand Canary, Mallorca and Tenerife - and one each to the following islands or groupings: Ibiza-Formentera, Menorca, Fuerteventura, Gomera, Hierro, Lanzarote and La Palma.

4. The cities of Ceuta and Melilla shall elect two senators each.

5. The Autonomous Communities shall also designate one senator and one additional senator for each million inhabitants in their respective territories. The designation shall be made by the legislative assembly, or in its absence, by the higher collective body of the Autonomous Community pursuant to the provisions of the Statutes, which in any case, shall insure adequate proportional representation.

6. The Senate is elected for four years. The term of the senators shall end four years after their election or on the day of the dissolution of the Chamber.

Article 70

1. The electoral law shall determine the reasons for ineligibility and incompatibility of Deputies and Senators, which shall include in any case:

- a) The members of the Constitutional Court.
- b) The high officers of the State Administration, as determined by law, with the exception of the members of the Government.
- c) The Defender of the People.
- d) The Magistrates, Judges and Prosecutors on active duty.
- e) The professional military and members of the Armed Forces, Corps of Security and Police on active duty.
- f) The members of the Electoral Commissions.

2. The validity of the records and credentials of the members of both Chambers shall be subject to judicial control under the terms to be established by the electoral law.

Article 71

1. The Deputies and Senators enjoy inviolability for the opinions expressed during the exercise of their functions.

2. During the period of their mandate, the Deputies and Senators enjoy immunity and may only be arrested in case of "flagrante delicto." They may not be indicted or tried without prior authorization of the respective Chamber.

3. In actions against Deputies and Senators, the Criminal Section of the Supreme Court shall be competent.

4. The Deputies and Senators shall receive a remuneration which shall be fixed by the respective Chambers.

Article 72

1. The Chambers establish their own Regulations, autonomously approve their own budgets, and by common accord regulate the Personnel Statute of the Cortes Generales. The Regulations and their reform shall be submitted to a final voting in

their entirety which shall require an absolute majority.

2. The Chambers elect their respective Presidents and the other members of their committees. Joint sessions shall be presided over by the President of the Congress and shall be governed by a Regulation of the Cortes Generales approved by an absolute majority of each Chamber.

3. The Presidents of the Chambers will exercise in their name all administrative powers and police authority in the interior of their respective Chambers.

Article 73

1. The Chambers shall meet annually in two ordinary periods of sessions, the first from September to December, and the second, from February to June.

2. The Chambers may meet in extraordinary periods of sessions at the request of the Government, the Permanent Deputation or by the absolute majority of the members of either of the two Chambers. The extraordinary periods of sessions must be convoked with a specific agenda and shall be closed once it has been dealt with.

Article 74

1. The Chambers shall meet in joint sessions to exercise the nonlegislative competences which Title II expressly authorizes for the Cortes Generales.

2. The decisions of the Cortes Generales specified in Articles 94(1), 145(2), and Article 158(2), shall be adopted by the majority of each of the Chambers. In the first case, the procedure shall be initiated by the Congress and in the other two, by the Senate. In both cases, if there is no agreement between the Senate and the Congress, an attempt will be made to obtain it by a mixed Commission composed of an equal number of Deputies and Senators. The Commission present a text which shall be voted upon by both Chambers. If it is not approved in the established form, the Congress shall decide by an absolute majority.

Article 75

1. The Chambers shall function in plenary sessions and in Commissions.

2. The Chambers may delegate to the Permanent Legislative Commissions the approval of bills or proposals of law. The plenary session, however, may at any time require debate and voting on any bill or proposal of law which has been the object of this delegation.

3. Excluded from the provisions of the foregoing paragraph are constitutional reform, international affairs, organic and basic laws and the General Budget of the State Affairs.

Article 76

1. The Congress and the Senate, and if necessary both Chambers jointly, may appoint investigating Commissions on any subject of public interest. Their conclusions shall not be binding on the courts nor will they affect judicial decisions, but they may be transmitted to the "Ministerio Fiscal" for the exercise of the necessary actions when required.

2. Appearance before the Chambers when requested shall be obligatory. The law shall regulate the sanctions which may be imposed for noncompliance with this obligation.

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