

APPENDIX

Why Democracy

Democracy²⁷ and peace are adopted in this article as the two criteria by which the impact of constitutional processes should be assessed. For countries emerging from violent conflict or facing the threat of violent conflict, the importance of sustainable peace is self-evident, and democracy remains the best governance structure for long term conflict cessation.

That said, there are no simple and universal relationships between democracy, peace and development. Democratic institutions are not enough to prevent conflict and poorly designed democratic institutions can ferment it in sharply divided societies. Democratization “can also become the tool of powerful economic interests, reinforce societal inequalities, penalize minorities, awaken dormant conflicts, and fail in practice to broaden popular participation in government”.²⁸ Moreover, re-creation of a predatory, shadow, or authoritarian state will be likely to lead to a return to conflict. Strengthening state capacity and democratization must proceed together, as Bratton highlights, “To be sure, it is impossible to democratize successfully in the absence of the political order that only a state can provide. But, by the same token, the state is unlikely to provide a durable order unless it is legitimated by democracy”.²⁹

In the longer term, the adoption of democratic governance structures is still considered best able to ensure peace and legitimacy. Despite the destabilizing and conflict prone nature of transitions to democracy,³⁰ studies have found that autocracies are less stable (more prone to regime change) than democracies.³¹ Thus, ultimately, as Hegre and Ellingsen argue: “The most reliable path to stable domestic peace in the long run is to democratize as much as possible”.³²

For simplicity, this article adopts the view of Diamond and Morlino that the key factors in an assessment of the quality of the democracy will be: the strength of the rule of law, the level of political participation, the nature of the political competition, the extent of horizontal and vertical accountability, respect for civil and political freedoms, progressive implementation of greater political equality, and responsiveness to citizens.³³

²⁷ The project adopts the operational definition of Democracy as a form of government “combining three essential conditions: meaningful *competition* for political power amongst individuals and organized groups; inclusive *participation* in the selection of leaders and policies, at least through free and fair elections; and a level of *civil and political liberties* sufficient to ensure the integrity of political competition and participation” (International IDEA, “Democracy and deep-rooted Conflict: Options for negotiators”, 1998).

²⁸ Bastian and Luckham "Introduction" at 1. See also Lake and Rothchild "Conclusion" in Rothchild (ed.) *The International Spread of Ethnic Conflict: Fear, Diffusion, and Escalation* (Princeton University Press, Princeton, 1988) at 345.

²⁹ Bratton “State Building and Democratization in Sub-Saharan Africa: Forwards, Backwards, or Together” (2004) Afrobarometer Working Papers No 43 at 24.

³⁰ Snyder *From Voting to Violence: Democratization and Nationalist Conflict* (Norton, New York London, 2000).

³¹ Hegre, Ellingsen, et al. “Toward a Democratic Peace? Democracy, Political Change, and Civil Wars, 1816-1992” (2001) 95(1) *The American Political Science Review* 33 at 42. See also Davenport *Freedom under Fire: Repression, Context and Fragility of the Domestic Democratic Peace* (2005).

³² Hegre, Ellingsen, et al. “Toward a Democratic Peace? Democracy, Political Change, and Civil Wars, 1816-1992” at 44.

³³ See Diamond and Morlino “The Quality of Democracy: An Overview” (2004) 15(4) *Journal of Democracy* 19 at 22-29, where they acknowledge that there is no absolutely objective way of assessing a single framework for democratic quality. Nonetheless, similar criteria are set out by Bastian and Luckham "Introduction" at 24-25.

It is also useful to define the term “state”, which, for the purposes of this article, is taken both to mean a geographic sovereign political entity with a permanent population, a defined territory, a government, and the capacity to enter into relations with the other states, as defined under international law,³⁴ as well as a set of social institutions claiming a monopoly of the legitimate use of force within a given territory, as defined by Max Weber.³⁵ The internal sub-elements of states are defined as a political regime (or system of government),³⁶ a governance framework (or constitution)³⁷, and a set of state institutions (or organizations) such as the armed forces, the legislature, and the justice system. State capacity refers to the strength and capability of the state institutions.

Table 2: Summary of key features of processes in case studies

Case	Pressure for Change	Interim constitution (where relevant)	Constitution design process	Approval process	Role of constitution building
Transitions from autocratic regimes					
Hungary 1989 - current	Initiated by intellectual revolutions tapping into	The constitution acted both as the interim structure and the final	The National Round table was a negotiation forum between the state-party, the opposition roundtable and the ‘Third Negotiator’ formed of	The act was passed by the legislature without amendment. It was	Negotiated regime transition between elites

³⁴ According to Article 1 of the Montevideo Convention on the Rights and Duties of States, December 26, 1933, which is considered to represent customary law, a state should satisfy the following criteria:

The state as a person of international law should possess the following qualifications:

- (a) a permanent population;
- (b) a defined territory;
- (c) government; and
- (d) capacity to enter into relations with the other states.

Its existence under international law is not however determined by recognition by other states (Article 3).

³⁵ Weber, M. 1919/Politics Politics as a Vocation, *Wirtschaft und Gesellschaft*, Max Weber's definition of the modern state 1918 [A short extract from a very long lecture given by Max Weber in 1918 at Munich University. Published 1919 as Politics as a Vocation.

³⁶ "Government" in Calhoun (ed.) *Dictionary of the Social Sciences* (Oxford University Press, <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t104.e714>, 2002). These regimes range from liberal democracy to autocracy.

³⁷ Although Weber uses the term social institutions, I prefer not to use it. Note that Max Weber also used the term “human community” interchangeably with social institutions. I rely instead on governance framework or constitution rather than institutions, to prevent confusion between institutions defined as “deeply embedded patterns of social practices or norms that pay a significant role in the organization of society” and institutions as “organized or bureaucratized administrative structures”). "Institutions" in Calhoun (ed.) *Dictionary of the Social Sciences* (Oxford University Press <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t104.e837>, 2002) .

	popular discontent	constitution.	seven leftist groups. The broader part of society did not participate, other than in a few demonstrations. It was an elite negotiation, representative, but not participatory	a formality.	Compromise by government in power to deflect rising tensions Blueprint for future regulation of power and/or transfer of power
Chile 1989-current	Initiated by popular discontent and electoral results pressure, influence of courts. Recent amendments driven by the interests of the institutional actors, mainly the political parties present in Congress		Initial negotiations between the democratic opposition, the government, and political parties that represented the military government. Resulted in compromise solution which still favored military and right. Further incremental reforms achieved through the legislature. It was an elite negotiation, representative but not participatory	Plebiscite	A form of co-opting to reduce anticipated tensions in population Negotiated regime transition between elites. Compromise by government in power to deflect rising tensions
South Africa 1991 - 1996	Initiated by popular discontent, military revolt of the ANC and international pressure on apartheid government.	The constitution-building process was agreed as part of the peace negotiations between 1991 and 1994. This began with the National Peace Accord of September 1991, and ended with an agreement on an interim	The process adopted was that the constitution was to be drafted by an elected Constituent Assembly that would solicit the view of the people. The Constitutional Assembly consisted of both houses of the Parliament newly elected in September 1994. Its 490 members were drawn from seven political parties, represented proportionally in accordance with their share of the vote. A massive public information campaign and educational effort was undertaken from	The final draft was to be adopted by a 2/3 majority in the Assembly, or it would go to referendum and require 60 % support for adoption. The draft was then to be considered by the Court to ensure	Negotiated and consensus based transition from authoritarian model to democratic government, avoiding a likely civil war. Symbol of new beginning Blueprint for future

		constitution (1993), which set out 34 principles on which the constitution would be based.	December 1994. The educational effort included a media and advertising campaign using newspapers, radio and television, billboards, and the sides of buses; an assembly newspaper; cartoons; a Web site; and public meetings; together these efforts reached an estimated 73 percent of the population.	that it was consistent with the 34 principles.	regulation of power and/or transfer of power Creation of consensus on the way forward Symbol of new beginning Reconciliation and healing process
Fiji 1995-1997	Initiated by elite and constitutional review provision	1993 government appointed cabinet committee to examine modalities of reform. To enhance credibility included leaders of opposition parties. Agreement took 2 years on terms of reference on a commission to consult with population and draft constitution.	Appointed Constitutional Commission relatively representative of main division but not of other interests (eg women). Did undertake some consultations through public hearings but undertook little public education and public debate. A draft was negotiated by the joint parliamentary select committee. A compromise was negotiated.	Passed by the legislature as an amendment to the constitution.	Blueprint for future regulation of power and/or transfer of power Compromise by government in power to deflect uprising tensions
Indonesia 1998-current	Initiated by dictator's retirement in response to popular pressure		Incremental series of amendments by new elected legislature. Not participatory	Legislature	Compromise by government in power to deflect rising tensions Blueprint for future regulation of power and/or transfer of power

<p>Nigeria 1999 -</p>	<p>Initiated by military perhaps in response to international and domestic pressure to transition to civilian government</p>		<p>The 1999 constitution was drafted by 25 men appointed by the military government.</p> <p>It was not representative and did not adopt a participatory process.</p> <p>Dissatisfaction with the process and outcome continues and civil society is seeking a ‘Sovereign national conference’ although the government proposes to use the procedures in the 1999 constitution.</p> <p>The presidential review committee selected in October 1999 includes the three main political parties and was chosen by the president. It has not produced a draft although claims to have collected 2 million written memoranda and 11/2 million oral submissions, in one month consultations.</p>	<p>Adopted by the military government.</p>	<p>Symbol of new beginning</p> <p>Blueprint for future regulation of power and/or transfer of power</p>
<p>Bahrain 1999-2002</p>	<p>Initiated by emir in response to loss of power and popular discontent</p>	<p>The Emir appointed a national charter committee comprising the government and Islamist opposition and independent intellectuals. The opposition resigned during the process however.</p> <p>The Emir then ordered a public education campaign and process of consultation (primarily attended by the opposition).</p>	<p>In 2002 the principles in the charter were developed into a constitution which was redrafted by the executive branch of the government without consultation or inclusion of the opposition or public. The government claimed that the referendum on the charter gave them the authority to do so.</p>	<p>Adopted by the executive</p>	<p>Attempt by Emir to reestablish his power and transition to constitutional monarchy</p> <p>Blueprint for future regulation of power and/or transfer of power</p> <p>A form of co-opting to reduce anticipated tensions in population</p>

		He acted on some requests and the Charter was adopted by referendum.			
Kenya 2000-2004	public pressure	<p>A negotiated agreement between President Moi and the opposition provided for wide ranging review after the 1997 general elections.</p> <p>This agreement was enacted in the Constitution of Kenya Review Act (1997).</p>	<p>Review Committee nominated by government after breakdown of talks with opposition.</p> <p>The civic groups appointed their own people's Commission of Kenya to collect view of the public.</p> <p>Chair of the committee insisted on a more representative committee and changed to include 10 members from the People's Commission and 2.</p> <p>Extensive process of education and consultation in constituencies. The draft was then subject to public discussion. Over 37 000 submission were received</p> <p>Representative national constitutional conference was to vote on the draft. But hampered by self-serving politicians using the ethnic card to cause divisions.</p> <p>Not representative but guided by a chair determined to be participatory.</p>	<p>To be adopted by the legislature and following court case to be submitted to referendum.</p> <p>The National Assembly dominated by self-serving politicians.</p>	<p>Compromise by government in power to deflect uprising or tensions</p> <p>Symbol of new beginning</p> <p>Symbol of new form of political governance</p> <p>Blueprint for future regulation of power and/or transfer of power</p>
Transitions from civil conflict					
Colombia 1991	Initiated by popular pressure for peace - via referendum	The 1991 process was initiated by the students and young citizens who marched in the streets and came up with a ballot which would ask	<p>Constitutional assembly elected on a national wide basis. Representative body including civil society and guerrilla members who had agreed to give up violence. Members of congress could not run. Active insurgents were excluded.</p> <p>Participatory process with citizen's working sessions were organized around the country,</p>	Adopted by the Constitutional Assembly	<p>Conflict negotiation</p> <p>Creation of consensus on the way forward</p> <p>Symbol of new form of political</p>

		for the convoking of a constitutional assembly.	their conclusions were submitted to the constitutional assembly.		governance
Guatemala 1997-1998	Initiated by popular pressure for peace accords	Grand National Dialogue in 1989 initiated process of discussion of issues with civil society, led to negotiations between National Reconciliation Council and insurgency umbrella group, followed by meetings with sectoral groups of civil society. Official peace negotiations between 1991-1996 led to 6 substantive and 5 operational accords.	Appointed representatives fairly representative Appointed commissions but representative as formed by persons with special expertise and partly drawn from civil society and partly from government. Prepared a package of 13 reforms sent to congress. Congress then added 37 new provisions that aimed to give political elite partisan advantage.	Needed to be approved by 2/3 majority of congress, then by electorate in referendum. Rejected at referendum following a successful no campaign by conservatives and military.	Conflict negotiation Creation of consensus on the way forward Symbol of new form of political governance
East Timor 2000-2002	Initiated by international community supported end of Indonesian occupation	The process was negotiated between the National Council (dominated by Fretilin) and the UN.	Elected Constitutional Assembly to draft and adopt the constitution. Although elected by mixed PR, dominated by one party. Not participatory. A 10 day period was mainly about providing information about the draft rather than hearing input.	Adopted by the legislature 2/3 vote. Opposed by the UDT, PD (youth resistance movement) and PSD – which declared that this was a Fretilin	Birth of a nation, symbol of new beginning Blueprint for future regulation of power and/or transfer of power

				constitution.	
Afghanistan 2001-2004	Initiated by war on terror and internationally assisted overthrow of Taleban	Bonn agreement Elite negotiation between warlords, excluding the Taleban. Not participatory	Appointed Expert Constitutional Drafting Commission and Constitutional Review Commission. Some public education and consultation. Amendment through negotiation in Constitutional Loya Jirga This was an elite representative negotiated process. It included a small participatory element.	Adopted by 2/3 vote of Constitutional Loya Jirga	Conflict negotiation Birth of a nation, symbol of new beginning Creation of consensus on the way forward Blueprint for future regulation of power and/or transfer of power
Rwanda 2002-2004	Initiated and dominated by ruling Tutsi party, winner of war		Legal and Judicial and Constitutional Commission appointed. Not representative only allies of RPF. Undertook a very participatory process including extensive education and popular consultation in provinces. 6 mths with thousands of trained assistants. Also included a questionnaire. Followed by debate in the legislature and amendment of draft.	Adopted first by the interim legislature (appointed), and then passed by referendum after and 6mths education campaign.	Creation of consensus on the way forward Symbol of new beginning Reconciliation and healing process

Table 3: Constitutional, Regime and Institutional history

Case	Constitutional history	Political history	Institutional background
Transitions from authoritarian rule			
<p>Hungary 1989 - current</p>	<p>First written constitution 1949 based on the constitution of the Soviet Union.</p> <p>The 1989 constitution was formally an amendment but in effect it created an entirely new constitution.</p> <p>The constitution was amended nine times between 1989-1990 but Act XXXI of 1989 effectively created a new constitution.</p> <p>The new constitution has been in place 15 years. It was negotiated after 40 years of communist rule.</p>	<p>Hungary was under a socialist regime between 1949 and 1989. The system was based on one party and the legislature did not act as a legislative body nor supervise the executive.</p> <p>In 1989 a national roundtable was formed between the opposition and the government (and third negotiator) to negotiate a new constitution.</p> <p>The 1989 constitution created a number of new institutions such as the Constitutional Court and State Audit Office.</p>	<p>Despite an extended period of corrupt autocratic regimes, the Austro-Hungarian regime did have a strong rule of law culture.</p> <p>Under communist regime was relatively high level of education and institutional capacity.</p> <p>Political parties had been banned between 1949 – 1989 but there had been political activity among the intellectuals dating from as far back as 1959, and during the 1980s the socialist model had softened to some extent and a number of socialist lobbies had formed.</p> <p>The political opposition was formed of a coalition of many different pro-democracy groups which came together in an alliance in 1989. Also within the Party two groups evolved, one pro-reform and one opposing it.</p>
<p>Chile 1989-current</p>	<p>1925 constitution: liberal and democratic document</p> <p>1973 coup overthrowing the Allende government led to derogation of 1925 constitution. Military junta appointed constitutional commission prepared a new draft constitution between 1973-1978. This was reviewed by General Pinochet's appointed State Council</p>	<p>Chile had a strong history of constitutional democracy prior to 1973. Under the 1925 constitution, there were 8 democratically elected presidents and 11 congressional elections.</p> <p>The coup of 1973 led to a period of seven years of emergency state, with restricted political liberties, banned political parties and harsh violent</p>	<p>Chile has a long history of rule of law, and even a legalistic culture. The military dictatorship constituted a major break in this, but even the military regime sought to operate through rules and constitutional legitimation.</p> <p>The judiciary, police and public auditor were professional and uncorrupt.</p>

	<p>between 1978-1980. The Junta then approved the 1980 constitution. It was adopted by plebiscite one month after its announcement under a repressive political environment.</p> <p>The constitution aimed to institutionalize authoritarian anti communist and neo-liberal ideology. It contained minimal democratic and institutional safeguards that were later used to initiate the transition to democracy.</p> <p>The 1989 reform have been followed by further 17 reforms. The 2004 attempt is most likely to dismantle the autocratic enclaves.</p> <p>The process is ongoing but began 16 years ago. The constitutional negotiation began 16 years after the coup, which provided substantial time for positions to soften and modify and reaching of possible compromise.</p>	<p>repression carried out by secret police.</p> <p>It was accompanied by deep economic and constitutional transformation. Fiscal reform, privatization, labour market, education and health system reform and privatization of the pension system.</p> <p>This was followed by a 1981-1990 period of transitional military rule. During that period however the government was under intense economic, social and political pressure as the opposition coordinated popular resistance. It reacted with a mixture of repression and political maneuvering.</p> <p>Leading up to the presidential plebiscite in 1988 the opposition chose to fight within the 1980 constitutional framework to campaign against Pinochet's election.</p> <p>Between 1990 – 2005 the right successfully vetoed any major changes in the constitution. However, it is now open to constitutional reform due to a changed political dynamic whereby the entrenchment provisions are now beginning to favor the leftist government in power.</p>	<p>There existed a strong institutionalized and deeply rooted party system prior to military dictatorship which was able to re-form despite oppression. Except the communist party which was largely destroyed by assassination.</p>
<p>South Africa 1991 - 1996</p>	<p>The South African Act is the first constitution and is passed by the British House of Commons following a national convention in 1908 between the Boer and British. The Union of South Africa is announced on 31 May 1910</p>	<p>Political and economic disenfranchisement of black people is the basis of the state.</p> <p>In 1912, the African National Congress is created, and later the South African Communist Party (1928).</p> <p>In 1948 the National Party wins the</p>	<p>South Africa has a long history of rule of law. The judiciary operated professionally, except that it was entirely biased against the black population. The regime largely sought to operate through rules and constitutional legitimation.</p> <p>The police and military were corrupt</p>

		<p>election and develops the policy of apartheid.</p> <p>Various popular defiance campaigns and political protests result in crack downs by the apartheid government. (eg Soweto in 1976).</p> <p>In the 1980s, negotiations begin between the government and Nelson Mandela from jail, and Thabo Mbeki from exile. Finally in 1990, De Klerk announces the unbanning of the ANC, the South African Communist Party and other liberation movements. Two weeks later, Nelson Mandela is released and negotiations for a transition begin.</p> <p>In September the country's first multiparty peace agreement is signed and negotiations begin for an interim government.</p>	<p>and violent, in breach of basic human rights in their interactions with the black population.</p> <p>There was nonetheless a degree of capacity in the majority of the institutions, and a level of capacity among the black leaders, and others who fought against apartheid.</p>
<p>Fiji 1995-1997</p>	<p>On independence in 1970 acquired a post-colonial constitution which adopted a racially structured legislature favoring the indigenous Fijians but also incorporating some cross voting seats.</p> <p>Following the coups in 1987, the military imposed government undertook a process of constitutional review by appointed committee of politicians. The result (the 1990 constitution) was even more racially based and entrenched indigenous Fijians dominance.</p> <p>In 1993-1995 a negotiation about the constitutional reform commission and</p>	<p>Following colonial rule by the UK during which the racial composition of the island was modified through the import of an Indian work force, an indigenous Fijian government held power for 17 years under the 1970 constitution which had an elected though racially constructed lower house and an appointed indigenous dominated senate. Under this model the army and most senior government posts were dominated by the indigenous Fijians.</p> <p>In 1987 the first indo-Fijian coalition government was overthrown by military coups. By 1990 it had handed</p>	<p>The rule of law culture is variable. The courts have rejected the post 1997 coup declaring it illegal. This decision was enforced, which suggests a relatively strong rule of law culture.</p> <p>There is respect for the higher courts generally, but some unease about the attitude of the government to judicial independence.</p>

	<p>terms of reference took place in a committee formed of representatives of the government and 2 opposition leaders.</p> <p>A constitutional reform process then took place between 1993-1996 initially by a 3 member reeves committee and then debated in the legislature.</p> <p>The 1997 constitution resulted from negotiations which created a consensus compromise document, mainly negotiated at the top of the political structure (especially by the PM and the former PM who had been overthrown in the coups). It was passed by a unanimous legislature.</p>	<p>over to an appointed civilian government.</p> <p>In 1992 despite these disadvantages the opposition participated in elections under the 1990 constitution and won sufficient seats to demand a constitutional review.</p> <p>The society was highly racially segregated.</p> <p>The first elections under the 1997 constitution led to the victory of Chaudhry's labour party and an indo-Fijian government. This was overturned by coup again, this time the courts declared the coup unconstitutional and ordered a new election. The new election brought to power a Fijian government. The electoral system that was supposed to encourage moderation instead worked against the parties that tried to work together in the spirit of cooperation. The election in 2001 brought to power a strongly Fijian party.</p>	
<p>Indonesia 1998-current</p>	<p>1945 post colonial constitution</p> <p>1949 roundtable agreement with the Netherlands produces a draft constitution that is repudiated by the upper house in 1950 which substitutes a temporary constitution and calling for the creation of a constituent assembly to enact a permanent constitution.</p> <p>1955 elected constitutional convention unable to reach consensus</p> <p>1959 dissolved by Sukarno who</p>	<p>In the post-colonial period Indonesia's governance has been characterized by executive centered, quasi military regimes operating under emergency powers.</p> <p>1957-58 regional rebellions and mutinies and strength of Communist party invoked by Sukarno to invoke martial law and introduce the concept of guided democracy. The legislature was partly elected and partly formed of 'functional groups' including the</p>	<p>Weak and corrupt beaurocracy inherited from colonial times.</p> <p>Civil society was destroyed under Suharto including the traditional governance networks. The 2 moderate Muslim social networks alternated between silence and activism during the Suharto years. They have yet to play a significant role in the <i>reformasi</i>.</p> <p>Women's groups formed in the 1980s have been a key group in the <i>reformasi</i> coalition.</p>

	<p>reinstates the 1945 constitution</p> <p>Since 1998 a series of constitutional amendments, statutes and evolving procedures are providing an incremental form of reform.</p>	<p>military, teachers, lawyers.</p> <p>1965 violent rebellion precipitates crackdown on the left and banning of Marxist parties</p> <p>1966 Sukarno gives General Suharto emergency powers to restore order.</p> <p>1967 an emergency appointed upper house strips Sukarno of power and appoints Suharto</p> <p>1976 all political parties other than the 3 government ones are banned.</p> <p>1998 Suharto resigns and is replaced by Vice President Habibie who agrees to call new multi-party elections in 1999</p> <p>Suharto was toppled in 1998 by the <i>reformasi</i> - a loose coalition of groups.</p>	<p>There remains a weak rule of law tradition. Despite an overhaul of the court system justice is unpredictable and lawyers, police and prosecutors inspire little confidence. Police corruption is widespread.</p>
<p>Nigeria 1999</p>	<p>Independence constitution in 1960.</p> <p>The military regimes have been the primary instigators of constitution building. The efforts have been top-down affairs.</p> <p>1979 constitution was the result of the 1975 military regime transition to civilian government and was drafted through a participatory process and voted on by elected representatives, although the final content was set by the military.</p> <p>The 1999 constitution was imposed by military government without debate or consultation. It has been rejected by the majority of the people.</p>	<p>Granted independence in 1960. In 1966 first military coup d'etat. In 1967 Biafran war of independence. Followed by many coups and counter coups.</p> <p>Nigeria has spent longer under military rule than civilian rule. It has also undergone many transitions to civilian rule, frequently through a new constitution.</p> <p>As the civilian elite and military officers are often one and the same the civilian governments have had close connection to the military. The current civilian head of state, Olesegun Obasanjo, headed the military regime between 1976-1979.</p>	<p>Civil society has become more established in recent years and has received international funding. It is vocally contesting the 1999 constitution and is leading the attempts at reform.</p> <p>The parties are all very closely aligned with the military, and formed of many retired military officers.</p> <p>The institutions have very little history of democratic rule and are corrupt and ineffective. The Electoral Commission was involved in the controversial decision in 1975 supported by the courts. Subsequently the courts have been involved in a negative fashion. The high court sought to prevent the elections for president in 1993,</p>

			declaring the appointed transitional government illegal and setting the stage for the military to retake power. They have also been involved of building convictions in politically motivated trials.
Bahrain 1999-2002	<p>In 1972 The Emir established a constituent assembly and mandated it to draft the first constitution. Only men were entitled to vote or run for election. The constituent assembly endorsed a new constitution and submitted it to the Emir who ratified and promulgated it.</p> <p>The constitution of 1973 only provided for voting by men, banned political parties and formed a legislature of 30 elected representatives and 14 ex officio cabinet members. It was not able to initiate or enact legislation but only to give advise and consent to laws proposed by the Council of ministers. In 1975 after a struggle over legislation that would allow detention of political suspects for 3 years without charge or trial led to the Emir dissolving the legislature and refusing to reinstate it. It was finally reinstated in 2002.</p>	<p>Bahrain has a history of autocratic and rigid regimes.</p> <p>In 2001 the political elites set in train a process of political reform voluntarily though in response to popular pressure.</p> <p>Bahrain became independent in 1971 having been a British protectorate. The Al Khalifa family took control of the country although the departing British insisted that the ruler had to grant limited participation in the political affairs to the public.</p> <p>It had a very short lived and limited experience with an elected legislature, but has been primarily under authoritarian rule. The rights provisions of the constitution were suspended and the emir ruled by decree in a repressive fashion. This alienated the Shiite community and led to widespread unrest and hostility towards the government. In 1994 clashes led to many dead and exiled. The state was both authoritarian and repressive.</p>	<p>During the 1972-1975 time frame there were no political parties with a strong social base. Political parties are still outlawed.</p> <p>The institutional and organizational capacities of the members of the legislature are very low as they have not had any for many years</p>
Kenya 2000-2004	Independence constitution 1963 negotiated to promote democracy and human rights, devolution of power and checks and balances but was amended rapidly to dismantle freedoms.	Since soon after independence, Kenya has been a dictatorship with one party rule and a highly centralized presidential system.	Weak rule of law. The tenure of judges was subject to the whim of the president. Very corrupt – to the point that the judges actually went to court to seek an injunction to stop the constitutional convention from dealing

			<p>with the judiciary.</p> <p>Police were oppressors</p> <p>Institutions became means to support the president or rendered toothless (eg the Auditor General)</p>
Transitions from civil conflict			
<p>Colombia 1991</p>	<p>Colombia has a history of constitutional assemblies which have marked a foundational event, sometimes to overcome conflicts and sometimes to consolidate advantages and privileges by those who are in power.</p> <p>Since 1810 when Colombia declared independence there have been 11 constitutions. The constitutional assemblies of the nineteenth century were chosen by political dominant groups of the major cities exclusively representing the interests of the powerful.</p> <p>The 1991 process came out of a conflict that was not won. The 1991 candidates were elected from not only political parties but also citizens' constituencies. It was the first time that Indians were represented by their own.</p>	<p>Ever since the conquest Colombia has been characterized by the politics of imposition and exclusion and has a long history of political struggle and civil war.</p> <p>During the C19th and first half of C20th the wars were promoted by political elites seeking to cement their power and accumulate privileges. The latter half of the C20th the wars were initiated by the marginalized social sectors rebelling against injustice, discrimination and arbitrariness.</p> <p>Government has been dominated by the white elites and there is deep seated racism. Until 1954 women were not able to vote, and until 1936 only those men who could read and write could vote.</p> <p>Long history of electoral fraud. The Guerrilla group M-19 was formed after the presidency was stolen from Gustavo Rojas Pinilla in 1970.</p> <p>The civil conflict since 1948 originated in injustice and social and political exclusion but became fuelled by money</p>	<p>The judicial branch was politicized through the National Front pact. There is only weak rule of law and even though it has more independence since the 1991 charter it continues to be besieged by the administration and legislature. The administration also became corrupt during that time.</p> <p>The political environment repressed political dissent and ultimately led to the creation of the FARC and ELN during the 1960s and 1970s.</p> <p>The Supreme court acted in line with the establishment to stop constitutional reform in a number of instances but did not oppose the setting aside of popular consultation enacted in the 1957 plebiscite when faced with the widespread popular demand for it.</p>

		<p>from illegal business and adopted terrorist tactics.</p> <p>In 1952 the army staged a coup which was overthrown four years later in ongoing violence. The pact known as the National Front (1957) determined that state power would be shared by only 2 political parties. In 1968 the National Front was dismantled without facing the problems it had created.</p>	
<p>Guatemala 1997-1998</p>	<p>1984 the military called a National Assembly to pass a new constitution. The elections were undertaken in a repressive climate with restricted debate and excluded the left. The constitution did create an ombudsman and constitutional court but protected the military from prosecution and protection of prerogatives and failure to reform judiciary and recognize indigenous culture and rights.</p> <p>In 1993 constitutional amendments were passed by referendum with little participation in the vote.</p>	<p>A Spanish heritage elite has dominated the state and denied the diversity and oppressed the indigenous majority (60 percent Mayan People and the other 2 main peoples).</p> <p>Authoritarian and military dictatorships until 1984.</p> <p>Civil conflict began in the 1960s initiated by a failed coup but joined by communist and later Mayan activists. The government responded with a scorched earth policy and villages were decimated. Political opposition and activists were assassinated or exiled.</p> <p>In 1984 the military handed over to civilian rule in presidential and general elections won by the most progressive centre right Christian democratic party.</p>	<p>Institutional weaknesses after 30 years of civil conflict.</p> <p>Leftist activists had been successfully eradicated and hence in 1980a political parties were all anti-left and military led and based on clientelism.</p> <p>By 1993 institutional breakdown and corruption were so bad that president dissolved congress, suspended the rights provisions of the constitution, and dissolved the supreme and constitutional court. The Constitutional Court declared his actions unconstitutional and called for a new president to be elected by congress. Thus the constitutional court and ombudsman have now a good reputation.</p> <p>The rest of the judicial sector is weak however and there is wide impunity for human rights.</p>
<p>East Timor 2000-2002</p>	<p>None.</p>	<p>ET had been under two periods of colonial rule. First Portugal and then Indonesia. In 1975 when Portugal left, Fretilin declared ET independence following a short civil war. Indonesia</p>	<p>Under the Indonesian occupation all of the senior administrative posts and professional positions had been held by Indonesians. These all left and there was close to no professional expertise</p>

		<p>then invaded and 25 years of vicious struggle resulted between the Indonesia army and the ET Resistance.</p> <p>Following the pro-independence vote in 1999 the Indonesian army went on a rampage killing many political and religious leaders and burning villages to the ground.</p>	<p>left (eg. one doctor in Dili and no judges).</p> <p>There is a very weak rule of law tradition under Indonesia's occupation, reliant on bribes. This has been followed by inexperienced and overwhelmed East Timorese.</p> <p>There was an administrative and legal vacuum but not a political vacuum as the CNRT had existed since 1998 as a broad popular front representing all political factions. Several political groups had a long history of organizing in ET since the 1974 - before and under Indonesian rule. Fretilin and Falintil had deep recognition as part of resistance movement. The Church was an active member of civil society.</p>
<p>Afghanistan 2001-2004</p>	<p>Constitutional history: Afghanistan has had 6 constitutions since the 1920s prior to the 2004 constitution. The constitutional model adopted was that of a constitutional monarchy with an elected legislature. However, Afghanistan does not have a strong history of constitutionalism. The constitutions did not reflect the real power structure: the royal family held all the power and the institutions created under the constitution were illusory. Power was based on a patronage system.</p> <p>The Bonn convention initiated the constitutional reform process in December 2001.</p>	<p>Long standing conflict. No history of modern government. Afghanistan has been ruled by monarch, then by warlords of various types, including the Taliban.</p>	<p>There is little to no tradition of rule of law in Afghanistan, both because of the extended period of conflict and associated crime and violence and because Afghanistan has never had a modern legal system.</p> <p>There are no true political parties and a very weak civil society.</p> <p>There was at the time of the constitutional building process no formal institutional government and little institutional capacity.</p>

<p>Rwanda 2002-2004</p>	<p>Although Rwanda has had a number of constitutions it does not have a history of constitutionalism with Presidents changing the constitution as they saw fit and centralizing all power in their hands.</p> <p>The 1962 constitution was an independence constitution drafted by the colonial power. It envisaged a pluralist system but a one party system was quick to emerge.</p> <p>The constitution was suspended during 5 years after the 1973 coup. It retained the human rights provisions but cut the provision for judicial review and abolished the multi-party system.</p> <p>In 1990 the pressure by internal and external opposition forced President Habyarimana to adopt a constitution recognizing multi-party system. The 1991 constitution was amended by the Arusha peace accords and the Protocols on Rule of Law.</p> <p>The 2004 constitution was made through a participatory process between 2003-2004.</p>	<p>Post independence Rwanda has been characterized by discrimination and division. During the pre-colonial era and until 1962 the political leadership was dominated by the Tutsi monarch. The First republic (1962-1973) was predominantly a Hutu state and treated Tutsi as outsiders. The second republic (1973-1994) came about through a coup which brought to power a second Hutu. This regime abolished the Tutsi monarchy and established a one party state, although the Tutsi were recognized as a Rwandan ethnic group.</p> <p>In 1991 the Rwandese Patriotic Front based in Uganda allied themselves with the opposition and forced the government to enter into a peace agreement providing for power-sharing. The genocide started soon after when the President's plane was shot down.</p> <p>In 1994 the RPF overthrew the genocidaires. A peace accord (Arusha) was entered into that provided power-sharing government between 3 parties. It banned any individuals involved in the genocide and the Mouvement Revolutionare National pour le Developpement from participating in government.</p> <p>In the transitional legislature the 8 political parties that had not participated in the genocide each received 13 seats and 6 seats were allocated to the army.</p> <p>The RPF had total control of the political sphere during the 1999-2003</p>	<p>The judicial sector has been weak and unable to uphold the rule of law or to protect the rights of citizens.</p> <p>The Hutu political parties were turned into empty shells by the suspicion of any form of Hutu politics following the genocide.</p> <p>The RPF has dominated.</p>
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