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Constitutions can empower or constrain efforts to protect the environment and public health. Often, they do both. Consideration of constitutional environmental law has frequently focused on constitutions as a source of environmental rights and obligations that can be invoked by citizens, governments, and non-governmental organizations to protect the environment or public health. These constitutional provisions include the right to a "clean" or "healthy" environment, right to life (interpreted to include a right to a healthy environment in which to live that life), and right to health, as well as procedural rights (such as the rights of access to information and access to judicial review) necessary to enforce those rights.[1] The body of constitutional case law on the environment has grown over the past decade around the world—in Latin America, Europe, Asia (particularly South Asia), and Africa.[2] In the United States, state courts have also started to enforce environmental provisions in state constitutions,[3] although the vast

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1. *See, e.g.*, Carl Bruch et al., *Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa*, 26 COLUM. J. ENVTL. L. 131 (2001); Richard O. Brooks, *A Constitutional Right to a Healthful Environment*, 16 VT. L. REV. 1063 (1992).

2. *See, e.g.*, Ben Pontin, *Constitutional Environmental Law: A UK Perspective*, 17 NAT. RES. & ENV'T (2002); *Earthjustice: Human Rights and the Environment—Developments*, U.N. Comm'n on Human Rights, 58th Sess., Geneva, Mar. 18-Apr. 16, 2002 (identifying 109 countries with environmental provisions in their constitutions); MICHAEL BOTHE, CONSTITUTIONAL ENVIRONMENTAL LAW IN EUROPE (forthcoming).

3. *See, e.g.*, John C. Dernbach, *Taking the Pennsylvania Constitution Seriously When it Protects the Environment: Part I—An Interpretive Framework for Article I,*

majority of U.S. environmental litigation remains rooted in statutory and regulatory causes of action.

The relevance of the structural aspect of constitutions is also starting to command attention. First and foremost, constitutions are constitutive, organic documents that establish the framework for government setting forth the respective roles and authorities for the legislative, executive, and judicial branches of government.[4] Constitutions also define the relationships between national government and sub-national authorities such as states, provinces, and districts. In defining governmental responsibilities, constitutions can empower or limit the authority of national governments to take specific actions. For example, many constitutions grant broad police powers to national legislatures, empowering them to enact environmental legislation.[5] In contrast, the U.S. Constitution reserves most of these police powers to the states; and most U.S. environmental law rests on the authority of Congress to enact legislation that relates to interstate commerce.[6]

In the United States, conservative judges have interpreted the Constitution to limit national actions to protect the environment in a variety of ways.[7] Some courts have questioned whether the Constitution limits the power of Congress to protect the environment where its link to interstate commerce is too tenuous;[8] to

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*Section 27*, 103 DICK. L. REV. 693 (1999); John C. Dernbach, *Taking the Pennsylvania Constitution Seriously When it Protects the Environment: Part II—Environmental Rights and Public Trust*, 104 DICK. L. REV. 97 (1999); Bruch et al., *supra* note 1, at 160-61, 202.

4. *See* OUTLAWS LEGAL SERVICE, CONSTITUTIONAL LAW, *at* http://www.outlawslegal.com/refer/ch04.htm (last visited, Oct. 16, 2003).

5. Telephone Interview with Antonio Benjamin, Professor of Law, University of Texas at Austin Law School (Jan. 24, 2003); *cf.* Proposing an Amendment to the Constitution of the United States Respecting the Right to a Clean, Safe, and Sustainable Environment, H.R. 33, 107th Cong. (introduced by Rep. Jackson). Section 2 of this proposed constitutional amendment would provide that "Congress shall have power to implement this article by appropriate legislation." *Id.*

6. *See* Solid Waste Agency of N. Cook County v. U.S. Army Corps of Eng'rs, 531 U.S. 159 (2001) [hereinafter *SWANCC*].

7. *See, e.g.*, Robert V. Percival, *"Greening" the Constitution—Harmonizing Environmental and Constitutional Values*, 32 ENVTL. L. 809 (2002).

8. *See SWANCC*, 531 U.S. 159. *See also* United States v. Wilson, 133 F.3d 251 (4th Cir. 1997) (holding that an attempt by the Army Corps of Engineers to extend jurisdiction to include all waters whose degradation "could affect" interstate commerce exceeds the authority of the Clean Water Act as circumscribed by the Commerce Clause); Hoffman Homes v. United States, 961 F.2d 1310 (7th Cir. 1992) (holding that there was no connection between Congress' Commerce Clause powers and migratory bird fly-ways).

At the same time, the Commerce Clause has been a source of authority for Congress to regulate waste management, as evidenced by the long string of dormant com-

convey broad standing to citizens and nongovernmental organizations (NGOs) to enforce federal environmental laws;[9] to enact legislation that diminishes the value of people's property without compensating them for the diminution in value;[10] or to subject states to suit by citizens.[11] Similarly, some courts have attempted to invoke constitutional provisions to constrain the ability of the executive branch to enact regulations that give form and detail to environmental laws.[12] Courts have even limited their own au-

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merce clause cases. *See, e.g.*, Oregon Waste Sys. v. Dep't of Envtl. Quality, 511 U.S. 93 (1994); C & A Carbone, Inc. v. Clarkstown, 511 U.S. 383, 391 (1994); Chemical Waste Mgmt. v. Hunt, 504 U.S. 334 (1992); Philadelphia v. New Jersey, 437 U.S. 617 (1978).

9. *See, e.g.*, Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992); Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871 (1990); Steel Co. v. Citizens for a Better Env't, 523 U.S. 83 (1998) (rejecting the standing of an NGO to bring a case for past violations). *But see* Fed. Elections Comm'n v. Akins, 524 U.S. 11 (1998) (in a non-environmental case, granting standing to an NGO for informational injury that was shared with the general public); Friends of the Earth v. Laidlaw Envtl. Servs., 528 U.S. 167 (2000) (the first Supreme Court case to uphold standing for citizens and NGOs in an environmental case in a decade); N.Y. Pub. Interest Research Group v. Whitman, 321 F.3d 316 (2d Cir. 2003) (upholding standing for citizens to challenge air regulations where the alleged injury was based on concern about future health impacts from regulatory changes).

10. Dolan v. City of Tigard, 512 U.S. 374 (1994); Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992); Nollan v. Cal. Coastal Comm'n, 483 U.S. 825 (1987); Tulare Lake Basin Water Storage Dist. v. United States, 49 Fed. Cl. 313 (2001). *But see* Palazzolo v. Rhode Island, 121 U.S. 2448 (2001); Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency, 535 U.S. 302 (2002). It is an intriguing, but probably purely academic, question whether Congress could seek to fund its "regulatory takings" of property by fees assessed on property owners where Congressional action increases the value of their property.

11. Vt. Agency of Natural Res. v. United States *ex rel.* Stevens, 528 U.S. 765 (2000) (holding a Vermont agency immune from a *qui tam* suit brought by a private individual); Bragg v. W. Va. Coal Ass'n, 248 F.3d 275 (4th Cir. 2001), *cert. denied*, 534 U.S. 1113 (2002) (holding that the state of West Virginia was immune in federal court from a citizen suit seeking to enforce the Surface Mining Control and Reclamation Act); Pa. Fed'n of Sportsmen's Clubs v. Hess, 297 F.3d 310 (3d Cir. 2002) (following the *Bragg* holding); Burnette v. Carothers, 192 F.3d 52 (2d Cir. 1999), *cert. denied*, 531 U.S. 1052 (2000) (holding that state officials are immune under the Eleventh Amendment from citizen suits brought under the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, and the Resources Conservation and Recovery Act); W. Va. Highlands Conservancy v. Norton, 147 F. Supp. 2d 474, 481 (S.D.W.V. 2001) (holding that West Virginia was immune from a citizen suit notwithstanding the court's finding that "federal law has been ignored and violated by West Virginia for more than a decade."). Courts have also held that the Eleventh Amendment shields states from private actions before federal administrative agencies. *See* Fed. Mar. Comm'n v. S.C. State Ports Auth., 535 U.S 743 (2002); R.I. Dep't of Envtl. Mgmt. v. United States, 304 F.3d 31 (1st Cir. 2002).

12. United States v. Wilson, 133 F.3d 251 (4th Cir. 1997); Am. Trucking Ass'n v. U.S. EPA, 175 F.3d 1027 (D.C. Cir. 1999) (invoking the non-delegation doctrine to hold that the Clean Air Act unconstitutionally delegated authority to Environmental

thority on constitutional grounds, holding that separation of powers constrains judicial action to enforce the law in suits that are brought by non-governmental actors.[13] To address these constitutional challenges to environmental law, initiatives such as the Endangered Environmental Laws Program at the Environmental Law Institute are seeking to reframe the debate around constitutional environmental law in the United States.

In Africa, and elsewhere, scholarly attention is turning to structural issues associated with constitutional environmental law.[14] For example, it is increasingly recognized that constitutional frameworks provide the executive branch with sufficient authority (in law and practice) over the judiciary that judicial independence, and thus accountability, of the executive is the exception rather than the rule.[15] This article focuses on the role of legislatures, and specifically on the constitutional measures that promote or limit the ability of elected members of a legislature to represent their constituencies or affect the ability of the public to hold their elected representatives accountable. This is referred to generally as "legislative representation."

In the constitutional context, legislative representation often is facially ambiguous and only becomes an issue in the practice of day-to-day politics. For example, constitutions may establish a legislature based on proportional representation, in which citizens cast votes for a particular party and legislative positions are allocated to the parties based on the percentage of popular vote that each party receives. Each party then designates its legislative representatives. The legislative representatives are not, strictly speaking, elected to represent a particular district, and as such are not directly accountable to any particular constituency other than the party that designated the legislative representative. Thus, members of a community affected by industrial pollution, timber concessions, or large-scale mining operations are unlikely

Protection Agency (EPA) to establish health-based national ambient air quality standards). *But see* Whitman v. Am. Trucking Ass'n, 531 U.S. 457 (2001) (unanimously overruling the D.C. Circuit).

13. *See supra* cases cited in note 8.

14. Peter Veit et al., *Serving Constituents, Servicing Nature: Legislative Representation and Natural Resource Politics in Africa* (Washington, D.C., World Res. Inst. Pubs., 2004).

15. *See, e.g.*, Jennifer Widner, *Building Judicial Independence in Common Law Africa*, *in* THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES 177-93 (Andreas Schedler et al. eds., 1999); JUDICIAL INDEPENDENCE IN THE AGE OF DEMOCRACY: CRITICAL PERSPECTIVES FROM AROUND THE WORLD (David O'Brien & Peter H. Russell eds., 2001).

to find an enthusiastic representative in the legislature. Yet, in many of these instances, communities do not receive significant benefits from the development, but they bear the brunt of the social, public health, and environmental harms. Similarly, a provision that establishes that a legislative representative must be a member of a political party to hold office may seem reasonable, until the legislative representative tries to represent some constituents in a matter that contradicts the priorities of his or her party. In such a situation, the party can threaten the representative with expulsion from the party, which could have the immediate effect of revoking the representative's mandate.

Legislative attempts to review governmental actions or exercise power frequently clash with the executive branch, particularly with regard to management of valuable resources. For example, in Sao Tome & Principe, the president threatened to dissolve parliament after it had sought to limit his control over the new oil industry in the Gulf of Guinea; a recent coup ended with control of the oil industry taken from the president and placed in the hands of the National Assembly.[16] In Liberia, a few legislative representatives collaborated with NGOs and the media to scuttle a bill that would designate the president as the sole authority to negotiate natural resource concessions.[17]

Peter Veit and colleagues articulated four basic aspects of legislative representation: accountability, autonomy, authority, and ambition.[18] These entail the accountability of legislative representatives to their constituents; autonomy of legislative representatives from political parties, the executive branch, and their legislative peers; authority of legislative representatives to take action on behalf of constituents; and personal ambition of the legislative representatives.[19] This article focuses on the first three of these aspects—accountability, autonomy, and authority—as they play out in three different phases of a legislative representatives' tenure.[20] Frequently, these conceptual aspects of representation

16. Veit et al., *supra* note 14, at 13 (noting that when the president had control over the oil, he had not allowed parliament to take part in the negotiation of concessions); *see also* Sarah Simpson, Abidjan, *Sao Tome Coup Leader, President Sign Accord*, Voice of America News, July 23, 2003, *available at* web.lexis.com/lawschool/reg/researchlogin.asp (last visited Oct. 16, 2003).

17. Veit et al., *supra* note 14, at 20.

18. *Id.* at 11.

19. *Id.* at 10.

20. In addition to the three primary areas of focus for this research—accountability, autonomy, and authority—personal ambitions also influence the functional ac-

are linked. For example, in considering a country's electoral system, there may be issues of accountability to constituencies through elections and autonomy from political parties, as outlined above. Similarly, accountability to constituents and autonomy from political parties may overlap in how a legislative representative may be removed from office.

Section I explores how constitutional provisions regarding election of legislative representatives affect representation, such as through the selection of the country's electoral system, requirements for party sponsorship, and voting procedures. These themes generally relate to accountability, autonomy, or both. Section II delves into the authority of legislative representatives to act on behalf of constituents while serving in the legislature. After surveying general provisions on the duties of legislative representatives and the rights of constituents, this section considers various powers of legislative representatives (and constraints on those powers) to represent their constituents' interests. These powers range from law making and debating to budgetary deliberations. Section III returns to the matters of accountability and autonomy in the specific context of removing a legislative representative from office, investigating how constitutional frameworks grant different sectors the power to recall a legislative representative or otherwise revoke the legislative representative's mandate. Section IV offers a few concluding thoughts on legislative representation and the environment as shaped by African constitutions.

This article relies upon a survey of the constitutions of fifty-three African nations,[21] with a few caveats. The status of some

countability of legislative representatives for representing their constituencies. Researchers have suggested that many legislators view their work primarily as a job, not as public service. Veit et al., *supra* note 14, at 17. To remain in office, these legislators focus their outreach on constituents immediately before and after elections. Through parties, cash incentives, and other modest measures, legislative representatives seek to curry favor with enough voters to ensure their return to power. Constitutional measures addressing the term of office (*i.e.*, how often representatives must stay in the good graces of their constituencies) and term limits affect the ability of representatives to use elected office to advance their own personal ambitions over their constituents' interests. Veit et al. cite another example of how ambition can affect a representative's motivation: in Kenya where an opposition representative opposing the construction of a dam was appointed deputy minister, concurrently, the opposition party merged with the Kenya African National Union, and the opposition chair became Minister of Energy (with responsibility for dams). Veit et al., *supra* note 14, at 14.

21. The fifty-three countries considered in this article include the fifty-two members of the African Union (AU) plus Guinea-Bissau.

African constitutions is unclear, creating methodological research challenges. For example, Somalia has effectively degenerated into non-statehood and is trying to develop a new constitution;[22] Sudan's constitution was partially suspended in 1999; Kenya is undergoing a constitutional review process; and the Democratic Republic of the Congo is functioning under a transitional constitution.[23] In such instances, we have used the last formally adopted constitution, recognizing that the constitutional framework may change in the near future. This constitutional survey is complemented, where possible, by references to scholarship and case studies (some of which are on-going).

## I. Becoming a Legislative Representative

From the outset, a candidate for Parliament or the legislature encounters a variety of constitutionally imposed mandates and constraints that shape whether that person can effectively represent a popular constituency. This section examines how constitutional provisions governing elections of legislative representatives can affect representation.

In many countries, constitutions establish the electoral system, determining whether a representative has a constituency (*e.g.*, in a first-past-the-post system) that the representative must represent effectively in order to be returned to office, or whether the representative is primarily indebted to a political party for the seat that the representative occupies. Constitutions often determine whether a candidate must be a member of a political party to run for office, the nature of the balloting, and whether legislative representatives are elected directly or indirectly. Constitutions are also starting to address campaign finance, which also influences those interests that a legislative representative is most likely to represent.

### A. Electoral System

There are two basic types of systems for electing legislators in Africa: first past the post (FPTP) and proportional representation

22. Discussions to negotiate a new constitution for Somalia have been slow, with reports (perhaps apocryphal) that after a week of intense negotiations in early 2003, the negotiators were able to agree on three words: "We, the undersigned."

23. Similarly, Swaziland suspended its 1968 constitution in 1973, and its 1978 constitution was never presented to the people. *See* CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 2003, http://www.odci.gov/cia/publications/factbook/geps/wz.html/#govt (last modified Aug. 1, 2003).

(PR). FPTP refers to a system in which the candidate who receives the most votes, even if it is not a majority, becomes the elected representative.[24] There is a modified version of FPTP referred to as a "Two-Round system," in which a candidate with a majority of the votes wins in the first round of elections, or if no candidate has a majority there is a run-off election between the two candidates with the most votes from the first round and the candidate who wins a majority of votes in the second round becomes the representative.[25]

The proportional representation system presents the electorate with a list of parties for which to vote, sometimes with the names of candidates and sometimes without.[26] After the vote, the parties are allocated seats in the legislature corresponding to the proportion of the popular vote that the party garnered in the election. Each party then takes the corresponding number of candidates from the top of its party list, each of which becomes a representative.[27]

Andrew Reynolds has outlined many of the advantages and disadvantages of the FPTP system.[28] The FPTP system provides a clear choice for voters between two main parties; however, additional parties often wither away and almost never reach a threshold of popular support. Thus, the national vote that these candidates earn does not translate into comparable percentages of parliamentary seats. The FPTP system can give rise to single-party governments, benefiting broadly based political parties. In societies that exhibit significant ethnic or regional divisions, FPTP is praised for encouraging political parties to be "broad churches" that encompass many elements of society; this is particularly the case when there are only two major parties and many different societal groups.[29] Perhaps the most often quoted advantage of FPTP systems is that they give rise to a parliament of geo-

24. *See* Andrew Reynolds, *First Past the Post—Advantages, at* http://www.aceproject.org/main/english/es /esd01a.htm (last modified Sept. 21, 2001) [hereinafter *Advantages*].

25. *See* Ben Reilly & Andrew Reynolds, *Two Round System, at* http://www.aceproject.org/main/english/es/esd04.htm (last modified Nov. 7, 2001).

26. *See* Richard E. Matland, *Women in Parliament: Beyond the Numbers*, at ch. 3, *at* http://www.idea.int/women/parl/ch3c.htm (last visited Oct. 28, 2003).

27. Andrew Reynolds, *PR Systems, at* http://www.aceproject.org/main/english/es/esf.htm (last modified Nov. 7, 2001).

28. *See Advantages, supra* note 24. *Compare* Andrew Reynolds, *First Past the Post—Disadvantages, at* http://www.aceproject.org/main/english/es/esd01b.htm (last modified Nov. 7, 2001) [hereinafter *Disadvantages*].

29. *Advantages, supra* note 24.

graphical representatives: legislative representatives represent specific cities, towns, or regions, so that localized constituencies have a voice in the legislative process. This is particularly significant for land and natural resource issues, as well as pollution, which tend to be location- and context-specific.

At the same time, however, FPTP systems tend to exclude or marginalize minority parties and women from equitable representation in parliament. Where there is a dominant ethnic population, FPTP systems can encourage the development of ethnic parties that dominate a particular region. In many instances, FPTP systems exaggerate "regional fiefdoms" in which one party wins all the seats in a province or district, leaving a large number of "wasted votes."[30] For example, in Kenya's 1993 election, significant disparities between the sizes of electoral districts—the largest had twenty-three times the number of voters as the smallest—contributed to the ruling Kenyan African National Union party's win of a large parliamentary majority with only thirty percent of the popular vote.[31]

The proportional representation system also has its benefits and setbacks. In a PR system, voters generally know the values and positions for which they are voting, namely those espoused by the party, which is then responsible for determining which individuals will hold the seats won by the party.[32] However, constituents in PR systems are "unable to hold individual legislators accountable because voters cannot identify and contact the legislator who is responsible for serving their particular electoral district because there are no districts in a PR system and no legislator is assigned this task."[33]

In certain instances, legislators in a PR system may have a *de facto* constituency, as they have a political base in a particular region (for example, as a former mayor or governor) or may be assigned a particular region in which to build popular support for the party. As a legal (and constitutional) matter, however, these legislators are primarily accountable to the party which determines which individuals will hold the party's seats in parliament. The constituencies in a PR system have only the loosest sanctions over or ability to support specific representatives.

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30. *See Disadvantages*, *supra* note 28.

31. *Id.*

32. *See Advantages*, *supra* note 24.

33. *Designing Better Electoral Systems for Emerging Democracies*, *at* http://www.uiowa.edu/~electdis/moreinfo.htm (last modified in 2001).

The constitutional provisions that dictate the electoral system can mean that legislative representatives do not have a constituency to which they are responsible. Without a constituency to hold them accountable, legislators may be reluctant to challenge political decisions supported by the government or the legislator's party. Thus, members of a community harmed, for instance, by industrial pollution, timber operations, or large-scale mining are unlikely to find a sympathetic representative or effective voice in the legislature. In a few instances where there has been a clearly defined constituency, the constituency has proven that it can hold legislators accountable. For example, in Zimbabwe, a representative from an opposition party allegedly started supporting the government's land policies, in effect working at cross-purposes to the principles of the opposition party. Constituents demanded his resignation, and the opposition party expelled the representative, which the Parliament Speaker then declared vacant.[34]

African constitutions exhibit a diversity of approaches in addressing which electoral system shall be adopted. Some constitutions clearly articulate the electoral system, while others are ambiguous or silent. As illustrated in Table 1, *infra*, constitutions of five countries stipulate use of the FPTP system, and in six countries the PR system. Twelve constitutions either use a combination of FPTP and PR, or another method of election. For example, article 48 of Liberia's constitution provides that election to the House of Representatives follows a Two-Round system, and the Senate (in article 45) is elected by a purely FPTP system.[35] One way that constitutions provide for a combination electoral system is by having a portion of parliamentary seats set aside for special interest groups.[36] Another example of a combination electoral system is in the constitution of Malawi, which provides for a senator from each district who is elected by a district council, a chief from each district who is elected by all the chiefs of the district, and "thirty-two senators elected by a two-thirds majority of sitting members of the senate" representing interest groups, society, and

34. Veit et al., *supra* note 14, at 12.

35. LIBER. CONST. ch. V, arts. 45, 48. As discussed above, in a Two-Round system, the first election is FPTP, and if there is not a majority winner, a runoff election is held.

36. *See, e.g.*, UGANDA CONST. ch. VI, art. 78 (requiring one woman for each district, as well as representatives for "youth, army, workers, persons with disabilities and other groups as Parliament may determine"); *see also* ETH. CONST. ch. VI, art. 54; SUDAN CONST. ch. II, art. 67.

religious contingencies.[37] Four constitutions establish that an organic law will determine the electoral system. Twenty-six constitutions, approximately half of those in Africa, are silent regarding the electoral system; in these countries, the electoral system is established and governed by legislative and regulatory acts.[38]

Another distinction that can be made is in the number of representatives from each district; that is, whether a district is a single-member district (SMD) or a multi-member district (MMD). In an SMD, voters elect one legislative representative per election, while in an MMD, the voters in that district will elect more than one representative.[39] One concern about SMDs is that minority communities or interests will not be represented because techniques used to delimit electoral districts, such as gerrymandering, can be used to ensure that only those representing particular groups are elected. Because of the larger base constituency in MMDs and the chance to elect multiple representatives, a party often can have different constituents' interests in mind when selecting their party list in order to attract the most number of votes.[40]

Similarly, a sufficiently large minority group voting as a block can seek to ensure that it has a voice in Parliament, even if the group would not otherwise have enough votes collectively to elect the top vote-getter (the winner in an SMD). In an MMD with, say, four positions at stake, the group only needs its candidate to garner the fourth greatest number of votes. Most PR electoral systems use MMDs, although they do not necessarily contain such a provision in their constitutions.[41] While some FPTP countries have MMDs (usually countries that follow block electoral systems), more have SMDs; in both cases, however, the policy deci-

37. *See* MALAWI CONST. ch. VI, art. 68.

38. As a matter of constitutional law, Algeria, Benin, Burkina Faso, Chad, Comoros, Congo, Cote D'Ivoire, Djibouti, Egypt, Eritrea, Gabon, Guinea-Bissau, Kenya, Lesotho, Libya, Malawi, Mali, Mauritania, Mauritius, Niger, Sao Tome & Principe, Senegal, Togo, Tunisia, and Zambia all are silent on the issue of the method the country is to use in its election of legislators.

39. *See* Lisa Handley, *Single Member Districts: Advantages & Disadvantages*, *at* http://www.aceproject.org/main/english/bd/bdabza01.htm (last modified Feb. 4, 2002).

40. *See* Andrew Reynolds, *Districting*, *at* http://www.aceproject.org/main/english/es/esc04.htm (last modified Nov. 11, 2001); Richard E. Matland, *Women in Parliament: Beyond the Numbers*, at ch. 3, *at* http://www.idea.int/women/parl/ch3c.htm (last visited Oct. 28, 2003).

41. Ben Reilly, *District Magnitude, Administration and Cost of Elections*, *at* http://www.aceproject.org/ main/english/es/esg04.htm (last modified Nov. 7, 2001). *See also* ANGL. CONST. pt. III, ch. III, art. 79.

sion of whether to adopt a single-member or multi-member district is not always articulated in the constitution.[42]

Table 1: Electoral Systems, as Established by African Constitutions[43]

| First Past the Post | Proportional Representation | Determined by Organic Law | Other/Combination |
|---|---|---|---|
| Gambia | Angola | Nigeria | Botswana |
| Ghana | Cape Verde | Rwanda | Burundi |
| Lesotho | Equatorial Guinea | Sierra Leone | Cameroon (P) |
| Swaziland | Namibia | Sudan | Democratic Republic of the Congo[44] |
| Uganda | Zimbabwe | | Ethiopia |
| | | | Guinea (P) |
| | | | Liberia |
| | | | Madagascar |
| | | | Morocco |
| | | | Seychelles (P) |
| | | | South Africa |
| | | | Tanzania[45] |

Note: "P" denotes countries that use a parallel system, which includes elements of both PR and FPTP.[46]

42. Mauritius, which uses a block system of election (a form of FPTP, see Handley, *supra* note 39), provides for MMDs in section 31(2), first schedule 1(1). The SMD countries that use an FPTP electoral system are: BOTS. CONST. ch. V, pt. 1, art. 63; GAM. CONST. art. 50; GHANA CONST. ch. VII, art. 47(1); LESOTHO CONST. ch. VI, pt. 1, art. 57(1); SIERRA LEONE CONST. ch. IV, art. 38(2), UGANDA CONST. ch. V, art. 63(1); ZAMBIA CONST. pt. V, art. 77(1). The constitutions of Burundi, Madagascar, and Tanzania—combination systems—provide for SMDs in articles 96, 66, and 60(3), respectively.

43. ANGL. CONST. pt. III, ch. III, art. 79; BOTS. CONST. ch. V, pt. 1, art. 58(2)(a); BURUNDI CONST. tit. VI, arts. 96-99; CAMEROON CONST. pt. I, art. 3; CAPE VERDE CONST. pt. IV, tit. I, ch. I, arts. 106, 107; ch. III, § I, art. 112; § III, arts. 122-23; EQ. GUINEA CONST. § V, art. 61; ETH. CONST. ch. VI, pt. I, art. 54; pt. II, art. 61(3); GAM. CONST. ch. V, pt. 5, art. 54; GHANA CONST. ch. VII, art. 50(a); GUINEA CONST. tit. IV, art. 50; LESOTHO CONST. ch. VI, pt. 1, art. 57(1); LIBER. CONST. ch. V, arts. 48, 49; MADAG. CONST. tit. V, § I, sub-tit. II, ch. I, arts. 66, 67; MOROCCO CONST. tit. III, art. 38; NAMIB. CONST. ch. 7, art. 49 (sch. 4); NIG. CONST. ch. V, pt. I, art. 77; RWANDA CONST. tit. III, ch. II, § I, art. 58; SEY. CONST. ch. VI, pt. I, arts. 78 (sch. 4), 79; SIERRA LEONE CONST. ch. VI, pt. I, art. 74; S. AFR. CONST. ch. IV, art. 46(1); SUDAN CONST. pt. VII, ch. III, art. 128(4); SWAZ. CONST. ch. IV, art. 32; UGANDA CONST. ch. VI, art. 78(1)(a); ZIMB. CONST. pt. 3, art. 38.

44. Democratic Republic of the Congo has a transitional constitution, which calls for appointment of legislative representatives by the government in article 56.

45. TANZ. CONST. ch. III, pt. II, arts. 66, 78. *See also* Alex T. Banzi, *Voting for Democracy* (1998), *at* http://www.aceproject.org/main/samples/vr/vrx_w012.pdf.

46. *See* Andrew Reynolds, *Parallel*, *at* http://www.aceproject.org/main/english/es/ese01.htm (last modified Sept. 17, 1998).

While this article focuses on how constitutions affect legislative representation, for purposes of subsequent analysis, it is helpful to take a broader view of electoral systems in Africa, whether they are rooted in constitutional or other organic enactments. This broader view of electoral systems is useful, for example, when considering how to interpret a constitutional provision requiring party sponsorship in light of a constitution that is silent on the electoral system. Where there are some disputes about the electoral system that a country uses, and the constitution has included a provision, the constitutional provision is used as the authority. Table 2 summarizes the Electoral systems in African nations, however determined.

Table 2: Electoral Systems in Africa[47]

| First Past the Post | Proportional Representation | Combination-electoral system |
|---|---|---|
| Chad (TRS) | Algeria | Botswana |
| Central African Republic (TRS) | Angola | Burundi |
| Comoros (TRS) | Benin | Cameroon (P) |
| Congo (TRS) | Burkina Faso | Cote D'Ivoire |
| Djibouti (B) | Cape Verde | Democratic Republic of the Congo |
| Egypt (TRS) | Equatorial Guinea | Ethiopia |
| Ethiopia | Eritrea | Guinea (P) |
| Gabon (TRS) | Guinea-Bissau | Kenya |
| Gambia | Libya | Liberia |
| Ghana | Mozambique | Madagascar |
| Lesotho | Namibia | Morocco |
| Mali (TRS) | Sao Tome & Principe | Seychelles (P) |
| Mauritius (B) | Zimbabwe | South Africa |
| Niger (P) | | Tanzania |
| Nigeria | | |
| Rwanda | | |
| Senegal (B) | | |
| Sierra Leone | | |
| Sudan | | |
| Swaziland | | |
| Togo (TRS) | | |
| Tunisia (B) | | |
| Uganda | | |
| Zambia | | |

Note: "TRS" denotes countries that have a Two-Round system, a modified form of FPTP. "B" denotes countries that use a block system, a modified form of FPTP.[48]

47. *See supra* note 43 and accompanying Table 1 in text. *See generally* CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK 2003 (index of information available by country), http://www.cia.gov/cia/publications/factbook/index.html (last visited July 29, 2003).

48. A block system is defined by the Ace Project as: "the use of First Past the Post . . . voting in multi-member districts. Each elector is given as many votes as there are seats to be filled, and they are usually free to vote for individual candidates regardless

B. Party Sponsorship

A number of constitutions provide that a candidate for legislative office must run as a member of a political party. This requirement implicitly but directly imposes an obligation on the candidate and often on the legislator, once elected, to remain in the party's good graces. If a candidate, even an incumbent, does not adequately represent the party, vote as the party demands, or speaks out on behalf of constituents in a way that may contravene the party's positions, the party may simply expel or suspend the person from the party. Faced with prospects of party disciplinary measures that could revoke the legislator's mandate, a candidate could be more beholden to a political party than a constituency.

In some instances, a candidate facing a choice between party dictates and responsibilities to constituencies could change parties so as to be affiliated with a party that more closely represents the candidate's views. A paucity of parties in many countries means that this option is often limited. Another related difficulty, discussed in section III below, is that a serving legislator who was elected as a representative of a particular party could be expelled, or threatened with expulsion, from the party, if the legislator represents his or her constituency to the detriment of the party. Such an expulsion could lead to an immediate loss of the representative's seat in the legislature.

Only seven nations' constitutions have addressed whether a political party must sponsor candidates or if candidates can run in their individual capacity. In Guinea and Tanzania, a person cannot run for legislative office without representing a political party.[49] In contrast, in Angola, Cape Verde, Congo, Kenya, and Nigeria, candidates can run either with a party or individually.[50] There does not seem to be a correlation between countries that require a party to represent candidates and that country's electoral system. Nigeria and Congo are FPTP systems; Angola and Cape Verde use PR systems; and Guinea, Kenya, and Tanzania use combination FPTP/PR systems.

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of party affiliation." Andrew Reynolds & Ben Reilly, *Electoral Systems*, *at* http://www.aceproject.org/main/english/es/esd02.htm (last modified Sept. 17, 1998).

49. *See* GUINEA CONST. tit. I, art. 3; tit. IV, art. 48; TANZ. CONST. ch. III, pt. II, arts. 67, 77.

50. The constitutions that allow for party or individual sponsorship are: ANGL. CONST. pt. III, ch. III, art. 80; CAPE VERDE CONST. pt. IV, tit. I, ch. III, § I, art. 113; CONGO CONST. tit. VI, art. 97; KENYA CONST. ch. III, pt. 1, arts. 33, 34; NIG. CONST. ch. V, pt. I, art. 65.

C. Tribalism, Racism, and Restrictions on Political Parties

African constitutions frequently establish limitations on political parties, particularly with respect to the ability of parties to advocate local or otherwise sub-national agendas. Such provisions reflect the histories, cultures, and politics in many countries. Many countries in Africa owe their current borders to the partitioning of Africa by colonial powers in the late 1800s.[51] Borders reflected the priorities and compromises of European nations, not the cultural, physical, or social realities of the region. Thus, Tanzania has more than 130 ethnic groups,[52] the Democratic Republic of the Congo has more than 200 ethnic groups,[53] and Nigeria has more than 250 ethnic groups.[54]

In order to promote national harmony and a national identity, African constitutions often formally seek to limit opportunities for tribal differences to drive the political process.[55] Accordingly, a number of constitutions forbid the formation of a party based on geographic location, race, or religion; instead, parties are supposed to advance national interests. A limited number of constitutions also limit where a political party or candidate can get funding for their campaign.[56]

Many constitutions have provisions similar to article 4(4) of Guinea-Bissau's constitution, which states that "it shall be prohibited to create Political Parties that are regional or local in nature, which encourage racism or tribalism, or which support violent means in pursuing their goals."[57] Moreover, article 4(5) further provides that "[t]he names of Political Parties may not be identified with any areas of national territory or invoke the name of any individual, church, religion, cult or religious doctrine."[58]

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51. *See* http://www.postcolonialweb.org/Africa/akindele1a.html (last modified Apr. 12, 2002); THOMAS PAKENHAM, THE SCRAMBLE FOR AFRICA (1992).

52. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 2003: TANZANIA, http://www.cia.gov/cia/publications/factbook/geos/tz.html (last modified Aug. 1, 2003).

53. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 2003: CONGO, DEMOCRATIC REPUBLIC OF THE, http://www.cia.gov/cia/publications/factbook/geos/cg.html (last modified Aug. 1, 2003).

54. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 2003: NIGERIA, http://www.cia.gov/cia/publications/factbook/geos/ni.html (last modified Aug. 1, 2003).

55. Amb. Francis M. Deng, Senior Fellow, *Dilemmas of Self-determination: A Challenge to African Constitutionalism*, U.S. Inst. of Peace (July 24, 2003), *available at* http://www.usip.org/fellows/reports/2003/0724_RPTdeng.html (last visited Oct. 17, 2003).

56. BURUNDI CONST. art. 63; GHANA CONST. ch. VII, art. 55(15).

57. GUINEA-BISSAU CONST. tit. I, art. 4(4).

58. *Id.* tit. I, art. 4(5).

## D. Conditions of Voting: Universal, Secret, and Equal

When it comes time to cast votes, the conditions for voting can influence whether voters are free to vote for candidates that they believe will best represent their interests or whether voters might be intimidated by voting conditions to cast their votes in a different manner. Accordingly, universal, secret, and equal suffrage can promote legislative representation. Commentators have argued that a constitution that limits voting and fails to provide for a universal system undermines the foundation of a democracy because the system fails to ensure that every voice is heard.[59]

Twenty-two African constitutions call for universal suffrage by secret ballot and equal treatment before the law. Seven additional constitutions contain provisions for universal and secret voting, but not equal elections. Four other countries call for universal suffrage, and eight more countries have a secret ballot. The final twelve countries call for the organic law to create a method for election of legislative representatives.[60]

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59. *See* ACE PROJECT, ACE ELECTRONIC PUBLICATION (index of articles), *at* http://www.aceproject.org/main/english/index.htm (last modified Sept. 5, 2003).

60. Constitutions that specify *universal* suffrage are: BENIN CONST. tit. III, art. 80; CENT. AFR. REP. CONST. ch. I, tit. IV, arts. 46, 47; MADAG. CONST. tit. I, art. 6; tit. IV, § I, ch. I, art. 66; MOROCCO CONST. tit. III, art. 37.

Constitutions that specify *secret* suffrage are: ALG. CONST. pt. II, ch. II, art. 101 (Council of Senate); EGYPT CONST. pt. II, ch. II, art. 87; ERI. CONST. ch. IV, art. 31; GHANA CONST. ch. VII, art. 49; LIBER. CONST. ch. VIII, art. 77; NAMIB. CONST. ch. VII, art. 47; SIERRA LEONE CONST. ch. IV, art. 36; ch. VI, pt. I, art. 74; SOMAL. CONST. ch. I, § I, art. 61.

Constitutions that specify *universal* and *secret* suffrage are: ALG. CONST. pt. II, ch. II, art. 101 (National People's Assembly); CAPE VERDE CONST. pt. IV, tit. I, ch. III, § I, art. 113; ch. I, art. 105; EQ. GUINEA CONST. § V, arts. 60, 61; MOZAM. CONST. pt. I, ch. III, art. 30; pt. II, ch. III, art. 134; pt. III, ch. I, art. 107; S. AFR. CONST. ch. I, art. 1; ch. II, art. 19; TUNIS. CONST. ch. II, art. 19; UGANDA CONST. ch. VI, art. 78; ZAMBIA CONST. pt. V, art. 63.

Constitutions that specify *universal*, *secret*, and *equal* suffrage are: ANGL. CONST. pt. I, art. 3; § II, ch. III, art. 79; BURK. FASO CONST. ch. IV, tit. II, art. 33; tit. V, art. 80; CAMEROON CONST. pt. I, art. 2; pt. II, ch. I, art. 15; CHAD CONST. tit. I, art. 36; tit. IV, arts. 107, 110; COMOROS CONST. tit. I, art. 4; CONGO CONST. tit. I, art. 3; tit. II, art. IV; tit. VI, art. 90; COTE D'IVOIRE CONST. ch. II, tit. III, art. 33; tit. IV, art. 58; tit. V, art. 80; DJIB. CONST. tit. I, art. 4; tit. V, art. 46; ETH. CONST. ch. III, pt. II, art. 38; ch. VI, pt. I, art. 54; GABON CONST. tit. I, art. 4; tit. III, art. 35; GAM. CONST. ch. IV, pt. 2, art. 26; ch. V, pt. I, art. 40; pt. 5, art. 53; GUINEA CONST. tit. I, art. 2; LESOTHO CONST. ch. III, art. 20; MALAWI CONST. ch. I, art. 6; ch. III, art. 40; ch. VI, art. 68; MALI CONST. tit. II, art. 27; tit. V, art. 61; MAURITANIA CONST. ch. II, art. 3; NIGER. CONST. tit. I, art. 7; tit. IV, § I, art. 64; RWANDA CONST. ch. I, tit. I, art. 8; ch. II, tit. III, art. 58; SAO TOME & PRINCIPE CONST. pt. I, art. 6; SEN. CONST. tit. I, art. 3; tit. VI, art. 60; SEY. CONST. ch. V, art. 24; ch. VI, pt. I, art. 79; TOGO CONST. tit. I, art. 5; tit. III, art. 52.

E. Direct and Indirect Elections

Once the ballots have been cast, the electoral system may allow the candidates with the most votes to immediately claim victory (deemed a "direct election"), or it may be necessary for an electoral college or other body to convene, consider the results of the popular election, and then elect the legislators (deemed an "indirect election").

In an indirect election, there is an intermediate step between voting by the public and the actual election of the legislator, president, or other elected official. In this intermediate step, elected representatives (for instance in an "electoral college") meet and vote for a candidate on their constituents' behalf, taking into account the results of the popular election.[61] In most instances, the results of an indirect election through an electoral college are the same as the popular vote.[62]

In contrast, a direct democracy is a political system in which all citizens are allowed to influence policy or elections by means of a direct majority vote. Based on the democratic principle of "one person, one vote," proponents of the direct over indirect electoral method claim many advantages. First, direct popular election is deemed to be the most representative and responsive to the will of the people. Second, direct voting can limit the influence of numerically small but politically powerful pressure groups. In order for a proposal to gain a majority in a referendum, it has to offer advantages to a much larger cross-section of the population.[63] Third, direct elections also seek to avoid a situation where a candidate wins office even though he or she lost the majority vote.[64]

At the same time, scholars find theoretical and practical flaws with the direct model. The most noted flaw is the risk of dema-

61. Wikipedia, *The Free Encyclopedia, Democracy*, *at* http://www.wikipedia.org/wiki/Democracy (last modified Oct. 25, 2003).

62. *Id.*

63. John F. Knutson, *Direct Democracy*, *at* http://www.basiclaw.net/Principles/Direct%20democracy.htm (last modified May 19, 2002).

64. For example, in the United States, each state delegation to the Electoral College endorses a candidate with all of its votes depending upon the majority outcome in its own statewide tally. There is no difference between a candidate that won with 50.1% of the vote in the state and 87% of the vote. Accordingly, in the 2000 U.S. presidential election, George W. Bush won 271 electoral votes (and the Presidency) to Al Gore's 266 votes, although Gore won the popular vote by 0.5%. *See* Mary Mosert, *Final Official Vote Results on Bush-Gore Popular Vote Totals*, *at* http://www.bannerofliberty.com/OS12-00MQC/12-20-2000.1.html (last visited Oct. 28, 2003). In the 1876 presidential election, Samuel Tilden won the popular vote by 3%, but lost in the Electoral College to Rutherford Hayes. *Id.*

goguery, also referred to as tyranny of the majority. In this case, a candidate can win on a dubious pledge to reduce the rights or benefits of the minority in favor of the majority. Another risk is that in a federal system, constituents in small states or provinces become powerless, as candidates shift their focus to the more populous regions, which carry more electoral votes.

Direct voting is particularly common for unicameral countries. Of the twenty-six unicameral countries in Africa, twenty-four countries have a direct vote:[65] only Guinea-Bissau and Libya provide that citizens elect all legislative representatives indirectly.[66] In contrast, bicameral countries in Africa tend to have a mixture of direct and indirect elections. That is to say, in countries with two houses of parliament, the representatives in one house are elected directly, while in the other house they are elected through an indirect vote. In fact, of the twenty-seven bicameral African nations, only Madagascar has citizens directly elect all legislators, and only Swaziland has all legislators indirectly elected.[67] Seventeen countries use a mixed method of voting, twelve of which have one house with legislators elected directly and the other house indirectly, which gives the constituents the benefit of both systems and creates a system in which the flaws of each system can be counterbalanced by the benefits of the other. In three bicameral countries, the possibility for indirect election, direct election, and/or the presidential appointment to the legislature exists in the same house.[68]

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65. ANGL. CONST. pt. I, arts. 78, 79; BENIN CONST. tit. II, arts. 79, 80; CENT. AFR. REP. CONST. tit. IV, arts. 46, 47; COMOROS CONST. tit. III, art. 32; COTE D'IVOIRE CONST. tit. IV, art. 58; DJIB. CONST. tit. V, art. 46; EGYPT CONST. pt. III, art. 62; GHANA CONST. ch. 10, art. 93(1); GUINEA CONST. tit. I, art. 2; tit. IV, art. 47; MALI CONST. tit. V, art. 61; MAURITIUS CONST. ch. V, pt. I, art. 31; MOZAM. CONST. ch. III, pt. III, § I, art. 134; NAMIB. CONST. ch. VII, art. 46; RWANDA CONST. tit. I, art. 8; tit. III, ch. II, § I, art. 58; SAO TOME & PRINCIPE CONST. pt. I, art. 6; SEN. CONST. tit. I, art. 3; tit. IV, art. 60; SEY. CONST. ch. VI, pt. I, art. 78(b); SOMAL. CONST. ch. IV, art. 61; TOGO CONST. art. 52; TUNISIA CONST. ch. II, art. 19; UGANDA CONST. ch. VI, art. 78; ZAMBIA CONST. pt. IV, art. 63. The only bicameral country with a direct vote in both houses is Madagascar. MADAG. CONST. tit. V, § I, art. 66; § II, art. 77.

66. GUINEA-BISSAU CONST. tit. III, art. 47; LIBYA CONST. ch. I, art. 6.

67. SWAZ. CONST. ch. IV, art. 35; ch. V, pt. I, art. 40.

68. The bicameral countries that use both direct and indirect voting are: ALG. CONST. pt. II, ch. II, art. 101; BURK. FASO CONST. tit. I, ch. IV, art. 33; tit. V, art. 80; CAMEROON CONST. pt. I, art. 2; pt. III, ch. I, art. 15; ch. II, art. 20; CHAD CONST. tit. I, arts. 6, 10; CONGO CONST. tit. I, art. 4; tit. V, art. 90; ETH. CONST. ch. I, art. 4; ch. III, pt. II, art. 35; GABON CONST. tit. III, art. 2; LESOTHO CONST. ch. VI, pt. 1, art. 55; MALAWI CONST. ch. VI, arts. 66, 70; MAURITANIA CONST. tit. III, art. 47; MOROCCO CONST. tit. III, art. 37; NIGER. CONST. tit. I, art. 7; tit. IV, § I, art. 64; TANZ. CONST. ch. I, pt. I, art. 5; ch. III, pt. II, art. 66. The bicameral countries that utilize direct, indi-

### F. Regulating Elections

Many African constitutions delegate the authority and responsibility for ensuring, overseeing, and regulating legislative elections. Legislative delegation typically provides for an organic law on electoral process, and administrative delegation refers the matter to an electoral commission or committee. For example, constitutions may specify that the law or committee set the conditions for the election, number of legislators, salary, conditions of eligibility, system of ineligibilities and incompatibilities, and determination of constituency boundaries.[69]

## II. Service in Office: Authority to Act on Behalf of Constituents

Once a candidate becomes a legislator, the analysis turns to questions regarding who that person represents and what powers are vested in the representative to advance those interests. This section starts by analyzing general provisions addressing the duties of legislative representatives and the rights of constituents. It then examines a range of specific authorities that may be available to or prohibited from the legislative representative. These powers include free speech, parliamentary debate, lawmaking (including the ability to introduce private members bills), budgetary authority, and a personal vote.

### A. Duties of Legislators and Rights of Constituents

Legislators can have a constitutional duty to represent their constituents, the citizens of the nation, special interest groups or a combination of these groups. Some constitutions are ambiguous as to whom a legislator represents, and many constitutions do not address the issue.

Various African constitutions provide legislators with the specific duty to represent constituents or the citizens of the nation.

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rect, or presidential appointment in the same houses are: Algeria, Botswana, Ethiopia, Lesotho, and Malawi. The unicameral countries that use both indirect and direct voting are: BOTS. CONST. ch. V, pt. I, arts. 57, 58; GAM. CONST. ch. V, pt. 3, art. 48; KENYA CONST. ch. III, pt. 1, art. 34; SUDAN CONST. pt. IV, ch. II, art. 67. In Comoros, article 32 of the constitution points to an organic law to create the voting policy. COMOROS CONST. tit. III, art. 32.

69. In twenty-six countries, constitutions provide for an organic law that establishes election procedures. In sixteen additional countries, electoral commissions or committees are responsible for determining electoral law pursuant to the constitutions. Eleven constitutions are silent on the issue.

Such provisions can provide a broad but clear fiduciary mandate for legislators to represent their constituents' interests. Alternatively, provisions specifying that legislators are charged with advancing the interest of the nation's citizens writ large can promote national interests at the potential expense of a localized constituency. It can be challenging to balance national harmony, unity, prosperity, and identity with ensuring that the majority does not trample individual and minority rights. While the interests of a minority group might not prevail in a particular instance, effective legislative representation can help to ensure that the interests are voiced publicly and considered in the deliberative process.

Legislative representation of minority interests is particularly important for matters of natural resources control and management. With seventy percent of African citizens living in rural areas, removed from the seats of power, and dependant on natural resources, decisions by the legislature and the government, whether made to benefit the nation as a whole or a particular region, can affect communities in different ways. Industrial development, mining of precious metals, gems, and common varieties, large-scale timber operations, and other initiatives can bring much needed economic development and hard currency. At the same time, these actions often have environmental, social, and public health effects on the surrounding area. This can affect such fundamental activities as constituents' ability to protect, for example, their land and their jobs, access to safe drinking water, and medical attention.[70] Legislative representation helps to ensure that such efforts can be known, mitigated, and compensated.

Even when a legislator has the duty and motivation to speak for a constituency, doing so can be detrimental to the legislator's career. For example, in Uganda, where Members of Parliament are "elected to represent constituencies"[71] through FPTP elections, an MP has been supporting a group of citizens opposing the cancellation of their permits for a tree farm, which the government had sought in order to grant a concession to a sugar company. For advocating on behalf of his constituency, however, the MP "has been labeled a sympathizer of the opposition and an 'economic saboteur' by the president."[72]

70. Veit et al., *supra* note 14, at 19.

71. UGANDA CONST. ch. VI, art. 78(1)(a).

72. Veit et al., *supra* note 14, at 19.

In twelve countries, legislators are accountable to the people of the nation, but not necessarily to a particular constituency.[73] In contrast, Tanzania and Uganda impose a constitutional duty on legislators to represent their constituents.[74] Seven legislative bicameral constitutions have different provisions regarding the duty of representation for legislators in each house, such as in Congo where Senators represent the territorial districts and members of the National Assembly represents the entire nation.[75] When taken together, these provisions mean that nine countries have some legislators charged with representing a particular constituency while nineteen countries have legislators who are charged with representing the nation's citizens. These tallies, as throughout the paper, reflect both unicameral and bicameral countries, with some bicameral nations delegating different responsibilities to each house.

While legislators may be charged with representing various interests, these interests may, on occasion, collide. For example, popular will can run counter to constitutional requirements, and different representatives' consciences can vary greatly. In Tanzania, legislators could be confused as to where their primary loyalties lie: as a result of a PR electoral system, in which the political parties determine which individuals will become legislators, elected representatives would appear to owe their primary allegiance to their party. However, article 66(1)(a) of the Tanzanian Constitution provides that representatives are elected to represent constituencies. While specific examples of African legislators representing constituencies are not commonly reported in scholarly literature, one of the few examples comes from Tanzania. After wildlife rangers in Tanzania allegedly killed fifty subsistence hunters in the Serengeti National Park, the Member of Parliament representing the region launched a parliamentary investigation into the incident.[76]

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73. BENIN CONST. tit. II, art. 80; CAPE VERDE CONST. pt. V, tit. III, ch. V, § II, art. 174; COTE D'IVOIRE CONST. tit. IV, art. 66; DJIB. CONST. tit. IV, art. 49; ETH. CONST. ch. VI, pt. I, art. 54(4); GUINEA-BISSAU CONST. tit. III, ch. I, art. 49(2); NAMIB. CONST. ch. VII, art. 45; NIGER. CONST. tit. IV, § I, art. 66; SAO TOME & PRINCIPE CONST. tit. III, art. 82(2); TOGO CONST. tit. III, art. 52; TUNIS. CONST. ch. II, art. 25; ZAMBIA CONST. pt. I, art. 1.

74. TANZ. CONST. ch. III, pt. II, art. 66; UGANDA CONST. ch. VI, art. 78(1)(a).

75. CONGO CONST. tit. V, art. 90.

76. Veit et al., *supra* note 14, at 14 (the epilogue to this incident touches on the fourth aspect of representation—ambition—as the legislative representative was subsequently appointed deputy minister. Nevertheless, the legislator did represent and

Often, a legislator not only has the duty to represent a localized or national constituency, but citizens have the right to representation. When constituents have the right to have their interests represented, they have a stronger moral and legal claim to press their representatives to bring government resources and other support to the district, such as support for local schools, health clinics, and water supplies.[77] The constitutions of many countries are ambiguous about the duties of legislators, but those constitutions do articulate that the citizens have the right to be represented. The language that establishes this right often looks similar to the constitution of the Central African Republic, which provides that "national sovereignty belongs to the people who exercise it directly by means of referendum or indirectly by their representatives."[78]

Twenty-four African constitutions vest sovereignty in the people of the nation. Of these African nations, almost half on the continent that vest sovereignty with the people are then able to delegate responsibility for the exercise of that sovereignty to elected representatives. Of these twenty-four nations, it is difficult to generalize. There is a fairly even split of countries that use PR and FPTP systems, as well as bicameral and unicameral parliaments. Six countries use a PR electoral system and ten countries use a form of FPTP (or Two-Round) system, with four using a mixed method for electing legislative representatives.[79] Eight countries that grant sovereignty to the people are bicameral, and the remaining twelve are unicameral.

## B. Protection of Speech

One of the most basic yet effective tools available to legislators to advance the interests of constituents is through speech and

advance his constituents' interests against the government, illustrating one way in which representation issues can affect a community's access to resources).

77. *Id.* at 12.

78. CENT. AFR. REP. CONST. tit. II, art. 18.

79. The countries with PR election systems are: ALG. CONST. pt. II, ch. II, art. 100; BURK. FASO CONST. tit. II, art. 32; ERI. CONST. ch. IV, art. 31(4); EQ. GUINEA CONST. § V, art. 60; LIBYA CONST. ch. II, art. 1; MOZAM. CONST. ch. III, pt. III, § I, art. 110.

The countries which use FPTP election systems are: CENT. AFR. REP. CONST. tit. IV, ch. I, art. 18; GABON CONST. tit. III, art. 3; GAM. CONST. ch. VII, pt. 1, art. 112(b); GHANA CONST. ch. VII, art. 47(1); MALAWI CONST. ch. I, art. 6; MALI CONST. tit. V, art. 26; NIG. CONST. ch. V, pt. I, art. 14(2)(a)(b); RWANDA CONST. tit. III, ch. II, § I, art. 6; SEN. CONST. tit. VI, art. 3; SIERRA LEONE CONST. ch. VI, pt. I, arts. 5, 97.

The following countries use a combination electoral system: LIBER. CONST. ch. V, art. 1; MADAG. CONST. tit. V, § I, ch. I, art. 6; MOROCCO CONST. tit. III, arts. 36, 2.

advocacy. Whether on the floor of Parliament, at a press conference, or in a town meeting, a legislative representative can use the bully pulpit to bring political and public attention to a matter. The representative can highlight problems, propound solutions, and pose pointed or difficult questions, as may be appropriate. Through free political speech, a representative can shine a spotlight on problems that need to be addressed and weaknesses in proposed legislation, as well as illuminate options for resolving those issues.

Most constitutions seek to protect legislative representatives from harassment or retribution for exercising their rights to speak out on political matters. These constitutions guarantee that legislative representatives have the freedom from prosecution, judgment, arrest, and investigation regarding opinions voiced in the exercise of their duties.[80] By including such provisions, most constitutions ensure that legislators have the freedom to act independently and in the best interest of whomever they are called upon to represent. Legislators are thus able to say what needs to be said, even if it is unpopular with the government, a political party, the public, or the legislature.

Thirty-nine African constitutions protect the speech of legislators, while fourteen are silent on the issue.[81] These provisions

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80. See, *e.g.*, MAURITANIA CONST. tit. III, art. 50, which states:
No member of Parliament may be prosecuted, pursued, arrested, detained or tried because of the opinions or votes voiced by him during the exercise of his functions. No member of Parliament, while Parliament is in session, may be prosecuted or arrested for a criminal or penal matter, except with the authorization of the assembly to which he belongs, unless it is a case of *flagrante delicto*. No member of Parliament, while Parliament is out of session, may be arrested, except with the authorization of the office of the assembly to which he belongs, unless it is a case of *flagrante delicto*, or authorized prosecution or a judicial sentence. The detention or prosecution of a member of Parliament shall be suspended if the assembly to which he belongs demands it.

*Id.*

81. ALG. CONST. pt. II, ch. II, art. 109; BENIN CONST. tit. IV, art. 90; BURK. FASO CONST. tit. I, art. 95; BURUNDI CONST. tit. VI, art. 103; CAPE VERDE CONST. pt. V, tit. III, ch. V, art. 18; CENT. AFR. REP. CONST. tit. IV, ch. I, art. 49; CHAD CONST. tit. IV, art. 114; COMOROS CONST. tit. III, art. 33; CONGO CONST. tit. VI, art. 95; COTE D'IVOIRE CONST. tit. IV, art. 67; DJIB. CONST. tit. V, art. 51; EGYPT CONST. pt. V, ch. II, art. 98; EQ. GUINEA CONST. § V, art. 68; ERI. CONST. ch. IV, art. 38; ETH. CONST. ch. VI, pt. I, art. 54(5); pt. II, art. 63(1); GABON CONST. tit. III, art. 38; GAM. CONST. ch. VII, pt. 5, arts. 38, 113; GUINEA CONST. tit. IV, art. 52; GHANA CONST. ch. X, arts. 115, 116(1); GUINEA-BISSAU CONST. tit. III, ch. I, art. 53; LIBER. CONST. ch. IV, art. 42; MADAG. CONST. tit. V, § II, ch. I, art. 69; MALAWI CONST. ch. VI, art. 60; MALI CONST. tit. V, art. 62; MAURITANIA CONST. tit. III, art. 50; MOROCCO CONST. tit. III, art. 39; MOZAM. CONST. pt. III, § I, art. 145; NIGER. CONST. tit. IV, § I, art. 67; RWANDA CONST. tit. III,

seem to be found in a wide range of political systems, although FPTP systems appear to protect speech with a little more regularity. There are ten provisions from countries with a PR system of election and nineteen provisions from countries with a FPTP (including Two-Round) system of election, or a combination of FPTP and PR systems of election. In the countries with a PR system, in which legislators depend on a party for their seat, protecting a legislator's freedom of political speech presents a countervailing authority for a legislator to advance the interests of the legislator's constituency even if the legislator's party is opposed to that particular position. The more salient point, however, is that in either a PR or FPTP system, an opposition legislator can advance positions and ask nettlesome questions of the government or majority party with less concern about reprisals. In effect, these provisions ensure that individual, minority party, and opposition representatives have the full range of legislative authority inherent in their office.

### C. Legislative Authority: Initiating, Deliberating, and Adopting a Law

In order for a legislative representative to fulfill the mandate of representation (whether of a localized constituency or the national citizenry), representatives need legislative authority to act. Three general forms of authority ensured in most constitutions are the ability to initiate a bill, the power to debate and deliberate on a bill, and the mandate to pass a bill into law. At the same time, constitutions can limit a representative's legislative authority through provisions circumscribing actions with budgetary or fiscal implications. It may seem self-evident that legislative representatives, as members of the legislative (*i.e.*, law-making) body, should have the authority to initiate, debate, amend, and adopt laws. However, as discussed below, constitutions frequently constrain some of these authorities, making it more difficult for a representative to advance the interests of the representative's constituency.

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ch. II, art. 66; SAO TOME & PRINCIPE CONST. pt. III, tit. III, art. 84; SEN. CONST. tit. VI, art. 61; SEY. CONST. ch. VI, pt. IV, art. 102; SIERRA LEONE CONST. ch. VI, pt. IV, arts. 98, 99; SOMAL. CONST. ch. IV, § I, art. 73(3); S. AFR. CONST. ch. IV, art. 58(1)(a), SUDAN CONST. pt. IV, ch. II, art. 82; TANZ. CONST. ch. III, pt. III, art. 100; TOGO CONST. tit. III, art. 53; TUNIS. CONST. ch. II, art. 26.

Twenty-six African constitutions give joint power to the president, parliament, and government to initiate bills in the system.[82] Sudan's constitution provides that "[t]he President of the Republic, the Council of Ministers, any federal Minister as well as any committee of the National Assembly or any member by private initiative, may table a legislative bill to the Assembly."[83] This provision further states that "[w]here the bill is by private initiative, it shall not be tabled to the Assembly save after referring it to the concerned committee to decide that it involves an important public interest."[84] Eleven of the twenty-six countries that ensure that legislators have the ability to initiate a bill have a PR system of election. Nine of the constitutions have a FPTP system of election, while five constitutions use a combination of electoral systems. Five constitutions also provide that the legislature alone has the power to initiate bills.[85] The constitution of Burkina Faso is the only constitution that provides that "[t]he people exercise the initiative of laws by means of petition constituting a proposal drawn and signed by at least 15,000 persons having the right to vote under the conditions prescribed by law."[86]

Many constitutions place restrictions on the types of bills that a legislator can initiate, deliberate, or pass. These restrictions typically relate to finances, limiting the ability of legislators to introduce bills that would create debt. Eleven African constitutions restrict the economic power that legislators have during law mak-

82. ALG. CONST. pt. II, ch. I, art. 97; ch. II, art. 119; ANGL. CONST. pt. III, ch. II, art. 66; ch. III, art. 93(1); ch. IV, art. 110; BENIN CONST. tit. IV, art. 105; BURK. FASO CONST. tit. VI, art. 97; tit. VII, art. 112; BURUNDI CONST. tit. VII, arts. 119, 120; CAMEROON CONST. pt. III, tit. IV, art. 25; CAPE VERDE CONST. pt. IV, tit. I, ch. II, art. 109(1); pt. V, tit. III, ch. IV, § I, art. 169; CENT. AFR. REP. CONST. tit. III, ch. I, art. 25; tit. IV, ch. IV, art. 62; CHAD CONST. tit. V, art. 134; COMOROS CONST. tit. III, art. 37; CONGO CONST. tit. VI, art. 110; tit. VII, art. 118; EQ. GUINEA CONST. § V, art. 75; GABON CONST. art. 53; GUINEA CONST. tit. III, art. 45; tit. V, art. 68; GUINEA-BISSAU CONST. tit. III, ch. I, arts. 60, 61(1); MADAGASCAR CONST. tit. IV, § I, art. 54; tit. V, § III, art. 84; MALI CONST. tit. I, art. 1; tit. VI, art. 75; MAURITANIA CONST. tit. IV, art. 61; MOZAM. CONST. pt. III, ch. III, art. 137; SAO TOME & PRINCIPE CONST. pt. III, tit. III, arts. 83(b), 88(1); SEN. CONST. tit. III, art. 51; tit. VII, art. 80; SEY. CONST. ch. VI, pt. IV, arts. 94(1), (2); SOMAL. CONST. ch. IV, § I, art. 70; S. AFR. CONST. ch. IV, art. 55(1)(b); ch. V, art. 81(4)(f); SUDAN CONST. pt. IV, ch. II, art. 87(1); TUNIS. CONST. ch. II, art. 28.

83. SUDAN CONST. pt. IV, ch. II, art. 87(1).

84. *Id.* pt. IV, ch. II, art. 87(2).

85. EGYPT CONST. pt. V, ch. II, art. 110; LESOTHO CONST. ch. V, pt. 1, art. 70; LIBER. CONST. ch. V, art. 34; NAMIB. CONST. ch. VII, art. 63(2)(g); UGANDA CONST. ch. VI, art. 90(3)(b).

86. BURK. FASO CONST. tit. VI, art. 97.

ing.[87] These constitutions provide that a legislator cannot introduce a bill that affects the budget, with a few exceptions. For example, in article 37 of the Comoros Constitution, the Parliament cannot adopt any law that would cause a diminution of public resources.[88] Other restrictions in African constitutions address constitutional revisions,[89] amendments to bills,[90] agenda setting,[91] and customary or tribal law.[92]

The ability to deliberate the bill gives legislators the power to discuss and amend proposed legislation. This gives legislators the authority and opportunity to help ensure that the legislature does not pass legislation that will harm a representative's constituents or the people of the nation. It ensures that all legislators can participate in the process of creating legislation and that the voice of the various constituencies will be heard, so long as the legislator's freedom of speech is protected. There are twelve constitutions that allow legislators to deliberate over a bill.[93] The constitution

87. ALG. CONST. pt. II, ch. II, art. 121; ANGL. CONST. pt. III, ch. III, art. 93(2); BOTS. CONST. art. 1; BURK. FASO CONST. tit. VII, art. 120; CAMEROON CONST. pt. III, ch. I, art. 18(3); ch. II, art. 23(3); CAPE VERDE CONST. art. 129(5); COMOROS CONST. tit. III, art. 37; COTE D'IVOIRE CONST. tit. V, art. 78; DJIB. CONST. tit. VIII, art. 69; KENYA CONST. ch. III, pt. 2, art. 48(a); MAURITIUS CONST. ch. V, pt. II, art. 54(a)(i); TANZ. CONST. ch. III, pt. III, art. 99(2)(a).

88. COMOROS CONST. tit. III, art. 37.

89. BOTS. CONST. ch. V, pt. IV, art. 89; KENYA CONST. ch. III, pt. 2, art. 46(6); MALAWI CONST. ch. V, pt. II, art. 66(2); MAURITIUS CONST. ch. V, pt. II, art. 47; ZAMBIA CONST. pt. V, art. 79.

90. BURUNDI CONST. tit. VII, art. 121; COTE D'IVOIRE CONST. tit. V, art. 78.

91. *E.g.*, CAMEROON CONST. ch. I, pt. III, arts. 18(4), (5) (addressing restrictions on legislative representatives in the agenda-making process); ch. II, arts. 23(4), (5) (government restrictions in agenda-setting).

92. The Constitution of Botswana, for example, addresses this issue in article 88(2) as follows:

> The National Assembly shall not proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the person presiding, would, if enacted, alter any of the provisions of this Constitution or affect— (a) the designation, recognition, removal of powers of Chiefs, Sub-Chiefs, or Headmen, (b) the organization, powers, or administration of customary courts, (c) customary law, or the ascertainment or recording of the customary law; or (d) tribal organization or tribal property, unless (i) a copy of the Bill has been referred to the House of Chiefs after it has been introduced in the National Assembly; and (ii) a period of 30 days has elapsed from the date when the copy of the Bill was referred to the House of Chiefs.

BOTS. CONST. ch. V, pt. IV, § 88(2).

93. ALG. CONST. pt. II, ch. II, art. 120; BURK. FASO CONST. tit. VI, art. 97; BURUNDI CONST. tit. VII, art. 121; CAPE VERDE CONST. pt. V, tit. III, ch. IV, § II, art. 172; CHAD CONST. tit. V, art. 134; COMOROS CONST. tit. III, art. 37; CONGO CONST. tit. VII, art. 121; ETH. CONST. ch. VI, art. 57; GABON CONST. tit. II, art. 30; NIGER. CONST. tit. V, art. 77; TANZ. CONST. ch. III, pt. III, art. 97(1); TOGO CONST. tit. V, art. 92.

of Ethiopia, article 57, describes the system by providing that "[l]aws deliberated upon and passed by the House" will then be passed to the president to sign, although if the President does not sign the law within fifteen days it will pass without his or her signature.[94]

The final aspect of authority is the ability to actually pass a law. Twenty-eight constitutions grant legislators the ability to pass a bill.[95] The Ethiopian Constitution provides in article 57 that the House will pass a law after deliberation, and article 55 enunciates the issues that are the responsibility of the House. For the constituents and citizens of the nation to have a voice in the government, the ability to introduce legislation, deliberate on bills, and finally have a vote in the system is essential to the authority of legislators to be able to act on behalf of constituents.

### D. Guarantee and Protection of Personal Vote

In order to be able to represent constituents in an effective manner, legislative representatives must have the authority to act on their behalf. One key protection is the guarantee of representatives to a "personal" vote, which ensures that they do not have to vote as part of a block if doing so would not be in their constituents' interests. A number of constitutions establish the right to a personal vote in provisions addressing the protection of vote.

Twenty constitutions ensure that legislative representatives have a personal vote, with fifteen of the twenty countries allowing the personal vote to be delegated.[96] Article 39 of the constitution

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94. ETH. CONST. ch. VI, pt. I, art. 57.

95. ANGL. CONST. pt. III, ch. III, art. 88; BENIN CONST. tit. IV, art. 96; BOTS. CONST. ch. V, pt. IV, art. 87; BURK. FASO CONST. tit. IV, art. 84; BURUNDI CONST. tit. IV, art. 106; CAMEROON CONST. pt. III, ch. I, art. 19; CAPE VERDE CONST. pt. V, tit. III, ch. IV, § II, art. 172; CENT. AFR. REP. CONST. tit. IV, ch. III, art. 55; CHAD. CONST. tit. V, art. 125; COMOROS CONST. tit. III, art. 39; COTE D'IVOIRE CONST. tit. IV, art. 61; ERI. CONST. ch. IV, arts. 32, 33; ETH. CONST. ch. VI, pt. I, arts. 54, 55; GABON CONST. tit. III, art. 36; GUINEA CONST. tit. V, art. 59; GUINEA-BISSAU CONST. tit. III, ch. I, art. 56; KENYA CONST. ch. III, pt. 2, art. 46; LIBER. CONST. ch. V, art. 29; MAURITANIA CONST. tit. IV, art. 56; MAURITIUS CONST. ch. V, pt. II, art. 46; MOROCCO CONST. tit. III, art. 45; SAO TOME & PRINCIPE CONST. pt. III, tit. III, art. 86; SEY. CONST. ch. V, art. 68; SIERRA LEONE CONST. ch. VI, pt. V, art. 106; S. AFR. CONST. ch. IV, arts. 44, 53, 55, 68, 75, 76; SUDAN CONST. pt. IV, ch. II, art. 73; TANZ. CONST. ch. III, pt. III, art. 97; ZAMBIA CONST. pt. V, art. 78.

96. BENIN CONST. tit. IV, art. 93; BURK. FASO CONST. tit. IV, art. 103; BURUNDI CONST. tit. VI, art. 102; CENT. AFR. REP. CONST. tit. IV, ch. I, art. 50; CHAD. CONST. tit. IV, art. 117; COMOROS CONST. tit. III, art. 36; CONGO CONST. tit. VI, art. 96; COTE D'IVOIRE CONST. tit. IV, art. 66; GABON CONST. tit. III, art. 39; GUINEA CONST. tit. IV, art. 57; MALI. CONST. tit. V, art. 64; MAURITANIA CONST. tit. III, art. 51; NIGER. CONST.

of Gabon is typical, providing that "the right to vote . . . is personal."[97] Rwanda is the only country that explicitly ensures that legislative representatives cannot be required to vote in a particular way.[98] Malawi and Senegal both provide that a representative will not lose his or her seat for voting against the representative's party but will if the representative changes parties.[99] Some constitutions provide that a legislator can forfeit her seat in the legislature if she votes against her party. This will be addressed in more detail in section III, below.

As with the discussion above regarding the protection of a legislative representative's speech, constitutional provisions guaranteeing a representative's votes reinforce the ability of legislative representatives to act on behalf of constituents. These constitutions permit representatives to cast their votes without fear of investigation, arrest, and prosecution.

Twenty-seven African constitutions, over half, protect a legislator's vote.[100] The language of these provisions usually is similar to that of article 90 of Benin's constitution, which provides that: "The members of the National Assembly shall enjoy parliamentary immunity. As a consequence, no Deputy may be followed, searched, arrested, detained, or judged for opinions or votes issued by him during the exercise of his duties."[101] These provisions oc-

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tit. IV, § I, art. 66; SEN. CONST. tit. VI, art. 64; TOGO CONST. tit. III, art. 56. The constitutions that ensure a personal vote but are silent on the issue of delegation are: Equatorial Guinea, Madagascar and Rwanda. Malawi's Constitution ensures a personal vote but does not allow for a legislative representative to delegate his or her vote.

97. GABON CONST. tit. III, art. 39. "The regulations of each Chamber exceptionally authorize the delegation of the vote. No one can receive the delegation of more than one mandate." *Id.*

98. "Any required mandate shall be invalid: the Deputies' right to vote shall be personal." RWANDA CONST. tit. III, ch. II, § I, art. 59.

99. MALAWI CONST. ch. VI, art. 65.

100. ALG. CONST. pt. II, ch. II, art. 109; BENIN CONST. tit. IV, art. 90; BURK. FASO CONST. tit. V, art. 95; BURUNDI CONST. tit. VI, art. 103; CAPE VERDE CONST. pt. V, tit. III, ch. V, § II, art. 181; CENT. AFR. REP. CONST. tit. IV, art. 49; CHAD CONST. tit. IV, art. 114; COMOROS CONST. tit. III, art. 33; CONGO CONST. tit. VI, art. 101; COTE D'IVOIRE CONST. tit. IV, art. 67; DJIB. CONST. tit. V, art. 51; ETH. CONST. ch. VI, pt. I, art. 54(5); ch. VI, pt. II, art. 63(1); GABON CONST. tit. III, art. 38; GUINEA CONST. tit. IV, art. 52; GUINEA-BISSAU CONST. tit. III, ch. I, art. 53; LIBER. CONST. ch. V, art. 42; MADAG. CONST. tit. V, § 1, ch. I, art. 69; MALAWI CONST. ch. VI, art. 64(1); MALI CONST. tit. V, art. 62; MAURITANIA CONST. tit. III, art. 50; MOROCCO CONST. tit. III, art. 39; MOZAM. CONST. pt. III, ch. III, § I, art. 145; NIGER. CONST. tit. IV, art. 67; RWANDA CONST. tit. III, ch. II, § I, art. 66; SAO TOME & PRINCIPE CONST. pt. III, tit. III, art. 84; TANZ. CONST. ch. III, art. 100(1); TOGO CONST. tit. IV, art. 53.

101. BENIN CONST. tit. IV, art. 90.

cur in a variety of electoral systems: twelve constitutions that protect legislators' votes use an FPTP or Two-Round System; eight have a combination FPTP/PR system; and seven constitutions with these provisions use a PR system.[102] In five constitutions, it is unclear what electoral system the country uses.

## III. Removing a Legislator from Office: Accountability to Whom?

The power to remove an elected legislator from office provides the clearest context for determining whether a legislator is able or compelled to represent a constituency in an effective manner. This section focuses on accountability of legislators to their constituents through citizen recall measures, as well as accountability of legislators to political parties through recall and forfeiture. As with the rest of this article, the analysis considers only constitutional provisions, although many of the disciplinary measures available to political parties may be found in non-constitutional enactments such as anti-defection laws, parliamentary procedures, and party documents.[103] In certain instances, the legislature can revoke a representative's mandate.[104] Constitutional provisions also address actions that may lead to a legislator forfeiting his or her seat.

### A. Accountability to Citizens: Recall

One way that constitutions ensure that legislators represent the interests of the constituents is by providing the right of citizens or constituents to recall a legislator. When a constituency can recall its elected legislative representative, the representative is more likely to accord significant insight to the views and needs of his or her constituency in deciding how to vote or otherwise act. As such, recall promotes representation. While the prospect of a recall campaign will not necessarily guarantee that a legislator will be in accord with the wishes of the constituency, the knowledge that a constituency is watching the actions of its elected rep-

102. *See supra* note 47 and accompanying Table 2 in text.

103. *See generally* Veit et al., *supra* note 14.

104. In addition to potential sanction by the public, a political party, and the legislature, legislative representatives may be subject to recall by the executive branch or tribal authorities (often referred to generally as "local notables"). While beyond the scope of this article, the constitutional role of tribes, kingdoms, and traditional communities in African politics in the context of representation as well as their relationship to the state more generally merits further analysis.

resentative and has the actual power to remove its representative from office can serve as a strong incentive for a representative to heed the constituency's views.

Seven countries grant citizens the right to recall legislative representatives.[105] Five of the seven countries use the FPTP electoral system; the remaining two electoral systems are unknown. In Ethiopia, which has a FPTP system, a representative's constituents have the power to recall the representative, even though the representatives are charged with representing the citizens of the nation.[106] Uganda, also a FPTP country, is the only nation in which the constitution gives legislators the duty to represent their constituents and constituents the power to recall their elected officials.[107]

B. Accountability to Political Parties: Recall and Forfeiture

In countries that have a PR electoral system, the seats that legislators occupy generally are viewed as belonging to the party that won them in the election, and the legislators have to answer to the political party that won the seats. One way that a party can retain control over its elected members is through the power to recall legislators who do not act or vote as the party wishes. For example, in Malawi, the Speaker of the National Assembly declared that a legislator, also from the ruling party, lost his mandate once he joined an umbrella organization of NGOs and opposition members after he had been investigating the diversion by senior officials of maize for personal gain.[108]

Only three constitutions provide for a party to have the power to recall a legislator. In Namibia, Seychelles, and South Africa, countries with PR systems, legislators answer to their party through the threat of recall.[109] In such systems, a legislator could find it difficult to look out for constituents (even if such constituents may be ascertained in a PR system), because the legislator would face the threat of recall by the party if the legislator did not hew to the party's position. The Seychelles Constitution provides that a legislator must vacate his or her seat if the party nominates

105. ETH. CONST. ch. II, art. 12; ch. VI, pt. I, art. 54; GAM. CONST. ch. VII, pt. 1, art. 92(a); LIBER. CONST. ch. I, art. 1; MALAWI CONST. ch. VI, art. 63; NIG. CONST. ch. V, pt. I, art. 69; SOMAL. CONST. ch. IV, § I, art. 74; UGANDA CONST. ch. VI, art. 84(3).

106. *See* ETH. CONST. ch. II, art. 12(3).

107. *See* UGANDA CONST. ch. VI, art. 26.

108. Veit et al., *supra* note 14, at 15.

109. NAMIB. CONST. ch. VII, art. 48(1)(a); S. AFR. CONST. ch. IV, arts. 62(4)(c), (d); SEY. CONST. ch. VI, pt. I, art. 81(1)(h)(i).

someone else.[110] The South African Constitution provides that a political party can recall a representative from the National Council of Provinces (one of two legislative houses) when the representative "has lost the confidence of the provincial legislature and is recalled by the party that nominated that person; or ceases to be a member of the party that nominated that person and is recalled by that party. . . ."[111] Similarly, the Namibian Constitution provides that a Member of Parliament must vacate his or her seat in Parliament if his or her political party declares the MP to no longer be a member of that party.[112]

Although only three constitutions provide that a political party may recall its legislative representatives, many constitutions provide that a representative must vacate his or her seat if the representative changes political parties once in office, or declares independence from the party. This set of provisions may be distinguished from the Namibian provision, in that Namibia's constitution grants powers to a party to eject a representative from the party and thus the legislature, while the other provisions are more narrowly circumscribed.[113] These provisions apply only when the representative actually leaves or changes parties.[114] If an independent representative joins a political party, these constitutions typically provide that the representative will lose his or her seat as a result.

These provisions satisfy various ends. In PR systems, in which a designated number of legislative positions are allocated to a political party based on the proportion of votes won in an election, these provisions help to ensure that there is continued proportional representation of the popular vote. These provisions help to protect constituents against competition, in which a party could seek to buy a seat by bribing or otherwise compelling a legislator to change political parties. The provisions also help to protect the interests of constituents who, when voting in elections, are presumably voting for the platform of the party. If the legislator switches parties, such a switch takes away (at least some) of the constituency's voice. These constitutional provisions seek to

110. SEY. CONST. ch. VI, pt. 1, art. 81(1)(h).

111. S. AFR. CONST. ch. IV, arts. 62(4)(c), (d).

112. NAMIB. CONST. ch. VII, art. 48(1)(d).

113. *Id.*

114. While such provisions seem to apply only when a legislator elects to leave a party or change parties, these provisions could be interpreted to apply in a situation where a party expels a legislator, in which case the legislator could be deemed to "leave" the party and thus lose his or her seat.

protect constituents who may have voted for the party or candidate on the basis of a specific platform that the representative subsequently abandons.

At the same time, these provisions could be applied to the detriment of constituents. If a legislator believes that it is in the best interest of the constituency to change political parties and join a party more in line with the needs of his or her constituents, the legislator is effectively barred from doing so at the risk of losing his or her seat, sacrificing the constituency's interests as a result.

Seventeen African constitutions provide that a legislator must vacate his or her seat if he or she switches alignment (*i.e.*, parties, party to independent, or independent to party). Of these seventeen, seven countries have an FPTP electoral system, six a PR system, and four use a combination electoral system.[115]

## C. Legislative Recall

One way that constitutions can promote good legislative governance and protect the interests of the citizens is by granting power to legislators to voice concern about and recall fellow legislators for inappropriate behavior or inability. Legislators can use such provisions to recall corrupt but locally popular legislators. At the same time, legislators could use this power to remove locally popular representatives who distinguish themselves through their integrity and high ethical standards, but who may advocate positions that are unpopular with their peers.[116] Seven constitutions have provisions for a legislative recall of legislators.[117] Four of the countries that have this constitutional provision to recall—Algeria, Guinea-Bissau, Namibia, and Sao Tome & Principe—have a PR system of election.

115. The countries that use a FPTP system are Congo, Gambia, Ghana, Nigeria, Sierra Leone, Uganda, and Zambia. The constitutions that include a PR electoral system are Angola, Cape Verde, Namibia, Senegal, Tanzania, and Zimbabwe. The countries that use a combination system are Kenya, Malawi, Seychelles, and South Africa.

116. ALG. CONST. pt. II, ch. II, arts. 106, 107; EGYPT CONST. pt. V, ch. II, arts. 96, 97; GUINEA-BISSAU CONST. tit. III, ch. I, art. 54; LIBER. CONST. ch. V, art. 38; MALAWI CONST. ch. VI, art. 63; NAMIB. CONST. ch. VII, art. 48; SAO TOME & PRINCIPE CONST. pt. III, tit. III, art. 85; SOMAL. CONST. ch. IV, art. 74.

117. Algeria, Egypt, Guinea-Bissau, Malawi, Namibia, Sao Tome & Principe, and Somalia.

D. Leaving Office

Frequently, constitutions establish provisions that state the circumstances under which a legislator may choose—or be compelled—to leave the legislature. The most common constitutional provision compelling a legislator to leave office is when the legislator changes parties or joins a party. In fact, if a legislator does not vote with his or her party, the legislator could be deemed to constructively cross the aisle.[118] Other constitutional provisions that provide grounds for leaving office include missing a certain number of sessions, entering bankruptcy, becoming no longer qualified under election requirements, resigning for personal reasons, accepting another government position such as ambassador, committing a crime, or being found to be of unsound mind. Eleven constitutions provide for legislators to leave office separately from the issues of their political party.[119]

IV. Conclusion

In Africa, natural resources are a source of wealth, power, and livelihoods.[120] The majority of African people living in rural areas are particularly dependent on natural resources for food, fuel, shelter, fiber, and income. A great diversity of wildlife, plants, and vistas are only found in Africa. In seeking to sustainably manage these resources for environmental, social, and economic objectives, attention increasingly turns to the governing processes. Scholars, advocates, and the international community have focused much of their attention on strengthening civil society as well as capacity for government agencies. Additional scholarship and capacity building has sought to promote judicial independence and capability to hear and decide cases with environmental implications.

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118. *See, e.g.*, SIERRA LEONE CONST. ch. VI, pt. I, art. 77(1)(l) ("A Member of Parliament shall vacate his seat in Parliament—if by his conduct in Parliament by sitting and voting with members of a different party, the Speaker is satisfied after consultation with the Leader of that Member's party that the Member is no longer a member of the political party under whose symbol he was elected to Parliament. . . .").

119. ANGL. CONST. pt. III, ch. III, arts. 85 (a), (b); BOTS. CONST. ch. V, pt. I, art. 68; ch. IX, art. 125(1); CONGO CONST. tit. VI, art. 98; GAM. CONST. ch. VII, pt. 1, art. 91; GHANA CONST. ch. X, art. 97; KENYA CONST. ch. III, pt. 1, art. 39; LESOTHO CONST. ch. VI, pt. 1, art. 60; RWANDA CONST. tit. II, ch. I, § I, art. 67; SEY. CONST. ch. VI, pt. I, art. 81(1)(h); SIERRA LEONE CONST. ch. V, pt. II, art. 71; UGANDA CONST. ch. VI, art. 83(g).

120. NATURE, WEALTH, AND POWER: EMERGING BEST PRACTICE FOR REVITALIZING RURAL AFRICA (2002), *at* http://www.dec.org/pdf_docs/pnacr288.pdf.

In recent years, interest in promoting good governance through legislative institutions has grown. Some of the interest is motivated by specific experiences; for example, where a legislative representative was effectively unable to represent his or her constituency due to legislative or constitutional constraints. As this article has highlighted, legislative representation in African constitutions can be quite complex. There are few generalizations that may be made, and many of the electoral and legislative systems in Africa have elements that are unique to the particular country. Moreover, as a matter of law and practice, the election, authority, and removal of legislative representatives is a combination of constitutional provisions, legislation, parliamentary rules, and politics. This article has examined the ways in which African constitutions seek to promote or limit (often both) the ability of legislative representatives to represent the interests of a particular constituency.

It is worth noting that all African countries have some constitutional provisions affecting the ability of an elected representative to represent a constituency. These provisions may relate to accountability to constituents, independence from political parties, authority to act on behalf of constituents, and ambition. At the same time, no country's constitution fully addresses all of these issues. In some instances, the constitution foresees a legislative framework that resolves the issues, in some other instances, the constitution is vague, and in yet other instances, the constitution is silent.

Almost all African constitutions vest sovereignty in the citizens of the nation; however, only a small fraction of them specifically provide that a legislative representative has the duty to represent a constituency. More often, constitutions address specific issues of representation, such as the process for electing representatives, the authorities of representatives, and the removal of representatives.

The system by which legislative representatives are elected affects whether the representative has a constituency to which the representative is directly accountable (for example, in subsequent elections), or whether the representative is more indebted to a political party for the seat. There appears to be a roughly even split between countries that follow some form of PR electoral system and those that follow a FPTP system. Some countries follow a combination of systems, which may also entail some representatives appointed by the executive branch. Civil law countries tend

to adopt PR electoral systems, and common law countries tend to follow FPTP electoral systems, but there are plenty of exceptions.

The conditions by which citizens elect representatives generally promote representation. Most countries protect citizens' votes as secret, with suffrage usually universal and often explicitly deemed to be "equal." The vast majority of African countries allow citizens to elect directly at least some representatives (only two do not): twenty-four of twenty-six unicameral countries ensure a direct vote, and most bicameral nations provide for a combination of directly and indirectly elected representatives.

Many constitutions that address political parties seek to ensure that these parties are not associated with tribes, ethnic groups, or a religion. Instead, they seek to promote national unity by requiring political parties to advance national objectives. Many constitutions reserve seats in the legislature for particular interest groups, such as women, agriculture, and "society." Some representatives who hold these seats are elected, and some are appointed either by parliament or the prime minister. For these special interest groups, different election rules usually apply.

African constitutions frequently seek to ensure that legislative representatives have the ability to carry out their legislative duties and to represent constituents once they are in office. In fact, a constitutional protection of a representative's speech and expression is the most common provision considered in this article. Almost three-quarters of African nations guarantee that a representative cannot be investigated, arrested, or prosecuted for opinions expressed in the representative's professional capacity. Such provisions help to ensure that a representative can, on behalf of constituents, utilize the bully pulpit to bring public attention to issues, to criticize, and to propose solutions. Moreover, most constitutions also protect the representative's vote. Where constitutions do not guarantee representatives' speech, opinion, or vote, they were silent; however, no constitution explicitly limits these legislative authorities.

In almost half of the African countries, constitutions grant the power to legislative representatives to introduce legislative bills. In many countries, this power is shared with the executive branch (including the prime minister), and may be limited to committees and bills that do not have financial effects on the nation's budget. A number of countries, though, recognize the constitutional authority of a representative to introduce a private member's bill. In contrast, only a few African constitutions specifically provide for

deliberation of bills. Just over half of the countries provide representatives with the authority to adopt legislation.

When it comes to power to remove a legislative representative—perhaps the ultimate sanction—only seven African nations allow citizens to recall a representative, and eight provide for legislative recall. In contrast, seventeen nations allow parties to recall or otherwise remove a representative from office, usually when a representative switches parties.

Together, these various constitutional provisions entail a range of mandates, duties, rights, and protections. Some of them are general, while others are specific. As a practical matter, some of the provisions are more hortatory or theoretical in their character while others have very real implications. For instance, requirements that a legislative representative be in a political party to run for office or that the representative remain with the political party once in office can constrain a representative from acting on behalf of a constituency when doing so runs counter to commands from the representative's party.

How the conflicting authorities on legislative representation in a particular country play out in a particular instance is largely unresolved. There are, as Veit and colleagues have highlighted in their survey of African experiences, a number of instances in which representatives have been able to represent constituents (particularly in environmental and natural resource matters), and even more instances in which representation has been problematic. While the constitutional provisions in this article may entail only a part of the framework for legislative representation in Africa, they do establish guiding principles, even if these principles conflict from time to time.