AN ANALYSIS OF DEMOCRATIC GOVERNANCE

COUNTRIES AT THE CROSSROADS 2011

FREEDOM HOUSE

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An Analysis of Democratic Governance

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COUNTRIES AT THE CROSSROADS
2010 – 2011

2010 COUNTRIES	2011 COUNTRIES
Argentina	Algeria
Bahrain	Angola
Brazil	Bangladesh
Cambodia	Bhutan
Cote d'Ivoire	Bolivia
Democratic Republic of Congo	Burkina Faso
East Timor	China
El Salvador	Colombia
Ghana	Ecuador
Guatemala	Egypt
Haiti	Eritrea
Honduras	Ethiopia
Indonesia	Greece
Jordan	Guyana
Kenya	Italy
Lebanon	Laos
Liberia	Libya
Malawi	Madagascar
Malaysia	Mali
Mexico	Mauritania
Nepal	Morocco
Nicaragua	Mozambique
Nigeria	Pakistan
Saudi Arabia	Paraguay
Sierra Leone	Peru
South Africa	Philippines
Sri Lanka	Rwanda
Tanzania	Senegal
Uganda	Swaziland
Vietnam	Syria
Yemen	Thailand
Zimbabwe	Tunisia
	Turkey
	Venezuela
	Zambia

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AFTER THE ARAB SPRING

The Uphill Struggle for Democracy

Christopher Walker and Vanessa Tucker

INTRODUCTION

This year's uprisings in Tunisia, Egypt, Libya, Syria, and elsewhere in the Middle East and North Africa have dispelled illusions about the durability of the region's prevailing governance systems. Long-entrenched authoritarian leaders have been forced to give way to popular pressure for change, suddenly invigorating a previously moribund political landscape.

However, these stunning breakthroughs carry no guarantee that democratically accountable systems will emerge in their wake. Some initial improvements appear to have been made in areas like freedom of expression and freedom of association, if only because the interim authorities are not as active in systematically suppressing exercise of those rights. For similar reasons, the first post-uprising elections in some countries will likely be improvements on the thoroughly rigged contests of the past. Tunisia's election in October 2011 suggests promise in this regard. But rebuilding basic institutions like the justice system, law enforcement agencies, and regulatory frameworks for the media and civil society, all of which have been warped and corrupted by decades of authoritarian rule, will require many years of effort. In this sense the removal of a dictator represents only the beginning of the end of authoritarian governance.

The depth of the reform challenge facing these countries is apparent in the findings of *Countries at the Crossroads 2011*, Freedom House's comprehensive assessment of democratic governance. The report analyzes the performance of 35 countries—including six in the Middle East and North Africa (MENA)—in the spheres of government accountability, civil liberties, rule of law, and anticorruption and transparency. The MENA countries' scores, which cover the period from April 2007 through December 2010, generally indicate grim and deteriorating conditions in the run-up to the Arab Spring.

Christopher Walker is vice president for strategy and analysis at Freedom House. **Vanessa Tucker** is project director of Countries at the Crossroads. Staff editor Tyler Roylance provided assistance in the preparation of this essay.

ANCIENS RÉGIMES IN THE MIDDLE EAST AND NORTH AFRICA

The group of MENA countries examined in this edition of *Crossroads* offers a diverse cross-section of the region with respect to the political outcomes of 2011. Egypt and Tunisia have jettisoned their long-ruling presidents thanks to the determination of unarmed protesters, and now are engaged in difficult and highly uncertain reform efforts. Libya has seen the end of Mu'ammar al-Qadhafi's four decades of tyranny, but only after protests and their violent suppression evolved into a full-scale civil war; Syria appears to be on a similar path. The remaining two MENA states covered in this report, Algeria and Morocco, have so far avoided any persistent protest movements, but their governments' cautious pursuit of limited reforms may prove insufficient given the rapidly changing expectations in the region.

While the past year's uprisings seemed to emerge overnight, the circumstances that led to them were the product of decades of institutional degradation. In some cases the old regimes were successful in achieving macroeconomic growth, but they consistently blocked political reform. As a result, any new national wealth was funneled into existing systems of elite corruption and patronage, deepening the sense of grievance among ordinary citizens. Successful political reform among other things would offer the societies in the Middle East and North Africa the chance to break free of the crony economics that has smothered economic opportunity and is endemic to their autocracies.

The removal of a dictator represents only the beginning of the end of authoritarian governance

Tunisia and Egypt, which touched off the Arab Spring by ousting their authoritarian presidents in January and February 2011, had suffered acute downturns in their governance performance in the preceding years, according to *Countries at the Crossroads* data. Overall, Tunisia and Egypt experienced declines, respectively, in 8 and 9 of the 17 subcategories measured in the analysis. This left Egypt with an average overall score of just 1.98 out of 7, and Tunisia with 2.36 out of 7, placing them among the worst-ranked countries in the study. Such declines from already low levels suggest that the leadership in both countries had little commitment to reform, and the people living under these dysfunctional governments were no doubt aware of it.

In Egypt, the prospect of a dynastic transfer of power from the octogenarian president Hosni Mubarak, who had held power for nearly three decades, to his son Gamal stirred deep disillusionment among the Egyptian population and stimulated greater engagement by civil society and independent media,

particularly via online social-media platforms. The regime responded with a fierce crackdown on dissent. As Joshua Stacher's *Crossroads* country report observes, the Mubarak government's "determination to maintain control of the political system led to the unjustified imprisonment of thousands of people, including for the expression of political ideas in the media." The combination of this crackdown with venality among the country's ruling elite, lack of opportunity for ordinary Egyptians, and an increasing number of high-profile cases of severe police brutality proved to be highly combustible.

The accountability of the military and security forces is a pivotal issue in these countries. While Tunisia's performance in this sphere has been weak, it has been stronger than that of Egypt, which must reconcile the popular desire for change with military leadership more comfortable with the status quo. Indeed, Egypt's Supreme Council of the Armed Forces (SCAF) is wielding power in a manner that suggests it will only reluctantly relinquish it.

Successful political reform would offer the societies in the Middle East and North Africa the chance to break free of the crony economics that has smothered economic opportunity and is endemic to their autocracies

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In Tunisia, the modernizing reputation cultivated by President Zine el-Abidine Ben Ali was belied by the reality of rampant corruption, especially surrounding the president's family; harsh repression of civil society and independent news media; and brutal, often parasitic law enforcement agencies. The December 2010 self-immolation of 26-year-old street vendor Mohamed Bouazizi, after a humiliating confrontation with the local authorities, captured the profound exasperation of the broader society and functioned as a catalyst for a long-awaited political overhaul.

Libya and Syria received even poorer governance scores than Egypt and Tunisia, and also showed declines from previous editions of *Countries at the Crossroads*. These regimes' exceptionally oppressive internal security policies and egregious failure to deliver public goods to their citizens presaged their markedly more savage responses to the protests of 2011, and may also explain the Libyan and Syrian peoples' determination to continue their struggle in the face of ferocious violence.

Libya has removed its dictator from power but now confronts the challenge of building national institutions from scratch. Of the abundance of negative legacies left by al-Qadhafi is not only the complete absence of any meaningful institutions capable of delivering political goods, but a decades-long campaign to alienate Libyan citizens from the idea of working within an institutional system. Meanwhile, Syrians will be forced to reconcile a country whose leadership has resorted to indiscriminate violence to retain power. This will magnify the burden of building a democratic system.

Algeria and Morocco performed slightly better than pre-uprising Egypt and Tunisia, but they nevertheless experienced declines on key indicators during the *Crossroads* coverage period. This retrenchment left them more vulnerable to the increased popular demands for representative and responsive government that arose during the Arab Spring in 2011.

AFTER THE UPRISINGS: PROSPECTS FOR REFORM

High expectations for quick and thorough changes in the MENA region could drive the reform process forward, but they could also lead to a great deal of disappointment. Given the stakes involved, setting reasonable benchmarks for progress is critical.

Taking into account the difficult hand reformers have been dealt, what institutional changes should be expected from these countries in the near future and over a longer term?

The most achievable near-term opportunities for reform might be understood as those occurring in the "voice and expression phase" of transitional development. More complicated challenges loom in the sphere of rule of law, including overhauls of the judicial system and reorganization of the police and security services to ensure that they are subordinate to civil authorities and subject to meaningful checks on their power. These structural reforms will require years to accomplish, as they entail extensive training programs, complex reconstruction of legal codes, and the establishment of new institutional habits and cultures.

Egypt and Tunisia

In Tunisia, there is clear promise in the areas of freedom of association and freedom of expression, and media freedom in particular. A fairly open field for the exercise of these rights has emerged, in stark contrast to the deeply repressive environment for news media and civic groups under the Ben Ali regime. Civil society and trade unions since January 14, 2011, have operated with a degree of openness and independence that was unimaginable before that date. In addition, spirited political jockeying took place ahead of October's constituent assembly elections and the elections themselves proved to be open, competitive, and pluralistic. But these gains do not mean that Tunisia has already cemented institutional reforms in the media, civil society, or electoral politics. Instead, they represent a promising early advance toward a culture of transparency and pluralism that must be safeguarded with concrete legal and regulatory changes. If citizens, political leaders, and other influential figures make the right choices, they can fortify Tunisia's nascent democracy against the challenges it will inevitably face.

In Egypt, the months since Mubarak's ouster have revealed a much darker outlook for reform. As of the end of October, the Supreme Council of the

Armed Forces (SCAF) had resorted to familiar methods of repression, including severe curbs on the activities of civil society and independent media, and foment of sectarian tensions for political gain. The SCAF's extension and expansion in September 2011 of the country's oppressive emergency law, a hallmark of the Mubarak era, sent a chilling signal to those working toward democratic governance. The scope of the law—nominally restricted in 2010 to narcotics and terrorism offenses—was widened to include labor strikes, traffic disruptions, and the spread of false information.

Egypt could achieve almost immediate progress by opening and defending the space for civil society and the news media, while ensuring fair, open, and transparent elections in November 2011. But if these first-tier reforms in the areas of free expression and association are not enacted and are prevented from growing roots, then the more difficult overhauls of the judiciary, security services, and other state institutions are far less likely to follow or succeed.

Algeria and Morocco have so far avoided any persistent protest movements but their cautious pursuit of reforms may prove insufficient given the rapidly changing expectations in the region

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Algeria and Morocco

The governments of Algeria and Morocco have pursued piecemeal and often cosmetic reforms in response to the upheaval in their neighborhood, and it is unclear whether such measures will satisfy their citizens. Wary of surrendering any real power, the leaders of these countries may be tempted to emphasize the need for stability and sow fears of disorder to stave off genuine reform. However, Mubarak and Ben Ali long relied on similar stalling tactics, and their efficacy sharply declined as existing conditions became unbearable and the uncertainties of revolt became decidedly preferable. Given these dynamics, the success or failure of reforms in the countries to the east will be crucial to prospects for change in Algeria and Morocco, providing either aspirational models or cautionary tales for the region as a whole.

Libya and Syria

Libya and Syria—whenever they emerge from bloodshed—will be forced to build new governance systems almost from scratch, as the highly dysfunctional old regimes and the conflicts that shattered them will have left core institutions in ruins. The bitterness and divisions engendered by these countries' experiences will make political reconstruction and its essential compromises all the more difficult. At the same time, the extremely low scores recorded by

Crossroads for Libya and Syria through 2010 suggest that they effectively have nowhere to go but up.

OTHER FINDINGS

The pre-revolt downturns in the MENA region formed part of a broader decline in governance indicators across the 35 countries assessed in this cycle of *Countries at the Crossroads*. The countries in question are a diverse selection of middle- and low-performing states, ranging from abysmal dictatorships like Eritrea and Libya to established democracies like Italy and Greece. The fact that so many on this spectrum experienced declines plainly illustrates the difficulty of establishing and sustaining effective democratic governance.

As with the previous assessment's similarly wide-ranging country set, the degree and overall number of declines exceeded those of improvements. On average, declines were registered in each of the four main categories—accountability and public voice, rule of law, civil liberties, and anticorruption and transparency. The rule of law category underwent the broadest decline, with 22 of the 31 countries with previous data experiencing deterioration. Venezuela and Syria suffered the sharpest score drops for rule of law. Deterioration in the protection of freedom of expression, part of the category for accountability and public voice, was nearly as common: two out of every three countries with previous data declined in this subcategory. Another subcategory under accountability and public voice, for free and fair electoral laws and elections, was also hit hard, with 17 of the countries with previous data registering declines.

With respect to the overall performance of each country, there were two that demonstrated dramatic deterioration (Venezuela and Syria), and four that improved significantly (Bangladesh, Bhutan, Pakistan, and Paraguay), but the remaining 25 countries with previous data experienced a complicated mix of declines and gains, presenting a general picture of stagnation. In some cases, as with Eritrea and Libya, the previous scores were already so low that they simply could not drop further. In other cases, countries in the process of reform seem to have lost a degree of momentum, as occurred in Burkina Faso, Ecuador, Mozambique, and Senegal.

Sub-Saharan Africa

All but two of the sub-Saharan African countries with previous data dropped in the subcategory of free and fair electoral laws and elections. Rwanda was a case in point, with its violence-plagued 2010 presidential election. Opposition parties were subjected to systematic intimidation and harassment, and a number were prevented from registering and fielding candidates. The assassination of Andre Kagwa Rwisereka, vice president of the Democratic Green Party of

Rwanda (DGPR), was a particularly serious blow to the process. In the absence of any meaningful challengers, incumbent president Paul Kagame won the deeply flawed election with 93.8 percent of the vote.

Ethiopia registered troubling declines in three of the four categories, with significant drops in accountability and public voice. Of special concern was the government's intimidation and harassment of civil society organizations, including through a new law that prohibits them from engaging in activities on politically sensitive topics. Civil society organizations established by Ethiopian citizens with foreign funding are now forbidden from working in the areas of governance, human rights, conflict resolution, and criminal justice.

Three other African countries—Eritrea, Swaziland, and Zambia—saw no improvements at all. Eritrea's poor results were especially troubling, given the very low level at which it was last analyzed. The country declined in every category and, as was the case with its last assessment in 2007, none of the scores in any category exceeded one full point on the seven-point scale.

Asia

Scores in the Asian countries presented a more complex picture. Three countries with previous data—Bangladesh, Bhutan, and Pakistan—made notable gains in multiple subcategories in accountability and public voice, and in civil liberties, but the advances of each country were qualified in some way.

Pakistan, last covered in 2006 when it was still under military rule, demonstrated improvement in free and fair elections, government accountability, and freedom of association. However, challenges including widespread corruption and lawlessness in regions such as the Federally Administered Tribal Areas and Khyber-Pakhtunkhwa continue to hamper the development of democratic governance.

Since Bangladesh's last assessment in the 2007 edition of *Crossroads*, a government put in place by a de facto military coup oversaw a return to free and fair elections at the end of 2008. Bhutan has had a similarly contradictory democratic process. Since the last assessment, a series of reforms driven largely by the powerful monarchy have resulted in the first open elections in Bhutanese history and the adoption of a formal constitution. Both countries continue to face challenges regarding human rights and the rule of law.

There were a few cases of sharp decline in the region. Thailand suffered the largest overall decline due to a military coup in 2006 and subsequent political turmoil that lasted throughout the coverage period. In particular, there was an increase in state terror and curtailed freedoms of association as the country was racked by dueling partisan protest movements. The government and military continued to act in ways that undermined the rule of law and judicial independence.

China

China, though often touted as an economic powerhouse, showed significant signs of deteriorating governance, with declines particularly notable in the areas of civil society, media freedoms, and the rule of law. Since 2007, China's leaders have tightened their grip on dissent in advance of high-profile events, such as the 2008 Beijing Olympics and 2010 World Expo in Shanghai. Conditions have grown worse since the Arab Spring, as the authorities stepped up extrajudicial detentions of dissidents after calls for protests began to circulate on the internet in early 2011. But recent developments point to a more deep-rooted move away from democratic governance, extending beyond transitory fears of public protest during specific events. As Chinese Communist Party leaders continue to emphasize the need for economic growth, they have backtracked on even limited reforms undertaken in previous decades, just as these appeared on the verge of generating substantial change. This was particularly notable in the area of rule of law, which was damaged by increasing extrajudicial repression, limited civilian control of the military, and official campaigns to reinforce the supremacy of Chinese Communist Party directives over formal legal processes. With China's average score hovering just below a 2 out of 7—slightly lower than Egypt's on the eve of uprising—and rulers who have shown few signs of willingness to undertake substantive political reforms that address the root causes of growing public discontent, the country's future social stability remain uncertain.

Americas

Of the seven Latin American countries examined, there were overall downward trends in six. Paraguay stands out as the only country with a significant net movement toward better governance. Since its previous assessment in 2007, Paraguay has held a pivotal election that ended the 61-year reign of the Colorado Party and ushered in a reformist government. Performance in the civil liberties category improved in most countries, with the exceptions of Guyana, Peru, and Venezuela. The largest gains across the region were in the areas of gender equality and opportunities for ethnic minorities. There have also been smaller positive trends, such as improvements in government accountability and effectiveness in Peru and Paraguay.

With respect to declines, Venezuela had the largest overall change since last assessed in 2007, with significant decreases in each category. The deepest decline came in the rule of law category, as property rights suffered from highly politicized confiscations of land. Rule of law was also a problem for Bolivia, Ecuador, and Guyana. Each of these countries experienced a move away from the primacy of law in civil and criminal matters, and featured a lack of accountability in the security forces. Freedom of expression and the media faced challenges

throughout the region, but particularly in Ecuador and Venezuela. Lastly, in Bolivia, Colombia, Ecuador, Peru, and Venezuela, elections became less fair and open during the assessment period.

Turkey

Turkey has been alternately characterized as an exemplary democracy and a state that is sliding into authoritarianism, but the *Crossroads* data suggest that it falls somewhere in between. Its scores on accountability and public voice demonstrate the challenges inherent in the establishment of democratic governance. Drops in the subcategories for electoral laws and elections and for effective and accountable government stemmed from the ruling party's increasing dominance of the political scene. Another downward trend was evident in media independence and freedom of expression, caused in part by the state's growing hegemony over media holdings and laws that criminalize poorly defined, speech-related offenses.

Europe

Greece and Italy, which were included in the *Countries at the Crossroads* analysis for the first time, are European Union members whose economic and governance systems have begun to slide into crisis. While both countries perform at high levels on issues relating to public voice and civil liberties—such as elections, free expression, and freedom of assembly—they received quite weak ratings on anticorruption and transparency issues.

Italy earns its poorest scores in the sphere of anticorruption enforcement, for instance. An inefficient bureaucracy and overregulation of economic affairs are among the factors contributing to this liberal democracy's deep-seated corruption challenges. While Italy has sound laws on the books regarding conflicts of interest, monitoring mechanisms and effective prosecutions are notably lacking.

Greece likewise suffers from bureaucratic inefficiencies and corruption despite performing well on political and civil rights. Corruption is believed to be common in areas including local government, town planning, transportation, public works, public health services, and education. High-level corruption has also flourished due to a relative concentration of power among a small group of politicians and a lack of transparency regarding the often entangled interests of the public and private sectors.

As these two countries seek to mitigate their massive public debts through increased tax collection and economic growth, a reinvigoration of fundamental democratic governance, especially as it relates to transparency and anticorruption, will be integral to success.

CONCLUSION

Great Expectations

Across the MENA region, the pent-up desire for change after decades of political stagnation and repression has led to high expectations for reform, and these are shared by observers in the international community. However, countries recovering from the breakdown of authoritarian regimes must overcome major economic disruptions associated with ongoing instability, and they are typically burdened with an inheritance of deeply flawed governance institutions. In this context, the potential for disillusionment and loss of momentum is great.

Among the most significant threats would be a mistaken conflation of the chaotic post-uprising period with democracy, and a tendency to judge the results of early reforms by the standards of long-established democratic states. Illiberal voices in the political arena will no doubt seek to blame democracy for the difficulties that inevitably follow the forced removal of a long-standing authoritarian regime. But Tunisia, Egypt, and Libya are not yet democracies. Instead they operate to one degree or another in a quasi-authoritarian limbo, where the remains of the old system form a hostile institutional environment for democratic reform efforts. Indeed, the story may not be how democrats prevail as much as how authoritarians seek to reconstitute themselves.

Given the wide range of challenges and the high stakes involved, it is in the interest of the democratic world—the European Union and the United States first and foremost—to understand that these are not yet democracies. Instead, they are part of a new phenomenon of governance unlike previous transitions from authoritarian rule, in which states in many cases had basic institutional frameworks on which to build. Keeping up pressure to follow through on the challenge of meaningful institutional reform, and avoid diversion to other paths, is of utmost importance. Formulating an effective strategy for aiding democratic reform in this context will test the ingenuity of the United States and European Union. *Countries at the Crossroads* 2011 directs attention to some of the critical issues that should take precedence in such a strategy.

COMPARATIVE COUNTRY SCORES: ACCOUNTABILITY AND PUBLIC VOICE

Country	*Electoral Laws and Elections*	*Effective and Accountable Government*	*Civic Engagement*	*Media Independence and Expression*	*Average*
Greece	6.60	5.67	5.67	6.00	**5.99**
Italy	6.00	5.67	6.67	5.29	**5.91**
Mali	4.20	3.67	6.00	5.71	**4.90**
Paraguay	4.60	4.00	5.67	4.43	**4.67**
Peru	5.40	4.00	4.33	4.43	**4.54**
Colombia	4.20	4.33	4.67	4.29	**4.37**
Guyana	4.40	4.00	5.00	4.00	**4.35**
Bhutan	4.00	4.67	3.67	4.86	**4.30**
Philippines	3.20	3.67	6.00	4.29	**4.29**
Bolivia	4.80	2.67	4.67	4.71	**4.21**
Turkey	5.00	4.00	4.33	3.14	**4.12**
Bangladesh	4.40	3.00	5.00	4.00	**4.10**
Ecuador	4.20	2.67	5.00	3.71	**3.89**
Zambia	4.00	4.00	4.00	3.57	**3.89**
Mozambique	2.80	3.67	5.33	3.71	**3.88**
Pakistan	3.60	3.67	4.00	3.57	**3.71**
Senegal	3.60	3.33	4.33	3.43	**3.67**
Burkina Faso	2.80	3.00	4.67	3.86	**3.58**
Mauritania	2.60	2.67	4.00	4.00	**3.32**
Morocco	2.60	2.33	4.00	2.71	**2.91**
Thailand	2.00	2.33	4.00	2.14	**2.62**
Algeria	2.60	2.33	2.67	2.71	**2.58**
Madagascar	1.20	1.67	3.33	3.00	**2.30**
Venezuela	2.00	1.67	2.33	2.57	**2.14**
Angola	1.20	1.00	3.33	2.29	**1.96**
Egypt	0.80	2.33	2.00	1.43	**1.64**
Swaziland	0.20	1.67	3.00	1.57	**1.61**
Tunisia	1.20	2.33	1.00	0.86	**1.35**
Ethiopia	1.00	2.33	1.00	1.00	**1.33**
Syria	1.20	1.33	1.33	1.14	**1.25**
Rwanda	0.60	1.33	1.33	1.00	**1.07**
Laos	0.80	1.00	1.33	1.00	**1.03**
China	0.40	1.33	1.33	0.57	**0.91**
Libya	0.20	0.67	0.33	1.00	**0.55**
Eritrea	0.00	0.33	0.00	0.14	**0.12**

COMPARATIVE COUNTRY SCORES: CIVIL LIBERTIES

Country	*Protection from State Abuse*	*Gender Equity*	*Minority Rights*	*Freedom of Belief*	*Freedom of Association and Assembly*	*Average*
Italy	5.50	6.00	5.75	6.00	6.75	**6.00**
Greece	5.38	6.00	5.50	5.67	6.75	**5.86**
Mali	3.75	3.00	3.50	7.00	6.75	**4.80**
Guyana	3.75	5.00	4.25	5.00	5.00	**4.60**
Bolivia	3.13	4.33	4.50	6.00	4.75	**4.54**
Madagascar	2.13	4.67	4.00	6.33	5.25	**4.48**
Zambia	3.75	3.33	4.75	6.00	4.50	**4.47**
Mozambique	2.63	4.67	4.00	6.33	4.25	**4.38**
Paraguay	3.13	4.33	3.75	6.00	4.50	**4.34**
Peru	3.50	4.00	3.50	6.00	4.50	**4.30**
Bangladesh	3.00	4.00	4.75	5.67	4.00	**4.28**
Burkina Faso	3.13	3.67	4.50	6.00	3.50	**4.16**
Ecuador	2.88	4.00	4.00	6.00	3.75	**4.13**
Philippines	2.38	4.33	3.50	5.33	4.75	**4.06**
Colombia	2.88	4.33	3.00	6.00	3.75	**3.99**
Senegal	3.25	4.00	3.50	4.67	4.00	**3.88**
Turkey	3.63	4.00	4.00	3.67	3.75	**3.81**
Bhutan	5.00	4.00	2.25	5.00	2.75	**3.80**
Venezuela	2.50	4.67	4.25	4.67	2.75	**3.77**
Morocco	2.88	4.33	3.75	3.33	3.75	**3.61**
Thailand	2.38	4.00	3.50	4.00	3.00	**3.38**
Mauritania	2.88	3.00	2.25	2.67	4.25	**3.01**
Swaziland	2.38	2.33	2.75	5.67	1.50	**2.93**
Algeria	2.75	3.67	3.75	1.67	2.75	**2.92**
Tunisia	2.38	4.00	4.00	2.67	1.25	**2.86**
Angola	1.88	3.33	3.00	3.67	2.25	**2.83**
Ethiopia	2.25	3.00	3.00	4.00	1.50	**2.75**
Laos	1.50	3.33	2.50	3.00	1.50	**2.37**
Pakistan	1.50	2.00	1.00	2.33	4.00	**2.17**
Syria	1.38	2.67	2.25	2.67	1.00	**1.99**
China	1.63	3.67	2.00	1.33	1.25	**1.98**
Rwanda	1.38	2.67	2.00	2.33	1.25	**1.93**
Egypt	1.13	2.67	2.50	2.00	1.25	**1.91**
Libya	1.25	3.00	1.00	1.67	0.50	**1.48**
Eritrea	0.88	2.33	0.75	0.00	0.00	**0.79**

COMPARATIVE COUNTRY SCORES: RULE OF LAW

Country	*Independent Judiciary*	*Primacy of Rule of Law*	*Security Force Accountability*	*Protection of Property Rights*	*Average*
Italy	5.80	5.80	5.75	6.33	**5.92**
Greece	5.80	5.80	6.00	6.00	**5.90**
Bhutan	5.40	5.00	5.50	3.67	**4.89**
Guyana	4.80	4.20	4.50	4.67	**4.54**
Zambia	4.80	3.40	4.75	3.33	**4.07**
Colombia	5.00	4.20	2.75	4.00	**3.99**
Turkey	3.60	3.40	4.00	4.67	**3.92**
Peru	3.80	4.00	3.75	4.00	**3.89**
Thailand	4.20	4.20	2.00	4.33	**3.68**
Mozambique	3.60	3.20	4.25	3.33	**3.60**
Paraguay	3.00	3.60	3.75	3.67	**3.50**
Burkina Faso	3.40	3.20	2.50	4.33	**3.36**
Bolivia	2.60	3.20	4.25	3.33	**3.35**
Senegal	3.00	2.80	3.50	3.67	**3.24**
Philippines	3.60	3.00	2.25	3.67	**3.13**
Bangladesh	3.40	2.40	2.50	4.00	**3.08**
Ecuador	2.40	3.20	2.50	4.00	**3.03**
Morocco	2.40	3.00	2.25	4.33	**3.00**
Mali	3.00	3.60	4.25	1.00	**2.96**
Egypt	3.20	2.20	1.00	4.33	**2.68**
Pakistan	3.80	1.80	1.25	3.00	**2.46**
Algeria	2.20	2.60	1.50	3.67	**2.49**
Madagascar	1.80	2.60	1.75	3.67	**2.45**
Tunisia	2.00	2.20	1.75	3.67	**2.40**
Angola	2.20	2.20	2.75	1.67	**2.20**
Mauritania	3.20	2.40	1.00	2.00	**2.15**
Ethiopia	2.00	2.00	2.25	1.67	**1.98**
Swaziland	1.80	2.60	1.00	2.33	**1.93**
Venezuela	1.60	2.60	1.75	1.67	**1.90**
China	1.40	1.00	2.00	2.67	**1.77**
Laos	2.00	1.40	1.00	2.33	**1.68**
Syria	1.40	1.60	0.75	2.67	**1.60**
Libya	0.80	1.60	0.25	2.67	**1.33**
Rwanda	1.40	0.40	1.25	1.33	**1.10**
Eritrea	0.40	0.00	0.00	0.67	**0.27**

COMPARATIVE COUNTRY SCORES: ANTICORRUPTION AND TRANSPARENCY (ACT)

Country	*ACT Environment*	*ACT Framework and Enforcement*	*Citizen Protections*	*Governmental Transparency*	*Average*
Italy	5.00	4.33	5.50	5.50	**5.08**
Greece	4.00	4.00	6.25	5.83	**5.02**
Bhutan	4.40	5.67	4.75	3.50	**4.58**
Philippines	3.20	3.67	3.75	4.50	**3.78**
Guyana	3.80	3.33	4.00	3.83	**3.74**
Turkey	3.40	2.67	4.25	4.17	**3.62**
Colombia	3.80	3.00	3.75	3.50	**3.51**
Burkina Faso	3.20	3.33	3.50	4.00	**3.51**
Peru	3.60	3.00	3.50	3.83	**3.48**
Mali	2.60	4.00	4.00	3.17	**3.44**
Thailand	3.40	3.00	3.75	3.50	**3.41**
Paraguay	3.40	3.00	3.75	3.50	**3.41**
Mozambique	3.20	3.33	2.50	4.17	**3.30**
Zambia	3.40	3.33	3.50	2.83	**3.27**
Bolivia	2.60	3.67	3.25	3.50	**3.25**
Ecuador	2.80	2.33	3.00	3.83	**2.99**
Tunisia	3.40	2.67	2.25	3.00	**2.83**
Mauritania	3.20	3.00	2.75	2.33	**2.82**
Rwanda	3.20	3.00	2.00	2.17	**2.59**
Algeria	2.00	2.33	3.25	2.67	**2.56**
Bangladesh	2.00	1.33	3.50	3.33	**2.54**
China	2.60	2.67	2.50	2.17	**2.48**
Senegal	2.20	2.33	2.50	2.17	**2.30**
Ethiopia	2.60	2.00	2.25	2.33	**2.30**
Pakistan	2.40	1.67	2.25	2.83	**2.29**
Morocco	1.80	2.33	2.50	2.50	**2.28**
Madagascar	2.20	2.00	2.50	1.83	**2.13**
Angola	1.60	2.33	1.75	2.33	**2.00**
Swaziland	2.20	1.33	2.00	2.33	**1.97**
Venezuela	1.60	1.33	2.50	1.67	**1.77**
Egypt	1.40	1.33	1.75	2.33	**1.70**
Laos	1.60	1.33	1.25	2.33	**1.63**
Syria	1.40	1.00	1.25	1.33	**1.25**
Libya	1.00	0.33	0.75	0.67	**0.69**
Eritrea	0.40	1.33	0.50	0.00	**0.56**

INTRODUCTION TO COUNTRY REPORTS

The *Countries at the Crossroads 2011* book contains reports on 35 countries. Each report begins with a section containing basic political and economic data arranged in the following categories: capital, population, and gross national income (GNI) per capita. In addition, numerical ratings are provided for Accountability and Public Voice, Civil Liberties, Rule of Law, and Anticorruption and Transparency.

The capital was obtained from the CIA *World Factbook 2011*. Population data were obtained from the Population Reference Bureau's *2010 World Population Data Sheet*. Data on GNI per capita are based on the purchasing power parity method and were obtained from the 2008 World Bank World Development Indicators database (www.worldbank.org).

The Accountability and Public Voice, Civil Liberties, Rule of Law, and Anticorruption and Transparency categories contain numerical ratings between 0 and 7 for each country, with 0 representing the weakest performance and 7 representing the strongest performance. For a full description of the methods used to determine the survey's ratings, please see the chapter on Survey Methodology.

Following the political and economic data, each country report is divided into five parts: an introduction, and analyses of Accountability and Public Voice, Civil Liberties, Rule of Law, and Anticorruption and Transparency. The introduction provides a brief historical background and a description of major events. The Accountability and Public Voice, Civil Liberties, Rule of Law, and Anticorruption and Transparency sections summarize each government's degree of respect for the rights and liberties covered in the *Countries at the Crossroads* survey. The Anticorruption and Transparency section is followed by a set of recommendations highlighting the specific areas of most immediate concern for the government to address.

ALGERIA

CAPITAL: Algiers
POPULATION: 36 million
GNI PER CAPITA (PPP): $8,110

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	2.71	2.58
CIVIL LIBERTIES:	2.97	2.92
RULE OF LAW:	2.58	2.49
ANTICORRUPTION AND TRANSPARENCY:	2.59	2.56

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Amel Boubekeur

INTRODUCTION

Algeria gained independence from France in 1962. The military overthrew Algeria's first president in 1965, marking the beginning of authoritarian military-backed rule. When opposition parties were legalized in 1989, lawful Islamism flourished and the Islamic Salvation Front (FIS) quickly rose as the main opposition party. Hoping to prevent an FIS victory in the 1991 parliamentary elections, the military declared a state of emergency, deposed the president, and jailed thousands of FIS members and supporters. The situation quickly deteriorated into civil war between the military government, the state's Department of Intelligence and Security (DRS), and Islamist factions. The violence diminished in the early 2000s, but resulted in extensive human rights abuses committed by all sides and the deaths of more than 200,000 people.

The Charter for Peace and National Reconciliation, adopted by popular referendum in September 2005, was supposed to mark the official end of the war. The charter was intended to reintegrate repentant terrorists and compensate victims but, in practice, it has been used to ensure impunity for the military, and for repentant Islamist factions who agree to return to civilian life. The charter mandates an end to legal proceedings against agents of the state and security forces "for actions undertaken in the protection of persons and goods, in the safeguard of the Nation and the preservation of institutions of the Republic of

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Algeria." Consequently, public criticism of the security forces is punishable by three to five years' imprisonment and a fine of between $3,500 and $7,000.

Elections are held regularly, but fraud is massive and the army and the DRS play a decisive role in the distribution of political and economic power. Alternation of power through elections remains elusive. The current president, Abdelaziz Bouteflika, is serving his third term, supported by the presidential alliance, a parliamentary majority consisting of the president's National Liberation Front (FLN), the National Democratic Rally (RND), led by current Prime Minister Ahmed Ouyahia, and the Islamist-leaning Movement for Society and Peace (MSP).

The FLN manages social and political issues, while the DRS focuses on security-related matters and controls the country's revenue, particularly the oil sector. Upon winning the presidency in 1999, Bouteflika's first mission was to give a civilian, reformer, and reconciliatory face to the authoritarian regime, which had been caught in major social, economic, and security problems after the war. Boosted by oil revenue and post-September 11 U.S. support, Bouteflika has attempted to consolidate his control over the army by launching institutional reforms and much-needed development initiatives. Despite some improvements, restructuring has mainly benefited groups close to the president, and has prevented civil society, political parties, and the private sector from acting freely. As a result, the situation deteriorated between mid-2007 and early 2011, prompting the army and the DRS to attempt to eject Bouteflika before the end of his third term. In this context of disorganization and lack of autonomous leadership, human rights abuses have markedly increased, amid the absence of rotation of power, violent repression of social demands, and widespread corruption.

Despite the state's ongoing antiterrorism efforts, terrorist attacks continue to be a problem. President Bouteflika escaped a suicide attack in Batna in September 2007 (suspected to have been led by the DRS), and two kamikaze attacks targeted the UN building and the Constitutional Council in Algiers in April of the same year. The latter attack was perpetrated by a terrorist who had been pardoned under the national reconciliation law, and Al-Qaida in the Islamic Maghreb (AQIM) claimed responsibility for both attacks.

The socioeconomic climate has deteriorated rapidly since 2007. Despite having significant foreign exchange reserves, Algeria's economic growth and industrial development, apart from the oil sector, remain weak. In early 2011, the year-on-year inflation was 5.7 percent and the price of basic commodities increased by over 25 percent.

Faced with intensifying demonstrations, riots, strikes, and protests since the first quarter of 2011, the government lifted the 19-year state of emergency in February 2011 and made temporary cuts in taxes and duties on basic foodstuffs, among other measures. Nevertheless, it continued to repress all forms of social protest and violate trade union freedoms and rights of association, backed by legal provisions in the charter and newly adopted security laws.

As of mid-2011, the question of President Bouteflika's succession and rumors of his ailing health were at the core of speculation about Algeria's political future. In the context of the Arab spring revolutions and upcoming 2012 legislative elections, the Algerian bicephalous model of governance, with the army and the security services on one side and the civilian presidential façade on the other, was collapsing. The army and security forces, fearing they would be held accountable for the crimes of the 1990s, pressured President Bouteflika to resign. In April 2011, President Bouteflika announced a revision of the constitution that would re-establish presidential term limits and improve regulations on political parties, elections, and associations. Members of the Algerian opposition and civil society criticized this proposal, arguing that Algeria's problems will not be resolved with new laws but rather with genuine enforcement of the existing ones.

ACCOUNTABILITY AND PUBLIC VOICE 2.58

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	2.60
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	2.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	2.71

Algerian elections are marked by varying degrees of pluralism, fraud, and participation. The army has always effectively appointed the president and his staff, but in the last two decades it has allowed a small number of nonthreatening candidates to run in order to give an impression of pluralism. Consequently, elections are largely boycotted by the opposition and ignored by the people.

President Bouteflika was reelected to a third term in April 2009, after moving in November 2008 to abolish the constitutional limit on presidential terms to two five-year mandates. Parliament passed this constitutional amendment by a show of hands in an extraordinary session without public debate or consultation.

Officially, Bouteflika was reelected with 90.24 percent of the popular vote and with a voter participation rate of 74.54 percent. However, estimates by diplomats, opposition parties, and independent observers of the actual rate of participation are closer to 30 percent.[1] A special UN observation mission reported voting irregularities and coercion. Opposition parties such as the Rally for Culture and Democracy (RCD) and the Front of Socialist Forces (FFS) boycotted the election. The five candidates on the ballot representing smaller parties unanimously denounced the outcome, claiming generalized election fraud. The two other parties that form the presidential coalition, the National Democratic Rally (RND) and the state-co-opted Islamist Movement of Society of Peace (MSP), supported Bouteflika and did not field candidates.[2]

A commission supervises elections at the national, regional (wilaya), and local levels. Its reports are not available to the public and any serious offenses,

which are submitted to the president, do not lead to follow-up. Vote buying is commonplace; other election fraud includes repeated voting with multiple identity cards, ballot box stuffing, and ballot box theft.

The ruling FLN/RND coalition monopolizes media and financial resources during electoral campaigns. In 2009, coverage of President Bouteflika's speeches and campaign started well before the official three week election period. While an improvement has been noted in press coverage of other candidates, a study by the Algerian League for the Defense of Human Rights (LADDH) showed that 27.6 percent of press coverage and 88.5 percent of broadcast media during the recent presidential election were not neutral.[3]

Campaign financing is also unequal. The electoral law authorizes candidates to use party and government funds, and personal finances for campaigns. State funds are limited to $2 million for presidential elections and $2,000 per candidate for legislative elections, which opposition candidates generally find insufficient. The use of public money and publicity materials is prohibited during the election period. President Bouteflika, however, has benefited from public advertising, as well as the financial support of private businessmen, who in return are privileged in the awarding of public contracts.[4]

The Algerian parliament consists of two chambers: a lower chamber, the National People's Assembly (APN), with 389 members; and an upper chamber, the National Council (CN), with 144 members. APN elections are held every five years, with the most recent in May 2007. The FLN, in power since independence, lost 63 seats but still maintained its plurality with 136 members elected. The two other parties that form the governing political alliance, the RND and the MSP, won 61 and 52 seats respectively. The official abstention rate in the last parliamentary elections was 65 percent. The most recent CN elections were held in December 2009. Senators are elected for a six-year term, with half of the seats up for election every three years. The electoral college—the 7,000 elected members of the Municipal Popular Assembly (APC), which represents the communes, and the People's Provincial Assembly (APWI), which governs the provinces (wilaya)—elects 96 CN members (two per province). The president appoints the other 48 members.

The CN was created in the 1996 constitutional reform in order to maintain executive control over the parliament and prevent a repeat of the 1991 FIS victory. While it neither proposes legislation nor amendments, the CN (particularly the members appointed by the president) can block APN legislation. Senators are immune from prosecution, and businessmen and smugglers have increasingly bought votes to get elected in order to benefit from this provision.[5] The FLN retained its majority in the 2009 CN elections, followed by the RND.

Algeria is divided into 48 provinces (wilayas). The APWI and the APC are each elected by the local citizens by universal suffrage every five years. The elected members of each body then elect a president. The FLN won a majority in the last provincial and municipal elections in November 2007.

To ensure that local politicians stay under national control, the president appoints a governor (wali) and a subdistrict chief to oversee respectively the APWI and the APC and to make decisions on financial, material, and human resources. A new municipal code adopted in April 2011 has been denounced by more than 600 mayors, who say they were not consulted and that the code does not protect them against lobbies that try to impose decisions upon them. Elected representatives remain under the influence of various clientelistic groups close to the executive, and citizens do not consider elections a venue for genuine political change, but rather as an opportunity to protect individual interests.

Only parties in good standing with the central government are permitted to run in elections, and considerable obstacles ensure that they will not challenge favored candidates. Only parties that obtained 3 percent of the vote in the preceding elections are authorized to field candidates, although certain minority parties are arbitrarily exempt from this requirement.[6] Candidates must also run in more than 25 provinces to be eligible. As a result, candidates from small or newly created parties face considerable difficulty.

The president's declining health has been a subject of concern in political and military circles, as Bouteflika has disappeared from public life at times for more than six months. To reinforce his position and that of his allies, the president has until recently fully controlled the nomination of political appointees. He named close allies such as Chakib Khalil as the oil minister, Yazid Zerhouni as the interior minister, and Abdelaziz Belkhadem as prime minister from 2006 to 2008 (and then subsequently as minister of state, the personal representative of the president of the republic). However, when Bouteflika began to consider his brother Said as his successor, the army clearly expressed its disapproval. Bouteflika and the army reached a deal in the 2008 revised constitution, which gave the president the possibility to compete for a third term. They backed him for a third term but in return he had to name Ahmed Ouyahia, general secretary of the RND as a prime minister in June 2008.

The constitution establishes parliamentary control of the government and legislation, but this control is lacking in practice. The absentee rate of members of parliament is 65 percent over the course of a legislative session.[7] In September 2008, just two months before voting to amend the constitution, members of parliament received a 300 percent raise, equal to 30 times the minimum salary. It is rare that a law proposed by the government is rejected. Lack of independence from the government inhibits members from fulfilling their basic responsibilities as lawmakers and acting in their role as mediator between institutions and citizens.

Since 2007, parliament's role has been increasingly reduced and the legislative power of the president strengthened. The use of presidential ordinances to amend and approve important laws, previously used only under exceptional circumstances, has become commonplace. Legislation by decree permits the president to deal with political crisis without parliamentary or public consultation.

The constitution requires that the government submit an annual general statement to parliament. Long neglected, a balance sheet was finally presented to the APN by Prime Minister Ouyahia in October 2010. He also presented to the CN the government's policy statement.

Despite a revamping of the civil service in 2006, all decisions and advancements (e.g., appointments, promotion, wages, overtime pay, the management of social benefits, and subsidized housing allocation) are based on political alliances, rather than merit.

Citizens' political choices are subject to pressure from various interest groups. During the 2009 presidential elections, more than 8,000 associations, including the General Union of Algerian Workers (UGTA, the monopolistic workers' union linked to the FLN), the Sufi orders, tribal leaders, imams, civil servants, and associations of private businessmen (*le patronat*), all publicly supported Bouteflika. Many public workers and officials said they were threatened with dismissal or reprisals if they refused to vote for him.

According to the minister of the interior, the country has more than 91,608 associations, many of which are fictitious, inactive, or created in order to receive grants during election periods.[8] Despite the high number of associations, civil society's influence on policy making is limited. Article 7 of Law No. 90-31 states that associations, political parties, and trade unions must register with the province at the local level, or with the Interior Ministry at the national level in order to operate legally. The authorities, however, often refuse to authorize organizations critical of government policies, prompting most of these organizations to operate underground. Fines and imprisonment are a risk for any person leading an unregistered association, but many illegal associations continue to operate.[9] No political party has received accreditation from the Interior Ministry since 1999; in April 2011, 42 filed requests. Apolitical groups may also be prevented from operating if their activities are linked to international structures or causes that threaten the economic interests of the governing elite.

Although foreign funding is not officially banned, the interior ministry makes foreign support of nongovernmental organizations (NGOs), political parties, or local unions virtually impossible. Non-Algerian researchers or members of foreign NGOs have difficulty obtaining visas. In 2007, an international workshop on enforced disappearances organized by several Algerian NGOs was prohibited and both Roberto Garreton, a UN expert on human rights, and Anne-Laurence Lacroix, director of the World Organization against Torture, were denied visas.

The government monopolizes broadcast media. Despite the creation in March 2009 of two new channels, one in Tamazight (Berber dialect) and one on Islam, and the launch of Radio Algeria International, there is little plurality. However, the Algerian press is widely seen to be among the most active in the region, with more than 30 privately owned (and more or less independent) daily and weekly newspapers of varying size and distribution.

On the other hand, harassment of journalists is increasing, especially of those that investigate corruption, military involvement in terrorism, or bad governance. The crackdown on journalists is evident in the increase of criminal libel suits and preventive arrests. The 1990 Law on Defamation outlaws remarks against Islam and against national unity. Amendments to the penal code made in 2001 established a prison sentence of up to five years for drawings, writings, or speeches that insult the president, parliament, courts, or the military. Furthermore, anyone who publicly questions the role of the army and the rulers can be convicted of advocating terrorism under the state of emergency and the Charter for Peace and National Reconciliation. Joint criminal and civil lawsuits can be brought against a newspaper's publisher, editor, and reporters, which can result in fines, jail sentences, and civil liability. Prison sentences are rarely carried out, but are costly for newspapers and journalists. One of the most striking examples is that of *El Watan*, a newspaper whose editor was brought in for questioning by the police 14 times during the first quarter of 2009. The DRS also harasses and intimidates journalists to encourage self-censorship.

In April 2011, the government prepared a draft amendment to the penal code to decriminalize press offenses. However, the amendment emphasizes the responsibility of journalists to pay fines, and establishes prison sentences for nonpayment.

In addition to directly and indirectly censoring publications, state agencies control press coverage with economic pressure. The state controls the National Agency for Advertising and Publishing (ANEP), and frequently blocks advertising as a means to intimidate the press. Most newspapers are printed on state printing presses, and six of these were placed under the direct control of the communications ministry in January 2008, a shift that threatened the editorial independence of half of Algeria's independent newspapers. The government also consistently harasses private printing companies, including by bringing against them dubious charges of failure to pay taxes. Shortly before the presidential elections in 2009, the magazines *L'Express*, *Marianne*, and the *Journal du Dimanche* were banned from publication.

It is very difficult for Algerian journalists to obtain official accreditation from the minister of the interior, which is required when working for foreign newspapers; likewise, foreign journalists have difficulties obtaining visas. Two Moroccan journalists, technically exempt from visa requirements, were expelled and prevented from covering the presidential elections in 2009.[10] The Algerian office of Al-Jazeera, which the government shut down in 2004, remained closed through the end of 2010.

Until 2010, the internet was relatively free from censorship, although the government did regularly monitor email and internet traffic and hacked Facebook accounts of known activists. An anti-cybercrime law adopted in June 2009 requires service providers to censor certain content (e.g., pornography

and terrorism-related material) and mandates the creation of a national center to monitor all internet connections. In 2010, the government began censoring the few existing opposition websites. The website of the Islamist opposition Rachad was blocked at various points throughout the year, as was the website of Algeria's only independent radio station, Radio Kalima.

CIVIL LIBERTIES 2.92

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.75
GENDER EQUITY	3.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.75
FREEDOM OF CONSCIENCE AND BELIEF	1.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	2.75

The state of emergency in place from 1992 until February 2011 severely restricted civil liberties. Military barricades, the prohibition to meet in groups, requisition by military authority, and night searches by security forces are only a few examples of the restrictions put on citizens in the name of security. Despite the lifting of the state of emergency, however, the impunity granted to security forces, terrorist groups, and Islamists in the Charter for Peace and National Reconciliation continues to restrict civil liberties. The charter requires that the families of the more than 8,000 people[11] who went missing during the war to recognize the death of their family members in order to receive compensation. Despite physical assaults from the police, groups of mothers of the missing, such as SOS Missing (*SOS Disparus*) and the Family Collective of the Missing in Algeria, have organized sit-ins for the past few years to protest the charter's provisions.[12]

Algeria signed the International Convention for the Protection of all Persons from Enforced Disappearance in February 2007. However, the government refuses visit requests from UN working groups on enforced or involuntary disappearances, from representatives of a UN special report on torture, and from the UN special envoy on extrajudicial executions. FIS sympathizers and ordinary citizens held in jail and in secret camps in the south without trial in the 1990s are routinely ignored when they request compensation.

The Charter for Peace and National Reconciliation also allows ongoing abuses under the guise of the fight against terrorism. The UN Committee against Torture criticized Algeria for such abuses in its May 2008 periodic report. In 2011, it condemned the country for failing to investigate the death of Djilali Hanafi after he was arrested and beaten by the police in 1998. The UN Committee also reprimanded Algerian security services for pressuring the Hanafi family to withdraw their complaint. According to one organization, some 15 additional complaints are pending.[13]

In February 2011, the minister of the interior recognized the existence of secret prisons that operate outside of the control of the judiciary,[14] but the

DRS officially maintains that these prisons have not been in operation since 1996.[15] The UN Commission of Human Rights classifies Algeria as a country that practices secret detention. On June 9, 2009, members of parliament proposed the abolition of the death penalty (which had been under a moratorium since 1993), but the government rejected the proposal.

The state of emergency also permitted administrative arrests and secret detention. The constitution stipulates that a suspect can be detained for a maximum of 48 hours without charge (or 12 days in the case of suspected terrorists), and that the detainee must be allowed access to his or her family, legal counsel, and medical care. Persons suspected of betrayal of national security or of terrorism can be kept in preventive detention for up to 20 months. Numerous abuses have been reported with regards to kidnapping by security forces; furthermore, there are reports that disappearances and torture have been committed under the guise of preventive detention.[16] For example, Malik Medjnoune, accused of the murder of the Berber singer and activist Matoub Lounes in 1998, has been held in preventive detention for 11 years. He was finally released in 2011.

The lifting of the state of emergency signals a shift in the strategy of the security services and the army. Fearing Bouteflika's attempts to hold them accountable for crimes committed in the 1990s, they used the change to deprive political rulers of their control over the fight against terrorism. In June 2011, an intra-ministry decree officially put all the security and police services under the army's authority.

Prison overcrowding is a problem, with 56,000 inmates filling 133 prisons intended for a total capacity of 25,000. In April 2010, prisoners in El Harrach held a hunger strike to protest prison conditions. The government is however currently building 80 new prisons and EU-financed legal reform has made reintegration programs more readily available for prisoners.

The problem of *harragas* (Algerians who emigrate illegally, mostly to Europe) is increasing. In 2009, there were an estimated 40,000 harragas. According to the Collective for Families of Harragas Missing at Sea, more than 300 have been secretly jailed in Tunisia and Libya. A new amendment, approved on February 25, 2009,[17] establishes sentences of two to six years for Algerians who emigrate illegally. In September 2008, parents of harragas protesting about their detained children were themselves arrested and sentenced to three-year prison terms for "inciting to violence and unauthorized crowd assembly." They were pardoned one month later.

Algeria is also a transit country for sub-Saharan African immigrants headed to Europe. There were an estimated 9,000 victims of trafficking and exploitation in 2007.[18] The government does not have a clear policy with regards to human trafficking and refuses refugee status to illegal sub-Saharan immigrants. Most are expelled without a hearing.

The president created the National Consultative Commission for the Promotion and Protection of Human Rights (CNCPPDH) in 2001 to investigate

human rights abuses. The president sets the organization's budget and appoints all members, including the group's leader, currently attorney Farouk Ksentini. Although the CNCPPDH publishes an annual report on the state of human rights in the country, that report is not always available to the public.[19] Selection and dismissal processes within the organization are not transparent and the CNCPPDH does not interact with civil society. Considered ineffective by independent human rights associations, the CNCPPDH was downgraded to a B status in March 2009 by the International Coordinating Committee of National Human Rights Institutions (ICC).

The constitution recognizes the equality of men and women before the law and condemns all forms of discrimination. Algeria ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1996 and amended its family code in 2005 to establishing rights for women, including keeping their house in case of divorce, the right to refuse a polygamous marriage, and the ability to transmit citizenship to their children. However, many women remain unaware of their new rights.

Invited by the Algerian government in November 2010, Rashida Manjoo, UN Special Rapporteur on violence against women, recognized the government's efforts to promote the role of women in the economy and in politics. She also underlined that violence against women persists in both public places and in the home, and criticized the lack of efficient cooperation between the state and civil society.[20]

In 2008, the Center for Information and Documentation on Children's and Women's Rights (CIDDEF), started "Balsam," a national network of 13 call centers for violence against women. Balsam is lobbying for penalties for domestic violence and raising awareness of the issue of women in religious marriages (*fatiha*) who cannot claim their legal rights.[21] An investigation in 2007 by a delegate from the women's ministry suggested that violence against women is widespread.[22] In 2008, the ministry established a national program to fight violence against women. Women who were kidnapped and raped by terrorists in the 1990s, are excluded from compensation measures mandated by the Charter of National Reconciliation.

Women represent 15 percent of the active work force. Despite some recent improvements in prevention lobbied for by female members of workers' unions, sexual harassment, punishable by up to two years imprisonment, generally goes unpunished. In November 2008, two female employees of La Banque d'Algérie who informed the *Djazair News* newspaper that their boss sexually harassed them were sentenced to a two-month suspended prison sentence after the boss accused them of defamation. The journalist and the editor of the newspaper were also sentenced.

Article 31 of the constitution, amended in 2008, dictates that "the state will work to reinforce women's political rights by increasing their chances to be elected to Assembly." In this framework, a national commission to develop a draft organic law on the representation of women in elected assemblies proposed

in March 2009 a quota of 30 percent female candidates on each party list. To date, this draft law has not been adopted. However, a recent tally of election results of the FLN and the Workers' Party shows 30 women elected in the APN, or 7.5 percent; 130 or 7.7 percent in the APWI; and 102 or 0.73 percent in the APC. Only one woman is a minister (of culture), and two are secretaries of state (in charge of the family and women's condition and scientific research).

Berbers are the larger ethnic group in Algeria, long mixed with a minority of Arab populations. Discrimination tends to be based on the linguistic divide between Arab- and Berber-speaking populations, rather than on ethnicity. The Berber language (Amazigh), spoken by 14 percent of the population, was recognized as an official (but not a national) language by a 2002 constitutional amendment. In June 2007, a presidential decree established an academy and a Superior Commissionership for the Amazigh language to promote its use. In schools, however, the language is rarely taught, nor is it used in public offices. Particularly in the judicial system, Arabic remains the main and often only language.

Medical coverage and social assistance for 2 million disabled Algerians has improved their living conditions, but the $60 payment they receive is insufficient. The 2002 law for the protection of persons with disabilities sets a 1 percent minimum quota of handicapped workers for state-owned enterprises, which is not enforced except at Algérie Télécom and Algérie Poste. Associations for the handicapped regularly denounce the lack of access to public buildings, schooling, and services.

According to the constitution, Islam is the Algerian state religion. 99 percent of the population is Muslim and less than 1 percent Christian. The ministry of religious affairs controls and constrains the practice of Islam, mainly to maintain political control over Islamist groups and civil society. Religious speeches are closely regulated and mosques and Sufi congregations are often used as a political venue to praise the government's actions.

A National Commission on Religious Worship, created in 2007, is responsible for recording, approving, and monitoring non-Muslim religions. Faced with a growing minority of Muslims who convert to evangelical Christian churches, the government issued Ordinance No. 06-03 on February 28, 2006, which criminalizes proselytizing by non-Muslims to Muslims. Since 2007, Muslims who convert to Christianity have been convicted "of religious practice without authorization." In June 2010, Abdelhamid Bouamama, a Christian, was sentenced to a one-year suspended sentence for "attempted conversion." In October 2010, Hocine Hocini and Salem Fellak, two Muslims whose conversion to Christianity was not considered valid, were accused of eating lunch during Ramadan and sentenced to three years in prison for "insulting Islam," but subsequently discharged. Non-Algerian Christians also face difficulties in practicing their religion. Local authorities often refuse to register applications for approval of such groups, and many unauthorized churches have been forced to close. The LADDH considers the "unauthorized practice of a non-Muslim

worship" charged in these cases a violation of both the right to freedom of religion guaranteed by Article 18 of the International Covenant on Civil and Political Rights (ratified by Algeria in 1989) and the Algerian constitution, which guarantees freedom of conscience.

The "freedoms of expression, association and assembly are guaranteed to citizens" under Article 41 of the constitution. However, since 2007 the right of assembly has been severely restricted through repressive judicial measures elaborated under the rubric of the fight against terrorism. The state of emergency allowed "the provisionary closing of concert halls and places of assembly of any nature, and to outlaw any demonstration that might trouble public order and peace." Public demonstrations are considered a subversive act under Article 87 bis of the penal code. Public demonstrations have also been outlawed in Algiers since 2001 (Law 91-19 regarding public meetings and demonstrations). Law 91-19 also prohibits access to rooms for the purpose of assembly.

Law 89-28 requires that organizers of public demonstrations request authorization eight days prior to the event. The Directorates General of Regulatory Affairs in each province rarely distribute authorization receipts for these requests however, and officials often prevent organizations from gathering. The governor of Algiers, for example, frequently prohibits the LADDH from holding public meetings. The Maison des syndicats (Union House) a gathering place run by the independent union for public administration personnel (SNAPAP), was shut down in May 2010 to prevent it from holding the Maghreb Union Forum. After it reopened, it was the target of numerous break-ins and attacks in April 2011.

The UGTA is the only trade union recognized by the state and the only union to take part in tripartite negotiations with the government and business unions. Independent trade unions are prohibited in the private sector, though they may be tolerated in the public sector. All independent union activity is excluded from consultation with the UGTA. Several multinational corporations, in particular those related to the exploitation of hydrocarbons in the south, prohibit their employees from forming (even UGTA) trade union branches. Yacine Zaid, who in June 2007 tried to establish a union branch of the UGTA, was legally harassed and then fired by Eurest Support Services, a subsidiary of the British group Compass. Members of independent trade unions are often arrested and brought before the courts without any charges registered against them.

Strikes and demonstrations critical of the government are generally repressed by the police. In March 2011, police intervened in more than 520 protests.[23] The law recognizes the right to strike and to assembly, but the state of emergency requires workers from both the public and private sectors to obtain government authorization. In October 2010, a regional coordinator of the National Council of Teachers (affiliated with the independent union SNAPAP) was sentenced to six months in prison for carrying a sign and protesting in

front of the local offices of the education ministry.[24] Despite this type of legal harassment, strikes and hunger strikes are multiplying to denounce the ban on trade unions, systematic late payment, bad work conditions, and poor management. In April 2010, 320 workers of the National Society of Road Works (SONATRO), including 22 union activists from the local chapter of the UGTA, were dismissed for "dereliction of duty," as spontaneous strikes are considered illegal.[25]

RULE OF LAW 2.49

INDEPENDENT JUDICIARY	2.20
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.60
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	1.50
PROTECTION OF PROPERTY RIGHTS	3.67

Although the constitution establishes judicial independence, the judiciary does not in practice enjoy independence from the executive branch. The president of the judiciary is the head of the High Council of Magistracy, which is constitutionally responsible for the appointment and promotion of judges. Appointments and dismissals are based on politics rather than merit, so judges, prosecutors, and magistrates are influenced by the expectations of the government, and most notably, by those of the ministry of justice.

The Constitutional Council, whose members the president appoints, rules on the constitutionality of treaties, laws, referendums, and regulations passed by the APN, and ultimately approves or rejects these laws. It also accepts or rejects the resignation of the president and manages any power vacuum. Since its inception in 1989, however, these roles have never been put into practice. Only the presidents of the country, of the APN, and of the CN can resort to the Constitutional Council.

In 1996, the revision of the constitution doubled the administrative court's jurisdiction. This was reinforced in 2008 by the new code of civil and administrative procedure, which transferred to the administrative courts the common law cases against the government or the state. Criminal law violations are regulated by the courts of general jurisdiction under the supervision of the Supreme Court, whose president is appointed by the president of the country and the cabinet chief by the ministry of justice. Appointed to use mediation as a new form of dispute resolution, administrative court judges often find themselves merely relaying decisions of the executive and security forces. Furthermore, the new code of civil and administrative procedure requires the translation into Arabic of all court documents (which are still for the most part published in French), and the related fees often deter citizens from taking legal action. Appeals of administrative tribunal decisions are the responsibility of the

State Council, established in 1998. At the end of the first semester of 2011, new laws aimed at reinforcing the government's control over the Supreme Court and the State Council were under discussion. In April 2011, lawyers joined street protesters, denouncing increasing interference by the ministry of justice in the organization of their association.

Prisoners typically have access to counsel, including the provision of free counsel for those unable to pay. The constitution guarantees the presumption of innocence, although that right is sometimes undermined by the use of coerced confessions, in particular during investigations by the DRS into acts prejudicial to state security. Due process is not always respected in practice, particularly in political cases, as the president holds the ultimate authority over judicial proceedings. For example, Mohamed Rahmouni, a civilian, was arrested in 2007 and his family has not been advised of the charges against him. He disappeared for six months and was finally located in the Blida military prison. His lawyer has been denied access to his client.[26]

The Charter for Peace and National Reconciliation exempts state officials and security forces from prosecution, forcing judicial authorities to dismiss past and current complaints or accusations of human rights abuses made by citizens against their leaders. Adequate investigation of reports from parliamentary commissions of inquiry into cases of corruption or abuses by security forces is rare.[27] Complaints of torture or kidnapping are typically either not registered or are filed without further follow-up. Consequently, complaints against the authorities are often filed in international or foreign courts. In March 2011, for example, nine Algerians living in Paris filed a complaint against General Khaled Nezzar, former Algerian defense minister, for his role in the deportations, massacres, and extrajudicial executions committed in the early 1990s. Since 2000, the families of the missing have lodged complaints with the UN Committee against Torture, which has asked the Algerian government to investigate each case of enforced disappearance and to amend the exemption from prosecution. In response, the Algerian government has denied all involvement.

When such cases are referred to the courts, the Algerian judicial system does not provide public information on procedures. In 2009, the RCD filed suits against President Bouteflika, accusing him of illegal use of funds and property of the state while running for president, and also against Prime Minister Ouyahia for libel for his attacks against those who opposed the revision of the constitution in 2008. Since 2008, several policemen have been convicted for torture, weapons smuggling, and embezzlement but no high-level officials have been held accountable for allegations of human rights abuses. A lack of transparency prevails among the police, where 5,670 cases of arbitrary layoffs occurred from 2007 to 2011.[28]

The right to property is enshrined in the constitution for all citizens. Citizen complaints against senior bureaucrats or military officials for plunder

of private property are numerous. The more than 1.5 million people who were displaced, sometimes forcibly, by the army while fleeing terrorism in the 1990s have not received compensation from the state.[29]

ANTICORRUPTION AND TRANSPARENCY 2.56

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.00
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	2.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	3.25
GOVERNMENTAL TRANSPARENCY	2.67

Corruption is endemic in Algeria, in particular in the public administration. In 2011, Transparency International ranked Algeria 105 out of 178 countries evaluated.[30] Despite official public statements, petty bureaucratic corruption and illegal enrichment by public officials is tolerated and rarely brought to justice.

In February 2006, Law 06-01 on the prevention of corruption was established by presidential decree in the wake of the country's 2004 ratification, with reservations, of the United Nations Convention against Corruption. The National Commission for the Prevention and Fight against Corruption was established in 2006 as the primary means to implement the national anticorruption strategy and develop appropriate policies to curb the phenomenon. It is responsible for gathering information in cases of suspected public corruption and transmitting its findings to the ministry of justice. However, the president did not appoint the commission's seven members until 2010 and no action has been accomplished since. Uncovering official corruption remains the responsibility of the DRS, members of which mainly focus their investigations on their political and economic rivals.

The Audit Court is responsible for auditing state finances (including public enterprises) and must submit an annual report to the president, to be published in the *Journal Officiel*. From 1995 to 2009, these annual reports were not published and no expenditure information was provided to the public.

There is no real monitoring of corruption among public officials. Article 36 of Law 06-01 requires public agents to declare their assets and requires that this declaration be published in the Official Gazette under penalty of imprisonment from six months to one year. However, neither the reporting requirement nor the sanctions have ever been enforced.

The government does not cooperate with civil society in the fight against corruption. In particular, it does not work with the Algerian Association to Fight Corruption (AACC), an affiliate of Transparency International. In October 2009, the government prevented AACC president Djilali Hadjadj, a journalist and physician, from participating in the third session of the Conference of States Parties to the UN Convention against Corruption.[31] Hadjadj was taken into custody and detained at Serkadji prison in Algiers in September 2010.

The process of privatization of state-owned enterprises is subject to approval by the State Participation Council, but details are not available to the public.[32] Most state-owned enterprises were privatized between 1995 and 2003; however, they were purchased by those in the ruling elite's circle. The remaining public enterprises (with the exception of the state oil company) are bankrupt despite the billions that the government is spending for their modernization, because of the paralysis that results from intense state pressure on public managers. The judicial system is used to punish managers for government elites consider bad performance. Since 2007, many state officials and directors of public companies close to Bouteflika and his circles have been prosecuted. This includes Algeria Telecom for squandering public funds in 2007, the Department of Fish and Fisheries for fishing illegally and influence peddling in 2009, the National Bank of Algeria for granting loans without collateral, and the Department of Public Works for procurement fraud during the completion of the east-west highway. However, ministers and other politicians involved are rarely convicted and, when applied,, penalties are minor.

The CEO of Sonatrach, Mohamed Meziane, was convicted of embezzlement and corruption of public funds in rhe awarding of oil and gas contracts to companies based on direct agreements rather than a bidding process. He was sentenced to one year in prison and a fine of $6,500 in April 2011. Sonatrach still does not make public its financial reports; Transparency International gave it a score of 0 for its anticorruption reporting.[33]

Public construction projects are a major source of corruption. The National Fund of Equipment for Development (CNED), responsible for the assessment of public infrastructure projects, has reported unnecessarily inflated costs on over 30 major ongoing projects. For example, work on the Algiers subway started in 1982 and is still not complete.

Article 160 of the constitution states that the two houses of parliament control how the budget will be spent. However, since 1982, financial laws have been enacted without parliamentary scrutiny. In 2010, an audit of the regulation 2008 budget was presented, but the exercise was deemed irregular. Parliamentary requests to eliminate special government funds maintained to finance different projects have not been granted. The Open Budget Index in 2010 once again gave Algeria the minimum score of 1 out of 100 because of the lack of transparency of the government with regards to public finances.[34] The oil tax, which represents 62 percent of budget revenues, is not controlled by the Audit Court but rather was assigned to the National Agency for the Valorization of Hydrocarbon Resources (Alnaft), created in 2005 following new legislation for hydrocarbons.

There is no law establishing access to government information. The government frequently restricts access to information, although it has recently established a system to manage its judicial records, which has allowed citizens much fasrer access to their personal legal records.

RECOMMENDATIONS

- The parliament should be empowered as an independent check on executive authority, including through fairly administered elections free of fraud and intimidation in which all candidates and parties are allowed to run.
- Following the lifting of the state of emergency, the government should immediately comply with legislative requirements regarding the freedom of association and assembly. The organization of public events and creation of independent political parties, associations, and workers' unions should be permitted. These groups should be allowed to operate without government interference.
- The security sector should be reformed, including clarification of the DRS' mandate and the end of impunity for military and security officials.
- The independence of the judicial system should be institutionalized and protected and full technical training opportunities provided to members of the judiciary.
- The government should take measures to institutionalize budgetary transparency and accountability and to effectively distribute oil and other revenue according to national development priorities.

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ANGOLA

CAPITAL: Luanda
POPULATION: 19 million
GNI PER CAPITA (PPP): $5,190

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	2.41	1.96
CIVIL LIBERTIES:	2.92	2.83
RULE OF LAW:	2.39	2.20
ANTICORRUPTION AND TRANSPARENCY:	2.21	2.00

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Dr. Carrie Manning

INTRODUCTION

Angola became independent from Portugal in 1975 after nearly 14 years of armed struggle that pitted Portuguese forces against three main armed liberation groups: the Popular Movement for the Liberation of Angola (MPLA), the National Union for the Total Independence of Angola (UNITA), and the National Front for the Liberation of Angola (FNLA). While these three groups engaged in shifting alliances with one another in the fight against the Portuguese, all were vying for the right to assume power at independence. By January 1975, the three movements had agreed to assume power together in an uneasy transitional government that never materialized. Instead, by November 11, 1975—the date established for independence—the MPLA had taken control of the capital, Luanda, and assumed authority over the new state, while UNITA and the FNLA carried on the fight from the central highlands. The FNLA quickly faded from the scene as a military organization, but the struggle between the MPLA and UNITA intensified, lasting until 2002. Estimated deaths from the conflict range from 500,000 to 1.2 million people, with millions more displaced from their homes.[1]

This period was punctuated with peace agreements and UN peacekeeping missions in 1991–92 and 1994–97. Elections in 1992 led to the seating of a multiparty parliament, with 70 seats (out of 220) for UNITA, but a first-round

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presidential election failed to produce a majority for either candidate. The country plunged back into civil war before a second round could be held. It was not until the 2002 battlefield death of UNITA leader Jonas Savimbi that lasting peace was secured.

For six years after the war, a Government of Unity and National Reconciliation (GURN), established under the 1994 Lusaka Protocol, remained in place, giving UNITA figures representation in ministerial and other government positions. In September 2008, legislative elections were held, bringing the GURN to an end. The ruling MPLA won more than 81 percent of the vote, leaving UNITA and other opposition groups impotent and clearing the way for constitutional reform. In February 2010, a new constitution was promulgated that formalized the longstanding concentration of power in the executive branch. The Council of Ministers, previously an organ with the power to initiate legislation, has been reduced to an advisory body to the president. The new constitution also created three ministers of state—for defense and security, civil affairs, and economic coordination—who report directly to the president. These ministers have resources, access, responsibilities, and authority that supersedes that of the line ministries. Furthermore, the 2010 constitution eliminates the National Assembly's right to question members of the government and gives it power only to "pronounce on" presidential declarations of war or states of emergency, not to authorize them, as had been granted by the 1992 constitution. The changes also boost the importance of the ruling party by eliminating direct presidential elections—henceforth the leader of the party receiving the most legislative votes will become president of the republic. However, unlike in parliamentary systems, there is no provision for a parliamentary no-confidence vote, and the executive is very minimally accountable to parliament.

Governance reform has been mixed in the period under review. The holding of elections was a positive development and stronger legal frameworks have been established to regulate public administration, protect civil liberties, and strengrhen rule of law. Transparency of public administration has improved with the first-ever audits of Sonangol, the state-owned oil company and largest generator of state revenues, and the publication of this and other financial information on the internet.

Yet in tandem with these formal improvements is the systematic use of state resources to suppress political opposition, reward political loyalty, and blur the lines between the ruling party and the state. President José Eduardo dos Santos has been in office since 1979. In addition to his formal roles as head of state, leader of the ruling party, and commander in chief of the military, President dos Santos occupies a central place in the economic life of the country. The ruling party's overwhelming victory in the 2008 legislative elections legitimized and reinforced the president's control of political and economic resources, but that victory was icing on the cake rather than an essential ingredient of presidential dominance in Angola.

ACCOUNTABILITY AND PUBLIC VOICE 1.96

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	1.20
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	1.00
CIVIC ENGAGEMENT AND CIVIC MONITORING	3.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	2.29

Angola held long-awaited legislative elections in September 2008. In addition, in May 2008 the Constitutional Court was established, with one of its key functions being oversight of electoral disputes in place of the Supreme Court.

While the legal framework was consistent with international norms and standards for free and fair elections, there were significant problems in the 2008 elections, including a lack of transparency in the tabulation process because of the decision by the National Electoral Commission (CNE) to exclude both party monitors and domestic observers; the failure to publish results by polling station, preventing their verification; and the decision not to require voters to vote at their designated polling station so long as they voted within the municipality where they registered. This made it impossible to verify turnout figures and to detect ballot stuffing reliably. In addition, though domestic observers were permitted for the first time, the CNE denied accreditation to more than half of them. The most egregious problems with transparency and voter access seemed to occur in Luanda, home to 30 percent of the population.[2] On voting day, only 320 of 2,584 polling stations in Luanda opened on time, leading election authorities to extend polling to a second day. Just 28 of 370 domestic observers in Luanda had received their credentials.[3]

In addition to the CNE—which was composed of members appointed by the government, ruling party, and opposition parties—the government created an interministerial electoral commission (CIPE), which prepared the voter lists. Though this was ostensibly done under the supervision of the CNE, the CNE did not in fact review the lists.[4] Furthermore, the division of labor between these two bodies was not always clear, weakening accountability for electoral administration.

Although the law provides for funding and airtime for opposition parties during campaign periods, in practice the ruling party enjoys advantages. State funding for the campaigns of all political parties with seats in parliament pales in comparison to the resources available to the ruling party through its control of state resources. Moreover, mandated state funding for opposition party campaigns was released just three weeks before voting day. Coverage on state-run radio and the country's only daily newspaper (*Jornal de Angola*), also state-managed, was biased toward the ruling party, and private media's reach is severely limited outside the capital.[5] Campaigning was relatively peaceful and politicians abstained from calls for violence during the campaign and electoral periods, but traditional

authorities and civil servants, as well as state vehicles and other resources, were deployed in the service of the ruling party's candidates. Thus, while opposition parties were able to enter and campaign in all areas of the country, most lacked the organization and financial wherewithal to mount effective national campaigns that could match the machinery of the incumbent party.

The imbalance in campaigning opportunities and resources, coupled with manipulation of election administration, contributed to a ruling party majority of nearly 82 percent (191 of 220 seats) in the legislature. This is a gigantic increase from the 54 percent of the vote won by the MPLA in 1992. UNITA captured only 16 seats (compared to 70 seats in 1992). Among the 14 groups (10 parties and 4 coalitions) that contested the elections, only 5 parties won seats.

By 2008, Angola was also long overdue for presidential elections, which had been held only once, in 1992. After the war ended, fresh presidential elections were planned for 2004, but it was not until 2007 that dates were set. Then, before they were held, the ruling MPLA used its parliamentary supermajority to push through a new constitution that eliminated direct presidential elections.

While in principle there are opportunities for the effective rotation of power among different political parties, in practice the likelihood of such rotation is very limited. The 2010 constitution and the events that followed further eroded the few checks and balances that had existed in Angola. Thus, on August 12, 2010, the president of the National Assembly ordered the temporary suspension of the powers of the legislature to monitor the executive, until further notice.[6] This decree suspended even the weak oversight powers that survived constitutional revision.[7] The civil service is formally merit-based, but in practice party loyalty is considered in hiring and promotion decisions.

Civil society groups have been growing in strength over the last decade. Civil society organizations (CSOs) can testify, comment on, and potentially influence government policy or legislation. In addition, the most capable CSOs have staged peaceful protests without being granted prior permission by the state. Although these exercises are often initially met with state resistance, they have succeeded in forcing open political space provided by law but rarely honored. Some ministries also welcome the technical capacity and resources domestic civil society organizations can bring to bear.

A new CSO law that has been in the making for several years promises to regularize the legal status of CSOs, some of which have been in legal limbo since the government brought suits against them, alleging illegal status or activity. It remains unclear, however, whether the new law will make it easier or more difficult for CSOs to obtain legal status. CSOs complain that laws are applied unevenly, with groups that are seen as state allies given more leeway than more critical organizations. While the constitution and statutory law recognize the right of civil associations, interest groups, and business organizations to organize, the government has repeatedly shut down some human rights

organizations and reportedly threatened and harassed others, especially around election time.[8] In March 2010, after years of delay, the court declined to hear an appeal from the prominent human and legal rights organization Association for Justice, Peace and Democracy (AJPD), which was fighting its closure on the grounds that its "founding documents" were in violation of state law.[9] Donors and funders of civil society organizations are largely free of state pressures, but the country's oil wealth imposes a certain amount of restraint on donor countries anxious to secure access.

Earlier in the decade there was a brief interval when independent media outlets proliferated and enjoyed relative freedom of expression. The state maintained a complete monopoly on television, but private radio stations emerged, mostly in Luanda, although none was permitted to broadcast nationwide. Radio Ecclesia, for example, has sought government permission to broadcast beyond Luanda for the past 15 years without success. In December 2008 the country's first domestically owned independent TV station, TV Zimbo, began broadcasting in Luanda and in several provinces.

An independent national media council was created in 1992 with a mandate to guarantee freedom of the press, and its opinions—including those that go against the government—have been given publicity, even in the state press. In 2006, a new media law modified the libel provision to allow journalists to use the facts of a case in their defense. (Previously, making even truthful accusations against the president was considered libel and a criminal offense.) Under current law, however, journalists who offend "public authority," including the president, members of government, the National Assembly, or security forces, may be charged with defamation and sentenced to a year in prison, as several journalists have been.[10]

Nevertheless, the independent media sometimes publish pieces extremely critical of the government and even the presidency. For example, in August 2010, a longstanding independent weekly, *Folha 8*, published a document by an Angolan journalist based outside the country titled "The Presidency: The Epicentre of Corruption." Radio Ecclesia and Radio Despertar, both independent radio stations that operate in the capital, broadcast regular call-in shows on which listeners are quite critical of the government.

However, with the return of electoral politics in 2008, the state began cracking down on freedom of expression. State-owned media are consistently biased in favor of the president and the ruling party, and opposition parties find it difficult to obtain airtime to publicize their events. In the wake of the global financial crisis, and following several years in which government suits against independent papers put them in financial distress, new firms with close ties to the government and ruling party have bought most independent papers. Media Nova, a firm owned almost entirely by three individuals with close ties to the president—State Minister for Military Affairs General Helder Vieira "Kopelipa," the head of communications in the president's office General

Leopoldino Fragoso do Nascimento "Dino," and the chairman of Sonangol, Manuel Vicente—bought several papers (*O Pais, Semanario Economico, Revista Exame, Chocolate*), as did another such firm, Media Investe.[11] This has allowed the state to limit freedom of expression covertly, under the guise of private enterprise. While journalists working for these papers continue to publish stories critical of the government, the papers' owners can curb such reporting at any time.

On at least two occasions in August and September 2010, Media Nova and Media Investe suppressed publication of issues of the newspapers they owned that reported on government corruption. In one case, all copies of the paper were seized and destroyed as they came off the printing press. Media Nova also owns the country's largest printing press. Nova Media Marketing, owned by the same firm, has recently been established and is expected to be an important player in the advertising market.[12]

In addition, more stringent legislation has been passed to discourage the expression of views critical of the state. In November 2010, a new state security law made it a crime to publish words, images, sound, or video that insults the president, the state, or state institutions, punishable by up to two years in prison. In May 2011, the National Assembly passed the "Law to Combat Crime in the Area of Information Technologies and Communication," which makes it difficult for media, CSOs, and ordinary individuals to express themselves using social media or indeed any form of electronic media, private or public. According to the law, sending an electronic message the state interprets as aiming to "endanger the integrity of national independence or to destroy or influence the functionality of state institutions" may be punishable by two to eight years in prison, as well as fines. The law also allows the state to block or intercept information from private computers or other devices without prior authorization.[13]

Intimidation and physical violence against journalists also appear to be on the rise. On September 5, 2010, a journalist from the private Radio Despertar was found shot dead in his home. It was not clear at the time of writing whether this was a politically motivated killing, but the ruling party had been harshly critical of the radio station just days before and threatened to close the radio station for airing views from UNITA leader Isaias Samakuva that it considered an incitement to violence.[14] In the days following this incident, a TV Zimbo reporter was shot in both legs, and two reporters from *O Pais* had their equipment stolen from their home and car. On September 30, 2010, police stole the equipment of photographers for *O Pais* after they photographed the site of government demolition of houses (see below). No arrests have been made in the months since those attacks. Prior to September 2010, attacks on journalists had been relatively rare, although government intimidation and harassment, particularly in the provinces, were not uncommon.

CIVIL LIBERTIES 2.83

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	1.88
GENDER EQUITY	3.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.00
FREEDOM OF CONSCIENCE AND BELIEF	3.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	2.25

Angola's laws on civil liberties are often consistent with international standards, but enforcement is problematic. Violations of human rights and civil liberties have been particularly acute in the enclave of Cabinda and, to a lesser extent, in the diamond-rich Lunda North and South provinces. Cabinda is an oil-rich enclave that is separated from the rest of Angola by a small chunk of territory belonging to the Democratic Republic of Congo. Armed Cabindan separatists have fought a decades-long, low-intensity war for independence from Angola. Although the war officially ended in 2009, the Angolan government has not abandoned its militarized stance toward citizens in the province. Politically motivated arrests are frequent. According to Human Rights Watch, "The Angolan government has long used the police and domestic intelligence services in Cabinda to intimidate and silence political critics."[15] It is the military rather than the police that is most often accused of extrajudicial incarceration and blatant violation of due process rights in this region.[16] Human Rights Watch reports widespread physical abuse and torture of military detainees in Cabinda and long periods (up to a month) of solitary confinement without access to food, water, or sanitation facilities.[17]

Police behavior remains problematic elsewhere in the country as well. Although reform enacted in 2003 was meant to modernize police structures and bolster respect for human rights, new mechanisms established to provide redress for citizens whose rights have been violated are largely ineffective and offer little support to victims.[18] A human rights ombudsman was appointed in 2005 as part of a national justice reform program, but human rights complaints are often subject to political pressure.[19]

Angolan law includes an overly broad and ambiguous range of offenses against the state, including "every and any act, not provided for by law, that endangers or may endanger the security of the State."[20] A 1978 law permits up to 215 days of pretrial detention for such crimes.[21] This law was used in August 2010 to convict four activists in Cabinda in connection with a fatal January 2010 attack on a bus carrying the Togolese national soccer team through the province. There was no evidence linking the four men to this attack, for which the armed separatist group Front for the Liberation of the Enclave of Cabinda (FLEC) claimed responsibility, but the four men had participated in an October 2009 meeting

with FLEC representatives. They were released in December 2010 after the Constitutional Court overturned the part of the state security law under which they were convicted.

In other types of cases, incommunicado detention is permitted until the public prosecutor performs an interrogation; this is technically supposed to be within five days of incarceration, but can be extended in matters of national security.[22] Preventive detention for extended periods often exceeds the legally established time frame, due to a scarcity of trained lawyers, judges, and financial resources for courts. Even these permissive laws are often not respected. According to a 2008 United Nations High Commissioner for Refugees (UNHCR) report, the five-day time limit for the detained to see the public prosecutor is rarely adhered to; police investigators are allowed to interrogate detainees despite the law that decrees a prosecutor must do it; and because of a shortage of legal staff, "the right to access to a lawyer and a corresponding legal aid system as guaranteed by the Constitution exists only in theory." The report concludes that there is "no effective system in place which can prevent arbitrary detention from occurring."[23]

Angola has no specific laws to fight human trafficking, and there is little data on the extent of the problem. Angola is a country of origin for human trafficking, with young men forced into agricultural labor and women and children forced into domestic servitude in other countries.[24] There have been no recent efforts to investigate or prosecute traffickers.[25]

Both the 1991 and 2010 constitutions recognize the principle of equality and nondiscrimination against citizens, including gender-based discrimination. Angola has ratified the UN Convention on the Elimination of All Forms of Discrimination against Women and has established numerous local, regional, and national organizations and initiatives for women.[26] The country has also ratified the core ILO Labor Conventions, and the constitution prohibits gender discrimination in employment and education.[27] Angolan labor law stipulates rights to paid maternity leave, equal pay, limited working hours, rest periods, and so forth, but compliance is weak.[28]

In practice there have been some significant advances, but the picture remains mixed. In the civil service and in some sectors such as banking, women make up 50 percent or more of all employees, but elsewhere they are seriously underrepresented, and they still face discrimination in the workplace. School enrollment rates reflect an imbalance of nearly 30 percentage points between males and females.[29]

For the 2008 legislative elections, the MPLA took a significant step toward increasing the representation of women in parliament by setting the goal that women comprise 33 percent of their party's representatives. The party placed a woman in every third place on the ballot in an effort to meet this goal. Although this was not a legal requirement, nearly half of the parties that ran included at least 30 percent female candidates on their lists. Overall, 39 percent

of the members of the new legislature are women, compared to 15 percent in the last parliament.

At this writing, the country's first domestic violence bill is before the Angolan National Assembly and appears likely to pass. Prior to this, domestic violence was not a crime. Laws on inheritance give women formal rights to 50 percent of their deceased husbands' estates, and legally men and women have equal rights to land ownership. However, these laws are not always enforced. Customary law privileges men in domestic matters, inheritance, and property ownership, often trumping the formal legal system in rural and periurban areas.

Protection on the basis of sexual preference is lacking. There are legal protections for the disabled, but here again law and practice are not always consistent.

Freedom of religion is guaranteed by the constitution and is not contravened in practice. The population is 37 percent Roman Catholic and 15 percent Protestant, and 47 percent hold indigenous beliefs. Catholic clergy have played a leading role in speaking out against human rights abuses by the government in Cabinda, and Catholic and Protestant leaders have been active in protesting forced eviction and demolition of private homes. Recently, Muslim groups (a small minority) have faced discrimination due to popular association with terrorism.[30]

Angola has three main ethnic groups: the Ovimbundu (37 percent), Kimbundu (25 percent), and Bakongo (2 percent). The three main armed groups fighting the Portuguese—and later one another—each drew core support from one of these groups: UNITA from the Ovimbundu, who were historically concentrated in the central highlands; the MPLA from the Kimbundu and Creole populations along the coast; and the FNLA from the northern Bakongo peoples. The *Partido de Renovacao Social* (PRS), a party that has espoused federalism, has its roots in the diamond-rich northeastern Lunda provinces. Despite this history, since the end of the civil war, ethnic identity has not been the basis of systematic discrimination, political tension, or violence. Instead, pastoral groups and nomads, who make up less than 6 percent of the population, face widespread discrimination and do not participate in politics of the state.[31]

Article 33 of the constitution allows for trade union participation. About one-quarter of the labor force is unionized, but unions are weak compared to employers. According to a recent report, "government influence on collective bargaining seems quite large. . . . the right to strike is strictly regulated."[32] Although trade union laws are reportedly being revised, many roadblocks remain, including close monitoring from the government, long bureaucratic procedures, and restrictions on collective bargaining and striking.[33]

Both constitutions that have been in force in recent years recognize the right of citizens to hold public demonstrations. However, officials often appear to be uncertain or wholly ignorant of the laws governing such demonstrations. For example, in March 2010 local officials in Benguela dispersed a peaceful demonstration protesting government demolition of houses, saying organizers had

failed to secure permission. The law requires organizers to notify authorities, but it does not require a permit. A second demonstration was permitted to go forward after local and international groups protested.[34] In Luanda and elsewhere in Angola, local authorities have repeatedly banned demonstrations and arrested protesters engaged in nonviolent protest. Despite these setbacks, several important ones have been held peacefully and successfully. Consistent with the pattern already discussed, freedom of assembly violations are prominent in the Cabinda region, where political activist groups are routinely harassed or detained.[35]

RULE OF LAW 2.20

INDEPENDENT JUDICIARY	2.20
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.75
PROTECTION OF PROPERTY RIGHTS	1.67

The judiciary is not independent in Angola. As one Angolan jurist put it, the judiciary is "hostage to the executive."[36] The Ministry of Justice has formal authority and budgetary control over the entire judicial branch. According to the 2010 constitution, the president now nominates—and the National Assembly formally elects—all justices of the Constitutional Court, Supreme Court, and Audit Court. Under the previous constitution, the president nominated only three of the seven justices of the Constitutional Court, while the National Assembly named another three and the Supreme Court named one.

The judiciary is subject to political interference by the government, president, and other politically powerful individuals affiliated with the ruling party. The government has rewarded compliant judges with paid posts as chairs of committees. Some close to the system argue that sentences are frequently paid off, especially in civil cases. Political loyalty plays an important role in the system, and comparable cases are not necessarily treated equally, nor do they yield predictable outcomes. Bribery and influence peddling are commonplace in the courts.[37] Due process is inconsistent, and prosecutorial independence is limited at best. There is a shortage of trained judges and lawyers, especially outside of the provincial capitals. However, justice sector reform is officially a government priority, and the state has undertaken the rehabilitation of some provincial courthouses and in some instances increased salaries for judicial officials.

Although Article 67 of the constitution declares the presumption of innocence, in practice individuals are presumed guilty until proven innocent. Simple court cases can take five to 10 years to be heard. Many laws pertaining to the judiciary and the penal system date from the single-party era and have not been updated.

Only a handful of the 168 municipalities had functioning courts in 2008, and only a few more are operational today. Most municipal matters must therefore be dealt with at the provincial level. According to one report by an Angolan legal rights group, judges outside of Luanda are generally poorly informed about national legislation, largely because the state does not make this information readily available.[38]

Despite these problems, rulings are mixed: while there are often partisan rulings, there are also cases in which the rule of law is upheld. Civil society organizations are beginning to use the court system, with mixed success, to challenge restrictions on legal civil liberties. It is too early to say how successful these efforts will be.

Defendants are legally entitled to a public defender, although this is rarely available in practice. The Bar Association (*Ordem dos Advogados*) is charged with providing legal assistance to those who cannot afford private counsel. There are also nongovernmental organizations and private lawyers who provide legal aid, and work is reportedly under way on a public defender law. In general, there are not enough lawyers in the country, and most are concentrated in the capital city. According to legal experts, four provinces are entirely without lawyers (North Lunda, South Lunda, Moxico, and Cuando Cubango), and others have but a handful. (For example, there is reportedly only one in Bie province.)

Public officials are periodically prosecuted for corruption and other crimes. Often these instances are highly publicized and occur in conjunction with presidential announcements of a renewed assault on corruption, but such efforts are episodic rather than systematic.

The new Constitutional Court is seen as somewhat more independent than other courts, although its endorsement of the troubled 2008 electoral process tarnished that image. In a significant demonstration of independence, the court struck down Article 26 of the Law on Crimes against State Security, which had essentially given the state the authority to classify virtually any act as a crime.[39] As a result, the August 2010 conviction of four Cabindan human rights activists in connection with a fatal attack on the Togolese football team was overturned.

The president's office exercises effective civilian control over the security forces, under General (Retired) Manuel Helder Vieira Dias Junior, rather than the Ministry of Defense or the Ministry of Interior. The military as such does not interfere in political processes. Leading generals in the armed forces have received privileged positions in joint ventures with foreign investors and have been given land and other significant economic assets. Members of the Presidential Guard are also given shares in economic ventures. Such privileges reflect the larger picture in which the president and the ruling party use their command of economic resources to secure political loyalty and ensure that any would-be whistleblowers are themselves tarred with the corruption brush. Military officials are no more or less likely to be held accountable for corrupt practices than other state officials.

Article 37 of the constitution recognizes the right of citizens, as individuals and collectivities, to own private property, which may be expropriated by the state for "public use" with fair compensation. The protection of property rights is poor in Angola. In 2009 the country ranked 114 out of 115 in the International Property Rights Index.[40] Most commercial disputes are not taken to court. Here, as in other areas in Angola, credible laws are not enforced or are directly contravened at the discretion of the president or other public officials.

The state has behaved capriciously when it comes to respect for property rights pertaining to land. Article 5 of the 2010 constitution recognizes the right of local communities to have access to and use of land, but the state retains the right to expropriate land in the public interest, with compensation in accordance with the law. It is difficult and time consuming to register title to land, and the courts' enforcement is weak.

A resolution passed by the National Assembly in September 2009 declares that it is the responsibility of the state to "protect, respect, and promote an adequate standard of living for Angolan families, guaranteeing them access to health care, housing, education and healthy living conditions."[41] The same document describes the state's legal right to demolish houses and relocate citizens in order to provide these benefits or to serve the public interest as defined by the state. Throughout the review period, the state has forcibly expelled citizens from their homes without compensation or remuneration. In 2009 and 2010 alone, thousands of families in Luanda, Lubango, and Huila had their houses demolished by the state, usually in the name of urban renewal.[42]

In August 2010, provincial government officials in Luanda put a notice in the daily newspaper declaring that all citizens who lived or owned property in a large area of Luanda province south of the city had 48 hours to register their property with the government. Failure to do so would result in their eviction. Registration required a series of documents that would most likely take more than 48 hours to acquire.[43] Such action is increasingly common.

ANTICORRUPTION AND TRANSPARENCY 2.00

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	1.60
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	2.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	1.75
GOVERNMENTAL TRANSPARENCY	2.33

Over the last three years, the Angolan government has taken a number of steps to improve transparency in the management of public funds. Important legislation necessary to combat corruption has been passed, and President dos Santos has declared zero tolerance for corruption in government. In practice, however, the separation of public and private interests is practically nonexistent at the highest levels of government, and both bureaucratic and political barriers

to private economic enterprise remain significant. According to the *Economic Freedom in the World* report, the average time to launch a new business venture in Angola is nearly twice the world average (68 days, as opposed to 35 days).[44] Bureaucratic hurdles vary, however, with personal and political connections to the ruling party and the upper reaches of state authority suggesting that the problem is not simply one of bureaucratic incompetence.

Two important laws were passed in 2010: one defining and establishing penalties for money laundering, and one on public probity. The latter, which served in part to consolidate and bolster the existing scattered legislation on the subject, establishes criminal penalties for using public goods for private gains and accepting bribes and kickbacks, and it defines conflicts of interest and disclosure regulation. However, these laws have not yet been put to the test, and serious problems remain. The law on public probity, for example, requires public officials to disclose their assets and income from all sources once every two years. However, the dominant interpretation of the law is that the president, vice president, and president of the National Assembly are exempt from this requirement.

In addition, a number of institutions have a legal mandate to combat corruption. These include the Audit Court (*Tribunal de Contas*), the inspector general of finance, and the attorney general. The attorney general's office is independent of the Ministry of Justice, an important step in reducing the judiciary's dependence on the executive branch. The office has a broad mandate to tackle money laundering, corruption, and organized crime, although it is understaffed and underfunded. An anticorruption unit within the attorney general's office is planned, and the attorney general is empowered to work with the Audit Court and to press criminal charges in corruption cases where appropriate.

The Audit Court is endowed with considerable legal power to investigate the actions of any government ministry or body, including public and private companies in which a government entity is a majority shareholder, and to enforce the laws pertaining to these entities. Its main concern is financial audits of government units and contracts over $50,000. Theoretically this empowers the court to investigate and pass judgment on the actions of Sonangol as well as other key privatized companies in which the government retains a majority share. However, in practice the court has yet to test its mettle. In addition, its political independence is questionable. Unlike in most countries, Angola's Audit Court is not accountable to parliament. The president of the republic appoints all seven members of the court, including its president. Thus far, the findings of the court's investigations are not automatically followed up with prosecutions; recommending follow-up action is the job of the Audit Court's justices, who rarely do so. The court has published all of its 2010 opinions on its website, along with basic information about itself and its mandate. Despite these important steps, the Audit Court constitutes an extremely weak bulwark against corruption unless the president embraces and strongly advocates for its mission.[45]

The office of the inspector general of finance (INF) is based in the Ministry of Finance and has global responsibility to review government finances. Individual ministries also have internal audit offices, each of whose writ is restricted to that ministry. Though on paper the INF is independent, it is routinely subject to political interference. Moreover, it lacks the necessary resource and human capacity to conduct national-level audits, and the selection and conduct of audits is not done in a systematic fashion.[46]

In practice, the picture for fighting corruption remains bleak. In 2009, Angola was ranked 162 out of 180 countries in the Transparency International Corruption Perceptions Index, a decline from 2008, when the country ranked 158 out of 180.[47] The considerable economic resources generated by the oil sector, diamonds, banking, and telecommunications are controlled either directly by the state (in the case of oil and diamonds) or by individuals who belong to the president's inner circle, the Presidential Guard, and/or the political bureau of the MPLA. The ruling party systematically uses state resources to coopt and control dissenting voices. Joint ventures with foreign companies—from banks to telecommunications to bioenergy companies—consistently include significant shares for individuals associated with the presidency or the ruling party. Privatization has privileged the same individuals. This favoritism consolidates the patron-client links between the president and potentially powerful political actors, and it severely diminishes accountability on policy questions, as well as political and economic competition. It also crowds out private investment by anyone without political connections. Corruption extends from the president's office down to lower levels. Teachers accept bribes in exchange for grades, and bribes are also demanded to secure students' places in school.

Sonangol is both player and referee in the country's booming oil industry. Oil accounts for 85 percent of Angola's GDP, and Sonangol is the country's largest economic enterprise and the greatest single contributor to GDP.[48] It is authorized by law to acquire 51 percent of all foreign oil companies operating in Angola. Sonangol negotiates all concessions with foreign oil companies and directs the use of each firm's required social investment funds in the country. In addition, Sonangol is itself an oil concessionaire. Sonangol has also become a key player in international joint ventures in other countries and other sectors.

Transparency of this once-opaque organization has improved dramatically in recent years, and recent reorganization of the Petroleum Ministry and Sonangol's structure has brought some improvements. The first known audits of Sonangol were carried out and published in 2008 and 2009 respectively. Beginning in 2004, the government made public the signing bonuses paid by private oil companies for drilling concessions, a major step forward in improving transparency in the sector.[49] New regulations separate Sonangol as an organization into two parts: concessionaire and regulator, with different operating rules for each. In May 2010 the company presented its balance sheet as concessionaire for the first time. Although the Ministry of Petroleum formally oversees

Sonangol, the company's role as gatekeeper of oil investment makes it the more powerful entity.

Investigation and prosecution of public officials for corruption are rare. Following a series of public promises beginning in November 2009 by President dos Santos to crack down on corruption, there was a handful of high-profile arrests. In February 2010, the Attorney General's office announced that it had arrested 21 people for embezzling $137 million from the Central Bank and Ministry of Finance in 2009.[50] A municipal administrator was arrested for embezzlement in September 2010, along with some other local officials in Benguela province.

But other high-profile cases that appear to involve the misuse of public funds are downplayed or ignored. During summer 2002, then Central Bank governor Aguinaldo Jaime attempted to transfer some $50 million from the Angolan Central Bank to his own private bank accounts in the United States. The funds were refused for having suspicious origins, but Jaime was never investigated or prosecuted for his actions. Some observers believe the "zero tolerance" campaign is an excuse to dispatch real and perceived rivals of the president or other high officials.

Moreover, the dominance of the president's office in controlling key political and economic resources undermines anticorruption measures. Among the structures created by the president is the Office of National Reconstruction, whose director reports exclusively to the Angolan president and which is in charge of funds designated for national reconstruction. Included in its portfolio is money provided by the China International Fund, which has provided billions of dollars to support infrastructure development in Angola since the end of the war in 2002. There has been no public disclosure of the accounts of this fund.[51]

In a 2007 report, CMI described the legal framework for budgeting as "appropriate but not fully adhered to."[52] According to law, the state budget is submitted to the National Assembly for approval, and there is a provision for a budget revision process later in the year if necessary. Until very recently, this was one of two areas in which the National Assembly still exercised meaningful oversight powers. However, this ended with the decree issued in August 2010 by the president of the National Assembly suspending all oversight of the executive by the legislature until further notice. Additional weaknesses in the budgeting process include the lack of public debate over the budget proposed to the legislature by the executive and the absence of audit reports to monitor whether planned and actual expenditures match.

Government procurement also suffers from irregularities. Procurement laws and regulations are unclear, little publicized, and not consistently enforced. Oversight mechanisms are weak; no audits are required. Inefficient bureaucracy frequently leads to payment delays for goods delivered, resulting in an increase in the price the government must pay. Transparency, enforcement, and capacity were all reported as inadequate. More recent reports confirm that bidding

processes are still not well regulated, and the composition and procedures of tender committees are often opaque.[53]

Nevertheless, in key areas there is public access to government information. The Ministry of Finance website provides copies of the current and past state budgets. Government tax revenues by province appear on the website for 2007, though not for later years. The government has established an integrated accounting system (SIGFE) for all national and provincial government revenues and expenditures. A pilot version went online in 2008, and the full version became operational in 2009. There is no public access to SIGFE, however.

A November 2009 $1.4 billion stand-by arrangement with the IMF, which had been spurned during the oil price boom, put increased pressure on the government to improve transparency and accountability mechanisms. The agreement required publication of a 2008 audit of Sonangol and the timely public disclosure of oil revenues. The IMF encouraged but did not require that government expenditures be audited, and the government has since established an accounting system for public expenditure. It has also published oil revenues from 2007 onward on the Ministry of Finance website. Less detailed information, through 2007 only, is available for the state-controlled diamond sector.

Angola has not joined the Extractive Industries Transparency Initiative (EITI), but it has complied with most of its requirements on publishing revenue data. According to the World Bank, Angola "has done far more [in this respect] than other countries that have signed on to EITI."[54]

RECOMMENDATIONS

- The government should take steps to limit constraints on freedom of expression. Steps should include investigating and prosecuting the perpetrators of attacks on journalists; increasing transparency of media ownership arrangements; encouraging respect for editorial independence; and reexamining laws that make criticism a criminal offense.
- Efforts to strengthen the independence and resources of the judiciary should be stepped up, including training for judges and lawyers. The government should demonstrate clear respect for the principle of an independent judiciary at all levels.
- Electoral administration should be improved ahead of the next general elections in 2012 to ensure free, fair, and credible elections. In particular, the roles of the CNE and any other bodies with authority over elections, such as those the CIPE was given in 2008, should be clarified and strictly enforced.
- Improvements in the monitoring, control, and transparency of public expenditure, from Sonangol down to municipal government, should be encouraged and strengthened. Public officials at all levels should be held systematically accountable for the misuse of public resources.

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BANGLADESH

CAPITAL: Dhaka
POPULATION: 164.4 million
GNI PER CAPITA (PPP): $1,550

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	3.30	4.10
CIVIL LIBERTIES:	3.92	4.28
RULE OF LAW:	2.61	3.08
ANTICORRUPTION AND TRANSPARENCY:	2.49	2.54

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Fahimul Quadir

INTRODUCTION

Bangladesh continues to confront major challenges to fostering a culture of democracy, human rights, and the rule of law. Despite its return to constitutional democracy in 1991 after a series of military governments and strongman rule, the country still struggles to establish democracy among the political elite, who are hopelessly divided along partisan lines. Relentless bickering between the two rival political leaders, Sheikh Hasina Wazed of the Awami League (AL) and Khaleda Zia of the Bangladesh Nationalist Party (BNP), has brought the country to the brink of a total breakdown, particularly in 2007. Apart from philosophical differences—Bengali nationalism anchored in the principles of secularism on the part of the AL, versus Bangladeshi nationalism that supports the role of religion in constructing the national political identity for the BNP—personal enmity and a reluctance to come to terms with democracy have created an environment of mutual distrust that prevents political forces from collaborating and cooperating with each other, organizing collective actions, rationalizing the allocation of scarce resources, and making public institutions work for the common good.

Bangladesh plunged into a major political crisis in late 2006, when the BNP-dominated coalition government failed to reach an agreement with the 14-party AL-led Grand Alliance over the formation of a caretaker government to hold parliamentary elections in January 2007. The mainstream opposition took to the streets and the situation eventually deteriorated to political anarchy in December 2006 marked by widespread rioting and killing of political party

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members by rival groups. Taking advantage of the widespread political violence and deteriorating security situation, the military quietly seized power on January 11, 2007, and President Fakhruddin Ahmed declared a state of emergency. After taking over, Ahmed's military-controlled caretaker government cancelled a parliamentary election scheduled for that month and began a long process of reforming the country's electoral system and election commission, establishing legislation related to campaign finance and electoral transparency. Almost 18 months after the military takeover, the country held what were generally regarded as free and fair elections on December 29, 2008, bringing Sheikh Hasina's AL-led alliance to power.

However, the return of democracy has failed to establish institutions based on accountability, good governance, human rights, and the rule of law. Sheikh Hasina's administration has shown little interest in the creation of a rule-based structure of governance and has further politicized the civil bureaucracy and judiciary, created new opportunities for abuse of power, and weakened the ability of independent watchdog institutions, such as the Anti-Corruption Commission, to hold public officials accountable for their actions. In recent years, the country has also witnessed increased government intolerance of dissident voices, including trade unions, registering their concerns in a democratic manner.

ACCOUNTABILITY AND PUBLIC VOICE	4.10
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.40
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.00
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.00

After declaring a state of emergency in 2007, the caretaker government took measures to restore the Bangladesh Election Commission's credibility as a nonpartisan body. In association with the military and the United Nations Development Program (UNDP), the BEC spent almost 18 months preparing for the December 2008 parliamentary election. The commission created a new voter registry with some 81 million voters, 12 million less than the previous registry created by its controversial predecessor. The commission also undertook a massive campaign to produce picture identification cards, a first in the history of Bangladesh.

The military's quasi-authoritarian experiment ended with the much-anticipated parliamentary election on December 29, 2008. Despite some procedural irregularities, domestic and international election observers found that the results reflected the will of the voters.[1] Sheikh Hasina's AL-led grand alliance achieved a landslide victory, with 262 seats in the country's 300-seat parliament (popularly known as the *Jatiya Sangsad*). The AL platform emphasized

elimination of corruption,[2] promotion of judicial independence and impartiality, establishment of the rule of law, and de-politicization of the civil administration. The party's election manifesto also promised to strengthen the National Human Rights Commission and enhance press freedom, including by ending intimidation and persecution of journalists.[3]

In a break from the past, the election was relatively peaceful, possibly due to supervision by 50,000 troops, 75,000 police, and 600 members of the Rapid Action Battalion (RAB), along with other security forces. Nevertheless, the Election Violence Education and Resolution (EVER) program monitored violence in 40 of the country's 64 districts and reported some 110 incidents of election-related violence, causing bodily injuries to about 336 people.[4]

Prior to the election, the caretaker government amended the Representation of People's Order Ordinance (RPO) 2008, which barred loan defaulters and corrupt politicians from contesting elections. Some elites have used their political and personal connections to borrow massive sums of money from nationalized commercial banks, only to subsequently willfully default on their loans. Because of their political connections, these loan defaulters have historically enjoyed a high degree of impunity. Successive military and civilian governments and a network of unholy political alliances with mainstream political parties have given elites extensive leeway to default on loans and evade legal action.[5] Despite the strong anticorruption rhetoric, the caretaker government ultimately yielded to the pressure of mainstream political parties and significantly relaxed enforcement of the newly amended and more stringent RPO.[6] In the end, major political parties were able to nominate about 130 candidates for the 2008 parliamentary election who were either loan defaulters or had defaulted on their utility service bills.[7] Indeed, the RPO failed fundamentally to improve the election culture. According to a FEMA study, the BEC's inability to strictly enforce the RPO allowed political parties to "ignore and flout laws with impunity" in the 2008 parliamentary election.[8] Although the BEC theoretically enjoys political autonomy vis-à-vis the government, it often operates under the influence of the executive and is not adequately equipped to enforce electoral laws and regulations. Due to lack of enforcement, major political parties routinely violate existing electoral laws to win elections, including through vote-rigging, intimidation, and tampering with vote counting.[9]

The amended RPO also had little impact on campaign spending limits, which it set at $20,000. A large number of candidates spent at least three times that amount, and after extravagant election campaigns candidates were easily able to avoid submitting reports or providing information on their funding sources, which reportedly included big business, corrupt individuals, and industrialists who expected big political favors in exchange.[10] Bangladesh had no defined provision for submitting election expense reports until 1996, and then some 95 percent of candidates in the 1996 parliamentary election did not bother to submit an expense report to the BEC.[11]

Sheikh Hasina's administration has taken some measures, mainly nonlegislative, to enhance government accountability primarily through the "Framework of National Integrity Strategy" approved by the caretaker government in October 2008. The strategy is designed to ensure that the executive branch is "transparent, responsive, and accountable to people and the Parliament." The framework also underscores the need for an independent judiciary and an efficient and impartial public service.[12] However, not much has been done to translate such lofty promises into concrete action. The parliament is not yet capable of holding the prime minister, cabinet ministers, and other political executives accountable for their actions, partly because to date it has been little more than a rubber-stamp for the executive. Opposition members are either marginalized because of the prevailing "winner takes all" culture or focus more on confrontational politics than holding the executive accountable through fair, nonpartisan debate. Although the parliament chooses the president, that position remains largely ceremonial.

Impartiality and efficiency in the civil service are also a challenge, as "partisan allegiance" is often the chief characteristic for career advancement. Senior bureaucrats appear to spend much of their time supporting the ruling party, which is necessary to ensure timely promotion to lucrative and meaningful positions, yet no concrete measures have yet been taken to liberate the civil service from this partisan influence. Media reports claim that dozens of senior officials have either been promoted or made "officers on special duty" (OSD) "on the basis of political considerations" in recent years,[13] casting profound doubt on the possibility of a civil service based on responsiveness, honesty, and integrity. The country's judicial system faces similar challenges in acting as a check on executive power (see Rule of Law).

Civil society associations, especially nongovernmental organizations (NGOs), play a critical role in offering alternative solutions to issues of inequality, discrimination, and poverty. By broadening the mainstream development agenda, they have successfully increased legitimacy for antipoverty programs that are rooted in the priorities and realities of the poor. Many NGOs have succeeded in involving marginalized communities, including women and landless peasants, in decision-making processes. However, retaining their autonomy vis-à-vis the government is increasingly becoming challenging for those NGOs and advocacy groups that question the policies and practices of the ruling party. The March 2011 dismissal of Nobel laureate and political critic Dr. Muhammad Yunus as the managing director of Grameen Bank makes it apparent that the current government has little patience for dissident voices. Yunus's removal suggests that the current government will not hesitate to push forward state frontiers to maintain its control over civil space. The creation of the National Social Commission in April 2009 was also seen as a political move by the government to control both NGOs and the flow of foreign funds directed at different NGO programs, as the commission, composed of different government agencies, was given the power to cancel NGO registration.[14] As of March 15, 2011,

the commission cancelled the registration of 550 NGOs allegedly involved in corruption, antigovernment activities, patronizing militant organizations, and misuse of foreign funds.[15]

Despite repeated promises to promote freedom of expression, government actions in the last two years raise serious questions about its commitment to press freedom. Newspapers and TV stations must obtain government permission to operate, and the government can cancel publication rights at its discretion. The government has shut down two TV stations—Channel One and Jamuna TV—canceled the publication rights of the Bangla daily newspaper *Amar Desh*, and indirectly interfered with the publication of news items and editorials highly critical of government policies and programs. It has also made decisions to block Facebook and Youtube without reasonable grounds.[16] In addition, the government has significant control over several broadcast media outlets and owns the only national terrestrial channel, the public BTV. The government's long pattern of harassment of *Amar Desh* continued when it shut the paper down in June 2010. It also engaged in extensive legal harassment of the editor, Mahbubur Rahman, who is known to be a close ally of opposition leader Mrs. Khaleda Zia and a former energy adviser to the BNP government. Rahman was arrested on charges of fraud and defamation in June 2009. He was held on charges of sedition and reportedly tortured while in custody, then sentenced to six months' imprisonment on charges of contempt in another case.

A regional human rights organization claims that "the government has been suppressing the media in fear of criticism of its own actions that threaten the democratic process and the upholding of the rule of law in Bangladesh."[17] Criminal libel laws were used to silence voices critical of the government and key members of the ruling party. Draft legislation was proposed in December 2009 to prevent the arrest of editors, journalists, and other media actors for defamation charges, but the promising reform has not yet passed and arrests continue. Like previous governments, the AL government continues to intimidate pro-opposition journalists through arbitrary detention and prosecution. One local media freedom organization documented dozens of attacks and instances of intimidation in 2009 alone, most of which went unpunished.

The government's increasing conflict with the media is in part due to the partisan role played by a large number of media outlets. After returning from a recent trip to Bangladesh, an International Press Institute observer noted: "The vast majority of Bangladeshi newspapers have clearly taken a stand in favor of one of the two major political parties. Media independence is difficult to find in Bangladesh, where the external pressures on media outlets are numerous and strongly influence content."[18] Media owners and advertisers, which include government agencies, also have a great deal of influence over the content of publications by exercising their monetary power to shape news coverage. A great majority of media owners are businesspeople who are more interested in maximizing profit than developing a "thorough understanding of the intrinsic values of the media profession."[19] Moreover, since the state no longer has a

monopoly on print and electronic media, it now depends on advertising campaigns either to reward those media outlets that favor its programs and policies or to punish pro-opposition media outlets by depriving them of government-sponsored advertisements.

Recent proliferation of information and communication technologies, including the internet, has enabled democratic engagement for people in Bangladesh. The state only occasionally mediates access to the internet, especially when it wants to block particular views for political and cultural reasons. However, this marginal intervention is perhaps due to the fact that internet penetration is particularly low, at less than 1 percent of the population.

CIVIL LIBERTIES 4.28

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.00
GENDER EQUITY	4.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.75
FREEDOM OF CONSCIENCE AND BELIEF	5.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.00

Bangladesh's return to constitutional democracy provided some optimism for a gradual improvement in its rather dismal human rights record, yet significant change has not taken place. Extrajudicial killings by security forces, deaths in police custody, harassment of political opponents, arbitrary arrest and detention, and the use of the lower judiciary to serve partisan interests of the ruling party all continue. Despite the government's promise to stop and investigate extrajudicial killings, about 229 people died either in "crossfire" (exchange of gunfire between security forces and alleged criminal gangs) or in police custody in 2009; many of them were known to police for their alleged involvement with various criminal activities. Local and international human rights groups documented many of these deaths as arbitrary killings by law enforcement agencies, especially by RAB. For example, according to a report by legal aid and human rights NGO Ain o Salish Kendra, of the total, 147 people were killed by police and RAB. Between April and June 2010, the same organization reported 20 deaths in different prisons.[20] While government reports attribute most extrajudicial killings to crossfire, government organizations make little effort to properly investigate the causes of death and the government has shown continued reluctance to hold accountable those responsible. The number of people killed in crossfire and other events increased to 180 in 2007, when the military-backed caretaker government was in power. Extrajudicial killings had been even more frequent under the Zia leadership in 2005, when some 377 people were reportedly killed in crossfire and police custody.[21]

Unwarranted arrest, detention, and torture in custody to obtain a forced confession remain serious concerns. Opposition party members, journalists,

union leaders, and political activists are often subjected to warrantless arrest and brutal physical torture. The government continues to use the Special Power Act of 1974 and Section 54 of the Criminal Procedure Code to arrest without a warrant and to deny the right to bail. These laws also indirectly allow law enforcement agencies to torture detainees during interrogations. According to Human Rights Watch, "the bodies of those who are killed by RAB and the police regularly have physical marks and injuries indicating that they were subjected to torture."[22]

The recent arrests of both Moshrefa Mishu, president of the Garments Workers Unity Forum (GWUF), and well-known opposition member of parliament Salauddin Quader Chowdhury ignited a debate about the country's culture of impunity for the wealthy and powerful. Mishu was arrested without warrant on December 14, 2010, and denied bail. Advocacy groups claim that the government targeted Mishu for fighting for the rights of apparel workers. Chowdhury was arrested on December 16, 2010, and was tortured in police custody.[23] Both were held in custody until April 2011. These high-profile cases reveal the gross abuse of power by police; ordinary citizens experience similar police brutality and harassment that often go unnoticed.

The government's handling of the mutiny by members of Bangladesh Rifles (BDR), the country's border security guard unit, also raises serious questions. In February 2009, some BDR members participated in an uprising to protest poor salary and benefits and the abuse of power by senior officials, who are recruited from the regular army and who allegedly treat the BDR as an inferior organization. The mutineers killed 74 people, including 58 army officers. After their surrender, security forces reportedly killed between 59 and 78 BDR soldiers in revenge.[24] Human Rights Watch documented extensive evidence of torture on the bodies of those who died or were detained.[25] The government formed a three-member committee to investigate allegations of killings of BDR personnel in police custody, but while the committee's report acknowledged two deaths as a result of torture, it did not attribute guilt, and the government has done virtually nothing else to address the allegations. Human rights groups questioned the prospect for fair trials of the BDR mutineers, as confessions were reportedly obtained through severe physical torture.[26]

Prison conditions remain poor despite some recent attempts, especially by the caretaker government, to improve the prison environment. Almost all prisons are overcrowded and lack acceptable sanitary facilities. The inmates are not properly nourished and most prisons lack adequate medical facilities. Rampant corruption in the prison system is partly to be blamed for the inhumane conditions.

The National Human Rights Commission, which the caretaker government established through the 2007 Human Rights Commission Ordinance, has yet to emerge as an effective body to protect human rights. The commission has a broad mandate that includes monitoring Bangladesh's human rights record, issuing summons, and resolving violations through mediation and conciliation.

The current government has done very little, however, to genuinely empower the commission to undertake these tasks. As of the end of 2010, the organization remained only semi-functional.

Combating terrorism appears to be an AL government priority. Political violence and attacks by Islamist extremist groups reached a climax in August 2005, in a series of bombings across the country. The government banned two of the largest extremist groups in 2005 and continued a heavy crackdown into the following year. While these efforts were quite effective in disabling the extremist organizations, the threat of terrorism remains a legitimate if somewhat lessened concern. In addition to passing the 2009 Laundering Prevention and Anti-Terrorism Act, the current government constituted a high-level committee on Anti-Money Laundering and Counter Terrorism Financing headed by the finance minister and banned a number of religious organizations for their alleged involvement in terrorist activities. It also instructed law enforcement agencies to act swiftly and decisively against all terrorist groups.

A 2010 U.S. State Department report claims that Bangladesh remains a source and transit country for human trafficking. Thousands of people are trafficked each year by criminal groups for the purposes of forced labor and commercial sexual exploitation. Although the state has taken some measures to address human trafficking, it has not passed any law to criminalize forced labor, nor has it increased efforts to prosecute traffickers.[27]

Discrimination and violence against women remain a major impediment to gender equity in Bangladesh. One women's rights organization noted that 2010 was the worst in three years in terms of violence against women, including steep increases in reported rapes, acid attacks, dowry-related violence, torture, and other attacks against women.[28] The criminal justice system often lets perpetrators go unpunished, especially if they are members of the ruling party or well-connected individuals who offer bribes in exchange for impunity.[29] Victims and their families often must contend with ongoing violence on the part of perpetrators in an effort to dissuade them from lodging formal complaints. Indeed, nine men were killed for protesting violence against women and girls in 2010 alone.[30] Despite its rhetoric, the government has not undertaken serious efforts to address violence against women and gender discrimination.

About 88 percent of Bangladesh's population is Muslim. Hindus constitute another 10 percent and Christians, Buddhists, and indigenous communities make up the remainder. While Bangladesh has a long history of religious tolerance, minority groups have experienced political and social discrimination in the recent past. In response, the AL government has taken concrete measures to ensure that ethnoreligious minority groups can freely practice their faiths, have equal access to government jobs, and play a role in national decision-making bodies, including the cabinet, though they still remain underrepresented. In a landmark August 2010 ruling, the Supreme Court struck down the fifth amendment to the Constitution, which had allowed for the formation of

religious political parties. The verdict laid the foundation for restoring secularism as a state principle in the Constitution and was wholeheartedly welcomed by various secular forces, including ethnoreligious minorities, as it concretized the possibility of removing Islam as the religion of the state.

An increase in attacks against minorities was reversed in 2009, when the AL government established a more pro-minority stance. This new approach included increased police protection of groups like the Ahmadiyya sect, a community of 100,000 that had been the target of extremist attacks by those who consider Ahmadis to be heretics. The AL administration has also appointed members of religious minorities to leadership positions in the government. All of these efforts are part of the AL's broader priority to promote secularism as a constitutional principle.

The government has been similarly focused on improving the rights of minority groups, though much work remains to be done. The government's decision to pull the military out of the Chittagong Hill Tracts (CHT) in July 2009 was enthusiastically endorsed by different ethnic communities that have been fighting for peace, security, and autonomy since the mid-1970s. Many saw the withdrawal of the military as an indication of the AL's willingness to work closely with different ethnic groups in the CHT in order to put forward a pragmatic, mutually agreeable agenda for peace. The administration has also reconstituted the Land Commission to resolve land disputes in the CHT and approved the Vested Property Return (Amendment) Act 2009 for restoring property that was seized from religious minorities.

The Bangladesh Constitution guarantees the right to form associations and unions, but repressive measures against garment worker trade unions, who are demanding improvements in working conditions, have revealed a major inconsistency in the government's labor rights policy. Sheikh Hasina's administration put itself at odds with trade unions when, instead of mediating disputes between the apparel workers and garment industry owners, the government used law enforcement agencies to harass union leaders, arrest them, and file criminal charges against some.[31] The AL government's decision to go after trade union leaders who campaigned for decent minimum wage ignited a debate not only about the irrelevance of existing laws that often favor employers, but also about the role of a democratically-elected regime in protecting vulnerable workers from manipulative practices of industries and business conglomerates.

Freedom of assembly improved considerably in 2008 with the end of extensive restrictions that had been in place under emergency rule after the dissolution of the caretaker government. However, although the right to freedom of assembly now exists under the law, civil rights groups continue to question the government's use of excessive force to suppress protests. For example, the brutal police attack on renowned academic and activist Professor Anu Muhammad and other conservationist protestors in September 2009 drew widespread criticism.

RULE OF LAW	3.08
INDEPENDENT JUDICIARY	3.40
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.40
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.50
PROTECTION OF PROPERTY RIGHTS	4.00

After years of fierce debate and delays, the military-backed caretaker government formally announced the separation of the country's subordinate judiciary from the executive on January 16, 2007. The Code of Criminal Procedure (Amendment) Ordinance finally came into effect on November 1, 2007, a decision welcomed by civil society organizations and lawyers as the first step toward an independent judiciary. Under the new law, the Supreme Court appoints all lower court judges and judicial magistrates and holds them accountable for their actions, as opposed to appointment by the Ministry of Establishment, headed by the prime minister, which previously had given the executive branch political control over the lower courts.

Nevertheless, direct and indirect political influence often makes it difficult for judges to make impartial, fair decisions based on the evidence and the law. The government's decision to send two judges into retirement in accordance with Section 9(2) of the Public Servants (Retirement) Act of 1974 on July 30, 2009, was an example of the political use of existing laws to punish judges who are unwilling to listen to the executive.[32]

Despite the attempt to make the judiciary functionally independent, controversy surrounding the appointment of judges—especially the Chief Justice and other judges in the High Court, one of two divisions of the Supreme Court—continues to polarize the country. Appointment of Supreme Court judges, which is done by the president after extensive consultation with the prime minister, continues to be politicized. Serious questions were raised when President Zillur Rahman appointed Justice A.B.M. Khairul Haque, a judge of the Appellate Division of the Supreme Court, as the 19th Chief Justice of Bangladesh on September 26, 2010. The lack of clarity of Article 95 of the constitution, which entrusts the president with the power to appoint the chief justice (the most prestigious position in the country's judicial system) but falls short of explaining the consultation process for the appointment, leaves plenty of room for political maneuvering. It was alleged that, in selecting Haque, the president superseded two senior judges of the Appellate Division. The Supreme Court Bar Association (SCBA), headed by members affiliated with opposition parties, condemned the "supersession of the two judges senior to the newly appointed chief justice. They [the pro-opposition office-bearers] termed the appointment as politically motivated and added that it tarnished the image of the apex court."[33] Pro-government lawyers, however, hailed the president's decision.

The separation of the judiciary from the executive has not changed the practice of appointing additional judges to the High Court based on political considerations; some observers claim that the politicization of the judiciary begins at this stage. Article 98 of the constitution does give the president the power to appoint additional judges to the High Court Division when seats of additional judges are vacant, and it is alleged that successive AL and BNP governments have appointed party loyalists to these posts. For instance, the leaders of the SCBA protested the BNP decision to appoint 19 additional judges to the High Court Division in 2004, a move they argued was politically motivated. Similar questions were raised in early 2010 when the AL government appointed 17 additional judges to the High Court Division. Two of the newly appointed additional judges became the center of political controversy, which led to the refusal of the former chief justice to administer the oath to advocates Ruhul Quddus and M. Khasruzzaman.[34] Critics view political appointments as an attack on the independence of the country's judicial system, limiting its ability to rule against the executive in politically-controversial cases.[35]

Moreover, the 2008 advent of a democratically-elected regime has not changed the country's longstanding tradition of appointing party-affiliated lawyers as public prosecutors. Following the practices of the past, the AL government quickly replaced the entire group of public prosecutors with members or genuine supporters of the governing party, who allegedly devote much of their time to the protection and promotion of partisan political interests. According to a report published by the Asian Human Rights Commission, the political appointment of public prosecutors often ensures "that the judicial process serves the interest of the government as much as possible and perverts the course of justice."[36] A national household survey conducted between June 2009 and May 2010 identified the judiciary as the most corrupt service sector in the country. Corruption is pervasive throughout the judiciary, including in the High Court. Some 88 percent of people who turned to the judicial system became the victim of widespread corruption.[37] Corruption and partisan politics are two of the main reasons why people are often denied access to justice, as they do not have access to independent counsel and fair trials.

In 2009, the AL government began a massive plan to withdraw what it considered to be politically-motivated cases filed against politicians and others under the code of criminal procedure, regular penal code, and the Anti-Corruption Commission Act. A committee was set up under the leadership of Quamrul Islam, state minister for law, justice, and parliamentary affairs, to review applications for such cases.[38] As of March 2011, the committee had withdrawn some 4,687 cases, most of which involved members of the ruling party.[39] At its first meeting the committee dropped 12 corruption cases against Prime Minister Sheikh Hasina as well as other cases filed against senior party leaders, known party supporters, and their relatives. The committee has come under sharp criticism for reversing the significant inroads the caretaker government had made in targeting official corruption in favor of political considerations.

For example, the committee has been reluctant to drop criminal charges filed against opposition party leaders and has refused to withdraw charges against journalists and human rights activists. This includes journalist Jahangir Alam Akash, whom the caretaker government reportedly falsely accused of protesting extrajudicial killings.

The armed forces' role in government came to a formal end with the December 2008 election, and the post-emergency civilian regime in Bangladesh seems to enjoy a great deal of autonomy vis-à-vis the military for the exercise of government authority. However, lack of effective oversight mechanisms,[40] involving both state and civil society associations, continue to make it challenging for the country to hold security forces accountable for their actions. Civilian bodies with a clear mandate for protecting ordinary citizens from institutional acts of violence and coercion are virtually nonexistent or nonfunctional in Bangladesh. The oversight bodies that exist, such as the judiciary through the penal code and civil courts, lack adequate power to monitor the arbitrary exercise of force by security sectors, including the military, police, and RAB. Civil society groups and the media also have difficulty ensuring that security forces respect basic human rights and freedoms. Governments often turn a blind eye to media reports and protests organized by credible, nonpartisan civil society associations that demand democratic control over the country's security forces, in part due to the ruling party's excessive reliance on security forces, especially RAB and police, to serve its parochial interests. The political use of law enforcement agencies coupled with political patronage of security officials have also negatively affected the ability of security forces to operate in a manner that is consistent with their constitutional mandate.[41]

In the last few years, the country has made very little progress in either enforcing property and contract rights or facilitating private economic activity by developing a reliable and effective legal system. The World Bank's Country Policy and Institutional Assessment (CPIA) rating gives Bangladesh a score of 3.0 on a 6-point scale in the property rights and rule-based governance category. Bangladesh also ranks poorly in the World Property Index, with only 20 points of a possible 1,000.[42] The AL government has taken some measures to amend the Vested Property Act, which traditionally allowed the state to unjustly confiscate property from individuals deemed enemies of the state.[43] There have been some reports of Bengali-speaking settlers encroaching on tribal lands in the CHT, though land seizure does not appear to be a problem elsewhere in the country.[44]

ANTICORRUPTION AND TRANSPARENCY	**2.54**
ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.00
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	1.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	3.50
GOVERNMENTAL TRANSPARENCY	3.33

Bangladesh's struggle to encourage pro-poor economic growth continues as corruption remains pervasive throughout government and society. Public and private sector institutions suffer from corrupt practices that severely undermine the prospect for fostering a culture of good governance. Corruption is so widespread that most people now view it as a fait accompli. This was not the case after the military takeover in January 2007, when the military-backed caretaker government began prosecuting corrupt politicians, high-level government officials, and business magnates. The caretaker government also embarked on a massive reform agenda aimed at making government bureaucracies more efficient, accountable, and transparent. Although critics viewed the caretaker government's institutional reform program as part of the military's standard populist narrative of patriotism and nationalism, it took concrete measures to empower the Anti-Corruption Commission (ACC) to pursue corrupt organizations, institutions, and individuals and obtain convictions against them. However, the country's return to electoral democracy changed the political landscape in such a way that institutional reform in general, and tackling rampant corruption in particular, was no longer a top priority. The AL government's focus seems to have shifted to regime consolidation rather than strengthening of public institutions. As noted above, the Sheikh Hasina administration moved to withdraw a large number of corruption cases filed by the ACC against the party's senior leadership, making it evident that curbing high-level corruption is not the government's immediate concern.

The office of the comptroller and auditor general of Bangladesh has not yet emerged as an independent institution capable of holding government leaders and institutions accountable for the inappropriate use of public funds. It does not have a fully developed complaint mechanism to deal with allegations of the misuse of public resources. Although civil servants and elected officials, including the president and prime minister, are required to declare their income and assets, no real effort is made to obtain objective and fact-based information to ensure the empirical validity of the disclosures. The Mahbubur Rahman case discussed above highlights the challenges faced by journalists in serving as reliable sources of information on public sector corruption.

On April 26, 2010, the cabinet approved a set of proposals for amending the anticorruption law designed to bring the ACC under the political control of the government. The ACC will now report to the president (who acts almost entirely under advisement of the prime minister) and will need government permission before it files a case against any government official. Provisions are also made for the government to appoint the ACC's secretary. Initiating and filing a corruption case will be much more challenging due to the stipulation that filing a false case may land an official in jail for five years. Political observers and the international donor community, including the EU and the World Bank, believe that such political measures to control the ACC will significantly weaken it. For instance, Iftekhar Zaman, executive director of Transparency International Bangladesh, claimed that the "ACC's accountability will be affected by political

influence if it is made accountable to the president. This is because in parliamentary democracy, the president acts on all the issues in consultation with the Prime Minister."[45] The World Bank commented, "Bangladesh government's move to amend the Anti-Corruption Commission Act will weaken the independent anti-graft watchdog and undermine its ability to investigate corruption."[46]

The weakening of the ACC could also negatively impact the country's ability to create a competitive market and favorable investment climate. Civil bureaucrats and political officeholders are likely to take unfair advantage of the country's cumbersome license regime, which requires companies to go through a rather lengthy and costly process of government approval. In the absence of functional and developed e-governance (which is currently under development with the support of UNDP), business groups will have to make arrangements for face-to-face encounters with public officials that will almost inevitably facilitate bribe solicitation.[47] Corrupt officials will also find it relatively easier to maintain the country's dysfunctional public contracting culture, in which "reports of corruption in the awarding of public and private tenders are frequent. Collusion between political leaders and bureaucrats in public contracting occurs in order to favor particular bidders."[48]

Bangladesh still has a relatively large number of state-owned enterprises (SOEs) in such sectors as agriculture, finance, industry, power, gas, transportation, trade, and water. Despite recent efforts to improve their governance structures, many of the SOEs are poorly managed, inadequately monitored, and badly regulated. The absence of effective oversight mechanisms, including performance assessment systems, makes it easier for both managers and boards of directors to use SOEs to their own personal gain.

In a significant effort to increase transparency, the government passed a Right to Information Act in July 2009 that mandates public access to all information held by public bodies. The act simplifies the fees levied for acquiring information and grants greater independence to the Information Commission, which oversees implementation and promotes the law. The Access to Information Program (A2I) is designed to connect citizens and public sector institutions, which will set the stage for Bangladesh to introduce procedures for access to government information.

Ordinary citizens and business organizations currently face a huge challenge in finding reliable, timely, and comprehensive data on government documents, programs, and activities such as the government's financial operations, its procurement practices, and public sector accounts.[49] Parliamentary committees and civilian watchdog groups remain weak or ineffective in demanding transparency and greater accountability in government activities. In an encouraging move, Prime Minister Sheikh Hasina's "Digital Bangladesh" program theoretically opens up some concrete possibilities for increased transparency; while the current emphasis of this program is on boosting the use of information and communication technology in order to create a knowledge-based economy, the concept of "Digital Bangladesh" has great potential for creating new structures

through which the government can make information on its policies and functions, including fiscal and economic decisions, readily available to the public at large.[50] The country has also made some initial progress in building accounting and fiscal reporting standards set by the International Monetary Fund. However, much needs to be done to improve transparency in the country's fiscal affairs.

RECOMMENDATIONS

- Electoral spending limits on political parties and election candidates should be strictly enforced. The BEC must be equipped with adequate resources to audit election expenses as well as to prosecute all violators regardless of their party affiliation and social status.
- A new empirically-driven performance evaluation system should be introduced to end political patronization of civil administration.
- Immediate actions need to be taken to criminalize all forms of custodial torture. This may include repealing Article 46 of the Constitution as well as Sections 132 and 197 of the Code of Criminal Procedure.
- A Supreme Judicial Commission should be created to deal with the appointment of judges. The commission should be entrusted with the responsibility for both identifying and recommending suitable individuals to the president.
- Recent decisions to amend the Anti-Corruption Commission Act designed to weaken the power of the Anti-Corruption Commission must be reversed to ensure the ACC's complete political independence. The ACC should be made accountable to a special parliamentary committee representative of different political parties with members known for their integrity.
- The government must take actions, including further strengthening the office of the comptroller and auditor general, to increase transparency in public procurement, financial management, and public expenditures.

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BHUTAN

CAPITAL: Thimphu
POPULATION: 700,000
GNI PER CAPITA (PPP): $5,290

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	3.39	4.30
CIVIL LIBERTIES:	3.50	3.80
RULE OF LAW:	4.73	4.89
ANTICORRUPTION AND TRANSPARENCY:	4.29	4.58

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

INTRODUCTION

Since 2007, Bhutan has undergone a major political transformation. The Bhutanese state moved within a period of ten years from a monarchical government into a parliamentary democratic monarchy. For the first time since Bhutan's unification in the 17th century by the Tibetan religious hierarch, Ngawang Namgyal, there is a clear separation of religion and state and monastic representation in the main institutions of government has been removed.

The transformation of the political landscape was accompanied by the abdication of the fourth king, Jigme Sangye Wangchuck, in December 2006 in favor of the then Crown Prince, Jigme Khesar Namgyal Wangchuck, who became the fifth king. This unforeseen move was perhaps a signal by the fourth king marking the wider political transition already unfolding. The fifth king oversaw the first elections and on July 18, 2008, formally signed Bhutan's first written constitution, completing the political transformation that began in 1998 when a Cabinet of Ministers replaced direct royal rule. In November 2008, the coronation of the fifth king in Thimphu also served as a belated celebration of the centenary of the Wangchuck dynasty, which was established in December 1907.

Despite the ongoing development of a democratic system, no permanent solution has been found for the Nepali Bhutanese, or Lhotshampa refugees. In the 1990s, approximately 90,000 Nepali-speaking Bhutanese were, it is claimed, forcibly evicted from the country. Since 2008, the United States, Canada and other countries agreed to accept Lhotshampa refugees though many remain in refugee camps today, awaiting resettlement or repatriation.

It is still too early to say how Bhutan's political transformation will evolve. The developing democracy has only two political parties, both dominated by royalist sympathizers, and lacks an effective opposition. Bhutanese appear to have cautiously embraced the top-down democratization process, but Bhutan

faces a range of other challenges—notably a series of earthquakes, the global economic downturn and its impact on the tourism industry, and intermittent acts of political violence by antigovernment groups—that will test the newly democratized government.

ACCOUNTABILITY AND PUBLIC VOICE 4.30

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.00
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	3.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.86

As outlined in the country's new constitution, Bhutan has a bicameral parliament comprising the National Council or upper house, and the National Assembly or lower house. The party that wins a simple majority is the governing party and its leader acts as prime minister.

The king is Bhutan's head of state and appoints the heads of national commissions, the attorney general, and members of the Supreme Court. The king can object to or amend legislation and return it to the parliament for review, but after it has been reconsidered and resubmitted, the king is obligated to sign it into law. Furthermore, the king's cabinet nominations are subject to the National Assembly's approval.

The creation of a new electoral framework for regular, free, and fair elections based on universal and equal suffrage took place between 2005 and 2007 and represented a major transformation of the Bhutanese political landscape. The Election Commission of Bhutan (ECB) is responsible for management of the electoral system, namely the creation of electoral rolls and the oversight of parliamentary and local elections (for the position of *gup,* or the head of local administrative units). It was also responsible for a referendum on the new constitution. The ECB was established on January 16, 2006, and currently comprises the chief election commissioner and two election commissioners, along with supporting staff. The commissioners were recommended for appointment by an independent committee and confirmed by the king on December 31, 2005. The ECB has maintained independence from political interference since its creation. In addition, the UN Development Program (UNDP), in participation with the Japanese government, has been working with the ECB since 2009 to enhance its capacity to ensure the conduct of free and fair elections at local levels and promote awareness on rights and duties through civic education.[1]

The ECB approached the establishment of an electoral system with two main concerns: the basic electoral education of the Bhutanese people, and the creation of an effective voter registration process. Throughout 2006 and 2007, election officials worked on creating the country's first voter database. The ECB believed that approximately 400,626 Bhutanese would be eligible to vote in the

2008 general election. Following several rounds of voter registration, 318,465 voters were registered by March 2008.

The registration process was not without incident. A high percentage of voter registration forms did not contain all the information required. Further problems were created by delays in the provision of new citizenship cards, which were required in order to register. The ECB faced major challenges to reach all of communities to ensure that each person had the correct documentation in order to be registered. However, despite the difficult terrain in Bhutan and the number of remote rural communities, registration in rural areas was higher than in the urban centers. It appears that either a significant number of rural-urban migrants did not understand that they were required to register in order to vote or that there was confusion over where they should register.

Mock elections were held in April 2007 to educate the electorate about the voting process and enable the ECB to identify structural problems that needed to be resolved prior to the 2008 general election. There were no registered political parties at the time of the mock elections, so four dummy parties were created, each of which was associated with a particular set of values. The traditionalist Druk Yellow Party received 44.3 percent of the vote, while the pro-industrialization and development Druk Red Party received 20.38 percent. The Druk Yellow party went on to secure 46 of the 47 constituencies in a runoff. These two mock parties were in reality very similar to the two real political parties that were created later in 2007. Election observers from the UN, Denmark, and India attended the first round of the mock elections and did not find any major irregularities.[2]

The formation of political parties became legal in April 2007. Political parties must register with the ECB and party representatives who wish to stand in elections must not have a criminal record and must have acquired tertiary-level education. Although a number of political parties emerged in the second half of 2007, only two parties ran in the elections: the Druk Phuensum Tshogpa (DPT), led by the former prime minister, Lyonpo Jigme Y Thinley, and the People's Democratic Party (PDP), led by another former minister, Lyonpo Sangye Ngedrup. The two parties campaigned on similar messages of unity and development and both proclaimed loyalty to the royal family, leaving little ideological contrast between the two parties.

A third party, the Bhutan People United Party (BPUP), was disqualified from competing in the elections on the grounds that it lacked the requisite member diversity and that its ideology was unclear. The BPUP had declared itself to be a party for the *nyamchung* (downtrodden) and, under Article 15(4) (b) of the constitution, membership of a political party may not be based on "region, sex, language, religion or social origin." The BPUP was held to be in breach of this article.

National Council elections were held in December 2007. The National Council is a nonpartisan body that has both legislative and review functions

and can initiate or prepare legislation, with the exception of monetary and financial bills. Of the 25 members, 6 are women. A simple majority elects 20 of the members from each of the 20 *dzongkhag* (districts), while the remaining 5 are appointed by the king.

The National Assembly has 47 representatives, all of which are elected on the basis of a first-past-the-post system in which a single member represents the constituency. According to the electoral framework, elections for the National Assembly are held in two rounds: in the first, voters select the party of their choice, and in the second, candidates from the two parties with the most votes compete. However, in the first general election for the National Assembly, held on March 24, 2008, only two parties competed, eliminating the need for a first round. Turnout was very high, at 79.4 percent. Despite predictions of a competitive race, and the fact that the PDP received 32.9 percent of the overall popular vote, the DPT secured 45 of the 47 seats in the new National Assembly.[3]

International observation reports of the elections indicated no major irregularities, but stressed the importance of a genuine choice among alternative ideological perspectives.[4] Both the DPT and PDP published manifestos, but the substantive differences between the parties were difficult to delineate. Both party leaders made it publicly known that they would follow the King's desire that they work in the "pursuit of Gross National Happiness." As a result, the elections were perceived as focusing on the personalities of the party leaders. Although the party candidates made strenuous efforts to reach as many communities in their prospective constituencies as possible, it was the role of the two party leaders that appears to have shaped both the campaign and voting.

There were 42 international and 52 domestic observers. From the reports of the election observers, the elections ran smoothly in all 20 dzongkhag.[5] However, recommendations by the international observers included a wide range of changes, including boosting capacity of the ECB and a more proportionate system for the allocation of seats.[6] Furthermore, the high voter turnout is somewhat mitigated by the fact that 82,000 Nepali Bhutanese living within the country were declared nonnationals under the 2005 census and were therefore ineligible to vote.[7] The lack of inclusiveness in the democratization process was reportedly the rationale for four bomb attacks on January 20, 2008, which the government claimed were launched by ethnic Nepalis protesting their exclusion from the electoral system.[8] Though the attacks caused minimal damage, they drew attention to the ongoing tension between the government and groups that are marginalized from the Bhutanese state.

Irregularities in the vote tallying process arose after a recount was conducted. It was found that in Phuntsholing, the tally of votes was miscounted and prematurely called in favor of the PDP.

In 2002, Bhutan held its first universal suffrage local elections. Despite the success of the national elections, however, local elections originally scheduled for late 2008 continue to be delayed. In May 2010, the ECB announced that

the process of preparing a voter list for local elections could not be completed until other work, including the revision of local-level district boundaries, is finalized. The process of "delimitation" follows from the Local Government Act 2010. In addition, the ECB has noted that extra time is required to educate people about the changes, conduct training, and address various logistical problems.[9]

Following the signing of the constitution in 2008, the Royal Civil Service Commission (RCSC) members submitted their resignations. Under Articles 2(19)(g) and 26(2) of the constitution, the right to appoint the chairperson and members of the RCSC rests with the king. In February 2009, the new commission and a new secretary were formally installed. The RCSC has developed a clear process of selection through competitive examinations, with a new exam introduced in 2008. Promotion is based on merit and there has been a steady training program to ensure professionalism across the RCSC.[10]

The state generally does not interfere with civil society organizations, though this is potentially because very few controversial or overtly political groups exist. The 2007 Civil Society Organization Act and the resultant creation of the Civil Society Organization Authority provided the first legal framework to support nongovernmental organizations (NGOs), and there is a growing awareness of the importance of NGOs in the development of democratic procedures and their role in strengthening democratization in Bhutan. A number of donor organizations, notably the United Nations, work closely with NGOs, reflecting the positive relationship between donors, the national government, and NGOs. Key civil society organizations (for example RENEW, an NGO working to promote women's education and empowerment) have played an important role both in developing and delivering a range of services and in influencing and working with government officials.

Bhutan has seen a substantial increase in the range of media outlets in the last few years. The formerly state-run Bhutan Broadcasting Service (BBS) is now a private corporation, marking the end of state media control. Nevertheless, it is currently the only service to offer both radio and television and is the only television service to broadcast from inside the Bhutanese border. In February 2008, BBS began an online radio service as well. Meanwhile, print and online media sources in Bhutan have proliferated over the last few years, replacing the monopoly of state-owned *Kuensel* as the only newspaper in the country.

Journalists are free from extralegal intimidation, arbitrary arrest, and physical violence. The state does not censor the media, but there is undoubtedly a substantial degree of self-censorship regarding culturally-sensitive issues. The media's role in the promotion of democratic values and debate is still embryonic; it will likely play an increasing role as the new party system becomes embedded and a new political consciousness emerges across Bhutanese society. Internet is becoming more widespread in the main towns and is free from state censorship.

CIVIL LIBERTIES 3.80

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	5.00
GENDER EQUITY	4.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	2.25
FREEDOM OF CONSCIENCE AND BELIEF	5.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	2.75

The 2008 constitution sets out for the first time the fundamental rights (Article 7) and duties (Article 8) of Bhutanese citizens. Article 7(1) of the constitution states that "All persons shall have the right to life, liberty, and security of person and shall not be deprived of such rights except in accordance with the due process of law." The death penalty was formally abolished in March 2004 and Article 7(18) affirms that no person will be subject to capital punishment. Similarly, torture is officially prohibited under Article 7(17), together with the use of inhumane or degrading treatment. There have been reports, however, that officials use torture in Bhutanese prisons, particularly with political dissidents.

The High Court and the judiciary have been proactively seeking to educate ordinary people about their rights and responsibilities through meetings organized in local communities. A key component of these meetings is to ensure that people understand their options for redress not just from violations committed by their neighbors but also with respect to the state. Crime levels remain low, although there are increasing reports of drug-related crimes, notably in Thimphu and Phuntsholing. There are no state-sponsored attacks on activities or political opponents and few reports of arbitrary arrests. Bhutan allows the International Committee of the Red Cross to visit and inspect its prisons annually and conditions were found to be generally acceptable in 2009.[11]

Gender equality in primary and secondary education has been achieved, with the proportion of girls equal to that of boys, but there remains a lag in terms of the ratio of females to males in tertiary institutions. The constitution allows for female members of the royal family to inherit the throne. Nevertheless, female representation in national and local government remains low. At present, only 10 of the 72 MPs are women, and there are no female cabinet ministers. At the local level, there remain very few women elected as gups. However, the percentage of civil servants who are women has increased from 19 percent to 29.5 percent. Employment remains primarily agriculture-based, but unemployment among urban women is significantly higher than among men, at 9.5 percent compared to 5.3 percent.[12] Two key NGOs, the Tarayana Foundation and RENEW, are actively promoting programs to empower Bhutanese women. The EU Election Observation Mission report recommends that political parties consider voluntary quotas for women candidates and that the election administration seek to ensure that women are well represented among election officials.[13]

Under Article 9(17) of the constitution the state will "endeavor to take appropriate measures to eliminate all forms of discrimination and exploitation against women including trafficking, prostitution, abuse, violence, harassment and intimidation at work in both public and private spheres." There are a range of organizations that actively promote equality and empowerment, for example the National Commission for Women and Children (NCWC), set up in 2004. These organizations emphasize improving child and maternal health, and recent indicators suggest that progress has been significant on lowering maternal mortality and improving under-five infant survival rates.[14] The National Assembly has unanimously endorsed the two Convention on the Rights of the Child Optional Protocols on the sale of children, child prostitution, and child pornography and the involvement of children in armed conflict. In addition, two draft bills under consideration, the Child Care and Protection Bill (CCPB) and the Adoption Bill, provide a comprehensive legal framework for child protection.

Although there is no specific law protecting Bhutanese citizens with disabilities, there is no evidence of official discrimination. The government seeks through the Disability Prevention and Rehabilitation program to provide medical and vocational rehabilitation and promote the integration of disabled children into schools.

Bhutan has three main ethnic groups and its people speak 19 languages. The majority of Bhutanese follow Himalayan Buddhism, notably the Druk Kagyu and Nyingma schools. The majority of Lhotshampa are Hindu, and there is a small, though gradually growing, number of Christians in the country. Article 7(4) of the constitution sets out the rights of freedom of conscience and belief for all Bhutanese. It acknowledges that "Buddhism is the spiritual heritage of Bhutan" (Article 3(1)), while specifically refraining from declaring Buddhism to be the official state religion on the grounds that recognizing Buddhism could create social division within the country. This marks a major transformation in Bhutan's political history, as the system of government intertwined secular and religious affairs beginning in the 17th century, with the unification of the country. Even during the period of modernization introduced by the third king during the 1950s and 1960s, monastic representation in government continued. It was not until the dissolution of the last National Assembly in 2007 and the move toward a newly constituted National Assembly that no places were reserved for the State Monk Body.

However, although the Bhutanese constitution sets out official indifference to religion and recognizes religious freedom and equality, the apparently secular nature of the new Bhutanese state is affected by the following considerations: the king must be Buddhist (Art. 2(1)), although the monarch will also act as protector of all religions (Art. 3(2)); Buddhist monks and nuns are prohibited from voting or standing as candidates for office (Art. 3(3)); and the state continues to provide adequate funds and facilities to support the Zhung Dratshang

(Monk Body) (Art. 3(7)). However, the state does not involve itself with the appointment of spiritual leaders or the internal organization of the Monk Body.

All religious groups are able to fully practice their faiths. However, while the king is to be regarded as the protector of all religions and of freedom of belief (Article 7(3)), there remains a prohibition on proselytizing. In addition, it is unclear whether the exclusion of Buddhist monks and nuns from voting or standing as candidates extends to other religions.

As noted above, Bhutan's most significant human rights problem relates to ongoing reports of discrimination towards the Lhotshampa community. Tensions between this group and the royal government began to rise in the 1980s, following the redefinition of the legal requirements for Bhutanese citizenship in 1985. Tensions erupted in the early 1990s and approximately 90,000 Lhotshampa either left or were expelled from Bhutan. For Lhotshampa remaining in Bhutan those who are unable to claim full citizenship are permitted to reside in the country but are not classified as citizens. Article 6 of the constitution sets out the basis for full citizenship: being born to two full Bhutanese citizens; being born in Bhutan prior to December 31, 1958, and appearing in government records; or by naturalization. This can cause problems for those individuals who have permission to reside but are not recognized as Bhutanese citizens.

The right to freedom of association has been formalized under Article 7(12) of the constitution, which provides that "Bhutanese citizens shall have the right to freedom of peaceful assembly and freedom of association." However, membership in associations that are deemed "harmful to the peace and unity of the country" is prohibited. This caveat mirrors the prohibition on the formation of political parties based on ethnicity, religion, or region.

The introduction of the Civil Society Organization Act 2007 was a major step forward for civil groups in Bhutan. The act sets out the scope of two new forms of civil society organizations, for "public benefit" and "mutual benefit." The former refers to those civil society organizations that assist a section of society; the latter represent the interests of their members, for example a particular profession or business. The act was under consideration for a number of years and uncertainty about its implementation probably inhibited the development of civil groups.

The Civil Society Organization Act also sets out the role and function of the Civil Society Organization (CSO) Authority, which is responsible for oversight and implementation of the act. Members of civil society organizations elected the authority's five members in March 2009, and the organization was formed the following month with 28 member organizations. Only one of the listed members was from eastern Bhutan, with the remaining 27 located in western Bhutan.[15]

The constitution does not specifically provide for a right to peaceful demonstrations, and whether this right exists remains unclear. To date, public demonstrations and protests have not been part of the Bhutanese political culture. As the wider society becomes more accustomed to the new political landscape

and the possibilities for engaging in political activities, the use of peaceful demonstrations may develop.

At present there are no trade unions in Bhutan, possibly because of the primarily rural-agricultural focus of the Bhutanese economy and society. The right of association does not explicitly include or exclude the right to form and participate in free and independent trade unions, although the 2007 Labor and Employment Act does allow employees to form an association in the workplace if at least 12 employees wish to join. In 2008, for example, telecommunications employees formed an association in response to concerns over promotions. To what extent these workplace associations can be seen as trade unions remains uncertain. However, the state does support a range of civil associations, and business organizations that are active in engaging with officials.

RULE OF LAW 4.89

INDEPENDENT JUDICIARY	5.40
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	5.00
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	5.50
PROTECTION OF PROPERTY RIGHTS	3.67

Under Article 21(1) of the constitution, the Bhutanese judiciary is independent and charged with upholding the rule of law. The structure of the judiciary changed slightly in 2009 with the formation of the Supreme Court, which is the ultimate court of justice for all appeals and specifically is charged with upholding the provisions of the constitution. Immediately below the Supreme Court is the High Court of Justice located in Thimphu, and in the main administrative center of each district there are district-level courts. Due to its size and commercial importance, the border town of Phuntsholing hosts a subdistrict court. The decisions of lower courts can be appealed upwards, and judicial independence is adhered to at each level of the court system.

Former chief justice Lyonpo Sonam Tobgaye, who oversaw major reforms in the Bhutanese judiciary—notably the development of formal legal education and civil and criminal procedural reforms—retired in October 2009. Shortly afterward, based on the advice of the Appointment Committee, the king appointed him to preside over the newly created Supreme Court. As the new highest court of law in the country, the Supreme Court will play a key role in the interpretation and application of the constitution.

In August 2010, opposition party leader Tshering Tobgay challenged the constitutional right of the government to revise tax rates without parliamentary approval.[16] The High Court had ruled against the government, which raised an appeal to the Supreme Court. The case was heard on appeal in January 2011; the February 2011 verdict held the government's actions in breach of the

legislative process. The decision was the first case to interpret the 2008 constitution and was noted by various commentators as an important landmark in Bhutanese political and constitutional development.

The Bhutanese judiciary has become more professionalized over the last 15 years in a process of slow but steady change. Since the April 2010 judicial appointments were made to the High Court, a professional, well-educated judiciary at all levels has now been achieved. The High Court also now includes one female judge for the first time. Appointments are based on advice and recommendations by the National Judicial Commission, which are submitted to the king for his approval. Selection is based on a judge's knowledge of the law and experience, with a minimum of seven years as a district court judge required before appointment to the High Court. An annual judicial conference is held that all judges at all levels must attend. In addition, the High Court monitors court data from across the country to ensure that all district courts are handling cases promptly and reducing delays to court hearings and decisions. Bench clerks and judges receive continuous training on use of the case management system. According to the 2009 World Bank and IFC Enterprise Survey, while more than 7 percent of companies operating in Bhutan identify functioning of the courts as a constraint to doing business, three-fourths of companies perceive the judiciary as fair and impartial.[17]

Judges have led a number of initiatives to ensure that ordinary Bhutanese are aware of the general structure of the legal system and the main areas of law, including property and contract law. In a series of visits, judges have discussed legal problems with villagers in order to ensure that they understand the range of legal options available beyond the traditional practice of village-level mediation. Two key aspects stressed in these meetings are the civil and criminal procedural codes, and the judges have emphasized that a person accused of a crime is held to be innocent until proven guilty. Another important part of this public legal education program has an explanation of court process. With the appearance of private law firms, the role of traditional attorneys (*jabmi*) is being supplanted by legally-trained representatives. The engagement with ordinary Bhutanese has been important for establishing confidence and improving the public's understanding of legal rights and obligations.

Article 7(23) of the constitution establishes the right of all Bhutanese to raise an action in any court. In addition, under the constitution and as set out in legislation governing civil and criminal procedure, all Bhutanese citizens have the right to due process. Access to the courts and the importance of ensuring that the courts handle cases in a timely manner has been a major factor in court reforms since the late 1990s. All citizens have the right to be represented and, if required and desired, the court may appoint independent representation. However, representation is not mandatory and an individual has the right to self-represent.

In the course of the democratic transition, the Office of Legal Affairs became the Office of the Attorney General, which acts as the state prosecutor, and a new

attorney general was appointed in March 2010. The duties of the attorney general, who is accountable to the prime minister and the king, are set out in Article 29 of the constitution. The attorney general can be asked to speak on legal matters in parliament. The Attorney General is required to declare any conflict of interest under Section 46 of the Office of Attorney General Act 2006.

The king is the commander in chief, and the chief operational officer reports directly to him and the prime minister. In June 2007, the Royal Bhutan Army (RBA) stood at 9,021 active duty personnel. However, in line with the government initiative introduced in 2005, which followed a December 2003 military campaign against Indian guerrillas who had set up camps in southern and southeast Bhutan, the size of the army has been reduced and a citizen militia is being trained. By 2008, the army had only 8,000 active duty personnel.

The Indian Army maintains a mission in Bhutan, known as the Indian Military Training Team (IMTRAT), responsible for the military training of RBA and Royal Body Guard (RBG) personnel. RBA and RBG officers are sent for training at the National Defence Academy in Pune, India, and at the Indian Military Academy in Dehra Dun. The Indian military has also provided support to the Bhutanese authorities, for example during the 2003 campaign, but does not exert any influence over Bhutanese affairs.

The Royal Bhutan Police joined Interpol in 2005. The police do not interfere in the political process and appear to have worked with election officials in 2008 to ensure the smooth running of the National Assembly elections.

Ordinary Bhutanese may own property alone or in association with others as long as they are full citizens. Property rights are enforceable and the state maintains a centralized land register. The state does not seize land; if areas of land are required for development purposes the owners are compensated.

ANTICORRUPTION AND TRANSPARENCY 4.58

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	4.40
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	5.67
CITIZEN PROTECTIONS AGAINST CORRUPTION	4.75
GOVERNMENTAL TRANSPARENCY	3.50

Bhutan's Anticorruption Commission (ACC) was established in 2006, and since then has made a substantial impact in the country. It has established an effective legislative and administrative framework that promotes integrity and the prevention, detection, and punishment of public officials, and a wider program focuses on educating the general public about the role of the ACC and what constitutes corruption. This approach recognizes that certain aspects of Bhutanese custom may inadvertently promote some forms of corruption. Under the direction of Neten Zangmo—a highly respected and independent-minded woman who was reconfirmed in August 2010—the ACC fulfills its duties without interference from the state.

Bhutan's relatively small economy remains dependent on the state. In efficient state-owned companies dominate many spheres of the private sector. According to a 2007 ACC survey, the main forms of corruption in the country identified by Bhutanese are nepotism, favoritism, and the misuse of public funds.[18] In a 2009 ACC report, 63 percent of Bhutanese companies identified corruption as a major problem.[19] Petty corruption does not appear to be a major problem, however, as evidenced by the fact that 75 percent of individual respondents to the 2009 ACC survey claimed to have had no experience with corruption in the past year. The Royal Audit Authority report and the surveys undertaken by the ACC demonstrate increased scrutiny of public finances and a state focus on increased transparency.

Following a 2010 review of business in Bhutan, a recent report suggests that there remains a lack of transparency around tax policies, and that tax officials deal with cases individually. As a result of this approach, decisions appear to be arbitrary and the relevant legislation open to various interpretations. A 2009 survey of companies operating in Bhutan reported demands for bribes, especially during frequent interactions with local authorities when doing business. The survey noted that the publicly declared war on corruption emphasizes the intentions of the government to promote private sector development. However, in roundtable discussions with small and medium-sized enterprises (SMEs) conducted by the ACC, some companies complained that the ACC is overly focused on petty corruption at the expense of addressing large-scale corruption.

According to the World Bank and IFC 2010 "Doing Business" report, while starting a business and applying for licenses in Bhutan are cheaper than the regional average, these processes are time consuming and bureaucratically complex.[20] A challenge or hindrance to companies appears to be the cost of enforcing commercial contracts. In contrast, enforcing commercial contracts is a costly affair, which does not necessarily involve heavy bureaucracy. A 2009 survey found that 15 percent of senior management time is spent dealing with the requirements of government regulations in Bhutan, which is the highest among all countries in South Asia. In an attempt to address these issues, the Bhutanese government has created an online web portal, the Bhutan Portal, which contains a range of practical information on legislation, requirements, and various licenses. Recognizing the importance of providing advice to promote and develop the private sector, the Bhutan Chamber of Commerce and Industry has developed its website as well and now provides companies with information and how-to guides. In addition, the ACC is working with a range of agencies to reduce the administrative burden on businesses and to streamline public sector procedures.

Bhutan's media present allegations of corruption and question the actions of authorities. However, a number of issues likely discourage would-be whistleblowers. The ACC website does not allow anonymous allegations of corruption to be submitted and individuals reporting corruption must provide not only details of the incident and the nature of the corruption, but also personal

details. If an allegation is found to be unsubstantiated and made maliciously or with false information, the informant may be prosecuted under the Anti-Corruption Act of 2006.

The constitution sets out the legal right of all citizens to obtain information and to petition government agencies. However, the draft Right of Information Bill has yet to be passed by the government. Work began on the draft in 2007, but recent statements by the minister for information and communication, Lyonpo Nandalai Rai, indicate that there is a reluctance to introduce the bill. This delay was publicly discussed and debated in a UN-sponsored forum on public space in August 2010, showing a growing demand for a clear legal framework and right to access information.[21]

The National Council may challenge the government on budget-making and provides an important review. However, it remains unclear to what extent ordinary Bhutanese have access to information on the executive budget-making process and expenditures. Although there are tight procurement guidelines, a 2009 survey revealed concerns about bribery and petty corruption that undermine confidence in the transparency of procurement processes.

RECOMMENDATIONS

- The government should pass the draft Right of Information Bill to ensure greater transparency.
- The ECB must complete local election voter registration lists and conduct the necessary education and training of officials, and hold long-delayed local elections.
- The government should promote wider political participation, including by integrating parties with genuinely divergent viewpoints, to ensure a more effective opposition in the National Assembly.
- The government needs to find a permanent solution to the Lhotshampa question, including full restoration of citizenship rights for Lhotshampa within the country and a resolution to the refugee crisis for the Lhotshampa living in refugee camps in eastern Nepal.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

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[11] See http://www.icrc.org/eng/assets/files/annual-report/icrc-annual-report-2009-new-delhi.pdf.

[12] Gross National Happiness Commission, National Commission for Women and Children, and the Royal Government of Bhutan, *National Plan of Action for Gender: 2008–2013*, http://www.undp.org.bt/assets/files/gender/NPAG.pdf, accessed April 26, 2011; National Statistics Bureau, http://www.nsb.gov.bt/, accessed April 26, 2011.

[13] See "Bhutan: Final Report on the National Assembly Elections, 24 March 2008," European Union Election Observation Mission to Bhutan, recommendations 32 and 33, http://eeas.europa.eu/human_rights/election_observation/bhutan/final_report_en.pdf.

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BOLIVIA

CAPITAL: La Paz
POPULATION: 10.4 million
GNI PER CAPITA (PPP): $4,250

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	4.46	4.21
CIVIL LIBERTIES:	4.22	4.54
RULE OF LAW:	3.55	3.35
ANTICORRUPTION AND TRANSPARENCY:	3.21	3.25

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Miguel Centellas

INTRODUCTION

Bolivia has continued to experience significant political conflict in recent years, although the dramatic tensions of 2007 and 2008 subsequently diminished in scope and intensity. The approval of a new constitution in January 2009 defused many of the underlying conflicts—particularly over regional autonomy—and set the country on more stable footing. Nevertheless, significant problems remain, most notably highly polarized politics, weak rule of law, and rising sectoral demands.

Since winning the December 2005 presidential election, President Evo Morales and his Movement toward Socialism (MAS) party have ridden a wave of popular discontent against the political establishment that had governed Bolivia since 1985. That frustration peaked with the October 2003 "gas war,"[1] when several weeks of bloody protests forced the resignation of Gonzalo Sánchez de Lozada. The turbulent two years that followed were remarkable in that constitutional order was maintained, often against difficult odds. Sánchez de Lozada's vice president, Carlos Mesa, assumed the presidency, and although he was successful in partly neutralizing the core issue of the October 2003 by holding a public referendum on gas export policy, Mesa could not forge consensus on other key issues. In the face of protests he too resigned, in June 2005. Because of widespread rejection of the next two figures in the line of succession—the leaders of the Senate and the Chamber of Deputies—the presidency was turned

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over to Eduardo Rodríguez Veltzé, chief of the Supreme Court. Last in the line of succession, he was constitutionally mandated to hold new elections. Through it all, the police and military remained committed to the constitutional order—itself a remarkable feat.

Morales's election was a milestone on the order of the anti-oligarchic, civilian-led 1952 National Revolution and shares much of its policy orientation: anti-imperialism, state capitalism, and agrarian reform. The first indigenous president in the country's history, Morales's presidency represents an unprecedented achievement for Bolivia's historically marginalized indigenous majority. Morales was also the first presidential candidate to win an absolute majority (54 percent) of the vote in a free and fair election. Previous presidents failed to win at the polls, leading to legislative election. This "parliamentarized presidential" system produced multiparty coalition governments and ensured political stability for nearly two decades, but led to erosion in confidence in the political establishment. That party system collapsed in the wake of the 2005 election, leaving opposition to Morales diminished and disorganized.

Bolivia in 2008 and 2009 was marked by intense conflict. The constituent assembly elected in June 2006 stalled amid regular clashes between pro- and antigovernment groups. A key issue was the demand for increased regional autonomy from the so-called *"media luna"* departments (Santa Cruz, Beni, Tarija, and Pando). A majority in each had voted for autonomy in a June 2006 referendum, but the government viewed the nationwide vote rejecting the proposal as the only binding result. According to the constituent assembly referendum's terms, the new charter was obliged to incorporate autonomy for any department in which voters had voted in favor—even as departments would be required to accommodate their autonomy statutes and governments to the new national constitution. The decision by the MAS to leave the question of whether to grant autonomy to any departments up for debate within the assembly violated that understanding and contributed to the assembly's stagnation, as did general opposition intransigence. Bypassing the opposition, which had initiated a boycott of the proceedings, progovernment delegates met separately and approved a draft constitution in December 2007. After nearly a year of confrontations over that text's legitimacy, a compromise facilitated by the Catholic Church and international intermediaries was reached between leaders of MAS and principal opposition parties in October 2008. The final constitutional text, significantly modified to appease the opposition, was approved by voters in January 2009. In line with the new constitution, new presidential and legislative elections were held in December 2009 (in which Morales won reelection), followed by regional and municipal elections in April 2010.

By April 2010, with the close of the electoral cycle, tensions declined significantly. There was a marked decline in Morales's efforts to mobilize social movements against his opponents due to the absence of high-stakes electoral conflicts; the reality of a cowed, fractured, and ineffective opposition; and the growth of conflicts within Morales's own constituency. In 2010 and early 2011

Bolivia experienced a spike in protest activity by key sectors typically aligned with the MAS, including a general strike by the Bolivian Workers' Federation (COB), the country's main labor federation, in May 2010.[2] The incident that most dramatically set the tone for 2011 occurred in late December, when Vice President Álvaro Garcia Linera, in charge while President Morales was out of the country, announced that gasoline subsidies would end. The government's policy rationale, that the smuggling of subsidized fuel to Bolivia's neighbors represented an unsustainable burden on the budget, was sound, but the suddenness of the move reflected a surprising inattention to the need to consult with outside groups before taking action on such a sensitive issue. The government also argued that it was pairing the move with wage increases, but this was of little comfort to the many Bolivians laboring in the informal sector. Wide-scale, locally violent protests erupted throughout the country, prompting President Morales to return to the country and announce, on December 31, that that the decree would be rescinded.

The economic climate has been favorable throughout Morales's two presidencies, facilitating implementation of the government's ambitious social agenda. Gross domestic product growth has been robust, reaching more than 6 percent in 2008, driven by high prices for gas and mining exports that produced fiscal surpluses throughout Morales's first term. Although the government used the windfall to counter the effects of the global recession,[3] commodities price declines contributed to slower GDP growth rates of 3.4 percent in 2009 and 4.2 percent in 2010.[4] As Bolivians turn from electoral politics after five years of nearly constant campaigns, day-to-day pocketbook issues, which remain a primary concern for most Bolivians, take on greater salience. Despite impressive gains, Bolivia remains quite poor and expectations are high, This contributes to Morales's decline in public approval polls, which dipped severely in early 2011 and recovered only to 42 percent by midyear.[5]

Bolivian officials and citizens have made progress on overcoming thorny problems: a new constitution that represents a legitimate compromise has taken effect, the issue of regional autonomy has been (mostly) resolved in ways that favor checks and balances, and significant advances have been made in poverty reduction. Other obstacles remain, however: politics remain highly polarized, government attacks on the press continue, gender rights remain underprotected, citizens' trust in the judicial system remains weak, and political conflicts continue to be primarily addressed outside the formal mechanisms of democratic politics.

ACCOUNTABILITY AND PUBLIC VOICE	4.21
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.80
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.71

The rise of the MAS brought formerly excluded groups into the political system and therefore represents a significant change from the previous era. But the magnitude should not be overestimated. While the MAS brings together social movements of long-marginalized subaltern social sectors, much of the national-level leadership comes from middle-class intellectuals and technocrats invited to stand for election or serve in cabinet posts.[6] The symbolic power of an indigenous president at the helm is significant, as are the government's concerted efforts to increase the role of social movements as legitimate channels for popular grievances and to expand indigenous rights. Nonetheless, many reforms that increase the public's ability to participate in politics remain untested. In 2004, citizens gained the right to initiate legislation and referendums, yet no such proposals have emerged at the national level. The legal autonomy granted to indigenous communities in 2009 remains, in practice, closely dependent on the MAS party hierarchy, which serves as the conduit between grassroots demands and the presidential palace.

The political system remains open, and voters have a number of choices. A 2004 reform allowed "citizens' groups" and "indigenous peoples" to compete in elections, ending the monopoly held by formal parties.[7] That reform had mixed results: the number of organizations contesting municipal elections exploded, from 18 in 1999 to 425 in 2005, but most were micro-local organizations limited to narrow communities. The result was a highly fragmented political landscape that privileged the largest organizations—principally MAS, but also some opposition vehicles. In 2010 only 191 political organizations contested local elections, but in several municipalities only the MAS presented candidates, or a two-party contest pitted the MAS against a micro-local organization. Opposition figures have successfully used "citizens' groups" as electoral vehicles to challenge Morales, but these have not lasted beyond a single election, remaining ttansitory political vehicles for populist leaders. The result is the absence of a viable, institutionalized opposition party, which has made it difficult for voters to identify a credible alternative to MAS or hold the opposition accountable from one election to the next; this in turn emboldens Morales and his supporters, allows them to treat opponents dismissively, and provides little incentive to institutionalize the MAS (which remains a loose coalition of social movements held together by the personality of President Morales).

The December 2009 presidential and legislative elections resulted in the consolidation of a dominant-party system. Constitutional reforms allowed Morales to run for reelection, which he won easily, with 64 percent of the vote, carrying the MAS to supermajorities in both legislative chambers.[8] None of the traditional parties that had dominated Bolivian politics since 1985 stood for election in 2009. The main opposition party, Progress Plan for Bolivia (PPB) was a "borrowed" political vehicle led by two former departmental prefects with longstanding ties to conservative political sectors; it took 26.5 percent of the vote.[9] Two centrist opposition candidates split most of the remaining votes. Overall, the MAS won 88 out of 130 seats in the Chamber of Deputies, to only

37 for the PPB. Benefiting from changes to the Senate's composition and seat allocation rules, the MAS won 26 of the 36 upper house seats; the PPB took the remaining 10.

The April 2010 regional and municipal elections continued this pattern. The MAS again emerged as the single largest party, winning governorships in six of the nine departments, as well as 231 of 337 mayoral contests. This electoral sweep was aided by the fragmented electoral landscape: only the MAS put up candidates in each municipality while the next two largest parties, the Movement without Fear (MSM) and the Movement for People's Sovereignty (MSP), competed in only 176 and 53 districts, respectively. MSM is an established, and growing, center-left party that until recently was allied with the MAS; the MSP was a new movement formed by MAS dissidents. Nevertheless, the anti-Morales opposition scored key victories as opposition incumbents won reelection as governors in Tarija, Santa Cruz, and Beni. Opposition candidates also won mayoral races in seven of nine department capitals and nearly captured the mayoralty in El Alto, a traditional MAS base. Yet the opposition's disorganized, fractured nature remained evident, as Beni was the only department in which the same party won both the governorship and the mayoralty of the department capital. Moreover, the PPB did not win a single office in the April 2010 regional and municipal elections.

The April 2010 elections revealed growing tensions within the governing coalition. The MSM's decision to campaign independently led to bitter public attacks by Morales against Juan Del Granado, the MSM leader and incumbent mayor of La Paz. The social-democratic MSM was a key coalition partner and had helped secure middle-class electoral support for Morales. In addition, a number of key MAS defectors formed new parties, offering left-indigenous challenges to Morales at the local level. One example was the MSP, which won six mayoralties in the Aymara heartland. Tensions also mounted in 11 indigenous municipalities that had been granted autonomy through an autonomy referendum attached to the December 2009 election. They expected to use traditional customs to choose officials, but found themselves forced to use standard elections—in which traditional community leaders faced challenges from official MAS party candidates.

Nonetheless, elections in Bolivia meet the standard of "free and fair," despite irregularities on the margins. Between December 2005 and April 2010, voters went to the polls six times in a range of national-level elections and referendums.[10] Each saw voter turnout levels far surpassing levels in the 1985-2002 period, peaking at 95 percent in the 2009 general election. Throughout the period, the National Electoral Court (CNE) remained professional and impartial, despite intense criticism from both government and opposition supporters and strains on its capacity. Prior to the 2009 general election, the CNE also undertook an overhaul of the voter registry, adopting a biometric voter identification system. While the system required all voting-age Bolivians to reregister to vote, which was a logistical challenge, the process marked a major

step forward in reducing voter fraud and increasing transparency. However, CNE was not able to harness new reforms to increase transparency in campaign finance, a longstanding problem in Bolivia. Though parties were ostensibly required to provide the CNE with accounts of their campaign spending, compliance was halfhearted and sanctions were minimal. The new law eliminated public funding of political campaigns but did not include any regulations on independent campaign finance.[11]

Another milestone was the creation of seven indigenous electoral districts. These were reserved for small indigenous communities otherwise unable to elect representatives to the national legislature. Ironically, these elections were not won by "indigenous peoples" (*pueblos indígenas*, as defined by the CNE), but by political parties (one from the PPB, the rest from the MAS). The MAS is a broad political coalition that includes many (though not all) indigenous organizations, and several indigenous candidates were recruited by and won electoral office through MAS, both in "at large" and special indigenous districts. However, the electoral law for special indigenous districts does not allow for the seats to be filled through a separate mechanism (such as traditional customs). More importantly, candidates in single-member districts must belong to a party with national presence, meaning that local indigenous organizations cannot run candidates without "invitation" from a national party. This gives tremendous power to the parties (government or opposition) to select indigenous representatives who will support their interests.

Achieving effective separation of powers remains a problem in Bolivia. From 1985 through 2002, presidents enjoyed legislative majorities because they governed through "pacted" coalitions. This effectively made legislatures rubber stamps for government policies, though these policies were crafted through interparty consensus. During his first term, Morales faced an opposition-controlled Senate, prompting frequent attempts to bypass the body through reliance on the MAS-controlled lower house and popular mobilizations designed to intimidate opposition legislators. Opposition legislators continue to exercise important oversight functions through legislative committee appointments, but in general, opposition fragmentation and the MAS's supermajorities in both chambers allow Morales to govern freely. Laws are often passed with little substantive debate, a situation not unlike the 1985-2002 pattern. Efforts to strengthen parliamentary autonomy are also hindered by the executive's tight control over the MAS, including expulsions of dissident voices within his own party. Although grassroots-level dissension within Morales's constituency has increased, MAS legislators remain highly dependent on their relationship to Morales and the central party hierarchy loyal to him.

A system of checks and balances is emerging in the evolving relationship between the central government and autonomous departments, regions, municipalities, and indigenous communities. Throughout his first term, Morales faced intense opposition from opposition prefects in six of nine departments. Prefects were popularly elected in December 2005 for the first time, as a compromise

on regional autonomy; although the previous constitution empowered him to dismiss and appoint prefects, Morales refrained from exercising that right. After the MAS prefect of Chuquisaca resigned in 2008, Morales appointed an interim replacement and called for a special election—which was won by an opposition candidate. The formal recognition of various kinds of subnational autonomies with devolved powers will likely strengthen this process.

Civil society is highly active in Bolivia. Channeling social demands through legitimate, democratic institutions remains a key challenge. Neither Morales nor his opponents show much interest in boosting public confidence in Bolivia's feeble political institutions. The MAS remains weakly institutionalized; it defines itself as a "social movement" and remains a loose alliance of sectoral organizations held together by Morales's charismatic leadership.[12] To supporters, this "democracy from below" represents an appealing alternative to party-based representative democracy; skeptics point to a record of such movements becoming dominated by their leadership, rendering them little more than patron-client relationships.[13] The MAS is not alone: most political actors rely on mass mobilization, rather than working through formal institutions. This applies equally to community groups, unions, business federations, and nongovernmental organizations (NGOs). This produces a vicious cycle: the failure of the state and formal institutions to address social demands leads to social protests, which further erodes confidence in institutions. Moreover, the tendency of political actors to measure their power in the streets leads to frequent clashes, fostering a climate of simmering political tension in which the next confrontation is always ready to burst to the surface.

Nongovernmental organizations (NGOs)—whether private sector, state sponsored, or blended—remain active in Bolivia. Regulations remain loose, which has encouraged the proliferation of organizations dealing with social, political, and economic issues. However, the Morales government has repeatedly criticized several NGOs and intellectuals, particularly those with ties to the United States Agency for International Development (USAID), as being engaged in "political" activity or serving foreign interests.[14] While several cases have involved relationships between opposition political figures, NGOs, or think tanks with ties to USAID, others have involved progressive organizations critical of Morales, such as the Table 18 workshop that was excluded from the April 2010 People's Climate Summit because it criticized the Morales government's promotion of resource extraction-based development.[15] This pattern of accusing NGOs that voice criticism of the government or its policies was repeated when Human Rights Watch criticized the procedures under which prosecutions of all former heads of state are being conducted.[16] Nevertheless, despite frequent threats to impose strict legal guidelines on NGO activity, no such law has yet been approved, and sanctions against critical NGOs remain mostly confined to hostile rhetoric.

Despite polarization and attacks against journalists, press freedom in Bolivia remains relatively strong. Morales maintains an antagonistic relationship with

the media, but there has not yet been any concerted effort to censor the press or hinder public access to information. In general, the highly-concentrated private media is critical of the government and often launch personal attacks on Morales, while the government controls a number of state-run television and radio networks, and in 2009 launched a daily newspaper, *Cambio*. Attacks against journalists spiked along with general political ferment in 2008 and 2009; watchdog groups registered 111 physical and verbal assaults on journalists and media outlets in the second half of 2009 alone.[17] While such attacks are rarely carried out by government or security personnel, but rather by independent social groups, they are also rarely investigated or resolved. This is complicated by the fluid relationship between Morales—and some opposition figures—and theoretically independent social movements. Civil society watchdog organizations have called on both Morales and opposition prefects to cease their verbal attacks on reporters who criticize them.

Online and other electronic media access is not restricted. The Bolivian government does not engage in censorship of online media or limit the distribution of independent print media. Libel and slander remain criminalized, but rarely lead to exorbitant fines or prison sentences. An October 2010 law against racism and discrimination included provisions to punish media outlets that print or broadcast racially derogatory material. The law was controversial and elicited concern from groups such as Reporters Without Borders because of vague wording that suggested individual journalists and media outlets could be held liable for any comments viewed as racist, even if expressed by a third party and not meant to reflect the reporter's or outlet's position.[18]

CIVIL LIBERTIES 4.54

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.13
GENDER EQUITY	4.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.50
FREEDOM OF CONSCIENCE AND BELIEF	6.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.75

Bolivia has ratified the major UN human rights conventions, as well as most regional and global treaties and conventions protecting civil liberties and prohibiting torture, genocide, and forced labor. The 2009 constitution is consistent with international human rights norms, and protects a wide range of civil and political rights. Nevertheless, the human rights situation on the ground remains worrisome.

Reports of systematic human rights violations have declined in recent years, primarily because the Morales government rejected forced eradication as the primary means to limit illicit coca production (the cause of most human rights abuses in previous years) in favor of "social control" by local communities in

areas were coca cultivation is permitted.[19] However, it is now difficult to reliably catalog human rights abuses in Bolivia, since the nongovernmental Bolivian Permanent Assembly for Human Rights (APDHB)—which was instrumental in reporting human rights abuses through 2005—virtually ceased functioning after many of its members joined the Morales government. International organizations have criticized the government's own human rights monitors for not aggressively investigating cases of government repression of legitimate protests.[20] One example is the slow investigation of two shooting deaths during a May 2010 police crackdown on a protest in Caranavi. That August, the APDHB issued a report condemning the Morales government for violating human rights in the case, and assigned specific political responsibility to Morales's government minister, Sacha Llorenti—a former APDHB director.[21]

There is significant concern that social control—which has no formal institutional oversight—frequently relies on corporal punishment, often in violation of due process rights. While the government's touting of social control has focused on the enforcement of restrictions on illicit coca cultivation, the term is informally applied to a wide variety of forms of community justice. Because social control measures are imparted outside the formal legal system and its regulations, its manifestations vary considerably. One method used in the Chapare region of coca production is the "palo santo," whereby alleged offenders are tied to a post infested with fire ants for several minutes.[22] Attacks on antigovernment opponents have at times been justified as applications of community justice. In March 2009, pro-MAS demonstrators forcefully seized the home of former vice president Víctor Hugo Cárdenas, injuring his wife and son in the process.[23] That attack prompted a communiqué from Human Rights Watch calling on Morales's government to unequivocally condemn mob violence.[24] Similarly, in April 2009, Marcial Fabricano, a lowland indigenous leader critical of Morales, was whipped until losing consciousness.[25] In these and other cases, local residents justified their physical attacks as acts of social control against individuals who betrayed the interests of their communities; in neither case were perpetrators charged by government prosecutors.

Between 2007 and 2009, frequent clashes between government and opposition supporters negatively affected the human rights situation in the country. International organizations have frequently urged the government to investigate incidents of abuse and take concrete steps to protect human rights, while also calling on opposition forces to show restraint. Because both government and opposition forces use mass mobilizations deliberately to intimidate their opponents or to disrupt institutionalized political activity (such as by forcing shutdowns of legislative deliberations), the climate is often ripe for violence. A key problem is the lack of trust in intermediaries: Morales supporters are skeptical of organizations with ties to Western countries; the opposition is skeptical of organizations seen as friendly to Morales, especially if they are perceived to be aligned with Morales's ally, Venezuelan president Hugo Chávez. In 2009 the United Nations Office of the High Commissioner for Human

Rights (OHCHR) established an office in Bolivia because of concerns about the political climate, but its work is hampered by Morales's frequent accusations that UN representatives act in complicity with American interests. Since early 2010, however, there has been a fundamental shift: government and opposition struggles are now more likely to be centered in courtroom battles, while street protests (such as those in Caranavi) more frequently involve citizen grievances or disputes between factions within the MAS coalition.

The gravest outbreak of violence in recent years occurred on September 11, 2008, when supporters of Pando's prefect, Leopoldo Fernández, clashed with Morales supporters near the town of Porvenir. According to Human Rights Watch, hundreds of Morales supporters traveling to the departmental capital for a protest encountered a roadblock, initiating a confrontation that escalated to indiscriminate gunfire by armed opposition supporters and the death of 16 protesters.[26] The government responded quickly, militarizing the department and arresting the prefect, Leopoldo Fernández, who was held for more than a year without formal charges. Fernández was formally charged with genocide for his alleged role in the Porvenir massacre, and as of mid-2011 remains in prison awaiting trial. From prison, Fernández remained a prominent figure in the opposition (he ran in 2009 as the vice presidential candidate for the chief opposition party), which portrayed him as a political prisoner.

More generally, while most conflicts in recent years were politically motivated, a growing number are sectoral or intercommunity disputes. For example, conflicts between cooperative and government-employed miners in Potosí left two dead in March 2008, and left significant tensions in the region.[27] Such differences would ideally be resolved through institutional channels, but because those channels are absent, the vacuum is filled by grassroots organizations. Thus far, aspirations to mass mobilization-based grassroots democracy in Bolivia have done little to promote pluralist dialogue, protect minorities, or prevent the emergence of traditional political caudillos. Thus, a critical task for Morales's government—but also for the opposition—is to seek ways to channel political grievances away from spontaneous political activity and towards strong, legitimate institutions that can provide both horizontal and vertical accountability.

Criminal violence has increased, though crime rates remain low by regional standards. Still, the ineffectiveness of police and law enforcement officials in addressing crime has contributed to increases in vigilantism, including lynchings that are frequently by the perpetrators—though emphatically not by the government—as acts of community justice, which is recognized in the 2009 constitution but remains undefined in law. Police reported 53 lynching attempts, and media reported 14 episodes that resulted in death in 2009.[28] Such acts are rarely investigated or prosecuted, both because communities defend perpetrators and police and prosecutors fear retribution. A public outcry against lynchings emerged after a criminal band, under the protection of an indigenous community, killed four police officers near the rural town of Uncía in May 2010.[29] The Morales government was harshly criticized over its handling of the

affair, particularly the lengthy period required to recover the officers' bodies and the state's inability to guarantee the safety of prosecutors attempting to visit the zone to investigate the incident.

Prison conditions continue to be poor, plagued by violence and inadequate sanitary and dietary standards. Overcrowding remains a serious problem, with over 7,000 inmates in facilities designed for 4,700.[30] The judicial system is also notoriously slow. Although the law promises timely due process, more than 75 percent of inmates are being held in pretrial detention, often in the same facilities as convicts.[31] Ostensibly, Bolivian citizens possess the right to challenge state authorities when their basic constitutional rights are violated through the official ombudsman's office (Defensoría del Pueblo). Current ombudsman Rolando Villena, in office since May 2010, has taken a much more proactive role than his predecessor in publicizing and denouncing rights abuses committed by both the state and private actors.

Gender equality continues to improve. The Morales government has taken concrete steps to increase female representation in government, including filling half the current cabinet posts with women, though most key ministries continue to be dominated by men. Government efforts to improve conditions for women include an increased role and training for female police officers and government cash transfers to new and expecting mothers. Nevertheless, women, particularly if poor or indigenous, continue to face discrimination and abuse. Rape continues to be a serious and underreported problem. According to the Inter-American Commission on Human Rights (IACHR), 70 percent of women have suffered some form of abuse.[32] Through November of 2009, the police Family Protection Brigade handled 19,182 cases, but lacked resources to follow up on most cases.[33]

Not surprisingly, the greatest advances have been made in the realm of assuring the rights of Bolivia's indigenous peoples. The 2009 constitution explicitly recognizes 36 national or communal languages within the country's territory. In addition, the state now also grants a special category of autonomy to municipalities that define themselves as "original communities" (*pueblos originarios*) and reserves seven seats in the legislative assembly for representatives of indigenous minorities. The Morales government's autochthonous rhetoric is symbolically important for the country's indigenous majority, which has long been marginalized socially, politically, and economically. Nevertheless, indigenous peoples continue to face significant discrimination in society. Bolivians who self-identify as indigenous make up more than half of the country's population, yet they are disproportionately more likely to be poor, unemployed, illiterate, or lack access to basic services than non-indigenous Bolivians. Race has been a frequent, though not dominant, subtext during the tumult of recent years. The most notorious instance of racial undercurrents rising to the surface in recent years occurred during Sucre's anniversary celebrations in May 2008, when a group of indigenous Morales supporters were attacked by opposition forces. The men were taunted with racial epithets, stripped, made to march to

the city square, then kneel while apologizing for the behavior of other Morales supporters.

Beginning with multicultural educational reforms during the mid-1990s, indigenous-language education has expanded. Educational and professional training opportunities for indigenous peoples has expanded in recent years, including the creation of a new state university in El Alto in 2000—although effective access to higher education remains limited to rural populations. In addition to symbolic recognition of language, traditions, and dress, the Morales administration passed a law requiring that (eventually) all public officials and functionaries to be proficient in at least one indigenous language. This has sparked significant interest among middle class Bolivians to learn an indigenous language (less than 30 percent of Bolivians speak an indigenous language as a "maternal" language). In October 2010, a new Anti-Racism Law was signed into law that outlaws racism and discrimination, with particularly harsh penalties for public servants who violate its provisions.[34] The law was accompanied by implementation plans drafted by several ministries. However, the potentially positive aspects of the law were overshadowed by concerns regarding its effect on freedom of expression (see Accountability and Public Voice).

In the arena of religious freedom, Bolivia has made important advances. The 2009 constitution makes Bolivia a secular state; previous constitutions recognized special roles for the Catholic Church. Freedom of religion continues to be the norm. A wide variety of religious denominations have churches, and the state allows religious schools to operate at all levels.

The situation of organized labor remains complex. Unions remain free to organize, and Bolivia retains an active, vibrant, and diverse labor movement. The COB, while a powerful force, has never regained the status it held prior to the neoliberal reforms of the 1980s, in large part because the vast majority of Bolivians work in the informal sector. COB leaders played key roles in the 2003 gas war, but they maintain an uneasy relationship with Morales (whose core supporters are rural organizations and informal laborers). Individual sectoral labor unions remain strong (particularly transportation workers) and frequently challenge government regulations. The same is true for labor cooperatives (especially mining cooperatives), which have increasingly come into conflict with state-employed miners.

[*Editor's Note: The Rosza Case* On the morning of April 16, 2009, Eduardo Rósza-Flores was killed during a police raid on his hotel suite in the city of Santa Cruz. Two other men, Árpád Magyarosi (a Hungarian citizen) and Michael Dwyer (an Irish citizen) also died during the raid; two others, Mario Tadic (a Croatian citizen) and Elöd Tóásó (a Hungarian citizen) were arrested. The five men were suspected of planning to assassinate Bolivian president Evo Morales and were implicated in various other antigovernment conspiracies. Pictures taken immediately after the raid showed the three corpses surrounded by heavy caliber weapons. A dual citizen of Bolivia and Hungary, Rósza-Flores had lived in exile for most of his life after his father, a communist

activist, fled Bolivia in 1972. Rósza-Flores's complex personal biography featured stints as a member of the Soviet-era Hungarian intelligence service and Hungary's Communist Youth Organization, as well as a journalist for Cuba's Prensa Latina and, eventually, a special forces commander in the Croatian National Guard. A few days after his death, Hungarian television broadcast a September 2008 interview with Rósza-Flores, in which he stated that he had been invited to return to Bolivia to help organize a regional militia in Santa Cruz, a bastion of anti-Morales sentiment.

At first, the case seemed a clear indictment of the most reactionary elements within the Santa Cruz regionalist opposition movement. Morales and other government officials were quick to link several prominent Santa Cruz business and political figures to the would-be terror cell. However, videos later emerged in which Rósza-Flores also declared his intention to assassinate the opposition prefect of Santa Cruz, Rubén Costas, and the president of the Santa Cruz Civic Committee, Branko Marinkovic. A European Union commission also raised questions about whether the two men arrested had confessed under torture and requested further information about the deaths of Magyarosi and Dwyer amid allegations that the forensic evidence did not fully back the government's description of a firefight. Other problems in the case involve irregularities in the initial warrant and other technical flaws in the legal handling of the case, which as of April 2011 had yielded no formal charges. A total of 39 people have been implicated as co-conspirators in the case, including 22 who fled the country (Marinkovic among them). The combination of a polarized political climate and mishandling of the case has fueled a number of conspiracy theories, including claims that Rósza-Flores was duped by Bolivian intelligence services in a deliberate attempt to discredit the Santa Cruz regionalist movement. Even as the case finally began to move forward in spring 2011, the odds that the legal process will answer the episode's many outstanding questions remain in doubt.]

RULE OF LAW 3.35

INDEPENDENT JUDICIARY	2.60
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	4.25
PROTECTION OF PROPERTY RIGHTS	3.33

Assessing the democratic quality of Bolivia's judicial system is particularly thorny. Strictly speaking, the rule of law is often circumvented—both by the government and by the opposition. A key problem is that the judiciary has historically been weak, inefficient, and subject to political manipulation by various actors. But even outside the judiciary, the legal "rules of the game" also often hinder accountability and consolidation of the rule of law.

One example is the conflict over the constituent assembly elected in 2006. After failing to win a supermajority, MAS delegates used their absolute majority to overturn the rule requiring a two-thirds vote of approval for any constitutional text. Morales and MAS delegates also reinterpreted the 2006 referendum on regional autonomies as nonbinding, contradicting the special election law that ensured autonomy for departments in which voters backed the measure. This prompted clashes between government and opposition supporters, which stalled the assembly's deliberations and contributed to a highly volatile political climate. A constitutional text was then hastily approved in a session with no opposition delegates present. This text was in turn overturned by a legislative compromise between party leaders from MAS and the key opposition party at the time, Social and Democratic Power (PODEMOS), that significantly rewrote the draft. This was the text approved by 61 percent of voters in the January 2009 constitutional referendum. Thus, the final constitutional text represents a legitimate compromise between the major political players—and was approved by voters—but was the result of a series of extralegal circumventions.

Another example is the series of "wildcat" autonomy referendums held in media luna departments in May and June 2008, following MAS delegates' refusal to incorporate departmental autonomy in the constitutional text. After a series of sharp clashes, both rhetorical and in the streets, the prefects announced their own referendums to approve local autonomy statutes. Both the government and the CNE declared the votes illegal, but took no steps to prevent them. After voters approved the statutes by wide margins, a compromise settled the issue: the government recognized the autonomy of the media luna departments and the electoral systems stipulated in their existing statutes were used in those departments in the 2010 gubernatorial and regional assembly elections. Voters in the country's five other departments voted on, and approved, regional autonomy in a 2009 referendum attached to the general election; they used electoral systems modeled on Santa Cruz in the 2010 regional assembly elections. Again, the final result held the government accountable to demands for regional autonomy—but did so in an extralegal, circuitous fashion.

In terms of the judicial system, Bolivia continues to face substantial problems, which have been further aggravated by the recent political climate. In addition to longstanding endemic corruption and inefficiency, the courts suffer from a large number of vacancies that have created a growing backlog of cases. The Morales government has frequently criticized the judicial system, accusing it of obstructionism and incompetence and giving tacit support to demonstrations aimed at pressuring judges. A number of judges whose tenure pre-dated Morales's election or who had arrived on the bench with opposition support responded by resigning; throughout most of 2009 and into 2010, the Supreme Court functioned with only 7 of its 12 positions filled, leading to a backlog of more than 5,000 pending cases.[35] The Constitutional Tribunal, a separate chamber, ceased functioning in May 2009 after its last remaining magistrate resigned under pressure.[36] The vacancy crisis prompted Morales to request a

law from congress, which he received, allowing him to appoint judges to vacant Supreme Court and Constitutional Tribunal seats pending upcoming popular elections for judges. The election of judges—a new feature in the 2009 Constitution—to these two key institutions may further complicate matters. On one hand, the move may help establish public confidence in and legitimize the institutions; on the other hand, elections for judges may further politicize the judicial process.

Citizen rights within the legal system remain deficient, especially with respect to due process issues such as the right to a timely trial (see Civil Liberties). The Morales administration has continued to make progress in promoting alternative venues for legal redress initiated in 2004 with the Mesa government's introduction of neighborhood justice centers. The new 2009 constitution also expands the rights of indigenous communities to establish their own systems of local courts and systems of arbitration. However, much of the legal framework to integrate this with the regular justice system remains to be implemented. In the meantime, although defendants have the rights to presumption of innocence and independent counsel, resource constraints mean that very few public defenders are available—according to the Inter-American Commission on Human Rights, as of 2009 only 3 percent of Bolivian municipalities had a public defender.[37] Prosecutorial independence also remains inadequate, and in recent years investigations and judicial processes targeting former officials and opposition supporters have proceeded with greater vigor than those involving government supporters.

Civilian control over the military has remained a hallmark of Bolivia's democracy. Despite several controversial moves by the government related to military organization and appointments, the rank and file has remained loyal to the constitutionally-elected government. The same is true of the police, whose role has increased as the role of the military in security public enforcement has decreased. Another potential advance came with the early 2010 instruction by the defense minister to make public many military records related to human rights abuses by military regimes of the 1970s and 1980s—though as of early 2011 that information had not yet been released[38] and the government's will to force the release seemed to flag following the initial decision. Nonetheless, police corruption remains a problem, which has led to turnover in the department's upper ranks, and occasional serious human rights abuses occur. In one highly publicized case in July 2010, a robbery suspect named David Olorio was killed while in police custody; subsequent investigation indication that he may have been tortured to death by officers seeking to determine the whereabouts of money Olorio stole from a public entity.[39]

Property rights continue to be protected under the new 2009 constitution. As is common in Latin America, the constitution includes language stating that land must serve a "social function" in order to avoid potential seizure by the state. Despite this, even in cases where land is clearly left without use, the social function law is rarely enforced. Rather, since passage of a new land law in

2006 the state has focused its redistribution efforts on public lands and property with unclear or disputed title. Over 20 million acres were retitled between 2006 and 2009, with most titles going to small farmers.[40] However, land hunger remains acute, and land invasions led by organized peasant organizations occasionally occur. Both these and operations carried out by the government have at times resulted in violence, particularly in the Alto Parapetí region of Santa Cruz department.[41] Other property rights are also generally respected, though the government has often threatened, and occasionally carried out, seizures of property owned by foreign investors in strategic sectors such as mining and hydrocarbons. In addition, the chronic weakness of the Bolivian judicial system makes contract enforcement a challenge for both individuals and businesses.

ANTICORRUPTION AND TRANSPARENCY 3.25

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.60
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.67
CITIZEN PROTECTIONS AGAINST CORRUPTION	3.25
GOVERNMENTAL TRANSPARENCY	3.50

Corruption and lack of transparency have been pervasive and consistent problems in Bolivia for decades. Indeed, confronting graft is perhaps the single most important challenge facing the Morales administration, as improvements in social development are threatened by continued corruption and lack of transparency. The government's challenge is to achieve these gains in a climate of deep political polarization—which provides strong incentives to use anticorruption laws to attack political opponents—while ensuring that previously subaltern groups are formally integrated into the policymaking process without succumbing to the temptations of graft.

Any progress will come from a low starting point. In 2010 Bolivia received a score of 2.8 out of 10 possible points on Transparency International's Corruption Perceptions Index, placing it 110 out of 178 countries surveyed.[42] A number of factors contribute to the country's corruption problem. Complicated government regulations continue to make interactions with the bureaucracy confusing and unpredictable, particularly as individual bureaucrats may not consistently apply, interpret, or even understand the regulations. For decades, bureaucratic jobs were understood as *pegas* (political appointments), favors to be handed out by political parties in exchange for political support. As such, each election or political realignment meant a turnover within the bureaucracy, even at the lowest levels. There are signs that the Morales government has taken steps to professionalize the bureaucracy, but these have been hampered by grassroots demands from supporters who expect their loyalty to be rewarded.[43]

Another factor is that the problems typically associated with state-owned enterprises (SOEs) continue to plague Bolivia. Efforts to professionalize the state oil company (YPFB) frequently run into problems caused by corruption,

as well as demands by key constituencies to have access to pegas in this strategic firm. An additional problem related to SOEs is that the growing role of the state in the economy has outpaced modernization and transparency efforts, thus increasing the opportunity for public graft. Indeed, four of the five heads of YPFB named by Morales between January 2006 and January 2009 were forced out by scandal.

Like previous governments, the Morales government has pursued tough anticorruption legislation. It created the Ministry for Transparency and the Fight against Corruption, which has significant investigatory powers, although prosecutions are conducted by the Public Ministry. In March 2010, Morales signed into law the Marcelo Quiroga Santa Cruz Anti-Corruption Law. Named after a respected socialist political figure who was assassinated in 1980, the law is sweeping and ambitious. While many of its provisions are positive, it also includes measures to retroactively sanction certain types of corruption, a violation of international law. Critics also worried that the law would be used for political purposes. Already in 2007, no fewer than 20 high-profile opposition figures and members of previous administrations faced legal charges.[44] Since then, charges have been brought against a wide range of former and current officials, including sitting opposition politicians such as Tarija governor Mario Cossío[45] and La Paz mayor Luis Revilla,[46] who explicitly claim they are being political persecuted.

A key problem is the appearance of political bias. While a range of opposition figures have been investigated for corruption and some have been forced to resign their offices, several high-profile government figures have faced few consequences. In one high-profile case in 2008, then minister of the presidency Juan Ramón Quintana was accused of involvement in illegal contraband following the discovery of 33 cargo trucks carrying illegal loads. Although the trucks were tied to Quintana by customs officials and the case was covered extensively in the media, it was never fully resolved; instead, Quintana resigned his post and Morales publicly admitted that corruption had infiltrated his own administration and promised to take measures to eradicate it.[47] Shortly thereafter, César López, the head of customs, was dismissed and charged with corruption, while in 2010, Quintana was named head of a new superagency to oversee rural development and border control—an office that supersedes border control previously in the hands of customs and department authorities.[48]

A major issue was a provision in the new law that allows for the suspension of elected officials at the point of formal charges rather than upon conviction. The process has been used almost exclusively against opposition mayors and governors, as well as dissident MAS figures. While there is little doubt that Bolivians want the government to tackle the plague of corruption, selective use of the law—which has been used to wrest control over municipal and departmental governments away from the opposition—has so far demonstrated a troubling political character. However, close Morales confidants have not been entirely immune. Santos Ramírez, a MAS cofounder and a trusted Morales

adviser, was tried and convicted on corruption charges that came to light following the murder of an oil executive. Later investigations by the government's own anticorruption czar revealed a large number of irregularities in the contracts between YPFB and private oil companies.[49]

In terms of transparency, the Morales government has made significant strides. In keeping with Bolivia's access to information legislation, the government has overhauled the Official Gazette (which publishes government documents, laws, and decrees), including posting the material online. Bolivian citizens now have direct access to a significant number of government documents through websites. This contrasts with previous practice, when citizens had to appear at the Gazette offices and pay for copies of public laws. Internet usage, while increasing, remains limited in Bolivia due to lack of resources, but the focus on transparency makes it possible for activists to access, publicize, and redistribute government information.

Government efforts to collect revenue through taxes, customs, and other fees is limited by rampant citizen evasion. Corporate taxes—when not circumvented—are a complex, cumbersome process that can result in a tax rate of up to 80 percent of profits.[50] Such onerous requirements are one reason that a significant percentage of the economy is in the informal (and untaxed) sector. The Morales government has made significant efforts to streamline the tax code and improve collection by bringing more citizens into the formal economy, but public resistance has been stiff, in some cases for reasons related to the illicit nature of some sectors. One example is the "undocumented" imported car sector, whose union has regularly protested government efforts to ensure that all automobiles sold in Bolivia are properly titled and legally imported. The government was finally able to crack down, despite significant public protests, after it granted amnesty to owners of undocumented vehicles who would pay a fine to obtain legal titles.[51]

Transparency efforts have improved in the past decade, but still lag behind international and regional standards. By law, political leaders must divest themselves from any outside positions—whether in the business sector or civil society—before assuming their official duties. The difficulty of abiding by the law's exacting requirements has led to a number of problems, including the transfer of assets from business leaders entering political office to family members. The law also requires government officials to step down from any civil society organization positions. Morales and several members of his government have not done this, continuing to serve as leaders of sectoral organizations (Morales remains president of the coca-growers federation), leading to a complicated and potentially dependent relationship between the state and specific civil society organizations.

The budgetary process remains firmly within the domain of the executive, although the legislature is expected to participate in the process. However, because significant revenues are derived from SOEs (particularly oil and gas revenues) and foreign direct assistance (which is often unreported), it is difficult

to know the exact extent or nature of Bolivian government spending. The 2010 Open Budget Index gave Bolivia a score of 13 out of 100, which ranks as the 12th lowest in the index. Nevertheless, this was an improvement from 2008, when Bolivia scored a mere 7.

RECOMMENDATIONS

- The government should respect subnational autonomy, respecting both the letter and spirit of the laws and seeking to assist subnational governing entities in developing effective institutional capacity.
- The government should refrain from demonizing the press and make concerted efforts to ensure journalists' safety and access, and prosecute those who attack or intimidate journalists.
- The government should respect and encourage legislative independence, facilitating consensus-building between progovernment and opposition legislators to ensure that the voice of all citizens is heard.
- In cases of sharp political disputes, the government should prioritize strengthening public confidence and trust in the institutions of representative democracy over the encouragement of public mobilizations to apply pressure on opponents.
- In order to ensure the long-term legitimacy of anticorruption measures, the government should refrain from using—or appearing to use—anticorruption efforts as a political tool and revise the anticorruption law to achieve compliance with international norms.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

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BURKINA FASO

CAPITAL: Ouagadougou
POPULATION: 16.2 million
GNI PER CAPITA (PPP): $1,170

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	3.41	3.58
CIVIL LIBERTIES:	4.16	4.16
RULE OF LAW:	3.28	3.36
ANTICORRUPTION AND TRANSPARENCY:	3.43	3.51

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Michael Kevane

INTRODUCTION

Burkina Faso's steady expansion of political freedoms, initiated in 1989 after the end of the Cold War and reinforced by internal opposition in the late 1990s, has not proved transformative. There have been no significant transfers of power at the presidential, legislative, judicial, or local levels. Suspicions persist regarding President Blaise Compaoré's commitment to genuine political liberalization. Social tensions exploded in early 2011 with demonstrations, strikes, and mutinies throughout the country, forcing the dismissal of the government. President Compaoré's ability to survive the crisis remains to be seen.

President Compaoré completed his 27th year in power in 2010. He took power in 1983 as part of a quartet of military officers that included Jean-Baptiste Lingani, Henri Zongo, and Thomas Sankara. Sankara was named chairman of the National Revolutionary Council and head of state. Divisions within the quartet quickly emerged, and Sankara was killed in 1987 during a bloody internal coup d'état led by Compaoré, who took over as head of state. Two years later, Lingani and Zongo were summarily executed, allegedly for plotting against Compaoré. Compaoré has been elected as president four times since 1989 (in 1991, 1998, 2005, and 2010), although the two earliest elections were boycotted by opposition parties.

During the 1990s, several political opponents were killed under suspicious circumstances. The most prominent was Norbert Zongo, a crusading journalist and independent newspaper editor, who was gunned down with three

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companions while driving on a rural road. Members of Compaoré's presidential security guard were implicated by an independent commission of inquiry, but charges against the chief of presidential security, Adjutant Marcel Kafando, were dropped in 2006, and no other persons have been charged. The investigations and numerous other sources strongly suggested that President Compaoré's brother, François Compaoré, was likely complicit in the killing, as Zongo was investigating the brutal torture and killing by presidential security officers of François Compaoré's driver. Zongo's killing became a rallying cry for opposition forces in 1998 and 1999, and catalyzed a sustained peaceful opposition social movement (the *Collectif*) that lasted into the early 2000s. The Collectif organized numerous massive street demonstrations and forced the regime to undertake significant reforms, including limits on presidential terms in office.

President Compaoré rallied from the serious challenge to his rule and new constraints on power. In 2005, the Constitutional Court (whose members are appointed by the president) ruled that presidential term limits did not apply retroactively. Compaoré was thus eligible for two more terms starting in 2005.

President Compaoré's power through the period 2000–2010 was derived from broad-based but shallow legitimacy, given his apparent concessions and subsequent focus on securing steady economic growth, and an implicit threat of force against opponents. The regime in 2010 promoted itself as on a trajectory toward greater transparency and accountability in the political process and economic policy. Regime supporters have argued for the superiority of their governing strategy of pragmatic reform and emphasis on competence and integrity in government, economic liberalization, and encouragement of private sector investment. Leaders of the regime have argued that their dominance is legitimate, earned fairly in the electoral arena. Indeed, legislative elections in 2007 and presidential elections in 2010 were won handily by the ruling party of President Compaoré, and the victories seemed to be influenced less by fraud and more by the wealth of party backers (including the president himself) and disarray in the opposition, which fielded more than a dozen candidates in the presidential election.

Regime critics have suggested that political liberalization has been tentative, shallow, and reversible. Numerous procedural and institutional reforms over the past decade have not been reflected in concrete indicators of substantive change in outcomes. There have been no cases of prosecution of high-level corruption cases; no instances where the judiciary has overruled the presidency on issues of substance; no shifting of constitutional power from the strong presidency to the legislative assembly; no greater likelihood of electoral transition; and no increase in transparency within the ruling party. Critics have argued that the government creates new institutions to improve governance but then staffs them with party stalwarts.[1] Finally, while the government claims to have spent much time and effort to decentralize and devolve powers to the local level (especially in rural areas), the central government, through its representatives, retains considerable influence over local affairs.[2]

Regime critics argue that the political system in Burkina Faso is volatile, and that there is a high probability that it will tip into instability. From February to June 2011, soldiers from various elements of the armed forces participated in controlled, nightly mutinies, and students, teachers, magistrates, and opposition parties organized spontaneous and often sizable demonstrations against the regime. In response, President Compaoré dismissed his government and appointed a new prime minister, but it does not appear that he has any intention of stepping down.

ACCOUNTABILITY AND PUBLIC VOICE 3.58

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	2.80
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.00
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	3.86

Burkina Faso has a mixed single-chamber parliamentary and presidential system at the national level, and municipal and rural councils at the local level. Terms at all levels are five years. The president is limited to two terms under Article 37 of the constitution. Nationally appointed government officials (regional governors, provincial high commissioners, and local prefects) have considerable power and budgetary authority. There are no limits to private financing of or spending on political campaigns, and public financing is provided. Burkina Faso ratified the African Union's African Charter on Democracy, Elections, and Governance in May 2010.

The electoral law was amended in 2009 and 2010. The electoral performance threshold for public financing of political parties was lowered from 5 percent to 3 percent of the vote. A second reform enabled Burkinabè citizens residing outside the country to vote, though the enormous technical difficulties and cost of organizing consular voting in countries such as Côte d'Ivoire led the government to postpone implementation until 2015. A third reform tightened limits on presidential candidates by requiring that every candidate obtain support from a specified number of deputies in the National Assembly or councilors in local municipal and rural councils. The reform emerged from allegations that many presidential candidates were taking advantage of generous campaign financing laws; without support from any significant constituency, they were running for president to acquire the financing. Of course, another effect is to make an independent challenge to the regime more difficult.

A fourth reform required voters to present tamper-proof photo identification at the time of voting, as opposed to the variety of identification documents allowed previously. The government had claimed that implementation of such a measure would be very costly, since large numbers of citizens in rural areas did not have photo IDs and would not have the capability or access to government offices to apply for cards. In the 2010 presidential election, the national election commission declared that voters without photo ID would still be allowed to vote.

A fifth electoral reform was gender quotas for party lists for legislative and local council elections.[3] Parties were required to have a minimum of 30 percent women candidates on their party lists, and parties not in compliance with the law would see public financing of their electoral campaigns cut by 50 percent. All of these reforms were generally discredited by civil society and opposition critics of the regime, who argued that they were cosmetic rather than substantive changes.

Legislative elections were held in 2007 and presidential elections in 2010 under the supervision of the Independent National Electoral Commission (CENI). The 15-member governing board has five representatives chosen by the executive branch, five by opposition parties, and five from civil society (one person from each of three major religious communities, one from the institutions of traditional chieftaincy, and one from the human rights community). This structure of tri-partite representation is reproduced at the provincial and local levels. Critics note that the process for selection of the civil society members is not clear. In Yatenga province in 2010, before the presidential elections, two civil society factions came to blows at the office of the high commissioner as representatives of the national CENI tried to mediate a dispute over who would represent civil society. There were numerous irregularities in the selection process.[4] In this example as in others, allies of the regime often appear to dominate the oversight institutions that should be independent.

Turnout was low for both elections.[5] Of the approximately 7 million eligible voters in the country, there were just 4.5 million registered in 2007 and 3.2 million in 2010. Turnout was 56 percent of registered voters in 2007 and 55 percent in 2010, marking a decline in voter participation since the early 2000s.

Legislative elections were conducted in a single round with proportional representation of closed party lists on a single ballot. Two-thirds of respondents to the Afrobarometer survey agreed that the 2007 elections were free and fair.[6] The president's party, the Congrès pour la démocratie et le progrès (CDP), won 73 of the 111 seats in the National Assembly. The Alliance pour la démocratie et la fédération/Rassemblement démocratique africain (ADF/RDA), allied with the CDP since 2005, obtained 14 seats, giving the president a very large majority. The main opposition party, the Union pour la renaissance/Mouvement sankariste (UNIRS/MS) led by Bénéwendé Stanislas Sankara, obtained only 4 seats. Sankara became the official head of the opposition.

The ADF/RDA's switch to support the president in the 2005 election led the National Assembly to pass legislation in 2009 giving official status to the opposition. This was because President Compaoré had rewarded the ADF/RDA with ministerial positions after his victory, yet the party wanted to continue to claim they were the official opposition. The new law guaranteed opposition access to state media while precluding members of opposition parties from occupying high posts in the government. Some commentators charged that the reform would further divide the already-fragmented opposition by imposing a single person as the head of the opposition.

The 2010 presidential election was a landslide victory for President Compaoré, who received 80 percent of the vote. (In 2005, he also had obtained slightly more than 80 percent of the vote.) Receiving 8 percent of the vote was Hama Arba Diallo, a veteran diplomat and mayor of Dori, a small but well-known town in the northern Peuhl region. In third place was Bénéwendé Sankara with 6 percent of the vote. Four minor candidates split the remaining 5 percent.

Four opposition presidential candidates held a press conference after the election and declared that the election had been marked by significant fraud. Specifically, they alleged that some voters were able to vote repeatedly by using multiple identity cards and not having their thumbs imprinted with indelible ink, and that voter registration cards were withheld from distribution in localities favorable to the opposition. Administrative law judge Rene Bagoro, president of the leading union of magistrates, also indicated that he thought voter registration cards were not legal, since they did not report the holder's country of birth.[7] Moussa Michel Tapsoba, the head of the CENI, maintained that the presidential elections were largely without major problems.[8] There were no reports from international monitors of major irregularities, nor were there significant reported threats of violence.

Both the 2007 and 2010 elections made clear that the well-financed electoral machinery of the CDP had grown increasingly formidable. Presidential candidates received approximately $60,000 each.[9] While there were no reliable estimates of total CDP campaign spending, in all likelihood it exceeded the public funding by several orders of magnitude. The country was flooded with freely distributed gadgets, especially articles of clothing bearing the likeness of President Compaoré. The CDP is able to host large, well-staged rallies in both major cities and small villages. Government ministers, who are in positions to both direct and withhold government resources from opposition areas, campaign extensively for the CDP. Meanwhile, opposition efforts to gain seats were hampered by continued disunity among opposition parties.

The CDP is a large umbrella party. A number of accounts of local CDP politics make clear that internally there is lively and active, though opaque, political bargaining among several regional and ideological factions.[10] In towns outside the capital there can be intense political competition within the party. A group of CDP activists and veteran politicians, known as the *refondateurs,* broke off from the CDP in early 2008 after an unsuccessful public attempt to have their views heard and deliberated within the party. They formed a party in 2009 called the Convention nationale pour le progrès du Burkina (CNPB).

Commentators on the political scene find themselves at odds over how to interpret shifts in the personal fortunes of particular politicians of the CDP. For example, Salif Diallo, widely regarded as one of the most powerful men in the party, was stripped of his position as minister of agriculture and water resources in 2008 and given (or exiled to) the ambassadorship to Austria. In July 2009, he gave an interview to a local newspaper in which he called for major reform of the constitution toward a more parliamentary and less presidential

system, and suggested that the electoral registers were deeply compromised. He was promptly dismissed from his role as vice-president of the CDP and expelled from the party. Some observers suggested that the schism began because François Compaoré was maneuvering to position himself as the undisputed heir to the presidency. Others suggested that the whole affair was intended to distract from attention paid to Zepherin Diabré, an opposition politician and outsider who many viewed as a serious challenger to President Compaoré. Still others thought that Diallo was actually serving the president by proposing constitutional reforms that might extend the president's rule beyond the two terms that would end in 2015.

According to the constitution, the National Assembly can censure and express a lack of confidence in the executive; however, given that it is dominated by the CDP, there is in fact very little oversight of government policy. Commissions of inquiry, oral and written questions addressed to government ministers, and site visits by deputies are relatively infrequent.[11] Most legislation originates with the executive, and there have been no instances where executive initiatives have been reversed by the legislature.

The civil service enjoys a mixed reputation, with some cadres enjoying positive reputations (electricity and water service) while others (customs in particular) are widely reviled as very corrupt. In principle, and to some degree in practice, civil servants are recruited and promoted through meritocratic examination systems. There is widespread suspicion, however, that bribes can be used to bypass the regular process.

Political and human rights associations are active in the country, and there are increasing signs that civil society organizations are expanding. This includes three organizations that engage in public interest action in the rapidly expanding mining sector: the Organisation pour le renforcement des capacités de développement (Orcade), MinAlert, and Publiez Ce Que Vous Payez (PCQVP). The government increasingly has to take these civil society organizations seriously, as accession to the Extractive Industries Transparency Initiative (EITI) requires evidence of active civil society participation in policy formulation and implementation.

Rotary clubs, Lions clubs, Chambers of Commerce, evangelical church associations, and other civil society organizations appear to be thriving, with few formal restrictions and no systematic harassment of their members or activities. International nongovernmental organizations (NGOs) operate throughout the country, and there appear to be few impediments to operations of international human rights and other civil liberties groups. International NGOs and local donors appear to be unimpeded in their efforts to assist local civil society organizations.

Freedom of the press is guaranteed in Article 8 of the constitution. The media is very open, and often very critical of government policy. There are several dozen private newspapers and private television and radio stations. Bloggers are becoming an increasingly important source of news and opinion

for those with Internet access, which is growing rapidly with the penetration of smartphones and Wifi USB connectors through the cellular phone system. Internet use is widely available in the two major cities of Ouagadougou and Bobo-Dioulasso and many medium-sized towns through internet cafes, with usage costs affordable to middle-class users. Nevertheless, internet penetration most likely remains in the single digits even in urban areas.

Several radio and print journalists have received anonymous death threats, and reported these to the public. The government has claimed to be taking the threats seriously. There appear to have been no attacks on journalists during the last several years.

The High Council for Communication (CSC) regulates the press and guarantees equal media access to candidates to political office in national elections.[12] Decriminalization of libel laws remained on the agenda of the prime minister's reform projects,[13] but libel proceedings have reportedly become considerably fairer, and reporters and newspapers are increasingly likely to win libel cases. There is little doubt, however, that the press engages in significant self-censorship, which the government promotes in part by restricting access to government information, making it very difficult for journalists to investigate controversial issues of policy and corruption.

CIVIL LIBERTIES 4.16

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.13
GENDER EQUITY	3.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.50
FREEDOM OF CONSCIENCE AND BELIEF	6.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	3.50

There were no reports of torture or extrajudicial killings of political opponents between March 2007 and March 2011. Extrajudicial killings of ordinary civilians by police, however, continued to occur. In June 2010, Arnaud Somé was killed by police in Gaoua.[14] The police claimed he was a drug trafficker and had resisted arrest. His death prompted large public demonstrations in Gaoua, and police forces were involved in numerous confrontations with residents over the following weeks. In June 2011, two police officers were sentenced to five years in prison for their role in the killing. In February 2011, secondary student Justin Zongo died in police custody after he was detained for an altercation in his secondary school. The local police claimed he had meningitis, but it was widely suspected that he was beaten to death. Resulting large-scale demonstrations prompted the government to arrest the police officers involved and force the regional governor to resign.

There is relatively little violent crime and terrorism in Burkina Faso, except for banditry on the roads. Several cases every year are reported of gangs stopping

private vehicles and buses and robbing passengers of belongings. The government has responded to these crimes by staffing rural police outposts.

Conditions in the main prison of Ouagadougou are poor, with overcrowding, inadequate food, and lack of basic sanitation.[15] A report by a civil society organization that visited the facility found numerous violations of basic hygiene, and noted that the great majority of the prisoners were still pending trial.[16] An exercise yard, the first of its kind, was inaugurated in 2010.[17] In the prison of Koudougou in September 2009, an apparent escape of prisoners in the morning led to an altercation later that evening, and resulted in six prisoners killed and seven wounded.[18] There subsequently appears to have been no official accounting of the events. A project to improve prison conditions and raise awareness was started by the international NGO Fédération Internationale de l'ACAT, working in partnership with ACAT-Burkina and the Association for the Prevention of Torture.

In early 2008, demonstrations and protest marches against price increases for basic necessities rocked Ouagadougou and Bobo-Dioulasso. Some of the marches degenerated into small riots, and considerable damage was done to public and private property. The marches were declared illegal, and numerous leaders and activists in the protests were arrested and detained. Many were subsequently sentenced to one-year prison terms. Some of the organizers, including Nana Thibaut, youth leader and president of the very small opposition party Rassemblement démocratique et populaire (RDP), were sentenced to three years. Commentators noted that the arrests, detentions, and trials were conducted in haste, and seemed to be politically motivated. In Bobo-Dioulasso, 153 people were arrested from February 21 to 22 and 125 sentenced to prison terms just eight days later. Thibaut was released by presidential pardon after serving a year of his sentence; others were likewise released by presidential order. There appears to have been no public inquiry into the deaths of two of the protestors, who apparently died while in detention.

Persons arrested are often subject to lengthy detentions without trial. While there were few significant or extended cases of arbitrary arrest and detention, the government has given no strong signals that it would refrain from arbitrary arrest, a tactic used repeatedly over the 20 years of the current regime. Union and civil society leaders are occasionally subject to temporary detention and interrogation. For example, in December 2008, Tolé Sagnon, general secretary of the national union confederation, and Chrysogone Zougmoré, president of the human rights organization Mouvement burkinabè des droits de l'homme et des peuples (MBDHP), were called in for questioning after a march commemorating the 10th anniversary of the killing of Norbert Zongo and his companions. Citizens may seek redress for violations of rights from the ombudsman, the Médiateur du Faso. In the ombudsman's 2009 annual report, it was noted that more than 45,000 persons had filed petitions over 15 years. There apparently has been no independent assessment of the nature of these petitions nor the services offered.

Gender discrimination has been a significant problem in Burkina Faso.[19] The government is party to the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), and created a Ministry of Promotion of Human Rights that was intended, among other purposes, to address gender equity. At the level of formal policies and institutions, the government continues to make progress, including female quotas for party lists. Several cabinet ministers are women. The government created a National Council for Promotion of Gender in 2010, charged with advising and giving public voice to advocates for greater gender equality, which encompassed all government ministries, representatives from other echelons of government, and civil society. However, given its large size, it seems unlikely to be an effective instrument for change.

There remains considerable gender inequality, especially in rural areas. Female circumcision is widely practiced, and forced marriages remain frequent. Divorce is difficult to obtain for women in many ethnic groups, despite being guaranteed by law. While the government occasionally enforces the law in these domains, critics argue that resources allocated are limited and in practice police and prosecutors turn a blind eye. The government has been a strong promoter of girls' education, and a major component of the $450 million United States' Millennium Challenge Corporation grant to the government was for promoting girls' schooling.

In a bid to extend the involvement of civil society organizations in the protection of human rights, the government created a National Commission for Human Rights in 2009, composed of a mix of members of government and civil society representatives. The commission was to have powers of investigation and could receive petitions from persons about human rights violations. Critics noted that for more than a decade the government has promoted various new bureaucracies concerned with human rights, while tolerating abuses by regime insiders.

The government continues to makes efforts to promote and empower minority or historically disadvantaged social groups, as well as the disabled. The government signed and ratified the Convention on the Rights of Persons with Disabilities in 2009. There are about 60 different ethnic groups, with the largest being the Mossi, Gurma, Gourounsi, Peuhl/Fulani, Bobo, and Bwa. There are no apparent restrictions on cultural expression in any form. The people of Burkina Faso are proud that ethnic differences are not salient, and that traditions of joking relationships between members of different ethnic groups are widely practiced. The government pointedly promotes ethnic and religious diversity and tolerance through festivals at the local and national levels.

Freedom of religion is firmly enshrined in the culture and policy of Burkina Faso. People practice traditional religions, Christianity, and Islam, and sometimes all three are practiced within one family. The government places few restrictions on religious practice. During times of crisis, such as April 2011, religious leaders from all traditions have been called upon to mediate and offer advice.

As part of a campaign against human trafficking, millions of rural residents were encouraged to obtain free birth certificates.[20] In May 2008 the government increased the maximum penalty for trafficking. A three-day police operation conducted with INTERPOL in southwestern Burkina Faso in October 2010 identified more than 100 children as trafficked and took them into custody, while 11 alleged traffickers were arrested.[21] This relatively limited operation provided a sense of the significant magnitude of the problem.

Occasionally, the government appears to take reprisals against persons who participate in collective action against it. Government employees who were members of two government unions, the Syndicat des agents du Trésor du Burkina (SATB) and Syndicat autonome des agents du ministère des Affaires étrangères (SAMAE), were transferred apparently for participating in protest marches in May 2007; only some were reinstated in their former posts. In general, reprisals are infrequent.

The National Assembly voted to pass a law criminalizing peaceful protests and their organization if protestors do not disperse immediately when acts of violence are committed.[22] The opposition argued that any protest would have to end immediately if provocateurs incited even small acts of violence, and that often it is the police and army who commit acts of violence during peaceful protests.

RULE OF LAW	**3.36**
INDEPENDENT JUDICIARY	3.40
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.50
PROTECTION OF PROPERTY RIGHTS	4.33

Attitudes of citizens of Burkina Faso toward the judiciary are ambivalent. A majority thinks that justice is unequal according to social position and that many judges are corrupt, but at the same time there is confidence in the institution of the judiciary itself. Furthermore, focus groups of judges and judicial employees reveal that many are concerned that justice is very difficult to access for ordinary citizens due to barriers of language (court business is in French) and distance.[23] Other concerns are the lack of infrastructure for the courts; lack of training and support from the High Council of Magistrates (CSM); long delays in bringing cases to trial, especially at the appeals level; and costliness and uncertainty about implementation of judicial decisions, which can be ignored with impunity. The government has been trying to improve the functioning of the judiciary, with investments in new facilities and increasing the number and quality of judges.[24]

President Compaoré is president of the CSM and has considerable influence over appointments.[25] Similarly, the president selects seven of the 10 members

of the Constitutional Council. A Supreme Court, with members selected by the National Assembly and the Appeals Court (which is largely selected by the president), has jurisdiction over the president in cases of treason, violation of the constitution, or misappropriation of public funds, if they are referred to it by 80 percent of the deputies in the National Assembly.

Judges belong to one of three syndicates. When one of these, the Syndicat burkinabè des magistrats (SBN), tried to hold a protest march in 2007 to demand improved compensation and working conditions and greater judicial autonomy, the minister of justice effectively shut down their attempt at public protest.[26] The SBN has also maintained that judges have been compromised by the political authorities.[27] In practice there are no notable cases in which the judiciary has overturned executive decisions.

There is very little effective protection for ordinary citizens who may not be able to afford a lawyer. A case in Koudougou concerning a teacher arrested and held for several months, despite vigorous lobbying by the teachers union, illustrated the opacity of the judicial process.[28] This opacity makes difficult precise statements about the degree of judicial independence for civil and criminal matters. While many citizens believe that there are significant opportunities for bribing and influencing judges and prosecutors, there are few credible reports measuring the extent of violations of due process.

There appears to have been no public accounting of the incidents of December 2006, when armed forces personnel went on a rampage in downtown Ouagadougou, killing numerous civilians and destroying property. The events also resulted in an assault on the central prison, and numerous prisoners apparently escaped. Defense Minister Yero Boly indicated in an interview in July 2007 that an investigation was under way.[29] In an interview in 2010, however, the army chief of staff failed to indicate any official policy changes or significant sanctions taken.[30] The aftermath of the events thus points to ineffective accountability mechanisms.

In March 2011 several garrisons in Ouagadougou and Fada N'Gourma mutinied, attacked local prisons to release soldiers who had been convicted of civil crimes, vandalized public and private property, stole weapons from arms depots, and then returned to their barracks. In April 2011 the president's own Republican Guard mutinied, and according to some accounts the president was forced to flee the presidential palace in Kosyam and spend the night in his home residence in the town of Ziniaré. Order was restored when the president sacked the army chief of staff. The situation appeared calm until early May, when the second-largest city, Bobo-Dioulasso, saw a three-night rampage by the armed forces. The Presidential Guard was sent in to quell the mutiny: according to official accounts, seven soldiers were killed and more than 100 arrested. These incidents strongly suggest that the military lacks even basic adherence to discipline and respect for civilian control.

Police are widely perceived to lack discipline, abuse their authority, and be prone to soliciting bribes. On September 21, 2009, cadets of the National

School of Police in Ouagadougou went on a rampage in the neighborhood around the school, injuring numerous persons and causing much property damage. The government announced that seven of the cadets held responsible were expelled from the school, and another 30 were made to take an additional year of schooling.

The government has firmly aligned itself with policies to strengthen private and corporate property rights. The mining sector, which has grown very rapidly, is a good case in point. Total investments in industrial mines in Burkina Faso have been on the order of $1 billion, particularly gold mines but also zinc and manganese. The government of Burkina Faso owns subsoil resources. The Ministry of Mines, Quarries, and Energy grants permits for exploration, provided companies submit exploration results to the government. The government has been very welcoming of investment the mining sector, and the Mining Code of 2003 introduced a light tax regime.

In contrast, rights to establish agricultural schemes, such as large-scale jatropha plantations, are still subject to considerable uncertainty.[31] Land tenure in Burkina Faso is a mix of local, customary traditions and ambiguous national law. A variety of land reform projects over the years have clarified private rights, but government enforcement and judicial precedent are not settled. A new land law in 2009 gave more power to local collectivities to settle local land tenure issues, and abrogated the long-standing legal principle that all land belonged to the national state.[32]

Fringes of cities and towns, and the entirety of larger villages, are enmeshed in opaque processes to survey and delimit residential and commercial property. The process is, by numerous accounts, rife with corruption and limited capacity.[33] There has yet to be a comprehensive examination of the widely reported phenomenon of land-grabbing that appears to be prevalent in many African countries. However, mining concessions in Burkina Faso generally compensate landholders and relocate infrastructure damaged during the establishment of mines, and there have been no significant, large-scale protests against the nascent jatropha sector.

ANTICORRUPTION AND TRANSPARENCY 3.51

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.20
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	3.50
GOVERNMENTAL TRANSPARENCY	4.00

Citizens and media in Burkina Faso are largely convinced that a significant corruption problem exists. Transparency International scored the country at 3.1 out of 10 in its 2010 Corruption Perceptions Index, placing it 98 out of 178 countries.[34] The Afrobarometer survey found that about 40 percent of respondents, in a nationally representative sample, thought that most or all

government officials were corrupt, although less than 15 percent of respondents said they personally had paid bribes for government services. The local NGO Réseau National de Lutte Anti-Corruption (REN-LAC), which researches and reports on corruption issues in Burkina Faso, also reports that corruption is deeply embedded in state activities.[35]

The government of Burkina Faso has consistently prioritized policies and reforms to combat and punish corruption. At the level of petty corruption there seem to be moderate efforts to prosecute corrupt officials. REN-LAC in 2009 conducted a "sting" operation against city workers in Ouagadougou who were requesting bribes to expedite birth certificates and residency documents.[36] REN-LAC turned over its report to the mayor's office, whose own investigation confirmed the accusations, and one person was arrested. There remains a disconnect, however, between widespread perceptions of corruption, significant government rhetoric and institutional action, and the lack of prosecutions of grand corruption.

The government has been moving steadily to enable the private sector to be the main engine of growth for the economy, reducing state involvement in provision of goods and services, and reducing interventions in markets. State-owned enterprises, however, continue to be important actors in the economy (water, energy, cotton processing, and airport). REN-LAC has noted that the Public Accounts Court and the press have investigated a number of these entities and found credible evidence of corruption and embezzlement, and yet there have been no high-level prosecutions.

An important effort has been made to streamline the process of establishing formal businesses. Business registration centers, for example, provide one-stop service for registration. The registration centers continue to improve their performance, and measurement of the cost, formalities, and time to establish a new business have been declining.

Civil society and opposition parties have long maintained the inadequacy of the requirement of Articles 44 and 77 of the constitution that the president and major officeholders declare their assets upon assuming office. There is no provision for public release of the information, nor for verification of the provenance of assets acquired during public service. There is a widespread sentiment that President Compaoré, for instance, has obtained assets in numerous national and international ventures through his role as president. Lack of effective disclosure impedes adequate attention to conflicts of interest or influence peddling.

The government created a High Authority for Control of State Accounting (ASCE) in November 2007, with powers to investigate government accounting. The ASCE is directed by the state controller general, who was given minister status. Inspectors in the ASCE were granted higher salaries and career paths within the unit, and the reports of the ASCE were mandated to be made public. Critics noted that the ASCE is not completely independent, but rather is under the authority of the office of the prime minister, and that civil society is not represented on a governing board. The ASCE began operations in late 2008,

investigating 10 government entities. In 2009, serious irregularities amounting to approximately $1 million were reported in four entities, a marked increase over the previous year. An NGO called Espace International Colin Powell pour le Sahel (EICPS) was the largest offender. Investigators determined that officials at the NGO were using the nonprofit status to import building materials free of duty and then resell them. Irregularities at the Commission on Digital Privacy and Rights (CIL) and the National Identification Office received much attention. The director of the CIL protested vigorously. As of June 2011, no judicial decisions or sanctions had been rendered related to these cases.[37]

The Public Accounts Court complements the functions of the ASCE. The seriousness of corruption issues that are uncovered in its periodic reports has increased, but it does not have powers to prosecute, and in many cases does not name the suspected corrupt agents. One case discussed in the court's report for 2008 (released in December 2008) concerned the National Social Security Administration (CNSS), which in 2005 allegedly made a number of private loans involving sums from $100,000 to $1 million. The head of the CNSS, who was campaign coordinator for President Compaoré in 1998 and former minister of trade, was fired by order of the Council of Ministers soon after the loans were made public. According to news reports, the beneficiaries of the loans were former Prime Minister Ernest Paramanga Yonli and a number of other high-ranking government officials.[38] By the end of 2010 none of the presumed beneficiaries had been indicted or brought to trial.

There are few reliable public sources of information about corruption. The lack of serious prosecution of corruption cases means that the media more often are left to print rumors and accusations. In an effort to redress this, civil society has taken the lead, and REN-LAC has opened three regional offices. Whistleblowers have few protections and thus have been rare. Judicial proceedings are very expensive, and victims of corruption presumably prefer not to seek redress.

Education is a particularly salient domain for corruption. One experimental study found significant willingness on the part of graders to accept bribes in return for changing scores, even when the bribe-giver and bribe-taker did not know each other.[39]

Citizens in principle have rights to obtain information about government operations in a timely and reasonable manner. In practice, however, few government agencies provide customer-friendly services. Investments in websites for government entities continue to grow, but the typical website is updated only rarely. The government has not adopted laws or regulations guaranteeing access to information. The public has difficulty obtaining copies of the proposed national budget and has little opportunity to comment through their representatives. At the local level, regional and communal budgets are generally not produced or accounted for in transparent processes.

A positive example of efforts to promote transparency is provided by the government's candidacy to become a member of EITI. With the EITI process

under way in 2008, civil society actors were granted a structured mechanism for accessing powerful interlocutors in government and in mining companies. The civil society organization Orcade was promoted to the status of official interlocutor on a quasi-equal standing with government. The local EITI secretariat in May 2011 released a first report of payments from mining companies received by the state fiscal authority, covering the period 2008 and 2009.

In other areas, however, there has been less progress in promoting transparency. A structured investigation of budgetary transparency in the city of Ouagadougou produced a mixed review. While production of the budget and accessibility to councilors was deemed to be improving, there was little public access to the budget process.[40]

A 2008 reform considerably strengthened the General Authority for Public Procurement. Even so, in an open letter to the Ministry of Finance, REN-LAC asked why many procurement contracts were allocated through no-bid procedures approved by the Council of Ministers.[41] REN-LAC cites, for example, a number of construction projects intended to improve infrastructure in the town of Ouahigouya for the December 2009 celebrations of independence. Although the celebrations had been announced a year in advance, the Ministry claimed that the procurement was urgent and thus could not be put out to competitive bidding.

The office of the president continues to maintain discretionary authority over a number of budget lines. These are less well-monitored than ministerial budgets, giving considerable scope for President Compaoré to reward political favors. The budget of the armed forces, moreover, offers considerable scope for personal enrichment by higher-level officers. Very little is verifiable in these areas of potential corruption.

RECOMMENDATIONS

- President Blaise Compaoré should declare clearly and unequivocally that he is opposed to amending the two-term limit of the present constitution, and that he will not stand for public office at the end of his presidential term in 2015.
- The electoral code should be amended to establish a campaign spending maximum, at some multiple of public financing of campaigns, and with provisions for real-time reporting of expenditures and campaign contributions.
- The government should partner with civil society and international NGOs to create and promote an anonymous, verifiable, crowd-sourced SMS-based web tool to report incidents of corruption. The High Authority for Control of State Accounting (ASCE) could be required by law to conduct and report on preliminary investigations of allegations.
- Simplified user-friendly versions of the government budget should be made public via government websites and other mediums as soon as the budget is formulated for consideration by the National Assembly.

- Civilian review boards should be established for monitoring the expenditures and accounting of each military base, with requirements for annual publication of expenditures.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

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CHINA

CAPITAL: Beijing
POPULATION: 1,338 million
GNI PER CAPITA (PPP): $6,890

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	1.03	0.91
CIVIL LIBERTIES:	2.15	1.98
RULE OF LAW:	2.04	1.77
ANTICORRUPTION AND TRANSPARENCY:	2.48	2.48

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Carl Minzner

INTRODUCTION

The People's Republic of China has an authoritarian political system controlled by the Chinese Communist Party (CCP). Since 2007, Chinese authorities have tightened official controls over the media and civil society, and backtracked on legal reforms they enacted in the 1990s and early 2000s.[1]

Following the 1949 revolution, party leaders led by Mao Zedong attempted to remold China. They imposed communist ideology, a state-run economy, and absolute party-state control over citizens' lives. Such policies led to mass famine (the Great Leap Forward, 1958–60) and severe political turmoil (the Cultural Revolution, 1966–76).

In the late 1970s, the Chinese leadership under Deng Xiaoping launched the modern reform period. They relaxed economic and ideological controls, fueling an unprecedented 30-year long economic boom. China has experienced a ten-fold expansion in GDP, replaced Japan as the second-largest economy in the world, and emerged as a world power.

These reforms are transforming the country. Hundreds of millions of people have been lifted out of poverty.[2] Urbanization is proceeding rapidly, with some 140 million migrants traveling annually between their rural hometowns to China's booming cities in search of work.[3] The freedom enjoyed by ordinary Chinese citizens with regard to core personal decisions such as where to live and work has greatly expanded. Commercialized media and new technologies have

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given rise to a cadre of activist journalists and bloggers who push against the boundaries of state censorship, often exposing corrupt or illegal behavior on the part of local officials.

Central government leaders, however, remain adamantly opposed to fundamental political reform. They reject free speech and representative democracy. They repress peaceful protests with brutal force, as with the Tiananmen student demonstrations in 1989 and the Falun Gong spiritual movement after 1999. Moderate calls for political reform are met with lengthy prison terms. For example, 2010 Nobel Peace Prize winner Liu Xiaobo is currently serving an 11-year sentence for his role in organizing Charter 08, a petition signed by thousands of Chinese citizens and intellectuals calling for greater political and civil rights.

Despite opposition to significant political change that might threaten their control, central government authorities have pursued a range of limited reforms to fight corruption and abuse of power in local government. Since the 1980s, Chinese authorities have adopted electoral reforms that allow a restricted level of citizen participation in the selection of local officials. Starting in the 1990s, Chinese authorities took steps towards professionalizing the judiciary and allowing citizens a degree of legal redress for grievances against officials. Some officials have called for deeper reforms. In a series of speeches given in 2010, Premier Wen Jiabao criticized the excessive centralization of political power, warning that "without the safeguard of political reform, the fruits of economic reform will be lost and the goal of modernization will not materialize."[4]

Other authorities, however, have blocked these calls. Propaganda officials censored some of Premier Wen's remarks, while state-run media outlets parroted the official line regarding the need to avoid "Western" political reforms. Positive reform efforts have been undercut when they appear to be on the verge of generating substantial change. For example, authorities moved to exert tighter control over village elections in 1999, after local activists and officials attempted to extend such competitive polls up to township governments. In the last several years, central party authorities have made similar, increasingly concerted efforts to curtail the legal and judicial reforms of the prior decade.

As in the past, Chinese authorities have tightened their grip on dissent in advance of high-profile events, or in the wake of overseas developments. Officials engaged in widespread detentions of activists and petitioners prior to both the 2008 Beijing Olympics and the 2010 Shanghai World Expo. Following the 2011 Arab Spring, Chinese authorities commenced one of the most sustained and widespread crackdowns in decades. Authorities launched extrajudicial detentions of public interest activists and lawyers, increased harassment of journalists, and began interfering with virtual private network (VPN) services used by many citizens to evade extensive state internet controls.

However, tougher Chinese policies with regard to the media, civil society, and legal institutions are not simply the result of transitory state concerns with regard to specific, one-time events. Rather, they represent a more general effort,

extending back several years, to curtail some of the limited reforms undertaken in recent decades.

China's future remains uncertain. Central Chinese authorities have chosen to prioritize party control at the expense of building autonomous legal and political institutions. This carries real risks for social stability. Rapid economic development is generating increased demands by citizens to participate in the decisions that affect their lives, and for authorities to more fairly respond to their grievances. In the absence of gradual and substantive steps toward political reform, this pressure is instead being channeled into mass citizen petitions and protests, populist official rhetoric, and nationalistic internet forums—unruly and imperfect release valves that erupt periodically (and with increasing intensity), but that fail to address the roots of building social discontent.

ACCOUNTABILITY AND PUBLIC VOICE 0.91

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	0.40
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	1.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	1.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	0.57

The CCP controls the institutions of government in China. China's executive branch, the State Council, notes that "Party committees serve as the leadership core over all [government and mass] organizations at the same level . . . and through Party committees and cadres in these organizations, ensure that the Party's policies are carried out."[5] Central government authorities regularly reject multiparty democracy as a "Western" concept inappropriate for China's conditions.[6] They have harshly suppressed leaders of movements calling for political reform, including the Chinese Democracy Party, founded and banned in 1998, and Charter 08, established in 2008.

Party authorities choose key figures in executive and judicial institutions, with subordinate government officials selected through competitive civil service exams. CCP authorities tightly control the electoral mechanisms that govern Chinese legislative institutions, limiting eligibility to stand for election to China's local people's congresses (LPCs). Independent candidacies are technically allowed, but during the 2006–07 LPC election cycle, Yao Lifa, Lu Banglie, and other independent candidates for legislative office experienced numerous incidents of abuse, detention, and harassment at the hands of local authorities.[7]

CCP institutions are themselves governed by non-transparent internal processes. Unlike the Maoist period, no single figure dominates the political landscape. Top-level decisions and appointments are consequently the result of backdoor political machinations involving different factions. At top-level party conferences in 2007 and 2010, such processes resulted in the elevation of Xi Jinping to key deputy posts in the party and military bureaucracies, presumably as the designated successor to lead China following the scheduled retirement

of current CCP general secretary Hu Jintao in 2012. Lower-level party officials respond to top-down personnel targets set by higher authorities, including economic development, social stability, and birth control targets.

There is a limited degree of public participation in the Chinese political system. Central party authorities have permitted a range of reforms to improve party governance and control, better monitor their own local agents, and respond to local discontent. Since 2005, authorities have increased their efforts to promote CCP-managed institutions such as the Chinese People's Political Consultative Conference and the approved eight minor political parties as channels for providing government and party leaders with suggestions. CCP officials have also carried out restricted experiments employing a degree of popular participation in selecting local party cadres. Party authorities, however, retain tight control over candidate pools and selection processes, and warn that candidates' popular support should not be the determining factor in ultimate selection decisions.[8]

Legislative institutions have evolved marginally away from their Maoist-era role as simple rubber stamps. China's national legislature, the National People's Congress, meets just two weeks a year in plenary session, for which the legislative agenda is largely (but not entirely) set by the State Council. Non-party members comprise roughly one-third of township and county LPC delegates.[9] Some delegates attempt to fulfill their legislative role in representing the interests of their constituents and supervising the actions of executive agencies, despite their limited resources, general absence of professional staff, and prevailing political constraints.

Central party authorities remain deeply ambivalent toward civil society. They welcome citizen participation in state-led efforts to address pressing social problems and natural disasters, as with the 2008 Sichuan earthquake, which triggered the largest outpouring of domestic humanitarian aid and philanthropic work in recent Chinese history. But party leaders instinctively fear the emergence of truly independent institutions, viewing these as potential political challenges. Such concerns have been exacerbated in the wake of events such as the Arab Spring of 2011 and the 2003–05 "color revolutions," in which social movements toppled authoritarian regimes in the Mideast, Eastern Europe, and Central Asia. These fears have given rise to official policy lines such as "the Party-state guides, society participates, and citizens show concern for,"[10] a restrictive regulatory environment that severely limits the growth of an independent civil society, and arrests or detentions of activists.

Chinese civil society consists of a spectrum of organizations that vary considerably in terms of distance from state power, legal status, and official support for (or tolerance of) their activities. It includes a handful of national mass organizations (such as the China Women's Federation or All-China Federation of Trade Unions) that party authorities founded, fund, and control. These groups engage in a range of charitable activities and enjoy regular access and input into

policymaking and legislative processes. Their positions vary little, if at all, from the official party line.[11]

Somewhat further removed from state power are the registered civil society organizations. As of 2010, these include 241,000 social organizations (voluntary groups ranging from industry professionals to environmental activists to bird-watching enthusiasts); 192,000 nongovernmental, noncommercial enterprises (such as private schools or hospitals); and roughly 2000 foundations.[12] National regulations issued in 1998 and 2004 grant these groups recognition as legal entities in exchange for acceptance of a degree of official supervision. Citizens seeking to found such an organization must locate an approved government or party bureau (or mass organization) to serve as a sponsor. Sponsors are charged with monitoring the activities of the registered organization in question. Often operating on shoestring budgets, registered organizations engage in a wide range of humanitarian activities. These sometimes skirt the boundaries of what authorities are comfortable with, providing assistance to vulnerable groups such as AIDS victims or displaced farmers. Depending on the prevailing political winds, such organizations may periodically be asked to provide input into the policymaking process.

Last are the entirely unregistered organizations. These consist of everything from informal networks of neighbors interested in community issues to organized groups of homeowners dissatisfied with the policies of their residential community to house churches seeking to practice their faith outside state-run patriotic churches. Estimates for the total numbers of unregistered organizations vary wildly, ranging into the millions. These organizations exist in a gray zone of legality. Some are suppressed as "illegal organizations." Many others are left alone as long as they remain small in size and do not openly challenge state controls.

Restrictive regulations severely hamper the development of Chinese civil society. Unable (or unwilling) to locate an approved sponsor organization, many organizations register instead as for-profit entities, creating potential tax problems. Lack of legal status creates difficulties for organizations that do not register. Unregistered groups of rural farmers engaged in cooperative economic development programs, for example, are often unable to borrow money from banks to fund their irrigation projects.

Chinese authorities have undertaken some tentative experiments with reform. The 2007 Law on Professional Farmers Cooperatives provided a channel for some rural organizations to register and obtain legal status. Government officials are liberalizing tax treatment for charitable contributions in an effort to build a domestic philanthropic sector. Some localities have permitted organizations to register with civil affairs authorities without obtaining a separate official sponsor. Central government officials, however, have regularly shot down proposals for more sweeping reforms that would eliminate the sponsorship requirement.

In recent years, Chinese authorities have stepped up their pressure on domestic civil society organizations and activists. They have launched a sweeping review of civil society organizations, requiring local authorities to review and rate all groups. Tax authorities are aggressively pursuing and sanctioning civic groups registered as for-profit organizations. In 2009, such tactics resulted in the closure of China's most well-known public interest law organization, the Open Constitution Initiative, and the arrest of its founder, Xu Zhiyong.[13] Authorities have used vague subversion charges to jail activists such as Wu Lihong, who was sentenced in 2007 and released in 2010, and Tan Zuoren, sentenced in 2010, following their efforts to challenge the failings of local authorities regarding environmental degradation and earthquake safety.[14] Others have fled China under the threat of government persecution, such as noted AIDS activists Gao Yaojie in 2009 and Wan Yanhai in 2010.

Heightened pressure has also been brought to bear on foreign nonprofit organizations working in China. Groups working on projects that would have been regarded as less sensitive several years ago, such as legal and administrative reform, have been subjected to more aggressive surveillance and questioning.[15] In March 2010, onerous new restrictions restricting the transfer of foreign funds to Chinese organizations entered into effect.[16] Both foreign donors and domestic Chinese recipients note that these regulations have created significant practical difficulties for their work.[17]

The party continues to maintain a tight grip over the media in China. Since 2007, authorities have further adapted traditional censorship, licensing, and propaganda controls for use in new technological arenas such as the internet, social-networking websites, and mobile-telephone text messaging. These controls are not absolute. Beneath the surface of state control, a vibrant and anarchic blogosphere is home to a bubbling mix of moderate, extreme, democratic, and nationalistic viewpoints. In addition, despite the risks of detention or demotion, Chinese journalists continue to push the boundaries of state censorship to report on scandals and abuses of power involving local officials.

Chinese authorities rely on a broad array of state-run print, radio, television, and online outlets to disseminate officially approved versions of news events, and on an extensive network of party propaganda bureaus to monitor and guide news reporting. Propaganda authorities give general guidance regarding the tone that media outlets are expected to take with respect to breaking news events. They also issue direct orders to avoid reporting on specific events or commentary viewed as threatening. In 2010, after 13 independent-leaning state media outlets coordinated the publication of a joint editorial criticizing the official household registration system and calling for reform, authorities forced the resignation of the responsible editor and ordered the deletion of the editorial from websites throughout the country.[18] Propaganda authorities regularly ban media organizations from independently reporting on crises that attract significant social attention. Examples include public health emergencies, such as the 2003 SARS outbreak; environmental disasters, including the

2005 Songhua River benzene spill; and food safety scandals, notably the 2008 melamine-tainted milk scandal. More extreme information blackouts also have been imposed in some instances. Following the outbreak of ethnic rioting in Urumqi in 2009, central government authorities severed internet, text messaging, and international phone access in the western region of Xinjiang for half a year.[19]

At the core of Chinese censorship is an expansive legal regime of prior restraints. A government license is required in order to publish a newspaper, work as a journalist, or report news on the internet. This has a chilling effect on speech. Media institutions engage in extensive self-censorship that goes beyond that required under vague official requirements for fear of losing their licenses. Many foreign and domestic internet content providers in China maintain their own staff to monitor and delete content that might be deemed objectionable, even absent specific state orders.

Chinese officials are modernizing their controls to keep pace with developing technologies. Regulations issued in 2007 require state ownership in companies providing online audio and video websites as a condition for obtaining an operating license.[20] Government authorities have experimented with or implemented registration systems that require users to provide their real names as a condition for blogging, using internet cafes, commenting on websites, or purchasing SIM cards for mobile phones.

Those who challenge official censorship risk severe sanction. Chinese authorities mount periodic crackdowns nominally directed against "illegal" or "pornographic" content, but which also single out politically undesirable speech.[21] They use vague subversion and state secrecy charges to jail journalists or writers such as Gheyret Niyaz (2010) and Chen Daojun (2008), who were imprisoned after issuing public commentary and criticism of government policies in Xinjiang and ethnic Tibetan areas, respectively.[22]

Central government authorities directly block many information sources they are unable to control. They jam foreign broadcasters such as the BBC and Voice of America. They maintain one of the world's most comprehensive systems for filtering and blocking internet content deemed objectionable. Since 2007, an increasing number of popular foreign media sites have been blocked, including YouTube, Facebook, Blogspot, Twitter, and Wikipedia. In 2010, citing a sophisticated cyberattack on their own corporate infrastructure and escalating Chinese government attempts to limit free speech, Google announced that it would no longer comply with official requests to censor search results on its search engine in mainland China, and began redirecting search requests on Google.cn to its Hong Kong search engine, which remains subject to blocking by mainland authorities.[23]

Since 2005, government officials have begun developing new techniques to "guide public opinion" on the internet. Party propaganda authorities have recruited paid, government-trained commentators to monitor online chat forums, participate in discussions regarding emerging topics of public concern,

and steer commentary in progovernment directions. Estimated numbers of commentators range in the hundreds of thousands.[24]

Censorship does have limits. State censorship of foreign language media is less comprehensive, compared with Chinese-language publications. Technology-savvy citizens can use proxy servers or virtual private networks to circumvent official internet controls. And state restrictions sometimes backfire. In the summer of 2009, authorities partially backed down from efforts to require every computer sold in China to come pre-installed with internet filtering software targeting religious, political, and pornographic content after the plan generated a wave of opposition by Chinese citizens and foreign corporations.[25]

CIVIL LIBERTIES 1.98

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	1.63
GENDER EQUITY	3.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	2.00
FREEDOM OF CONSCIENCE AND BELIEF	1.33
FREEDOM OF ASSOCIATION AND ASSEMBLY	1.25

On paper, the Chinese constitution recognizes a range of civil rights, including the freedoms of association, religion, and speech, as well as equal rights for women and guarantees against unlawful deprivation of personal freedom. But the lack of any mechanisms to enforce the constitution, combined with official efforts to ensure continued party control over Chinese society, mean that many of these provisions have little value in practice.

Chinese authorities routinely suppress dissidents who attempt to peacefully exercise their constitutional rights. Officials sentence some to lengthy prison terms under subversion and state security laws. The security forces spirit others out of Beijing in advance of high-profile international events, or subject them to house arrest and round-the-clock surveillance, as has been the case with Shandong rights activist Chen Guangcheng. During the fall of 2010, government authorities detained or threatened dozens of Chinese activists to prevent them from speaking to the media or celebrating Liu Xiaobo's Nobel Peace Prize award.

Despite undertaking some legal reforms in recent years (see Rule of Law), Chinese authorities continue to rely on a range of extralegal detention systems. Reeducation through labor (RETL), for example, permits authorities to sentence citizens to up to three years of administrative detention, with the possibility of a one-year extension. Such sentences are not subject to effective judicial review and lack even minimal procedural protections for defendant rights. Government authorities use RETL to sentence citizens for crimes such as prostitution and drug use, as well as political dissent and spiritual activism. According to official statistics, total RETL detainees in 2008 numbered between 160,000 and

190,000.[26] Actual numbers may be higher. Scholars and officials periodically discuss reforming the system, but no substantive steps have yet been taken. In recent years, some public interest activists and lawyers, such as Gao Zhisheng and Teng Biao, have been officially "disappeared" for weeks or months at a time, in the absence of any administrative or legal proceedings at all.

Violent crime is relatively uncommon in China. Comparative United Nations studies of official homicide rates, for instance, reveal that Chinese rates (1.2 murders per 100,000 individuals in 2007) are one-fourth the U.S. rate, as well as significantly lower than most Latin American nations and many Asian ones.[27] Official criminal incarceration rates (between 120 and 186 prisoners per 100,000 individuals) are also lower than in many developing countries and the U.S.[28] Naturally, these figures do not include individuals held in China's extensive network of administrative detention facilities, such as RETL camps.

Although a 2005 UN investigation found that torture of detainees and prisoners was declining (but still widespread),[29] many political prisoners continue to report severe abuse, including deprivation of food, sleep, and medical care and beatings by other inmates, all under the direction of prison officials. Those whose cases attract the attention of foreign media or governments tend to receive better treatment. With respect to ordinary criminal trials, prosecutors rely heavily on confessions extracted by police to obtain convictions (see Rule of Law), leading to repeated instances of forced confessions obtained under police pressure or torture. Chinese officials have made some efforts to curb these practices. Exclusionary rules adopted in the summer of 2010, for example, are aimed at barring court use of evidence obtained through torture.[30]

Chinese citizens lack effective means of redress against government abuses. Since the 1980s, authorities have enacted a range of reforms, such as the Administrative Litigation Law and the State Compensation Law, that give citizens some degree of judicial recourse against state organs. However, lack of judicial independence and the institutional weakness of the courts have rendered these reforms limited in their effects.

Lacking judicial checks on state power and alternative channels of political participation, many citizens resort to directly petitioning higher-level party and government authorities via "letters and visits" (*xinfang*) institutions in an attempt to redress their grievances. Deeply rooted in earlier imperial practices, such institutions are the result of centralized political power in the hands of a few and a paternalistic state narrative that depicts central government authorities as "father-mother" officials responsible for the welfare of their citizen-wards, which lead citizens to seek the personal intervention of top party officials (or the emperor) in resolving their individual and collective grievances. This is rarely successful. One survey found that only 0.2 percent of petitioners succeeded in having their complaints addressed.[31] Moreover, since local officials receive career and salary sanctions for petitioners who leave their jurisdictions and complain to higher authorities, they have significant incentives to suppress citizen petitioning. This has led to systematic abuses. Local Chinese authorities resort to

an extensive network of illegal "black" jails, forcible psychiatric detentions, and hired thugs (or "retrievers") to prevent petitioners from reaching higher authorities. Such practices have become increasingly common in recent years as central government authorities have strengthened pressure on local officials to maintain social stability and prevent instances of citizen petitioning.[32]

Since 1949, the People's Republic of China has recognized a high degree of equality between men and women with regard to civil and political rights. Women enjoy equal voting rights with men. Party policy and state law guarantee designated percentages of women in leadership positions.[33] As of 2009, 21.3 percent of representatives in China's national legislature were female, lower than many European countries, but higher than Japan, the United States, and many other developing countries.[34]

Despite significant official efforts to combat prevailing social biases, Chinese women continue to experience gender discrimination in the workplace and domestic violence at home, particularly in rural China. Sexual harassment, gender discrimination, and domestic violence are all barred under the amended 2005 Law on the Protection of Women's Rights and Interests. However, relevant definitions and avenues of recourse remain unclear, limiting the effectiveness of these legal provisions. Party-dominated mass organizations, such as the All-China Women's Federation, have sponsored legislative proposals to clarify these ambiguities and better protect women's rights.

Sex-selective abortion, although banned under Chinese law, is a serious social problem. According to a 2010 Chinese Academy of Social Sciences study, there are currently 123 male children aged 0-4 years old for every 100 females, well in excess of global averages of 103-105 males per 100 females.[35] Multiple factors are responsible: prevailing cultural norms (particularly in rural China) and economic pressures favoring boys; the introduction of commercial ultrasound technology since the 1980s, which has enabled parents to determine the sex of their child before birth, in violation of Chinese law; and state population control policies. Scholars identify skewed sex ratios as a major factor fueling social problems such as prostitution and human trafficking.

Chinese authorities have stated that they do not intend to abandon official population planning policies in the near future. These generally limit urban residents to a single child, and rural residents to two, if the first is female.[36] Some limited reforms have been undertaken, including loosening restrictions for some urban couples who are themselves single children, and strengthening financial assistance programs for rural families that comply with official policies.[37] Nonetheless, official population policies continue to be enforced by heavy fines and loss of state jobs for those who violate birth quotas. Driven by top-down quotas and incentives, local authorities in some areas enforce population policies through forced sterilizations and abortions. Activists who challenge such abuses can encounter severe repression by officials. For example, authorities imprisoned Shandong civil rights activist Chen Guangcheng from

2006 to 2010 for his efforts to challenge abusive local birth control practices, and have subjected him and his wife under house arrest since his release from jail.

State law theoretically guarantees China's 55 recognized ethnic minority groups (roughly 9 percent of the population) a range of political, educational, religious, cultural, and linguistic rights. But official efforts to promote national unity under party control undermine or negate these provisions in practice. For example, the Chinese constitution establishes a system of nominally autonomous ethnic administrative areas, with the head of the government drawn from the relevant ethnic group. Real power in these regions, however, is vested in the overwhelmingly Han party administration. Actual autonomy remains extremely limited.

Minority groups that do not challenge official controls enjoy somewhat more space to exercise their lawful rights. This is particularly the case with smaller or more highly assimilated minorities in southwestern China, such as the Bai, Yi, and Zhuang. In contrast, authorities pursue extremely harsh policies with regard to those ethnic minorities viewed as resisting state controls over their religious and cultural expression, particularly the Buddhist Tibetans and Muslim Uighurs, whose autonomous areas make up much of western China. Chinese authorities have tightened these controls in recent years. Starting in 2005, party authorities in ethnic Tibetan areas stepped up a tough patriotic education campaign aimed at forcing monks and nuns to denounce the Dalai Lama, the exiled spiritual head of Tibetan Buddhism.

State controls, coupled with economic disparities and massive Han in-migration, have generated festering ethnic tensions in western China that exploded in both Tibetan areas (2008) and in Xinjiang (2009). Each experienced the outbreak of peaceful citizen demonstrations as well as violence directed at Han residents. Ethnic riots in Urumqi in July 2009 killed hundreds of residents, both Han and Uighur. In response, Chinese authorities mounted severe crackdowns in both Xinjiang and Tibetan areas.

Human rights conditions in both Xinjiang and in Tibetan areas sharply deteriorated in the wake of these crackdowns. Authorities deployed large numbers of security forces, cut off communications links with the outside world for extended periods of time, and detained or arrested thousands of residents. Officials invoked state security laws, among other provisions, to prosecute both violent rioters as well as peaceful political demonstrators.

Despite the popular resentment these episodes revealed, Chinese authorities reject the need to address the political controls that fuel ethnic discontent. They have instead strengthened their security measures and ideological controls, including revitalizing patriotic education campaigns for Tibetan monks following the 2008 unrest. Viewing pervasive economic underdevelopment as the root of current problems, officials have also announced large-scale development programs for both Xinjiang and Tibetan autonomous areas in recent years.[38] These include projects to raze and redevelop the "old city" section of

Kashgar, and to expedite the forcible resettlement of hundreds of thousands of Tibetan nomads to urban areas.

With respect to other marginalized groups, Chinese officials have experimented with a degree of cautious liberalization. In April 2010, national authorities lifted China's two-decade travel ban on HIV-positive visitors.[39] Disability activists are carefully experimenting with new legal challenges to employment practices that discriminate based on an individual's HIV or hepatitis-B status. Shanghai witnessed its first organized gay pride event in 2009, following the decriminalization of sodomy in 1997 and the Chinese Psychiatric Association's 2001 determination that homosexuality was not a mental illness.[40]

Nonetheless, limitations still exist. Authorities remain sensitive to organized political activity or direct criticism of core state controls. In the run-up to the 2009 pride festival, Shanghai police cautioned businesses against allowing public gatherings to watch film screenings.[41] Disability rights groups remain under surveillance. Noted AIDS activist Hu Jia is currently serving a three-and-a-half-year prison sentence for subversion after publicly criticizing China's human rights record.

Chinese migrants and rural residents continue to face significant discrimination based on their household registration (*hukou*) status. Established in the 1950s, the hukou system originally served Maoist goals of population control and state economic planning, classifying citizens as urban or rural, agricultural or nonagricultural. Post-1978 economic liberalization has eroded many restrictions originally tied to hukou status, such as the ability to travel. But hukou status remains tightly linked to a range of rights and privileges, particularly urban social benefits. Most rural migrants to Chinese cities are unable to obtain equal public services such as healthcare and schooling for their children. Because residency status is hereditary, with limited channels to change one's status, this disparity risks hardening into a permanent divide between migrant and urban youth.[42]

Chinese authorities have undertaken some limited steps to address this discrimination. A 2009 tort law allows the lives of urban and rural residents to be valued equally in calculating death compensation for major accidents. Under amended 2010 election laws, rural and urban residents are to be counted equally in determining legislative representation. And assorted local experiments have enabled a thin "upper crust" of privileged rural migrants to obtain full-blown urban residency status in major Chinese cities.

Nonetheless, these reforms remain highly constrained in practice. In many localities, strict economic conditions for obtaining urban residency (such as actually purchasing a house) exclude low-income rural migrants living in rental apartments. A number of national and local reforms have ground to a halt over thorny funding issues. Local governments resist shouldering the burden for extending education and health benefits to migrants. Many urban residents, meanwhile, oppose cuts to their privileged levels of access to public services.

Official Chinese policies toward religion have softened since the Maoist era, when state authorities attempted to eradicate religious faith entirely and

enforce mass adherence to atheism. Since the late 1970s, authorities have permitted churches, mosques, and temples to reopen under careful state controls. The last three decades have witnessed a revival among believers in the five officially recognized religions—Buddhism, Catholicism, Islam, Protestantism, and Taoism—and a range of folk religions and spiritual movements.

Chinese authorities, however, maintain strict controls over religious groups and their internal activities. Party-controlled "patriotic religious associations" lead each of the five recognized religions. These control selection of religious leaders, publication of religious texts, and interpretation of religious doctrine. This permits Chinese officials to harmonize the tenets and activities of recognized religious organizations with state policy. Party insistence on atheism within its ranks also excludes many believers from high government office.

Religious groups that are not registered with state authorities, or that reject Party leadership, risk abuse and imprisonment. Official demands that Catholics reject the authority of the Holy See in appointing bishops (and accept the leadership of the Catholic Patriotic Association) have fueled longstanding conflicts with lay believers, given rise to an underground Catholic church, and led to detentions of clergy who resist state policy. In recent years Chinese officials have established a degree of discreet coordination with papal representatives to jointly recognize some bishop ordinations.

Chinese believers who reject state controls and choose to worship alone, within the confines of their own homes, are generally left alone. In contrast, unregistered groups of believers who meet privately for worship services, such as Protestant "house churches," risk government harassment and periodic crackdowns. In September 2009, for example, Shanxi public security officials mounted a violent raid on the unregistered Linfen-Fushan church in a campaign to suppress "illegal buildings." Over 100 members were wounded, church buildings leveled, and five pastors sentenced to lengthy prison terms.[43]

Chinese authorities take particularly harsh measures to control (or eliminate) organized beliefs that they view as challenging their political control. State controls over the religious practices of Tibetan Buddhists and Uighur Muslims have tightened in recent years. Authorities continue their severe decade-long persecution of the Falun Gong spiritual movement, which was initiated following a peaceful protest in 1999 by practitioners outside central CCP headquarters. Official repression of Falun Gong has been characterized by large-scale arrests and widespread torture, psychiatric confinement, and forced conversions of practitioners under the supervision of an extralegal, party-led agency.

Worker associations and other civil society groups are subject to extensive state controls. The party-run All-China Federation of Trade Unions (ACFTU) is the only authorized union, and outside organizing is banned. Rapid urbanization has raised fears among party leaders that an independent labor movement might develop among the ranks of migrant workers, particularly in foreign firms lacking ACFTU branches. Indeed, in the spring and summer of 2010, large strikes broke out at a range of enterprises in China, mostly foreign-owned,

by migrant workers seeking higher wages and better working conditions. Chinese authorities are adapting their controls in response. Since 2006, they have pressed foreign firms that have traditionally resisted unionization (such as Walmart) to establish ACFTU branches, in order to preempt the formation of wildcat unions and diminish the likelihood of protests.

Chinese authorities severely restrict public demonstrations and protests, particularly at symbolic locations such as Tiananmen Square or during important events, such as central CCP meetings. Despite the announcement by public security authorities that they would permit demonstrations in designated zones during the 2008 Olympics, not a single application was authorized.[44] Notwithstanding state controls, China continues to experience tens of thousands of protests each year. These range from small demonstrations of a few homeowners with shared grievances to massive demonstrations of thousands of individuals protesting local corruption, environmental pollution, or land seizures, and from entirely peaceful protests to violent riots that result in the burning of government buildings and vehicles. Many protest organizers receive long prison sentences. Some peaceful protests are suppressed with violent force, while authorities respond to others with tactical concessions. In response to the 2010 wave of strikes, for example, Chinese authorities applied pressure on foreign firms to raise worker salaries in order to quiet labor unrest.

RULE OF LAW	**1.77**
INDEPENDENT JUDICIARY	1.40
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	1.00
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.00
PROTECTION OF PROPERTY RIGHTS	2.67

Party authorities control the work of Chinese legal institutions. At each level of government, party political-legal committees supervise local courts, prosecutors, and police. This facilitates political and extralegal influences. However, it conflicts with reforms pursued by Chinese authorities since the 1980s that emphasize the need for state institutions to conduct their daily operations in accordance with legal norms.[45]

Post-1978 China experienced significant legal reforms. Civil and criminal codes were adopted; law schools reopened. Students began to study formal law rather than party dogma. Consistent with these reforms, Chinese authorities also took steps to strengthen judicial professionalism. The 1995 Judges Law made some degree of professional legal knowledge a prerequisite to serve as a judge.[46] Amendments in 2001 added the requirement of a university degree (although not necessarily in law).[47] In addition, officials enacted procedural and legislative reforms that encouraged citizens to resort to courts and litigation (rather than Maoist meditation institutions) to resolve grievances against

one another or the state. Similarly, authorities recognized a somewhat more independent role for the bar. The 1996 Lawyers Law redefined lawyers' role from "state legal workers" to "legal practitioners providing legal services" and explicitly recognized nonstate law firms.[48]

By 1997, central party authorities had made "rule by law" (*yifa zhiguo*) a core slogan. Naturally, they had no intention of calling party power into question. Rather, they perceived law as an effective tool to strengthen party governance of China and improve resolution of citizen grievances.

However, CCP authorities now perceive these reforms to have had a range of negative side effects. Some concerns are practical. Since Chinese courts remain institutionally weak actors, enforcement of administrative and civil decisions remains very problematic. Moreover, heavy emphasis on courts and litigation to resolve citizen grievances has created significant disconnects with rural realities. As recently as 2005, one out of eight Chinese counties lacked a single lawyer.

Other central party concerns are explicitly political. Legal reforms unleashed a range of pressures for greater institutional change. Chinese courts developed as a forum for citizens and activists to bring a range of politically charged grievances against state actors and entrenched elites. A cadre of public interest lawyers emerged, adept at using media coverage and legal challenges to promote change. In 2003, they managed to prompt national authorities to abolish the custody and repatriation detention system, following a scandal generated by the death of a migrant, Sun Zhigang, at the hands of Guangzhou authorities. Reforms resonated within official ranks as well. In 2001, the Supreme People's Court (SPC) suggested that the previously nonjusticiable rights in the Chinese constitution might actually have legal weight, authorizing a lower court to apply constitutional provisions in a particular case.[49]

Such developments have frightened central party authorities and prompted a backlash against earlier legal reforms. In 2008, Chinese authorities appointed Wang Shengjun, a former public security chief and CCP political-legal affairs official, as the new SPC president. He has steered the judiciary in a more conservative direction. As part of this shift, Chinese leaders have launched political campaigns to reassert political and ideological control over legal institutions. The "Socialist Rule-of-Law" (2006) and "Three Supremes" (2008) campaigns have reemphasized to judges and other officials the supremacy of party doctrine and the need to resist "Western" rule of law concepts. Authorities are similarly reasserting control over the bar. Official harassment of public interest lawyers has increased. Some have had their licenses revoked, while others have been subjected to surveillance, kidnapping, torture, and imprisonment. In April 2009, justice officials launched a new campaign emphasizing the role of lawyers as "socialist legal workers," and cautioning them to "consciously resist the plots of Western enemy forces."[50] Chinese authorities are also making significant efforts to reinvigorate mediation institutions, and are actively discouraging judges and parties from resorting to courtroom litigation as a means to resolve citizen grievances.

Despite some reform efforts, the Chinese criminal justice system continues to be marked by abuses stemming from authoritarian political controls, weak rule of law norms, and lack of resources. Arrests and trials of political dissidents or spiritual activists are staged, predetermined affairs, carefully controlled by party authorities. Even ordinary criminal trials are characterized by relatively weak protections of the rights of criminal defendants. China's Criminal Procedure Law does allow criminal defendants the right to appoint counsel, except in cases involving state secrets.[51] However, lawyers represent clients in only 30 percent of criminal cases, citing low fees and fear of retaliation as significant factors for avoiding such cases.[52] Defense lawyers experience significant difficulties meeting with their clients and gathering evidence. Police frequently deny lawyers the right (guaranteed under Chinese law) to meet with their clients immediately after interrogation or detention. Officials also often deny defense lawyers access to case files. In addition, 95 percent of witnesses in criminal trials do not appear in court, denying defense attorneys the ability to engage in cross-examination.[53]

Specific legal and bureaucratic practices exacerbate these problems. Salaries and career advancement for Chinese judges and officials are linked to a range of numerical performance targets, including conviction and reversed case ratios. These incentivize officials toward high rates of criminal convictions—99.3 percent between 1997 and 2005—and infrequent appellate reversals.[54] Under article 306 of the criminal code, law enforcement authorities have also aggressively brought charges of evidence fabrication against defense lawyers as a means to dissuade them from actively representing their clients' interests.

Chinese authorities have made significant efforts to reform the widespread use of capital punishment following several media scandals involving the execution of wrongfully convicted defendants. In 2007, the SPC reclaimed power of final review over all death penalty sentences in China. Both Chinese and foreign sources reported a decline in executions in the wake of these reforms.[55] In the fall of 2010, Chinese legislators also began consideration of draft legislative proposals that would reduce the numbers of crimes eligible for the death penalty. However, the impact of these reforms is uncertain. Procedures for SPC appellate review of capital punishment remain murky, and death penalty statistics continue to be classified as state secrets, hindering accurate evaluation of trends. Outside observers estimate that Chinese authorities carried out between 5000 and 8000 executions per year between 2005 and 2007, accounting for as many as 90 percent of executions worldwide.[56]

Both the 1949 Communist Revolution and post-1978 reforms deeply mark the substantive legal rights enjoyed by Chinese citizens. Property law provides one example. In keeping with socialist ideals, China has not recognized private ownership of land since the 1950s. Rather, rural land is owned by agricultural collectives, and urban land by the state. Starting in the late 1970s, however, Chinese authorities began to recognize long-term leasehold rights. Further reforms in the 1980s and 1990s formalized these rights, and Chinese farmers

currently receive 30-year use rights to the land they farm. This, coupled with state privatization of the entire urban housing stock (but not the underlying land) in the late 1990s, has allowed citizens a degree of economic security and fueled China's massive agricultural and construction booms.

However, land disputes have emerged as a major source of conflict in the last decade. Rapid urban expansion and major projects such as the 2008 Olympics and 2010 Expo have driven local authorities to aggressively seize land and demolish buildings for development projects. But low compensation standards, weak procedural protections, and limited checks on government power have fueled widespread corruption and abuses in many such projects, including the use of thugs to intimidate and evict residents. Numerous citizen protests have erupted as a result. In response, central government officials have called on local authorities to strictly protect citizen rights in seizure proceedings.[57] They have also provided some greater protection (albeit vague and primarily symbolic) to citizen rights through passage of the 2007 Property Law, including the automatic renewal of leasehold rights (upon expiration) for land used for residential purposes.[58] Nonetheless, extensive local government reliance on the sale of land rights to raise revenue has stalled deeper, more substantive reforms.

Consistent with its origins as an arm of the Communist Party, the Chinese military is governed outside the regular state apparatus. The People's Liberation Army reports directly to top party authorities, rather than the State Council, and is governed internally by party political officers and committees. The military is rarely called in to suppress domestic dissent—the 1989 crackdowns in Lhasa and Beijing being notable exceptions. Responsibility for day-to-day policing and surveillance rests largely with the Public Security Bureau, while quelling citizen protests (sometimes violently) falls to paramilitary institutions such as the People's Armed Police or informally recruited local security forces.

ANTICORRUPTION AND TRANSPARENCY 2.48

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.60
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	2.67
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.50
GOVERNMENTAL TRANSPARENCY	2.17

Official corruption remains pervasive in China. Concentrated political power in the hands of a few, limited checks on party and government officials, and lack of governmental transparency enable networks of corruption to thrive. China falls in the middle of all countries in terms of perceived corruption, slipping from a rank of 72 in 2007 to 78 in 2010 on Transparency International's Corruption Perceptions Index.

Official corruption has evolved since the 1980s. Early reform-era corruption primarily involved arbitrage of the two-track pricing system, as government agencies took advantage of their access to price-regulated goods and sold them

at (higher) market prices. Since the 1990s, however, corruption has involved a wider range of illicit transactions in which officials abuse their positions for financial gain.[59] Local officials demand kickbacks from real estate magnates to issue development permits. Judges accept bribes from litigants in exchange for favorable decisions. Managers of state-owned enterprises take money to rig government procurement bids.

China has experienced rapid growth in large-scale corruption involving high-level party cadres.[60] Such top-level networks are only taken down in the midst of major political realignments among central party leaders, at which point corruption charges become effective tools for disposing of political rivals. Examples include the arrest, dismissal, and sentencing of the Party secretaries (and mayors) of Beijing (Chen Xitong, in 1995) and Shanghai (Chen Liangyu, in 2006).

In recent years a range of local corruption scandals have gained nationwide attention, including the Shanxi brick kiln "slave labor" (2007), Hebei melamine (2008), and Sichuan schoolhouse (2008) scandals. Such episodes share broad similarities. First, local authorities strike corrupt deals to enrich themselves at the expense of citizen interests. Then, they use political control over local media outlets to shut down public reporting of problems and to blind their own superiors about the extent of problems. Furthermore, they use their sway over the courts to block avenues of legal redress. Problems fester, eventually erupting in a nationwide sensation when bloggers, citizen activists, or independent-leaning journalists manage to break the story in a forum outside the direct control of the local authorities in question.

Such media exposés offer a limited check on local corruption. Central government authorities tolerate some reporting as a way to monitor their own subordinates and provide a vent for social discontent. But significant limits exist. Party authorities squelch reporting on local corruption when it starts to touch on broader political questions or generates widespread discontent with core central government policies (as opposed to individual local officials). One notable example is suppression of news regarding the extent to which shoddy construction practices resulted in the deaths of thousands of schoolchildren during the 2008 Sichuan earthquake. Reporting on corruption involving top elites or their families is also strictly barred.[61] Threat of prosecution under vaguely worded state secrets laws deters investigations by bloggers and journalists. Local authorities often retaliate against individuals who raise the curtain on corrupt dealings, leading some whistleblowers to flee their hometowns and move overseas or to Beijing.

Chinese authorities rely on internal party discipline inspection committees (DICs) to monitor officials and combat corruption within the ranks of party cadres, and on institutions such as the Supreme People's *Procuratorate*, the Ministry of Supervision, and (since 2007) the National Bureau of Corruption Prevention to fight corruption inside the government. Party DICs are equipped with a range of extralegal powers to detain and investigate party

officials. At the conclusion of the internal party investigation, party authorities have the option of handing over suspects for prosecution by state authorities according to the criminal law. Periodic efforts have been made to impose greater asset disclosure requirements on lower-level officials in an effort to curb corruption. In 2010, for example, central authorities mandated that officials report to higher authorities—but not publicly disclose—their outside income, family investments, and spouse's employment.[62]

Such efforts at internal party self-supervision face serious institutional constraints. Party DICs are commonly chaired by deputy party secretaries on the local CCP committee. This creates significant obstacles in terms of investigating incidents of corruption linked to other party committee members, or their friends and associates. Excessive concentration of political power and the absence of bottom-up checks have led to the spread of corruption within Chinese anticorruption institutions themselves. In November 2010, authorities sentenced Kang Rixin, former general manager (and party head) of the state-owned China National Nuclear Company, and a member of both the national party DIC and the Central Committee, to life in prison for accepting 6.6 million yuan (US$1 million) in bribes.[63]

Chinese officials periodically resort to anticorruption campaigns. These are characterized by intense, highly politicized bursts of aggressive enforcement by state and party authorities. One such campaign rocked the southwestern metropolis of Chongqing in 2009–10, resulting in one of the largest anti-gang trials ever. Over 9000 suspects were investigated, 90 officials prosecuted, and the former director of the Chongqing judicial bureau was executed for receiving over 12 million yuan (US$1.76 million) in bribes as part of a complex web of corruption to sell government positions and provide protection to criminal syndicates.[64] Observers widely viewed the campaign as motivated by Chongqing party secretary Bo Xilai's efforts to strike a populist image in a bid for a seat on the Politburo Standing Committee in 2012. Chinese lawyers and academics have expressed concern regarding the impact of the campaign on rule of law norms, particularly the prison sentence for evidence fabrication meted out to one of the defense lawyers, Li Zhuang, in a trial marked by numerous irregularities.[65]

Chinese authorities have attempted to build some institutions to increase government transparency. They have issued national Open Government Information (OGI) Regulations, which entered into effect in May 2008. These emphasize that local authorities should make public a range of government information, including local budgets, land use plans, and administrative rules and regulations. Under the OGI regulations, citizens may request government information that has not been disclosed, and may seek administrative or judicial review if governments refuse. Broad exceptions exist for issues affecting state secrets or public security.[66]

Thus far, the results are mixed. Chinese authorities have launched efforts throughout the bureaucracy to stress the need to comply with the new regulations. Public interest lawyers have actively attempted to use them in order to

push authorities to release detailed information regarding official budgets, use of highway tolls, and government stimulus plans.[67] In 2010, Guangdong authorities announced that they would make the provincial budget public.[68] Actual implementation of OGI reforms remains uneven, however. Shanghai authorities complied in full with 79.3 percent of initial requests filed in 2004 under the city's municipal OGI regulations (which served as a partial template for the subsequent national regulations), declining to 51.5 percent in 2009. Similar declines occurred with respect to administrative reconsideration. In 2004, 45 percent of reconsideration petitions filed with Shanghai authorities resulted in orders that authorities correct their actions, falling to 8 percent in 2008. Out of some 400 court cases brought under the relevant Shanghai OGI regulations between 2004 and 2008, the government lost just once.[69] Significant variation in governmental transparency also exists between provinces and localities.[70]

RECOMMENDATIONS

- Adopt meaningful bottom-up checks on state power to check abuse of power by local officials, curb corruption, and address social unrest. Examples include: removing restrictions on the media and internet, relaxing registration requirements for civil society organizations, and expanding citizen political participation in the selection of officials.
- Clarify or repeal vague state security and state secrets laws used to imprison activists, citizens, and lawyers attempting to peacefully address popular grievances and promote gradual political reform in China, and halt extralegal detentions and disappearances of such activists.
- Reform the reeducation through labor system to conform with international law, abolishing forced labor practices, releasing spiritual and political dissidents, and allowing detainees an opportunity to contest accusations of guilt before an independent adjudicatory body.
- Create mechanisms for Chinese citizens to enforce the rights guaranteed to them under China's own constitution, including freedom of association, religion, and speech.
- Curb the trend toward increased politicization of the Chinese judiciary, and ensure that court reforms, such as the new emphasis on mediation, are implemented in a manner that respond to citizen needs rather than repress legitimate grievances.
- Experiment with creating independent oversight and anti-corruption institutions that have proven successful at promoting clean governance in other jurisdictions, such as Hong Kong's Independent Commission Against Corruption and Singapore's Public Service Commission.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

1 Several notes regarding sources are in order. Since this chapter is written for a general audience, it cites easily accessible English-language sources to the greatest extent possible. Extensive Chinese-language sources regarding many of the developments discussed here are available in this author's academic writings, and in sources such as the annual reports by the Congressional-Executive Commission on China.

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COLOMBIA

CAPITAL: Bogotá
POPULATION: 45.5 million
GNI PER CAPITA (PPP): $8,600

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	4.47	4.37
CIVIL LIBERTIES:	3.93	3.99
RULE OF LAW:	3.94	3.99
ANTICORRUPTION AND TRANSPARENCY:	3.73	3.51

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Rodrigo Uprimny

INTRODUCTION

The analysis of democratic governance within Colombia presents a particularly thorny set of challenges. This is due not only to longstanding paradoxes and ambiguities within its political and legal systems, but also to the dynamics of violence and evolving degrees of respect for human rights and rule of law norms in recent years. Especially during the two-term (2002–10) presidency of Álvaro Uribe, governance has evolved in complex ways that defy clear-cut evaluation.

From a structural and long-term perspective, Colombia presents a number of contradictions. In the last 150 years, the country has experienced almost no periods of military rule, a tradition of civilian-led stability that stands out relative to its coup-prone neighbors in Latin America. In addition, Colombia has a long tradition of respect for the independence of the judiciary as well as, since 1910, a unique form of judicial review of the constitutionality of laws and governmental actions. In 1991, a new constitution was promulgated that strengthened judicial protection of human rights, promoted equality and nondiscrimination, and deepened the democratic mechanisms of citizen participation.

Thus, in some respects, Colombia appears to be a well-established and advanced democracy. In other areas, however, severe shortcomings seriously undermine the extent of democratic rule in the country. Some of these deficits are historical: throughout its evolution, the Colombian state has been very precarious. Official institutions have never completely controlled the entire territory, and private armed actors have traditionally filled the breach. More specifically, for nearly 50 years Colombia has endured a protracted internal conflict. At

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its core, several leftist guerrilla groups, most notably the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), fight against Colombian authorities while also seriously and repeatedly violating international humanitarian law. The conflict is both symptom and cause of Colombia's troubled social and economic realities, including persistent and dramatic inequality and widespread poverty. Colombia's Gini coefficient, a measure of inequality in which 1 represents complete concentration of wealth, is 0.58, one of the highest in the world. Roughly 46 percent of the population lives in poverty, with 16 percent in extreme poverty.[1]

But the Colombian conflict is not a classic revolutionary conflict in which the state confronts an armed insurgency.[2] It also includes the participation of right-wing paramilitary groups with strong ties to some sectors of the Colombian military as well as politicians, landowners, and drug traffickers. Particularly in the 1990s and 2000s, these paramilitary groups have been responsible for many of the conflict's worst abuses, including hundreds of massacres, thousands of killings, and innumerable forced disappearances. When combined with additional, less-organized forms of criminal and social violence, the sum is a country that for the last 50 years has had extremely high rates of homicide and kidnapping as well as an ongoing crisis of internal displacement.

In short, Colombia combines features of an institutionalized democracy with those of a more unstable state—or even an authoritarian regime—where citizens' rights are violated due to state incapacity or unwillingness to offer adequate protections. Scholars have thus had trouble characterizing the country's ambiguous political system. Colombia is certainly not a dictatorship, nor is democracy a mere facade. Popular elections are held regularly to select governments, and the system of constitutional checks and balances is more or less effective. But neither can it be considered a consolidated democracy, given the widespread violence, human rights abuses, and profound social inequalities.

President Uribe's two terms epitomized the contradictory elements. Security improved for many Colombians, thanks to a more widespread presence of the armed forces throughout the nation's territory, the partial demobilization of right-wing paramilitary groups, and a series of military successes against left-wing guerrillas, especially the FARC. But at the same time, the armed conflict with the guerrillas showed little sign of ending, the demobilization of the paramilitary groups has been highly troubled, and the humanitarian crisis persisted—and in some aspects even worsened. The end result of all these factors is that violence in Colombia remains intense.

Institutional developments are similarly paradoxical. The reform of the constitution to allow the immediate reelection of President Uribe in 2006, and his attempts to maximize executive power, undermined the system of checks and balances established by the constitution.[3] Meanwhile, many opposition leaders, human rights activists, and even Supreme Court justices were subjected to surveillance and illegal wiretapping by the government's primary security and intelligence agency, the Department of Administrative Security (DAS—see

Accountability and Public Voice). Finally, it also became evident that alliances between paramilitary organizations and politicians affected national and regional elections. Nonetheless, the system maintained sufficient safeguards to block some of Uribe's highest priority initiatives, despite his enormous personal popularity. In addition, in a process known as parapolitics, a series of investigations and trials allowed for significant public debate and some accountability for the shady electoral alliances.[4]

By the end of Uribe's two terms, Colombia had, in some sense, more state control but less rule of law. His administration provided improvements in security for most segments of the population; overall, Colombia now has more state control over the nation's territory and less violence. But the humanitarian crisis and armed conflict continued, and the carefully constructed system of checks and balances experienced significant strain.

This improvement in security, combined with Uribe's populist style of governing, explains much of Uribe's sustained high popularity throughout his tenure. After the guerrillas' military successes against the Army in the latter half of the 1990s and an utterly failed peace process with the FARC, many Colombians embraced firm leadership that was perceived as restoring the authority of the state in the eyes of both citizens and the world.

In this context, Juan Manuel Santos was elected in 2010 as the new president, with the support of the *uribista* political forces. It was assumed that Santos would maintain the basic policies and political style of his predecessor. This has not been the case: President Santos has preserved some of Uribe's policies but has also introduced important changes that could yield gains for governance and the rule of law. As of spring 2011, it is not clear what the impact of the changes introduced by President Santos will be—nor whether he is willing and able to sustain them—but it appears that Colombia's democracy is headed for yet another new phase.

ACCOUNTABILITY AND PUBLIC VOICE 4.37

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.20
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.29

Colombian governments have, with very few exceptions, been civilian regimes chosen by popular election. For decades, these contests have had profound flaws, but they are held regularly and conducted in a more or less fair manner. Elections are conducted and supervised by the National Electoral Council (CNE), which is the highest electoral authority, and the Registrar. Both institutions are formally independent of the central government and Congress so as to avoid undue political interference with the ballot. The law also establishes state financial support for political parties and movements and for their electoral

campaigns. Private financial contributions to organizations are regulated, and the law establishes limits not only on private contributions to political organizations but also on total spending in electoral campaigns.[5]

While the legal framework is adequate, the Colombian electoral system still presents serious shortcomings. First, in institutional terms, the independence of the electoral authorities is still weak. As the CNE's nine members are elected by Congress for a period of four years, the body's composition depends on the will of the most powerful political parties—actors it is supposed to control. Second, electoral authorities lack the capacity or will to systematically and impartially enforce laws controlling the undue influence of legal and illegal money in elections. On many occasions, independent civil society-led investigations have shown that parties and political movements have surpassed spending limits or violated regulations; however, the electoral authorities have neither controlled nor sanctioned these illegalities, and face difficulties in merely accessing party accounts.[6]

Third, there is clear evidence that criminal organizations, especially paramilitary groups, have been interfering with elections for at least the last 10 years. Scores of congressmen and regional political leaders, based especially (though not exclusively) in northern Colombia, made illegal pacts under which various armed groups coerced citizens to vote for politicians who subsequently acted as the organizations' allies and protectors. The extent of this "parapolitics" phenomenon was far reaching and implied profound transformation of the political landscape. For instance, a recent investigation concluded that in multiple regions, at least one out of every three local politicians had some relations with illegal armed groups.[7]

This infiltration of criminal organizations into the electoral process prompted important judicial investigations that have resulted in the imprisonment of many politicians. By July 2011, more than 110 members of Congress were being investigated by the judiciary, especially by the Supreme Court, which is charged with conducting criminal investigations of legislators: 36 have been convicted, 41 were on trial, and 36 more were under formal investigation.[8] Most, though not all, of the investigated or convicted politicians formed part of President Uribe's coalition. Uribe and other officials responded with frequent, vociferous rhetorical attacks on the court—and with or without the president's knowledge, retaliation by the DAS (see below).

The reaction of the judicial system—and especially the Supreme Court—to the infiltration of criminal organizations in the electoral and political systems serves as a microcosm of Colombia's democratic ambiguities. Infiltration of institutions and influence over politicians has been so extensive that some analysts speak of the capture of these institutions by the mafia-political alliances.[9] At the same time, however—at least at the national level—the judicial system was able to react with courage and, to a certain degree, forestall a total capture of Colombian institutions by criminal organizations.

The parapolitics process highlights the importance of Colombia's independent judiciary as a guarantor of checks and balances. This status acquired particular importance in light of the 2005 constitutional reform establishing the possibility of one immediate presidential reelection. The controversial amendment was approved in order to allow the immensely popular President Uribe to stand for a second term. However, the change disrupted the equilibrium established in the 1991 constitution, which featured an institutional framework constructed on the premise that reelection was proscribed. While the president does not directly appoint other officials, he or she has a strong influence on the selection of the attorney general, the inspector general (*procurador*, a position with important responsibilities in monitoring the conduct of public servants), the ombudsman, the comptroller general, the members of the judicial tribunal in charge of investigating judges and lawyers, and the members of the central bank, among others. Furthermore, the combination of President Uribe's authoritarian inclinations, high popularity, and broad support within congress created reasonable fears that the executive's influence would erode the independence of the judiciary—the final bulwark of the system of checks and balances.

The election of President Santos in 2010 also reflected the vigor of Colombian separation of powers. Santos's election was possible because the Constitutional Court barred an additional constitutional reform to allow Uribe a third term. Specifically, the court found that a national referendum on the proposed change could not take place because of serious procedural breaches during its approval in Congress and because, in any case, a second reelection would destroy the checks and balances system. In an important demonstration of elite commitment to basic democratic principles, President Uribe accepted this judicial ruling, which occurred very late in the process. Santos, who served as minister of defense from 2006 to 2009, was subsequently elected with the support of Uribe's coalition.

The electoral process in 2010 yielded surprises, though drama was largely concentrated in the first round of the presidential contest. Considering that President Uribe's approval rating was generally over 70 percent, with even higher spikes on certain occasions, it was unsurprising that uribista political forces won a majority of seats in the March 2010 congressional elections. In the Senate, parties clearly aligned with Uribe obtained roughly 60 percent of the seats, led by the Social Party of National Unity (Partido de la U) with 28 of the 102 seats, the Conservative Party (CP) with 22 seats, and the Party of National Integration (PIN) with 9. In contrast, opposition parties polled poorly: the Liberal Party took 17 seats, while the Democratic Alternative Pole (PDA) won 5. Radical Change, a centrist grouping led by Germán Vargas, a previous uribista who broke with him over the third term issue, also garnered 8 seats. The breakdown was similar in the House of Representatives, as the U won 47 of the 166 seats, followed by the CP with 38, the Liberals with 37, Radical Change with 15, and the PIN with 12. As in past years, suspicion of criminal infiltration

was widespread. One leading parapolitics researcher noted that up to 22 senators and 25 percent of representatives might maintain links with illegal organizations.[10] This was especially true for the PIN, a new political party that was composed of candidates whose previous parties were dissolved because of documented parapolitics involvement.

Due to Uribe's popularity, all analysts supposed that the candidate supported by the uribista forces, Santos, would win the presidency easily. Instead, a former mayor of Bogotá, Antanas Mockus, who formed a new political movement (the Green Party) with three other respected former mayors of Bogotá and Medellín, experienced a spectacular rise in polling numbers. Mockus's rise was based on a political discourse that focused on respect for the law, the protection of public financial resources, and the defense of life in the face of Colombia's lethal violence. The platform was a clear critique of Uribe's government, which was accused of tolerating corruption and extrajudicial killings. This "green wave" vaulted Mockus into the lead, according to polls during the run-up to the May first round. Toward the end of first-round campaigning, for reasons that provoke heated debates among analysts but are at least partly related to Mockus's rhetorical missteps during televised political debates and the Greens' lack of electoral machinery, the green wave diminished, and Santos eventually finished in first by a comfortable margin. Nevertheless, the Green Party obtained over 20 percent of the votes in the first round and 27 percent (to Santos's 69 percent) in the second round, an important result illustrating that in spite of Uribe's popularity, many Colombians rejected the illegalities committed during his presidency.

Perhaps in response to this message, the newly-elected Santos initiated important changes to some of Uribe's more confrontational policies. Almost immediately upon entering office, he attempted to repair relations with the high courts, opposition forces, and the leaders of neighboring Ecuador and Venezuela, with whom diplomatic relations had been suspended following a string of diplomatic crises exacerbated by ideological differences. The domestic changes were most dramatic. Santos has tried to replace Uribe's polarizing style. Whereas Uribe had strongly opposed bills that sought the restitution of land to internally displaced persons and reparations to the victims of serious human rights violations—including victims of state actors—Santos offered strong support; a combined victims and land rights bill passed in May 2011. In addition, prominent opponents of a third term for Uribe, such as new interior minister Germán Vargas, were included among his key appointments. President Santos justified these changes with the idea that Colombia needed a national unity government, and he invited opposition forces, including the Liberal Party and Green Party, to join the coalition. The Liberals accepted very quickly and the Greens some months later, leaving the small PDA bloc as the sole thread of opposition to both Uribe and Santos.

The result has been that, by July 2011, Santos enjoyed not only substantial popular support but also an overwhelming majority in Congress: 89 senators

out of 102 were part of the governmental coalition.[11] The cost of this strategy, however, has been growing tension with the core uribista forces. By early summer 2011, even if there was not (yet) a formal break between Santos and Uribe, the ex-president's hardline supporters were essentially playing an opposition role on many key issues.

Another group with which the Santos administration has sought to change the tenor of relations is nongovernmental organizations (NGOs). Colombia features a large NGO sector that operates generally without legal restriction and vigorously advocates on numerous political, social, and development-related issues. However, under Uribe there were also constant verbal attacks against NGOs that criticized government actions. Government officials, including Uribe himself, at times suggested that NGO workers might have ties with the guerrillas or were enemies of democracy and the state. In the eyes of civil society, this stigmatization contributed to the climate of violence that has resulted in the deaths of scores of NGO workers and activists (see Civil Liberties).

Media workers were also subject to harsh rhetorical denunciations. The media in Colombia is yet another realm of paradox. Media outlets and journalists continue to enjoy constitutional and legal protections, as they have for decades. There is no official censorship, and the many private outlets operate free from state pressure. Journalists are not imprisoned on the basis of their reporting. Media outlets, especially a subset of the printed press, have played an important democratic role in recent years by publicizing important cases of corruption and atrocities committed by paramilitary groups and state security forces. For instance, the scandal of the "false positives" extrajudicial killings by the military (see Civil Liberties) initially garnered attention thanks to revelations made by the media.

Yet there are many threats as well. Defamation remains criminalized, and in 2010, at least 10 journalists faced potential prosecution for libel, with charges mostly filed by politicians and other public servants.[12] In recent years well-known journalists Alfredo Molano and Claudia López each faced prosecution; López was denounced by former president Ernesto Samper. In the end, both were acquitted, but journalists express worries that such prosecutions promote self-censorship.[13]

There are at least two other factors that negatively affect press freedom. First, the media is highly concentrated. The most important outlets are either themselves part of economic conglomerates (like the newspaper of record, *El Tiempo*) or have strong ties to powerful economic groups, like the radio and television network RCN. Owners' economic interests may at times limit editorial independence. One example was the closure in February 2010 of the important newsweekly *Cambio*, published by the El Tiempo Editorial Group. The shuttering was widely perceived to have been caused by ownership's disapproval of the magazine's investigative reports exposing corruption scandals, most notably graft within a large-scale agricultural subsidies program (see Anticorruption and Transparency).[14] Second, journalists in Colombia have been subject to high

levels of violence. According to the Press Freedom Foundation (FLIP), more than 138 journalists have been murdered since 1977 because of their work.[15] Most of these crimes remain unsolved. FLIP reported that as of the end of 2010, intellectual authors of the crimes have been identified and sentenced in only five cases.[16] In the past few years, the lethal violence has diminished, but threats and intimidation remain high. In 2010, FLIP reported 2 murders, 1 kidnapping and 60 threats against journalists, abetting high levels of self-censorship, particularly in the provinces.

One particular scandal exemplified the Uribe administration's conflicted attitude toward checks and balances, press freedom, and NGO autonomy, as well as its tendency to polarize Colombian society by establishing a radical division between friends and enemies. This was the illegal wiretapping and surveillance of journalists, NGOs, opposition politicians, and Supreme Court justices carried out by the DAS. The issue came to light in 2009 and accelerated throughout 2010 as the involvement of ever-higher officials was revealed. By early 2011, several DAS employees had been convicted, with various others, including members of the office of the presidency, under investigation. Uribe himself was under investigation by a congressional commission; while he claims to have had no role in the illegal acts, the newsmagazine *Semana* reported that the DAS bureaus most deeply implicated in the scandal began operating during his administration.[17] As part of its efforts to overcome the legacy of Uribe's governing style, the Santos administration has announced that there would be no illegal wiretapping during his government, and it has been more open to accepting criticism as a natural characteristic of democratic debate.

CIVIL LIBERTIES 3.99

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.88
GENDER EQUITY	4.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.00
FREEDOM OF CONSCIENCE AND BELIEF	6.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	3.75

The Colombian constitution contains a generous set of rights, which includes not only civil and political rights but also social and collective ones. In addition, the constitution grants treaties ratified by Colombia superior normative force in relation to any ordinary law. Additional judicial mechanisms guarantee the protection of these rights. Any citizen has the option, via an *actio popularis*, to challenge the constitutionality of any law or governmental decree before the Constitutional Court or the Council of State. In addition, any person can use special writs, in particular one called the *tutela*, to request judicial intervention to protect his or her fundamental rights when these rights have been threatened or violated. In another layer of protection, any person unlawfully detained

can use the writ of habeas corpus before any criminal judge, who can order the detainee's immediate release. Finally, any person whose rights have been affected by the authorities can claim damages before the judicial system.
Some of these judicial mechanisms, particularly the tutela, have been quite effective for the protection of constitutional rights.

Aside from offering protections to individuals, these writs have also facilitated the intervention of the judicial system in general, structural situations. For instance, the *actio popularis* allowed human rights NGOs to challenge the constitutionality of the Justice and Peace Law (LJP), which created the legal framework for the demobilization of paramilitary groups, arguing that it amounted to legalized impunity and violated the rights of victims. The Constitutional Court accepted the complaint in part and introduced important modifications to the law. Moreover, since 2004, after declaring that government policies toward internally displaced peoples (IDPs) did not meet constitutional standards, the Constitutional Court has been supervising governmental policy, which has led to improvements in the conditions of IDPs, although their situation remains critical.[18]

Nevertheless, in spite of legal recognition and notable judicial protections, the persistent fact is that amid rampant violence, Colombia has suffered from a profound human rights crisis for at least three decades.

Besides the actors engaged in the prolonged armed conflict, powerful criminal organizations commit violent crimes such as kidnapping and murder. The homicide rate during even the most peaceful years—in the mid-1970s—was a relatively high 22 per 100,000 persons. During some years, such as 1990, it reached 80 per 100,000 persons, one of the highest rates in the world.[19] There are important relationships between the political violence linked to the armed conflict and other forms of criminal and social violence. One particular element acts as a thread throughout Colombia's lawlessness: drug trafficking, which has fueled the armed conflict by providing a steady resource stream for both guerrillas, especially the FARC, and the paramilitary groups, who finance much of their activity with drug money.[20]

The confluence of political and criminal violence has led to thousands of extrajudicial killings and forced disappearances, many of which were committed by state agents or by paramilitary groups acting in collusion with sectors of the National Police or the military.[21] Colombia also has approximately 5 million internally displaced persons, which amounts to over 10 percent of the population.[22] These victims were forced to abandon their lands by armed actors, sometimes in traditional battles over territory, other times in collusion with rural investors seeking to take over fertile land. Between 1980 and 2010, roughly 6.5 million hectares, or about 15 percent of the country's rural productive land, were abandoned by IDPs, in many cases ending up in the hands of armed actors.[23]

During Uribe's two terms, security improved along many dimensions. His signature policy, known as "democratic security," combined different strategies:

aggressively confront the guerrillas, launch a peace process with paramilitary groups, and increase the presence of the army and the police throughout the national territory by significantly increasing military spending (with significant support from the U.S.).

In some respects, the strategy was successful. The guerrillas were forced to retreat far away from the cities, main roads, and economic centers. Some of the FARC's main leaders, such as Raúl Reyes, Martín Caballero, and Negro Acacio (all three names are aliases), were killed in military operations. In July 2008, the group lost its most prominent hostages, chiefly former presidential candidate Íngrid Betancourt and three American military contractors, when a dramatic operation known as Operation Checkmate freed a group of 15 hostages, all of whom had endured years of horrific conditions. The FARC's founder, Pedro Antonio Marín (nom de guerre Manuel Marulanda) died in March 2008; that same month, another top leader was killed by one of his own fighters.

In addition, from November 2003 to August 2006 some 32,000 paramilitaries formally demobilized and surrendered their weapons,[24] while the number of massacres and the homicide rate decreased significantly in the initial years of Uribe's first term,[25] though the homicide rate never dropped below 30 per 100,000. Moreover, Colombians could travel throughout the countryside with less fear of being kidnapped by guerrillas.

However, the guerrillas, even if weakened, remain far from defeat and even managed to exhibit renewed initiative in 2009 and 2010.[26] According to The Rainbow Foundation, an NGO that monitors the evolution of Colombia's armed conflict, the number of military operations attributed to the FARC, which fluctuated between 949 and 1057 between 2003 and 2007, jumped to 1614 in 2009 and 1947 in 2010.[27]

The process with the paramilitaries, meanwhile, has been ambiguous and controversial. The Uribe administration claimed that following the demobilization, paramilitarism as such had ended in Colombia. Nevertheless, from the beginning of the process there were doubts about the effective dismantlement of these groups' power, which comes as much from their financial resources and collusion with authorities as from their weapons. Indeed, new criminal organizations, with different names but activities similar to those of former paramilitaries, have emerged in many of the places previously under paramilitary control.

The Uribe government insisted that these new criminal bands (or *bacrim*, as the government labels them) represented a phenomenon distinct from paramilitarism. The nature of these groups—and even their appropriate name—has been hotly debated. The new groups' alliances appear to be more fluid, and their structures more atomized, than the blocs that operated under the AUC banner, while cooperation with the security forces seems to have diminished. However, both analysts and the Santos government agree that the groups are a serious threat to Colombian democracy. These bacrim (some analysts prefer the label neoparamilitary) comprise around 10,000 members, operate in many parts of the country—including, at times, in collusion with sectors of the

army and police—and have been involved in thousands of killings and forced disappearances.[28]

Demobilization of the paramilitary forces has yielded only tenuous gains for victims. After the 2005 Constitutional Court ruling, the LJP established an alternative punishment of five to eight years in prison for paramilitaries involved in war crimes or crimes against humanity who confess all their crimes and make efforts to provide reparations to victims. Some confessions have resulted in improved understanding of paramilitary groups' operations and the extent of their complicity with politicians, landowners, and sectors of the military. According to the Inter-American Commission on Human Rights (IACHR), these confessions helped to facilitate "the exhumation of 2,719 graves and the remains of 3,299 persons, of which 1,100 were fully identified and 973 have already been delivered to their families."[29] According to a report by the attorney general's office, by March 2011, paramilitaries had confessed to over 48,000 murders and 4,800 forced disappearances.[30] Nevertheless, the extradition of the top paramilitary leaders to the U.S. in May 2008 and the failures of the LJP process limited the scope of the revelations; only a small subset of the paramilitaries are still contributing to the truth process. According to the United Nations High Commission on Human Rights (UNHCHR), even if the confessions have "revealed a significant number of homicides, they did not give a complete picture of the diversity, context and systematic nature of violations committed by paramilitary organizations."[31] Finally, the first confirmed conviction under the LJP's terms did not occur until June 2010, when two paramilitaries were convicted, with the ruling confirmed by the Supreme Court.

In addition, the legal circumstances of many paramilitaries remain highly uncertain. Of the 32,000 demobilized paramilitaries, only 3,000 suspected war crimes perpetrators were obligated to pass through formal LJP procedures and confess their crimes. In theory, the other 29,000 "ordinary combatants" were to receive pardon and be reinserted into society. However, not only have reinsertion programs often failed and led former combatants to return to crime, but both the Supreme Court and the Constitutional Court have declared (on separate occasions involving separate laws) that the legislation used to regularize the status of the demobilized paramilitaries was legally deficient and failed to adequately respect victims' rights. As of July 2011, the status of yet another bill remains uncertain, keeping these thousands of former combatants in a state of confused limbo.

Meanwhile, violations continue to occur. For instance, according to the Colombian Commission of Jurists, a respected human rights NGO, between July 2007 and June 2008, at least 1470 people died in circumstances that can probably be ascribed to illegal actions perpetrated by the various armed actors. Of the 913 cases in which it was possible to establish the perpetrator, 296 were attributed to public servants, 460 to paramilitary or bacrim groups, and 157 to guerrillas.[32] In particular, the number of IDPs grew significantly in the last few years.[33] Finally, after a much-lauded multiyear downward trend in urban

crime, homicide numbers in a number of cities, particularly Medellín and Cali, spiked starting in 2008. Analysts attributed the trend to changes in the conflict's regional dynamics as well as the leadership vacuum created by the extraditions of criminal kingpins to the U.S.

One of the gravest manifestations of human rights violations in recent years involved thousands of extrajudicial killings, the so-called "false positives," carried out largely by the army. The expression refers to the "illegal executions of civilians manipulated by the security forces in order that they appear as legitimate guerrillas or delinquents that were killed in combat," as characterized by UN Special Rapporteur on Extrajudicial Executions Philip Alston.[34] Stimulated by some army units' interest in exhibiting guerrilla body counts as a metric of success, the UNHCHR's Colombia office alleged that more than 3,000 killings occurred, mostly between 2004 and 2008.[35] The number of cases decreased starting in 2008, when the Uribe government, recognizing the seriousness of the situation, followed up on an internal investigation within the military by removing military members, even high-ranking officers, bearing potential responsibility in the killings. Protocols to combat such practices have been drafted and are in the process of implementation, and many of the murders are being investigated by the attorney general's office. Yet the level of impunity remains high, and the few convictions that have occurred involve low-ranking members of the military.

In addition, in April 2011, a press investigation revealed that the conditions of detention in military facilities for convicted officers are extremely lenient.[36] For the few criminals convicted, on the other hand, Colombian prisons have been characterized by terrible conditions for decades, especially severe overcrowding. In 1998, the Constitutional Court ruled that conditions amounted to a massive violation of inmates' rights and ordered the government to enact relief measures. In the following several years the situation improved, but as of 2010 prisons were again overcrowded by about 40 percent. Roughly 40 percent of prisoners are in pretrial detention and high-ranking criminals have long been able to exert control over criminal enterprise from within prison walls.[37]

The violence and threats by armed groups, especially those linked to paramilitaries, have also affected civil society, especially groups working in human rights. In its 2009 report, the IACHR stressed that "the work of human rights defenders and community and trade union leaders continued to be affected by threats against their life and personal safety" and reported numerous cases of murders or threats against human rights activists.[38] Violence against victims' rights advocates and social leaders advocating on behalf of the displaced has intensified as land reform efforts have acquired greater momentum. Human rights activists and NGOs were also subject to the illegal wiretapping and surveillance committed by the DAS. These attacks appear to have declined substantially with the arrival of the new government. In response, the government has developed several programs for the protection of witnesses and victims, including both general and LJP-specific protection programs run by the

attorney general's office, and an interior ministry-run program that focuses on shielding human rights activists, trade unionists, and social leaders. Despite these important efforts, the Santos administration has been unable to overcome severe shortcomings within the programs—including alleged spying by some of the very security forces assigned to protect—and halt violence against these vulnerable citizens.

For years, Colombia has been notorious as the world leader in violence against trade union members. According to the National Labor School (ENS), an NGO that documents the violence, between 1986 and August 2010, 2,842 trade union members were murdered;[39] about 25 percent of the victims were union leaders. Violence diminished under Uribe: homicides declined from 193 in 2001 to 47 in 2009. Nevertheless, 550 union members were killed between August 2002 and August 2010. In the past few years, especially because of political pressure from the international community, trade unions, and human rights organizations, Colombian authorities have undertaken important efforts to reduce the longstanding impunity for these crimes. According to ENS, before 2007, there were only 50 judicial decisions; the number increased in the following years and reached 207 in July 2009. Most verdicts have been convictions. However, impunity remains over 95 percent, and material authors have been prosecuted far more often than intellectual ones. The intense violence against union members has had profoundly negative effects on the capacity of trade union organizations to develop and protect the rights of their members: at less than 5 percent, Colombia has one of the lowest levels of unionization in Latin America.[40]

In June 2011, Congress approved an ambitious, long-awaited bill to provide material reparations to all victims of the armed conflict and to return land to IDPs. President Santos strongly supported the law, in stark contrast to Uribe, who opposed a similar project on the grounds that it was financially unfeasible and that it was unacceptable to place victims of illegal armed actors and those of the security forces on the same plane. Although human rights organizations have pointed to some flaws in the bill and implementation will pose an enormous challenge, its approval marked a fundamental step toward ameliorating the situation of millions of victims.

On the other hand, inequality and discrimination in Colombia are deeply rooted and seriously affect the enjoyment of civil and other rights. Colombian legal norms prohibit discrimination on many grounds, such as gender, race, disability, and religious belief. Freedom of conscience and belief are in general well respected. The only notable absence of protection involved same-sex couples, but in 2008 and 2009 the Constitutional Court extended many of the rights enjoyed by married heterosexuals to same-sex couples.[41] In addition, the Colombian legal system authorizes modest affirmative action in favor of women and ethnic minorities in order to ameliorate gender and race-based discrimination, and has incorporated other recent improvements, such as ratification of the UN Convention on the Rights of Persons with Disabilities.

Nevertheless, in social, economic, and political terms, discrimination against women and ethnic minorities persists. Congress currently is only 12 percent female, much lower than most other Latin American countries.[42] Women have higher rates of unemployment and receive lower wages than men in similar jobs.[43] Violence against women in Colombia remains epidemic. Roughly 30 percent of all women report that they have been physically assaulted by their husband or companion; 11 percent have been raped.[44] The situation for those subjected to the armed conflict is even worse. According to a recent report, from 2001 to 2009 nearly 500,000 acts of sexual violence were committed by the armed actors.[45] This violence remains in almost total impunity: according to the attorney general's office, by March 2011 demobilized paramilitaries had reported only 86 cases of sexual violence.[46]

Social indicators in terms of health, poverty, employment, housing, access to justice, and other measures consistently lag those of other Colombians. For instance, the infant mortality rate for Afro-Colombians is 44 per 1000 live births, more than twice the rate for the general population, and Afro-Colombian female life expectancy is 67 years, as opposed to 78 within the general population.[47] Moreover, indigenous and Afro-Colombian communities and individuals make up a disproportionately large percentage of the IDP population. The probability of becoming an IDP is 84 percent higher for Afro-Colombians than for the rest of the population. This disproportionate vulnerability to forced displacement is aggravated by the fact that many traditionally indigenous and Afro-Colombian territories are located in zones that are strategic either for armed actors engaged in highly profitable illicit economic activities or powerful agricultural and mineral interests seeking to expand legal operations.[48]

RULE OF LAW	**3.99**
INDEPENDENT JUDICIARY	5.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	4.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.75
PROTECTION OF PROPERTY RIGHTS	4.00

As noted above, Colombia has a long tradition of significant judicial independence, at least compared to other Latin American countries. Judicial nominations are not made directly by the president or political parties; rather, under the 1991 constitution, judges are appointed via a merit-based selection process coordinated by a sub-body within the judicial council. High court jurists in Colombia—in particular, members of the Constitutional Court—are generally held in higher esteem than in many regional peers,

Aside from the Constitutional Court's control functions and those of the Supreme Court, which is charged with investigating allegations against sitting

politicians, the constitution also establishes other institutions to control possible misconduct by the government. These include the ombudsman, the comptroller, and the inspector general (*procurador*), which has the power to impose disciplinary sanctions on any public servant and can also intervene in judicial procedures in order to defend human rights. Finally, the attorney general, who is in charge of investigations of all crimes, is independent from the government, even if the president has an important influence in his nomination.[49]

The institutional design implies a sophisticated system of checks and balances that has functioned more or less as intended. Nevertheless, the system is vulnerable to disruptions such as the weakening of checks and balances caused by Uribe's initial reelection (see Accountability and Public Voice). Still, judicial independence survived, as conspicuously demonstrated by the convictions of government allies in the parapolitics process and the Constitutional Court ruling that forbade a potential second Uribe reelection, among other decisions. The necessary complement is that judicial decisions are generally complied with. That said, the extent of governmental implementation of the Constitutional Court's prescriptive rulings, such as the decision mandating amelioration of IDP conditions, has been more limited.

In addition, the constitution's failure to establish a clear hierarchy between the high courts has led to acute confrontations, labeled in the press as the "train crash," in which the Constitutional Court has overturned Supreme Court and State Council decisions; the latter have, in turn, refused at times to follow Constitutional Court decisions. These quarrels have negatively affected the coherence and legitimacy of the Colombian judicial system, if not its independence.

This independence is accompanied, however, by the system's profound and acute shortcomings in efficiently and fairly dealing with common citizens' more routine conflicts. On balance, the results of the judiciary's intervention in civil, administrative, and criminal matters remain deficient. For instance, a claim against the government to obtain reparations for an abuse takes an average of almost three years if the case remains in a district tribunal; it can take 10 more years if it goes, by appeal, before the State Council.[50]

The situation is somewhat better in criminal matters. In 2006, a comprehensive reform of the code of criminal procedure was promulgated in order to implement a more adversarial and oral system, which was supposed to enhance the efficiency of the criminal system, improve respect for due process, and increase legitimacy. Five years later, a general evaluation of the reform's implementation concluded that there have been advances, including increased protection of defendants' rights, thanks to improved oversight by independent judges of prosecutors' work and better service offered by public defenders.[51] Moreover, in some respects, efficiency increased: the average time for cases to arrive at the formal accusation stage decreased from 29 months to 4 months. Nevertheless, criminal investigation remains highly inefficient, and criminals

not caught in the act are rarely formally accused. Thus, the level of impunity remains very high, even in crimes as serious as homicide. In 2008, for instance, there were convictions in only 2.7 percent of the homicides committed.[52]

In addition, judges and prosecutors still face threats and intimidation that undermine their capacity to independently decide criminal cases. Prosecutorial independence has often been questioned, but the attorney general, once confirmed, does not follow instructions from the government and cannot be removed from office by the president. The importance of the office was demonstrated in 2009 and 2010 by the stalemate between Uribe and the Supreme Court, which refused to confirm any of the three candidates proposed by the president. The Court considered them unsuitable for the job, but Uribe refused to change the list; only in October 2010, after President Santos had offered new nominees, did the Court select Vivian Morales to fill the post.

Although Colombia has maintained sufficient civilian control over the security forces to ensure the preservation of democracy, the military has enjoyed substantial autonomy, particularly in operational terms, which contributed to the previously noted problem of collusion with illegal armed groups. However, there have been advances in the investigation of human rights abuses. Following a 1997 Constitutional Court decision,[53] investigative and prosecutorial responsibility for gross rights violations committed by the military or the police were mostly transferred from the military justice system to civilian courts. Several important convictions for rights abuses and collusion between military officers and criminal organizations have been achieved in recent years. For instance, two very prominent and high-ranking military officials, Colonel Alfonso Plazas Vega and General Jesús Arias Cabrales, were convicted, in June 2010 and April 2011, respectively, for the forced disappearances of civilians during a politically traumatic event, the 1985 siege of the Palace of Justice.[54] However, these decisions were strongly criticized by retired officers' organizations, key political and economic elites, and even by both Uribe and Santos, leading to proposals to return cases involving military officials to the military justice system. Although the proposal was shelved, the strength of criticism illustrated Colombia's still-tenuous civilian oversight of the security forces.

The Colombian legal system recognizes private property, and courts generally protect it and guarantee respect for contracts. Nevertheless, the state has largely failed to secure property rights of the most vulnerable 10 percent of the population: the IDPs forced to flee their homes and leave their possessions behind. The dynamic behind this internal displacement is complex; in some cases it has been a side effect of the armed conflict, but in many other cases powerful economic actors, in collusion with the armed groups, stimulated the displacement in order to appropriate the land and initiate large-scale agriculture and mining activities. The result has been described as an "agrarian counter-reform," and it has increased property inequality in rural areas. According to some estimates, the Gini coefficient for land went from an already high 0.70 in 1984 to an astronomical 0.87 by 2010.[55]

ANTICORRUPTION AND TRANSPARENCY 3.51

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.80
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.00
CITIZEN PROTECTIONS AGAINST CORRUPTION	3.75
GOVERNMENTAL TRANSPARENCY	3.50

Colombia features an array of legal instruments to combat corruption and to increase governmental transparency. For instance, all public servants must make sworn declarations of income and assets, and strict regulations forbid employees from contracting with relatives. Colombia has also approved and ratified international instruments such as the UN Convention against Corruption.[56] In May 2011, Congress approved a new statute against corruption, which incorporates new tools to prevent and sanction illicit acts of corruption, including the use of covert agents to detect graft. A notable change is the partial modification of norms regulating government contracting processes; the flexibility of these regulations had facilitated serious acts of corruption in recent years.[57]

In spite of these legal advances, there is consistent evidence that Colombia has a serious and pervasive corruption problem. This is reflected in Transparency International's Corruption Perceptions Index, which in 2010 ranked the country 78 out of 178, with a score of just 3.5 out of 10.[58] Conversely, significantly fewer Colombians than in many Latin American peers—10 percent or less—have reported paying petty bribes in recent surveys.[59] The disparity between low reported petty corruption and higher general perceptions of graft likely stem from the reality of diminished petty corruption combined with well-publicized instances of grand corruption, especially scandals associated with government contracting and abuses of power.

One conspicuous example is the scandal associated with the Nule group; a conglomerate led by three cousins, Guido, Manuel, and Miguel Nule, which achieved rapid and enormous financial gains via lucrative contracts with both the national government and some local administrations. Presented for some time as successful and creative entrepreneurs, judicial and press investigations revealed that most of the Nule contracts were obtained by bribing politicians and public servants—and abetted by contacts with top political leaders, including President Uribe.[60] The mayor of Bogotá, Samuel Moreno, was suspended in May 2011 pending investigation of his involvement after his brother, Senator Ívan Moreno, was indicted on corruption charges in April.[61]

Another important scandal involved one of Uribe's closest supporters, ex-Minister of Agriculture Andrés Felipe Arias, who was accused of diverting public monies from a fund, Secure Agricultural Income (*Agro Ingreso Seguro*, or AIS), designated to assist peasants and small farmers facing economic difficulties. In reality, according to press reports and judicial investigations, they were disbursed to rich families and powerful rural businessmen in order to build

political support for Uribe's possible reelection as well as Arias's own presidential campaign.[62] As of May 2011, Arias remained under formal investigation

The capacity of the judicial system to investigate complex corruption cases has typically been very low. For instance, in 2007, the attorney general, which is the main institution in charge of uncovering and prosecuting corruption, received complaints of 1,246 possible cases of embezzlement of public funds but logged convictions in only 13 cases.[63]

Since the transfer of power from Uribe to Santos, a series of corruption scandals has erupted, including both the AIS and Grupo Nule cases; some emerged from investigations stimulated by the new government, others from previous judicial investigations, and yet others out of complaints made by the press or opposition parties. The cases have given the impression that corruption worsened during Uribe's two terms: one explanation suggests that the exacerbation of Colombian graft was linked to President Uribe's efforts to retain power and to win a second reelection.[64] However, it was clearly not the only relevant factor; other elements, such as the weakness of prosecutorial capacity, have played also an important role in the failure to limit corruption.

With respect to government transparency, some information is available through a 1985 law, but Colombia possesses no specific and comprehensive regulation of the right to access public information, and information about public servants is often difficult to citizens to access. An administrative code approved in January 2011, which partially regulates the subject, was a lost opportunity that replicated old regulations and did not reflect international access to information standards. The budget process also requires significant reform; although the 2010 Open Budget Index awarded Colombia an above-regional average score of 61 out of 100, it noted ongoing deficiencies in budget transparency, including weaknesses in legislative oversight of ongoing budget revisions. The report also noted that neither the Office of the Comptroller General nor the Office of the Auditor General produces published reports regarding auditing and oversight of the management of Colombian revenue and expenditures.[65]

RECOMMENDATIONS

- Focus judicial reform efforts on increased efficiency, while ensuring that any reform preserves judicial independence—especially of the high courts—and strengthens the role of the civilian courts in the investigation of military and police abuses.
- In order to protect the electoral process from the persistence influence of criminal organizations, strengthen the electoral system and reinforce its independence from political parties by providing the electoral authorities greater power to access party accounts and sanction noncompliant parties.
- Prioritize the transparency of government activities, including the enactment of more comprehensive transparency legislation and the implementation of open, modernized government contracting processes.

- The government must act to diminish the extreme inequality that persists in Colombia. A critical measure will be the articulation of effective procedures to implement the Victims' Law, particularly the restitution of land to IDPs and the protection of citizens advocating on behalf of marginalized ethnic and economic groups.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

1 These data are from the National Department of Planning. See Departamento Nacional de Planeación, *Bases del Plan Nacional de Desarrollo. Prosperidad para todos* (Bogotá: Departamento Nacional de Planeación, 2011), 13.

2 There have been important discussions to define the nature of Colombian armed conflict, which has become a nameless conflict, according to the title of an important collection of writings on the subject. See Francisco Gutierrez, ed., *Nuestra Guerra sin nombre* (Bogotá: Norma, IEPRI, 2006).

3 See Mauricio García and Javier Revelo, *Mayorías sin democracia. Desequilibrio de poderes y Estado de derecho en Colombia: 2002–2009* (Bogotá: Dejusticia, 2009), www.dejusticia.org/interna.php?id_tipo_publicacion=5&id_publicacion=667

4 For the evolution of the so-called parapolítica, see the review of the Corporación Nuevo Arco Iris, Arcanos No 13 (2007). See also Mauricio Romero, ed., *Parapolítica; La ruta de la expansión paramilitar y los acuerdos políticos* (Bogotá, Corporación Nuevo Arco Iris, Asdi, 2007), http://www.nuevoarcoiris.org.co/sac/files/libros/Libro_parapolitica.pdf.

5 For an explanation of the regulations about the financial support to parties, political movements, and electoral campaigns, see the documents of the Misión de Observación Electoral (MOE) in www.moe.org.co. See, especially, the document *Financiamiento electoral en Colombia* (Bogotá: MOE, 2010), www.moe.org.co/home/doc/moe_nacional/CARTILLASMOE/Cartilla%20G.pdf, accessed February 2011.

6 For instance, according to "votebien.com", an alliance formed by some media and civil society organizations to monitor elections in Colombia, in 2009, at least 164 candidates to the Congress in the 2006 elections have not presented in 2009 their formal accounts of their spending to the CNE. But most of them were not investigated. See "Las cifras que no cuadran," Votebien.com, October 28, 2009, www.terra.com.co/elecciones_2010/votebien/html/vbn87-las-cuentas-que-no-cuadran.htm. And also see "Las cuentas sin sanciones," Votebien.com, October 29, 2009, www.terra.com.co/elecciones_2010/votebien/html/vbn95-las-cuentas-sin-sanciones.htm.

7 See Claudia López, ed., *Y refundaron la patria. De cómo mafiosos y políticos reconfiguraron el Estado colombiano* (Bogotá: Debate, 2010).

8 The data were given directly from the Corporación Nuevo Arco Iris to the author in July 2011.

9 See Claudia López, ed., *Y refundaron la patria. De cómo mafiosos y políticos reconfiguraron el Estado colombiano.*

10 See interview of Leon Valencia, director of Arco Iris, in "¿Cuántas curules del próximo Senado son atribuibles a la parapolítica?," Corporación Nuevo Arco Iris, March 29, 2010, www.nuevoarcoiris.org.co/sac/?q=node/716.

11 See Juanita León, "Santos se corona como el presidente superpoderoso," La Silla Vacía, July 21, 2011, www.lasillavacia.com/historia/santos-se-corona-como-el-presidente-superpoderoso-25973.

12 See Fundación para la Libertad de Prensa (FLIP), *El olvido de la justicia. Informe sobre el estado de la libertad de prensa en 2010* (Bogotá: FLIP, 2011), www.flip.org.co/resources/documents/a3ccce4c7ba43eca7e348fcfa342a7b5.pdf.

13 See the public pronouncement expressing this fear by FLIP, a well known NGO that groups important journalists to protect freedom of speech: "Periodistas frente a procesos judiciales," FLIP, August 25, 2008, www.flip.org.co/alert_display/0/408.html.

14 See the interview of the former directors of *Cambio* about the reasons of the closure of the magazine: Cecilia Orozco Tascon, "Cierre de la revista 'Cambio', golpe al periodismo de denuncia," *El Espectator*, February 6, 2010, www.elespectador.com/impreso/cuadernilloa/entrevista-de-cecilia-orozco/articuloimpreso186229-cierre-de-revista-cambio-gol.

15 See the Flip database of the violence against journalists in www.flip.org.co/murder_list.html, accessed September 12, 2011. See also FLIP, *El olvido de la justicia*, p 12.

16 FLIP, *El olvido de la justicia*, p 48.

17 "Acusados siete ex funcionarios del DAS por chuzadas," Semana.com, January 26, 2010, http://www.semana.com/noticias-nacion/acusados-siete-ex-funcionarios-del-das-chuzadas/134183.aspx.

18 For an evaluation of this Constitutional Court's intervention, see the documents of the Comisión de Seguimiento del Desplazamiento (a group of several NGOs that permanently monitors this policy) in the following link: www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52, accessed September 12, 2011. For an academic discussion of this judicial intervention, see César Rodríguez and Diana Rodríguez, *Corte Constitucional y cambio social. Como la Corte Constitucional transformó el desplazamiento forzado en Colombia* (Bogotá: Dejusticia, 2010), www.dejusticia.org/interna.php?id_tipo_publicacion=5&id_publicacion=781.

19 For a general view of the long term evolution of homicides in Colombia, See Jorge Orlando Melo, "Cincuenta años de homicidios: tendencias y perspectivas," in *Razón Pública*, August 11, 2008, www.razonpublica.com/index.php?option=com_content&view=article&id=217:cincuenta-ade-homicidios-tendencias-y-perspectivas&catid=21:conflicto-drogas-y-paz&Itemid=30.

20 For this discussion see Francisco Gutierrez, ed., *Nuestra Guerra sin nombre.*

21 For a general overview of the human rights situation in Colombia in the past few decades, see the different reports of Human Rights Watch, Amnesty International, the Inter-American Commission on Human Rights, the UN Office of High Commissioner of Human Rights in Colombia (OHCHR), and the Colombian Commission of Jurists.

22 For a general evaluation of the internal displacement situation in Colombia, see the different documents of CODHES, available at www.codhes.org, accessed September 12, 2011. In particular, see "¿Consolidación de que?," Boletín Informativo, in CODHES 75 (February 2011), www.codhes.org/images/stories/pdf/bolet%C3%ADn%2077.pdf.

23 For a general evaluation of the land abandoned by internally displaced persons, see the different documents of the "Comisión de Seguimiento de la Política Pública de Desplazamiento," available at www.codhes.org. In particular, see "Cuantificación y valoración de las tierras y los bienes abandonados o despojados a la población desplazada en Colombia," January 2011, www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52.

24 See Alexandra Guaqueta and Gerson Arias, "Impactos de los programas de desmovilización y reinserción sobre la sostenibilidad de la paz," in Elvira María Restrepo and Bruce Bagley, eds., *La desmovilización de los paramilitares en Colombia: entre el escepticismo y la esperanza* (Bogotá: Uniandes, 2011), 515–517.

25 According to Melo's data, the homicide rate diminished from 69 to 39 per 100,000 persons between 2002 and 2006. See Jorge Orlando Melo, "Cincuenta años de homicidios: tendencias y perspectivas."

[26] See Camilo Echandía, Eduardo Bechara , and Irene Cabrera, "Colombia: estado del conflicto armado al final de la administración de Alvaro Uribe," in Hans Mathieu and Catalina Niño, *Seguridad Regional en América Latina y el Caribe. Anuario 2010* (Bogotá: Friedrich Ebert Stiftung, 2010), 136–172.

[27] See Ariel Fernando Ávila Martínez, "De la guerra de 'Jojoy' a la guerra de 'Cano,'" in *Arcanos*, no.16 (2010), 38.

[28] For a general overview of these new criminal bands or "bacrim" and their nature and activities, see Mauricio Romero and Angela Arias Ortis, "Bandas criminales, seguridad democrática y corrupción," in *Arcanos*, no. 14, 40–52. The data on the possible members of these criminal groups come from this article. See also Inter-American Commission on Human Rights (IAHRC), chap. 4 in *Annual Report 2010* (2011), http://www.cidh.oas.org/annualrep/2010eng/TOC.htm, accessed September 12, 2011.

[29] See IAHRC, chap. 4 in *Annual Report 2010.*

[30] The data are from the General Attorney Office. See "Gestión Unidad de Justicia y Paz," March 31, 2011, www.fiscalia.gov.co/justiciapaz/Index.htm.

[31] OHCHR–Colombia, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia 2010*, A/HRC/16/22, 2011 (February 3, 2011), paragraphs 25 to 30.

[32] See Comisión Colombiana de Juristas (CCJ), *Situación de derechos humanos y derecho internacional humanitario* (Bogotá: CCJ, 2009), 3, http://es.calameo.com/read/000360549c74ef241ed4b.

[33] According to "¿Consolidación de que?," CODHES, p. 11, during the eight years of President Uribe's governments, about 2.6 million persons were displaced.

[34] "Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions," Human Rights Council, March 31, 2010, A/HRC/14/24/Add.2, para. 10. In its 2010 annual report, chap. 4, Colombia–paragraph 19, the IACHR provides a vivid description of the pattern of "falso positives."

[35] OHCHR–Colombia, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia 2010.*

[36] "Tolemaida Resort," Semana.com, April 2, 2011, www.semana.com/nacion/tolemaida-resort/154427-3.aspx.

[37] See Rodrigo Uprimny and Diana Guzman, "Colombia," in Pien Metaal and Coletta Youngers, eds., *Sistemas sobrecargados. Leyes de drogas y cárceles en América Latina* (Amsterdam, Washington: WOLA, TNI, 2010), 43–50, www.dejusticia.org/interna.php?id_tipo_publicacion=5&id_publicacion=885, accessed March 2011.

[38] See IAHRC, *Annual Report 2009*, http://www.cidh.org/annualrep/2009eng/Chap.IV.a.eng.htm, accessed September 12, 2011.

[39] All these data are from Escuela Nacional Sindical (ENS, 2009), *Cuaderno de Derechos Humanos No 21*. Medellín, and ENS, *Cuaderno de Derechos Humanos No 22* (Medellin: ENS, 2010).

[40] The level of unionization has been always low; nevertheless, it went down from 12% in 1980 to 5% in 2002. See Miguel Eduardo Cárdenas, "Treinta años de sindicalismo en Colombia: vicissitudes de una transformación," in Francisco Leal Buitrago, *En la encrucijada. Colombia en el Siglo XXI* (Bogotá: Norma, 2006), 255.

[41] See Corte Constitucional, rulings C-336 of 2008 and C-029 of 2009.

[42] See the data of the Inter-Parliamentary Union about women in national parliaments: "World Classification," Women in national parliaments, July 31, 2011, www.ipu.org/wmn-e/classif.htm.

[43] See Lorena Alvarez Ossa, "La discriminación tiene cara de mujer," in Razón Pública, May 4, 2010, www.razonpublica.com/index.php?option=com_content&view=article&id=900:la-discriminaciaboral-tiene-cara-de-mujer&catid=26:recomendados&Itemid=356.

[44] See Profamilia, *Salud sexual y reproductiva en Colombia. Encuesta Nacional de Demografía y Salud 2005* (Bogotá: Profamilia, 2005).

[45] Oxfam International, *La violencia sexual en Colombia. Un arma de guerra* (Oxfam Internacional, September 2009).

[46] "Gestión Unidad de Justicia y Paz," Attorney General's Office, March 31, 2011, www.fiscalia.gov.co/justiciapaz/Index.htm.

[47] All data come from these two reports: César Rodríguez et al., *Raza y Derechos Humanos en Colombia* (Bogotá: Observatorio de Discriminación Racial, 2009), 57, http://odracial.org; Observatorio de Discriminación Racial, CCJ, Dejusticia, ONIC, PCN, and Uniandes, *Alternate Report to the Fourteenth Report presented by the Colombian State to the Committee for the Elimination of all Forms of Racial Discrimination* (2009), http://www.odracial.org/index.php?modo=interna&seccion=publicaciones.

[48] Ibid., par 44.

[49] The attorney general is nominated by the Supreme Court for four years from a list of three candidates provided by the president. Thus the president has an important influence on the attorney general's selection. But once nominated, the attorney general does not follow instructions from the government and cannot be removed from office by the president. The nomination of the last attorney general was very controversial because the Supreme Court refused to select any of the candidates proposed by President Uribe in September 2009 as the Court considered them not suitable for the job. President Uribe refused to change the list, so for almost a year, it was not possible to select a new attorney general. Only in October 2010, after the new President Santos decided to change the list, did the Court select Ms Vivian Morales as the new attorney general.

[50] For data on the average time of common cases, see Consejo Superior de la Judicatura, *Boletín Estadístico* (Bogotá: 2009), 11, www.ramajudicial.gov.co/csj/downloads/UserFiles/File/ALTAS%20CORTES/CONSEJO%20SUPERIOR/CENDOJ/boletines/Boletin%20Estaditico%20No%203%20-2009.pdf, accessed April 2011. The data about the Conseil d'Etat comes from personal interviews with justices from that tribunal.

[51] See Corporación Excelencia en la Justicia (CEJ), *Balance de los primeros cinco años de funcionamiento del sistema penal acusatorio* (Bogotá: CEJ, 2011),255–262.

[52] Calculated from the data of Mildred Hartmann Arboleda, "La capacidad del sistema judicial para dar resultados en delitos de connotación social," in *Sistemas Judiciales*, no. 15 (2005), www.sistemasjudiciales.org/content/jud/archivos/notaarchivo/849.pdf, accessed March 2011.

[53] See Corte Constitucional, Sentencia C-358/97.

[54] In November 1995 a guerrilla commando took control of the Supreme Court building and took hostage of the justices of the Supreme Court. The retaking of the building by the army was violent: about 100 people died, including 12 justices, and 11 persons were forcibly expelled. General Arias Cabrales was the officer in command of the military operation.

[55] See Carlos Salgado, "De como legitimar las tierras incautadas," in *Revista Arcanos*, no. 11 (2005), www.nuevoarcoiris.org.co/sac/files/arcanos/arcanos11_diciembre_2005.htm, accessed March 2011. See also the interview of Absalon Machado, one of the leading experts on Colombian rural issues, in "Se necesita ir más allá de la restitución de tierras: Absalón Machado," *El Tiempo*, February 9, 2011, http://m.eltiempo.com/justicia/se-necesita-ir-mas-alla-de-la-restitucion-de-tierras-absalon-machado/8839912/1.

[56] See Ley 970 dof 2005 and Corte Constitucional, Sentencia C-172/06.

[57] "El estatuto anticorrupción: 140 herramientas contra la corrupción," *El Universal*, May 5, 2011, www.eluniversal.com.co/cartagena/politica/estatuto-anticorrupcion-140-herramientas-para-la-lucha-contra-la-corrupcion-22702.

58 "Corruption Perceptions Index 2010 Results," Transparency International, www.transparency.org/policy_research/surveys_indices/cpi/2010/results, accessed September 12, 2011.

59 See Mitchell A. Seligson and Dominique Zéphyr, "The Americas Barometer 2006: report on corruption," in *Global Corruption Report 2008. Corruption in the Water Sector* (Cambridge: Cambridge University Press and Transparency International, 2008), 312–320; see also "Latinobarómetro Informe 2010," Latinobarómetro, http://www.latinobarometro.org/latino/latinobarometro.jsp, accessed September 12, 2011.

60 Juanita León, "Así llegaron los primos Nule a la cima del poder," in La Silla Vacía, October 10, 2010, www.lasillavacia.com/historia/18554.

61 "Samuel Moreno, suspendido port res meses del cargo," *El Espectador*, May 3, 2011, http://www.elespectador.com/noticias/bogota/articulo-266979-pliego-de-cargos-contra-samuel-moreno-carrusel-de-contratacion; Marguerite Cawley, "Senator Ivan Moreno arrested on corruption charges," *Colombia Reports*, April 28, 2011, http://colombiareports.com/colombia-news/news/15905-ex-senator-ivan-moreno-arrested-on-corruption-charges.html.

62 See "Agro Ingreso Seguro ante jueces penales," *El Espectador*, February 21, 2009, http://m.elespectador.com/impreso/judicial/articulo-252374-agro-ingreso-seguro-jueces-penales.

63 See Mildred Hartmann Arboleda, "La capacidad del sistema judicial para dar resultados en delitos de connotación social," p. 206–207.

64 See Juanita León, "La corrupción: estrategia para mantener a Uribe en el poder," La Silla Vacía, May 23, 2011, www.lasillavacia.com/historia/la-corrupcion-estrategia-para-mantener-uribe-en-el-poder-24616.

65 "Open Budget Index 2010: Colombia," International Budget Partnership, http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Colombia.pdf, accessed September 12, 2011.

ECUADOR

CAPITAL: Quito
POPULATION: 14.2 million
GNI PER CAPITA (PPP): $8,100

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	3.92	3.89
CIVIL LIBERTIES:	3.91	4.13
RULE OF LAW:	3.23	3.03
ANTICORRUPTION AND TRANSPARENCY:	3.03	2.99

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

J. D. Bowen

INTRODUCTION

In recent years, Ecuador has experienced a period of near-constant political campaigning. Voters have gone to the polls on five separate occasions since President Rafael Correa assumed power in January 2007, leading to the description of Correa's political style as the "permanent campaign"[1] and a "plebiscitary presidency."[2] During the first two years of his administration, voters were asked to approve the convening of a constituent assembly to rewrite the national charter (which they did overwhelmingly in April 2007), elect delegates to the assembly (September 2007), and ratify the new constitution (September 2008). Under the rules of the new constitution, Correa was reelected in April 2009 and voters chose members of the National Assembly. Finally, in May 2011 a referendum was held on a set of ten questions ranging from the legality of bullfighting to a potential revamping of the judicial system.

This wave of voting follows on the heels of a decade of political instability in which Ecuador experienced the extraconstitutional removal of three sitting presidents: Abdalá Bucaram in 1997, Jamil Mahuad in 2000, and Lucio Gutiérrez in 2005. Correa has managed to reestablish a modicum of order in Ecuador's chaotic political environment, and his administration has implemented important changes in some spheres. However, order has often come at the expense of respect for democratic institutions, civil liberties, and political

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pluralism. Propitious economic conditions—particularly the high price of oil, Ecuador's dominant export and hard currency earner—have enabled a surge in public spending that has bolstered the government's popularity, which has been above 50 percent for most of Correa's four years in office. The concentration of power in the executive branch has enabled the president to overshadow other institutions of government. This power has on occasion been used to further laudable democratic goals, such as weakening the control of unelected elites in various economic sectors. Nonetheless, it has also been used to hush opponents and reward political allies. Such hyper-presidentialism itself represents a potential threat to the long-term viability of democracy.

As of spring 2011, policies that affect significant aspects of democratic governance, such as press freedom and rule of law, remain in flux. A multi-year debate in the National Assembly over a proposed media law that could potentially result in significant restrictions on journalists appeared to be moving toward resolution. More dramatically, a police revolt in September, 2010 brought into question civilian authorities' ability of to control and discipline state security forces (see Editor's Note). Given the role of Ecuador's military in the removal of sitting presidents over the past 15 years, the degree of democratic control over the security forces is clearly relevant to the vibrancy and stability of Ecuadorian democracy.

Many of the new institutions and rules created by the 2008 constitution have the potential to greatly improve democratic governance in Ecuador. The recognition of specific rights for previously marginalized citizens (such as women, indigenous peoples, and Afro-Ecuadorians) represents a significant improvement over the previous constitution. However, these rights and other innovations can only be meaningfully implemented when power is shared equally across branches of government and opposing opinions are treated as legitimate. The aspirational nature of the constitution is a potential source of political motivation but also a real source of legal and political conflict, as the state will inevitably violate many of its more utopian provisions, such as constitutional guarantees of *sumak kawsay* (a good life). An important segment of Ecuadorian society believes Correa's conduct to have already rendered the constitution devoid of meaning. While a majority continues to support the president, Ecuador is undoubtedly in a period of great uncertainty regarding both the stability and quality of its democratic institutions.

ACCOUNTABILITY AND PUBLIC VOICE	**3.89**
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.20
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	3.71

Ecuadorian democracy looked more uncertain than ever in April 2007, when newly-elected president Rafael Correa called a plebiscite asking voters to demand the constituent assembly that had been a central part of his campaign platform. Correa had deliberately refrained from having his new political movement, Country Alliance (AP), field candidates for a parliament he accused, not without reason, of being corrupt, inefficient, and beholden to a small number of political bosses. Under the banner of leading a "citizens' revolution," Correa's goal was nothing short of the complete restructuring of Ecuador's political system and a reorientation of Ecuador's economy along more nationalist lines. Nonetheless, the previous constitution had been in place for barely eight years; although Correa was certainly reflecting a profound popular disgust with the political status quo, drafting the twentieth charter in Ecuador's 180-year history demonstrated a profound weakness in the underlying institutions of political authority. Indeed, the genuine deficiencies of the 1998 constitution notwithstanding, the choice of rewriting the charter further feeds a political culture of overhauling the rules when powerful actors find the existing ones politically inconvenient.

Although 81 percent of voters approved the convening of the assembly, Correa made post hoc adjustments to the body's statute that gave it full powers to rewrite (rather than merely revise) the constitution and, more importantly in the short term, assume the legislative functions previously held by congress. Given Correa's lack of partisan support in the legislature and his significant majority in the new assembly, the result was a significant concentration of power in the hands of the president.

The period preceding the constituent assembly revealed stark deficiencies in Ecuador's system of checks and balances. Opposition parties in congress attempted to block the referendum by impeaching the president of the electoral tribunal; the tribunal responded by removing from office the 57 legislators who voted in favor of impeachment on the grounds that they had attempted to intervene illegally in the electoral process. Correa sided with the tribunal, which had approved his referendum, and the conflict escalated to a full-blown constitutional crisis between the executive and legislative branches. Following voter approval of the assembly, the Constitutional Tribunal (TC) reinstated 51 of the 57 deposed lawmakers, arguing that their removal had been illegal. Before these 51 could resume their positions, however, the remaining members of congress voted to fire the nine TC justices for "unconstitutional actions."[3] The entire episode served as a microcosm of the perverse form of checks and balances that had taken hold in Ecuador, with partisan obstruction replacing legitimate oversight and accountability.

Electoral processes both before and after Correa assumed power have been reasonably free and transparent. Under the new constitution, the primary electoral authority is the National Electoral Council (CNE), and disputes regarding electoral rules and oversight of the CNE are resolved by the Electoral Disputes

Tribunal (TCE). Both organisms are composed of five members to be selected by the Council on Citizen Participation and Social Control (CPCCS), a new branch of government established by the 2008 constitution. Candidates representing all political parties are able to campaign without undue hindrance; however, President Correa, like his predecessors, has used his privileged access to local and national media to effectively drown out competing voices. There are provisions for public campaign funding and restrictions on the amount of privately-raised money candidates may spend. However, these provisions are poorly enforced and candidates routinely overspend with impunity.

Ecuador's most recent presidential and parliamentary elections were held in April 2009. The political environment was highly polarized, yet the election itself was generally peaceful and occurred without major incident. President Correa won 52 percent of the vote, obviating the need for a second round runoff. Former president Lucio Gutiérrez came in a distant second with 28 percent of the vote. On the parliamentary side, Correa's Proud and Sovereign Fatherland (PAIS) party came in first, gaining 59 of the 124 seats. Gutiérrez's Patriotic Society Party (PSP) came in second, with 19 seats, and the conservative Social Christian Party (PSC) was third, with 11; the remainder of seats, including enough representatives of groups sympathetic to PAIS to assure Correa a governing majority, went to smaller parties across the ideological spectrum.

Despite legal gaps caused by the fact that new electoral laws approved in 2009 had not yet gone into full effect, campaigns for both national and provincial offices were generally peaceful. The contest featured improvements from previous elections, particularly by incorporating elements of the 2008 constitution that extended voting rights to previously excluded groups. Candidates were able to campaign freely, but EU election observers characterized the electoral environment as lacking "robust competition and lively political discourse."[4] Most contests were personality driven rather than focused on specific programs and policy discussions. Campaign finance rules theoretically granted all presidential candidates equal opportunity to reach voters through national television. However, the time allocated was generally insufficient and, outside of these specific campaign advertisements, coverage of Correa dominated the airwaves—with positive coverage on public channels being countered by unflattering treatment by the private media. The 2009 law addressed many of the shortcomings of previous elections, especially regarding weak sanctions for campaign finance violations. Adequate enforcement in future elections could play a large role in leveling the electoral playing field.

The elections were monitored by both domestic and international observers, and there were few legal challenges lodged with electoral authorities. However, the weakest link in the electoral process was the TCE's slow, overly bureaucratic settlement of disputes over campaign rule violations.[5] In addition, the slow, error-prone tabulation process created tension in some regions, though the basic results were never under any doubt. Similarly, although official exit polls proclaiming an easy government win in the May 2011 referendum proved

wildly off the mark, the final results, in which some of government-promoted positions barely triumphed, were generally acknowledged by the opposition.

Despite frequent opposition talk of Correa's authoritarianism, the relative integrity of Ecuador's electoral institutions and the narrowness of the government's victory in the 2011 referendum suggest that Ecuadorian politics retain some dynamism. The lack of a well-articulated opposition, along with Correa's consistently high approval rating, which aids PAIS candidates, means that the system's openness to a democratic rotation of power at the national level has not been tested in recent years. Under the new constitution's terms, President Correa could legally remain in power through 2017. Opposition parties have preserved some bastions of power at the local level. In Guayaquil (Ecuador's largest city and economic hub), for example, the Social Christian Party (PSC) has held a virtual monopoly on important political offices for the past two decades and looks unlikely to relinquish its hold on power.

In the National Assembly, the executive's dominance over the legislative agenda has caused significant strain within his alliance. The president has maximized his constitutional powers in two particularly provocative ways. First, he has threatened to use the so-called "*muerte cruzada*," in which the president dissolves parliament and rules (with limited powers) by decree until new elections for both parliament and the presidency can be called. Such threats have often been issued at times of ferment within the legislature, notably in the September 2010 period preceding the police mutiny. Second, he has wielded his line-item veto power with vigor, often striking provisions of laws that were agreed upon by PAIS legislators and members of other parties only through painstaking compromise. Again, this caused particular consternation in September 2010, when Correa made extensive revisions to both the Public Service Law and the Law on Superior Education. Although operating within his legal powers, the administration's persistent lack of interest in even mild conciliation has both weakened the legislature and alienated some of the president's early allies. Several prominent PAIS members, including Assemblywoman María Paula Romo and former constituent assembly head Alberto Acosta, have abandoned the bloc, although a coherent opposition movement to Correa from the left or center-left has yet to take shape.

The new constitution created the CPCCS as the fifth branch of government, in addition to the executive, legislative, judicial, and electoral branches. As of spring 2011, the CPCCS has yet to become fully functional. Among its many functions, the CPCCS is charged with investigating corruption and abuses of power and designating numerous important public officials, including the ombudsman, attorney general, inspector general, and CNE members. Along with these prerogatives, the CPCCS has broad information-gathering authority and extensive subpoena powers. With its broad constitutional mandate, the CPCCS is an illustrative example of a potentially positive reform that has languished due to an apparent lack of political will to implement it. In theory, its role in preserving checks and balances could lead to constraints on

the sweeping powers of the presidency. In practice, however, the first major selection process conducted by the CPCCS, to select a new attorney general, was tarnished by persistent accusations of manipulation benefiting the government's favored (and victorious) candidate.

Employment opportunities in the civil service continue to be driven largely by patronage calculations. However, improvements that had begun in previous years have not been reversed under Correa. Most notable is the functioning of the Internal Revenue Service (SRI), which in barely a decade has gone from being corrupt, inefficient, and unprofessional to being a competent body composed mostly of trained professionals. Accordingly, tax evasion rates have declined.[6] Correa also undertook a broad-based attempt to modernize and professionalize bureaucratic institutions—although Ecuador has a long history of similar rationalization attempts that were eventually aborted. Given the nepotistic abuses of recent governments, the effort to hire trained and competent professionals to staff important government institutions is laudable.

The wave of popular discontent that helped drive Correa to power in 2006 had been building for years within civil society organizations and nongovernmental organizations (NGOs). Since assuming power, Correa has generally respected the rights of civil society organizations and NGOs, although he has often used the bully pulpit of the presidency to publicly berate social movements and NGOs (both national and foreign) that diverge from his policy agenda. For example, Correa has repeatedly denigrated the indigenous movement and its leaders as well as environmental NGOs such as Acción Ecológica for their "childish environmentalism" when they have protested against mining and energy activities in indigenous territories.[7] Nonetheless, the government generally refrains from formally restricting the ability of civil society groups to organize, register, and disseminate their message.

The media environment has become significantly more complicated since 2007. In barely four years, the Ecuadorian government has gone from owning one media outlet (Ecuador National Radio) to controlling 19 outlets, ranging from television to radio and print media.[8] As part of ongoing corruption investigations, the government has seized several prominent television and radio stations, as well as newspapers. The most significant of these cases involved the seizure of two of Ecuador's largest television stations (Gamavisión and TC Televisión), which the government asserted were owned by the Isaías family, fugitive financiers accused of various crimes connected with the banking crisis that devastated the country in the late 1990s. Although these and other assets were ostensibly seized with the purpose of reselling them in order to compensate those who lost money in the banking crisis, the stations remain under state control. Moreover, under the guidance of presidential chief of staff Vinicio Alvarado and his brother, Minister of Communications Fernando Alvarado, the government spends vigorously to distribute progovernment messages and promote government-approved candidates for office. The president's weekly radio address, in which he routinely upbraids the private media, is broadcast

throughout the country. The state also spends significant sums promoting itself in numerous privately-owned press outlets, thus giving the government financial leverage with the media.

In addition, the government is engaged in an open ongoing battle with several independent news organizations that the president accuses of being mediocre and corrupt coupmongers.[9] The Committee to Protect Journalists has repeatedly criticized the administration, particularly regarding its use (or threat of use) of ambiguous libel laws to punish and threaten the press.[10] The most-publicized case involves prominent Guayaquil journalist Emilio Palacio of newspaper *El Universo*, who received a three-year prison sentence in March 2010 (later rescinded) for referring to the president of a government-run financial institution "a thug."[11]

Finally, the National Assembly has for several years been debating a law that would further regulate the press in ways that press watchdogs consider antithetical to the freedom of expression. While the proposed media law would take the positive step of explicitly prohibiting media monopolies and oligopolies, in its early 2011 iteration it would also condition free expression rights to ensure that information is "true, verified, opportune, contextualized, and plural." While such qualities are certainly ideal, the vagueness of these conditions opens the door to censorship (or self-censorship) of information deemed controversial or prejudicial to governmental interests.[12] The government has made no efforts to restrict access to the internet or censor its content, but service remains expensive, thus limiting most of the poor from internet access.

CIVIL LIBERTIES 4.13

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.88
GENDER EQUITY	4.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.00
FREEDOM OF CONSCIENCE AND BELIEF	6.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	3.75

In contrast to the areas of accountability and rule of law, the situation of civil liberties in Ecuador has changed relatively little in recent years. In general, civil liberties are formally protected but often violated in practice. This reflects both the hyper-presidential nature of the current regime and the general weakness of the Ecuadorian state, which makes it difficult for civilian leaders to control and punish both security force members who violate civil liberties and criminal networks that evade state control.

A May 2010 visit by the Inter-American Commission on Human Rights (IACHR) documented significant improvements in some parts of the prison system, included diminished overcrowding, greater availability of public defenders, enhanced upkeep and staffing of childcare centers at women's prisons in

Quito and Guayaquil, and an overall reduction in violence at men's prisons. On the negative side, it documented inadequate prisoner nourishment (the daily budget is approximately one dollar per prisoner per day), inadequate medical care, unsanitary conditions, and the mixing of accused criminals with convicted ones.[13] The positive achievements, however, have been undermined by the constant shuffle of top prison authorities and the transfer of responsibility for the country's prisons to the Ministry of Justice, a switch that should eventually lead to positive changes but created substantial uncertainty in the interim. Another ongoing problem is the high percentage of prisoners in pretrial detention, estimated at over 50 percent of the prison population as of mid-2010.[14] To ease prison overcrowding authorities have released thousands of detainees, which became a hot button political issue in 2010 as citizens perceived the releases to have fed a rise in crime.

Under the 2008 constitution as well as previous ones, an ombudsman's office has a mandate to defend citizens from arbitrary arrest and detention along with other rights abuses. The office lacks prosecutorial or other sanctioning power, however, and enforcement remains patchy. A positive development in the search for redress, however, was the 2010 publication of Ecuador's Truth Commission Report. Although the commission lacked the authority to bring formal charges, it documented 456 human rights violations committed since 1984.[15] Although the level of human rights violations in Ecuador never rose to the level of those in other parts of Latin America, the thorough attempt to document abuses is an important step in moving away from a culture of impunity for violators of basic human rights.

Nonetheless, particularly outside major urban centers—where effective oversight can be exercised by interested civil society organizations—arbitrary arrest and detention, along with political intimidation, continue to be problematic. In the rural southeastern province of Morona Santiago, human rights activists connected to the National Coordinating Body for the Defense of Life and Sovereignty (CNDVS) received death threats in 2009 from local authorities for protesting a meeting between local officials and a Canadian mining company that was operating with an expired license.[16] In addition, several citizens have been detained following incidents in which vulgarity was directed toward Correa.[17]

Beyond state violations of civil liberties, the state has frequently proven incapable of defending citizens' liberties from nonstate actors such as criminal networks, human traffickers, and guerrilla and paramilitary combatants (mostly from neighboring Colombia). Some portions of Ecuadorian territory are effectively beyond government control. This is particularly true along the northern border with Colombia, where citizens are often caught in the crossfire between drug traffickers, guerrilla movements, and the militaries of each country.

A July 2010 visit by UN Special Rapporteur on Extrajudicial Executions Philip Alston concluded with a discussion of the challenges facing Ecuador's criminal justice system. Particularly in rural areas, impunity is the norm, with

less than 1 percent of all murders ending in a conviction.[18] Such impunity (and the fact that some media outlets thrive on sensationalist reporting of heinous crimes) coincides with increased murder rates throughout the country, with highly visible violence such as contract killings in Quito and Guayaquil contributing to a broad perception of pervasive criminality.

In places where the state effectively enforces its writ, the government officially recognizes gender equity, and the Correa administration has taken meaningful steps to ensure that women are represented within institutions of government. The 2008 constitution guarantees equal representation of men and women on party lists for national elections, although this provision has not been strictly enforced. The constitution, however, contains contradictory articles specifically related to women's reproductive rights. While article 46 guarantees the right to life "from conception," article 67 provides broad guarantees regarding women's right to control their own sexual and reproductive decisions, including "the right to make free, responsible, informed decisions about their health and reproductive lives and to decide when and how many children to have."[19] The contradictory language appears to be an attempt by the Constitutional Assembly to placate both women's rights activists and the Catholic Church. The result is legal uncertainty that has yet to be resolved. Despite government campaigns to spread awareness, an extremely high rate of domestic violence continues to impinge on the rights of many Ecuadorian women.

The rights of indigenous Ecuadorians, who comprise approximately 10-20 percent of the Ecuadorian population (estimates vary widely, from as little as 7 percent to more than 40 percent) are explicitly recognized in the constitution, which recognizes Ecuador as an intercultural and plurinational state. In practice, however, the Correa government has alienated many indigenous groups that initially supported him, particularly antagonizing leaders of social movements like the Confederation of Indigenous Nationalities of Ecuador (CONAIE) by permitting mining and oil drilling in indigenous territories and excluding indigenous representatives from the highest levels of government decision making. However, many groups within the indigenous community have split, weakening their ability to mobilize against the government.

Employment discrimination against women, ethnic minorities, and the disabled is outlawed, yet continues to be widely practiced. The legal and working environment for disabled people has improved significantly, however, due in part to the public pressure applied to businesses and local officials by Vice President Lenín Moreno, who has used a wheelchair since being injured in a robbery in 1998.

Freedom of conscience and belief are generally respected. Although a large majority of Ecuadorians are Roman Catholic, the state is explicitly secular. In practice, government officials neither promote nor hinder the free practice of religion. At the societal level, social discrimination remains a problem for non-Catholics, most of whom are evangelical Christians.

The state formally recognizes the right of all citizens to organize and form associations, and the right to organize is widely respected. Ecuador has a vibrant associational environment, with a variety of complementary and competing associations representing nearly all segments of society. Trade union rights are generally respected; labor groups are not a major political or social force due to the large size of the informal sector. Relations between the government and public sector workers are subject to occasional tensions, as during the debate over the new Public Service Law in September 2010.[20]

Demonstrations and protests are regular occurrences and, although they are often met with official indifference, are generally tolerated. There have been cases, however, of human rights violations by security forces (both public and private) against demonstrators as well as attacks on social movement organizations' offices and leaders. The Correa government has made ample use of broad and vaguely defined laws against "terrorism and sabotage" to prosecute and harass protest leaders, especially indigenous and environmental activists. Ecuador's criminal code defines terrorism and sabotage as "crimes against the common security of people or human groups of whatever kind, or against their property,". . . by individuals or groups "whether armed or not." Conviction carries a possible prison sentence of up to eight years.[21] In June 2010 several indigenous activists, including CONAIE president Marlon Santi, were placed under criminal investigation for terrorism and sabotage for their involvement in protests during a meeting of the Bolivarian Alternative for the Americas (ALBA) in Otavalo attended by President Correa and other Latin American leaders. Terrorism laws have also been used against journalists. In August 2010 Juan Alcívar of *La Hora* newspaper was charged with terrorism following a demonstration in La Concordia where he allegedly threw a tear gas canister at President Correa. He was released from preventive detention but still faces terrorism charges.[22]

RULE OF LAW 3.03

INDEPENDENT JUDICIARY	2.40
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.50
PROTECTION OF PROPERTY RIGHTS	4.00

Ecuador's 2008 constitution, like its predecessor, provides for the formal separation of powers and for a judicial system that guarantees the rights of all Ecuadorian citizens, including special recognition of indigenous legal practices in majority indigenous zones. However, also like its predecessor, these provisions are often recognized in the breach. Under the new constitution, the key judicial entities are the Judiciary Council (CJ), a nine-member body selected through a competitive process with citizen oversight, a 21-member National

Court of Justice selected by the CJ following open competition, and a nine-member Constitutional Court selected through competitive processes overseen by representatives of the other branches. The conformation of the current CNJ was the topic of considerable controversy, as the previous, 31-member Supreme Court of Justice was winnowed down by lottery, a mechanism that drew vocal objections from many jurists. Following the publication of the results of the May 2011 referendum, the CJ was disbanded in favor of an 18-month interim CJ charged with restructuring the justice system.[23] The CJ also appoints and dismisses lower court justices.

Cases involving average citizens continue to languish in courts, while accusations that bribery is used to move cases more rapidly and influence judicial outcomes are common. The more serious problem for democratic governance remains the ability of powerful interests to use the judicial system to further political and economic agendas. The Correa administration has politicized high-profile cases to attack political enemies. For example, in 2008 prominent businessman (and outspoken government critic) Mauricio Pinto was sentenced to preventive detention while he was investigated for tax fraud related to the importation of two airplanes in 1997. Although the detention order was dropped, the timing of the charges—more than a decade after the alleged crime, but in the heat of the campaign to approve the new constitution, which Pinto had criticized—suggested that politics, as much as justice, was a motivating factor.[24]

Most judges have adequate training to carry out their job, but the political environment of the past decade has subjected them to intense political pressures. Under these conditions it is not surprising that even competent and honest judges seek to avoid offending powerful state officials. Nearly all recent presidents (including Correa) have meddled in the judicial system to an extent that judicial officials generally do not feel secure in their positions. In May 2011, Minister of Interior José Serrano reacted to an innocent verdict in the case of César Carrión, a police colonel accused of attempted murder in relation to the September 2010 police mutiny (see Editor's Note below), by threatening to bring charges against the judges who exculpated him. In another notable case, the government appeared to benefit from judicial ambivalence when José Chauvín, a close collaborator of several high administration officials, was found innocent of drug trafficking in May 2010. Chauvín had acknowledged meeting with leaders of the Revolutionary Armed Forces of Colombia (FARC) in Ecuadorian territory shortly before the Colombian military crossed the Ecuadorian border to destroy a FARC camp in March 2008.[25] Despite evidence gathered from a dead FARC leader's laptop that money from the FARC had entered Correa's campaign coffers (with or without the president's knowledge), no charges were brought against other government officials.

In criminal proceedings the law offers the presumption of innocence. However, defendants without resources to hire a private attorney find themselves at a distinct disadvantage within the legal system. Public defenders

generally carry heavy caseloads and lack the time or resources to offer an adequate defense for many of their clients (although this situation has improved slightly in recent years). As in most countries, those with wealth or political connections are much more likely to benefit from competent legal defense than those who lack resources and connections.

Prosecutors are formally independent from political influence. The top prosecutor, the attorney general, was designated by the National Congress under the previous constitution, but is now selected through a process overseen by the CPCCS. Lower-level prosecutors are selected through competitive processes. The attorney general until July 2011, Washington Pesántez, invited controversy both by defending President Correa and his allies from formal investigation and for appearing to use his position to protect himself and his family. One particularly significant complaint against Pesántez stemmed from a traffic accident in which his wife allegedly killed a woman while driving a vehicle belonging to the prosecutor's office. Despite numerous witnesses testifying that the vehicle was driven by a woman, prosecutors charged a male police officer with the offense.[26] Attempts to impeach Pesántez based on this and other allegations have been repeatedly rebuffed and contributed to the split within PAIS. Pesántez has reportedly used his power as prosecutor to harass PAIS members who have attempted to hold him accountable. Most recently his office initiated tax fraud investigations against PAIS assemblywoman María Paula Romo and her parents, apparently in retaliation for her leadership of efforts to impeach him.[27]

The institutionalization of the rule of law requires that national and local security forces operate under democratic civilian control. Given that the military played a direct or indirect role in the removal of the last three elected presidents prior to Correa, the subordination of military leaders to elected civilians is questionable at best. At present, the president appears to have the loyalty of the military, but this loyalty is conditional. While the military ultimately came to the president's defense when the president was held captive by mutinous police officers in September 2010 (see Editor's Note below), their loyalty to the democratic process remains an open question. There is concern that Correa has essentially purchased the loyalty of the military through increased salary and benefits packages. In addition, the military has been handed control of key economic assets such as Petroecuador, the state-owned oil company that was controlled by the Navy from 2007 to early 2010, ostensibly for the purpose of rooting out corruption and inefficiencies.[28] Beyond Petroecuador, various branches of the armed forces control significant industries in the tourism, manufacturing, agriculture, and natural resource sectors with minimal transparency or oversight.

Economic and property rights have continued to erode under the Correa administration. This is due both to the overall weakness of the rule of law and to efforts by the Correa administration to assert a greater role for the state in economic activity. In addition, the state has taken several actions that have led large investors (both domestic and foreign) to question the security of their property rights in Ecuador. The most prominent international case involves

the Ecuadorian government's decade-long prosecution of Chevron for environmental damages dating back to the 1970s, with both sides engaged in dubious legal maneuvers.[29] The seizure of assets believed (by the government) to be tied to fugitive business and political leaders (such as the Isaías brothers—see Accountability and Public Voice) generated doubts about the government's willingness to respect property rights and the legal process for seizing assets tied to criminal activity. A prominent case was the seizure of Industrias Lácteas Toni (a large producer of various dairy products) in 2008 based on accusations that the company was actually owned by the Isaías brothers and thus subject to expropriation.[30] The government's attempt to prove the Isaías's ownership has been slow and sloppy, making it difficult to separate the legal case from the government's political goals.

The Ecuadorian economy remains heavily state-centered. The Heritage Foundation, a conservative think tank that produces an economic freedom index, rated the Ecuadorian economy as "repressed," its lowest possible designation, and ranked the county 158 out of 179 countries in its 2010 survey, ahead of only Venezuela and Cuba within Latin America.[31] The aforementioned seizures of economic assets and the president's populist rhetoric, which frequently vilifies business "oligarchs," was described by the group as creating further uncertainty surrounding the legal protection of property rights.

[*Editor's Note: September 30, 2010: Police Mutiny or Coup d'état?* For several tense hours on September 30, 2010, Ecuador's democracy appeared to be on the edge of collapse as President Rafael Correa was trapped in a police hospital by a group of police officers in Quito. The incident unfolded following the initiation of protests by police officers across the country in reaction to a policy shift whereby the police would be folded into the general civil service for purposes of calculating salaries and bonuses. Although there was little evidence that it represented a salary cut, many officers perceived the change as a threat to their accustomed system of bonuses and other perks.

The drama involving the president occurred when Correa attempted to explain the policy change to a group of protesting officers. Rather than calming the scene, his presence only heightened tensions, due in part to a characteristically confrontational performance that included ripping open his shirt and yelling "if you want to kill the president, here I am, kill me if that's what you want!"[32] During the altercation that occurred when police blocked Correa's exit, the president was injured and taken to a nearby police hospital, where he declared a state of emergency across the country, including a government takeover of all broadcasting frequencies for six hours. The tumult further entrenched the standoff between the police units that had isolated Correa in the hospital and the army forces that arrived to free the president. As police around the country abandoned their posts in support of their colleagues in Quito, the country was plunged into both political uncertainty and personal insecurity, with widespread looting and general lawlessness, particularly in Guayaquil, Ecuador's largest city. Isolated units of the military acted in solidarity with the police;

the Air Force, for example, blocked the runway at Quito's primary airport and seized the presidential airplane and helicopter in order to prohibit the president from leaving the country.[33]

By early evening the decision was made to free the president by force. In the fighting that ensued to attempt to free the president, five people were killed and dozens more injured; the toll for the day throughout the country reached at least 10 dead and over 250 wounded. Following his liberation, Correa declared the event an attempted coup d'état, a position also taken by the OAS and the Union of South American Nations. While there clearly was substantial coordination within the police as well as with parts of the military, no alternative leader stepped forward to seize power, and most of the military remained loyal to the president. President Correa emerged strengthened from the ordeal in the short term, but the flagrant act of police insubordination set a dangerous precedent in a country where the security forces have long played a prominent role in national politics.[34]

The episode reflected several underlying weaknesses in Ecuador's political system. Most obviously, the loyalty of a significant part of the security forces is conditional, as demonstrated by the several-hour lag between the eruption of chaos and the military's clear statement backing the constitutional order. Second, although President Correa was able to resume his duties, he was apparently forced to backtrack on his proposals to streamline the system of granting raises and promotions, effectively handing victory to the police that rose up against him. Third, although many analysts disputed the government's decision to label the event an attempted coup d'état, Correa used the crisis as an opportunity to single out his political rivals—especially Gutiérrez's PSP—as antidemocratic coupmongers, illustrating his ongoing preference for confrontation over conciliation. As of the spring of 2011, nearly 300 police and soldiers had been charged or were under investigation, with many more reassigned. Although then Secretary of the Interior Gustavo Jalkh promised to insulate and protect judges and prosecutors involved in the investigations,[35] early judicial processes resulted in mixed verdicts, angering the government and leading to threats of retribution (see Rule of Law). Overall, while Ecuador's political system showed resilience on September 30, the balance of the strengths and weaknesses revealed that day will only be clear over the next few years.]

ANTICORRUPTION AND TRANSPARENCY 2.99

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.80
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	2.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	3.00
GOVERNMENTAL TRANSPARENCY	3.83

Ecuador has long struggled with endemic corruption and weak government transparency. This has not changed significantly in recent years, although the government has set up institutions that have the potential to perform important

oversight functions. According to Transparency International's 2010 Corruption Perceptions Index (CPI), Ecuador scored 2.5 out of 10, ranking it 127 out of 178 countries surveyed.[36] Ecuador's ranking has improved slightly in recent years, but as the CPI is based on perceptions rather than direct measurement, the gains are likely to be as much an artifact of the perception of boundless corruption of the late 1990s and early 2000s as an endorsement of the integrity of current public officials.

The increasing activity of the state in the economy has created new opportunities for various types of graft. This was demonstrated most vividly early in the Correa administration by a scandal involving lucrative state contracts awarded to the president's brother, Fabricio Correa.

During President Correa's first two years in office, his brother's firm won contracts worth approximately $167 million, mostly in the area of infrastructure building, despite legal provisions barring a president's family members from doing business with the state.[37] Fabricio Correa used a technicality exempting holding companies from these anti-nepotism rules to his advantage; the president was apparently unaware of this obvious conflict of interest until it was reported in the press, suggesting that there is insufficient oversight in the awarding of government contracts. The two brothers subsequently experienced a major falling out, with Fabricio accusing presidential aides of corruption and vociferously denouncing his brother's politics.

The battle against corruption has been a common campaign theme for candidates across the political spectrum, and a common ingredient in the downfall of presidents Bucaram, Mahuad, and Gutiérrez. Accordingly, the government has created a number of anticorruption bodies to help fight graft. The comptroller and attorney general's office both have departments dedicated to weeding out corruption, and the Correa government created a new institution, the National Anticorruption Secretariat, to coordinate and oversee the battle against corruption in both the public and private sectors.

Public officials are required to file a notarized declaration of all assets upon entering office and again upon leaving the public sector. These declarations have enabled the independent media to be more vigilant of public officials. Indeed, the media has been a vigilant watchdog of government corruption, although both pro- and antigovernment accusations are sometimes politicized. Government interference in the media and lawsuits, such as the $10 million suit initiated by President Correa against the authors of a book examining the Fabricio Correa episode,[38] has likely led to self-censorship by journalists afraid of running afoul of powerful government figures.

Arguably the area of greatest improvement in the area of anticorruption and transparency is in revenue collection. Well into the 1990s, the Internal Revenue Service (SRI) was dysfunctional, corrupt, and unable to effectively enforce Ecuador's tax laws, particularly on the wealthy, many of whom routinely evaded huge tax bills with impunity. The SRI has upgraded its technology and record-keeping ability, increased the professional credentials of its staff, and become an

island of bureaucratic competence.[39] Since 2009 the SRI has been in charge of collecting assets declarations (*declaración patrimonial*) from all Ecuadorians with assets over $200,000. Government officials hope that this will help further rationalize the tax system, by clarifying what assets are held where and by whom.[40]

Within the current government, the concentration of power in the hands of the president and his party has led to a severe lack of transparency. Although the National Assembly has important and powerful legal tools for promoting transparency and accountability, these tools are rarely used, and the party exercises little effective oversight in the areas of budgeting and procurement. There is, therefore, ample room for corruption and influence peddling. Without effective oversight, however, it is difficult to know with any certainty the degree of corruption.

Petty corruption by local officials, many of whom ignore conflicts of interest while carrying out their functions, and police officers are particular problems. Corruption within the education system is also a problem, particularly in rural areas where educational opportunities are scarce and media coverage is weak. Formal protections for whistleblowers exist, though instances of whistleblowing leading to investigations and prosecutions are rare. In theory, the CPCSS will have an important role to play in limiting corruption and providing redress to victims, but this institution has yet to prove its worth in this sphere.

In general, constitutional and legal provisions are in place to ensure government transparency and public access to information. In practice, however, such access is difficult for normal citizens. Although further progress is necessary, budgeting and expenditure accounting processes have become more transparent following numerous corruption scandals during the 1990s and early 2000s. The scandal surrounding Fabricio Correa's government contracts illustrate both the challenges and improvements in this area: the fact that the contracts were ever signed indicates a lack of transparency and oversight in contracting processes, but the fact that the problem was caught and largely corrected suggests some responsiveness within the system.

Overall, government transparency seems to have improved somewhat in the past four years. This owes in part to the return of some degree of political stability under Correa's leadership. During the decade from 1996 to 2005, when three presidents were removed, constant political turmoil, institutional changes, and legal maneuvering made transparency nearly impossible. Although the current situation leaves substantial room for improvement, the return of some semblance of political order makes it possible to investigate abuses of power even when government officials are not forthcoming, offering hope for some institutional consolidation even within an atmosphere of political polarization.

RECOMMENDATIONS

- The government should immediately halt political harassment and intimidation of journalists, and enact legislation to change libel, defamation, and insult-related legal violations from criminal to civil offenses.

- The government should formulate a plan for the orderly divestiture of assets seized as a result of corruption and other criminal investigations. This is particularly important where the assets are politically important, such as media outlets.
- The government should refrain from any interfering or applying any political pressure during the CPCCS selection processes for positions including attorney general, ombudsman, and CNE members.
- The government should fully investigate actions that occurred during the September 2010 police mutiny and punish those involved in order to consolidate civilian control over security forces.
- In order to bring stability and improvements to the prison system, efforts to bring the prisons under the full control of the Ministry of Justice should continue expeditiously.

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EGYPT

CAPITAL: Cairo
POPULATION: 80.4 million
GNI PER CAPITA (PPP): $5,680

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	1.89	1.64
CIVIL LIBERTIES:	2.03	1.91
RULE OF LAW:	2.78	2.68
ANTICORRUPTION AND TRANSPARENCY:	1.70	1.70

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Joshua Stacher

INTRODUCTION

The sudden collapse of Hosni Mubarak's nearly 30-year presidency and the implosion of his ruling National Democratic Party (NDP) in early 2011 came as a shock to Egyptians and international observers alike. Before the uprising occurred, few would have predicted that protesters could overwhelm and defeat Mubarak's extensive security apparatus, or that the military would turn on the president in an attempt to salvage parts of the old regime. However, there were many signs of an impending political impasse in the months and years leading up to the crisis, as the mounting grievances of the Egyptian people were consistently neglected by the government.

The most visible strains on the system included unprecedented waves of collective industrial action—partly in response to aggressive economic reforms that almost exclusively benefited Mubarak and NDP insiders—as well as increasing political activism in the streets and online to voice the public's objections to blatantly rigged elections, the possibility of a hereditary presidential succession, and egregious cases of police brutality. The deterioration of the regime was particularly evident in the contraction of political freedoms and economic opportunities for those outside the political and economic elite.

The Egyptian government frequently violated the civil and political rights of its citizens in the final years of Mubarak's presidency. Torture and arbitrary detentions became commonplace. The freedoms of assembly and association, which had always been subject to surveillance by the security services, were hampered by additional restrictions. The constitutional right to participate in

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elections as a voter or candidate became devoid of substance as the authorities imposed an array of legal and extralegal obstacles.

The Supreme Council of the Armed Forces (SCAF), which assumed power after Mubarak's ouster, is set to remain in place until a presidential election can be held in 2012 or 2013. Egypt was not a military dictatorship during Mubarak's presidency, however. The military was instead a key constituent member of the country's ruling coalition. While generals were regularly appointed as provincial governors,[1] they were infrequently named as cabinet ministers. According to a 2001 study, only 8 percent of Mubarak's ministerial appointees emerged from the military.[2] This percentage was reduced further after a technocratic cabinet took over in July 2004. Compared with the tenures of former Egyptian leaders Gamal Abdel Nasser (1954–70) and Anwar al-Sadat (1970–81), appointments under Mubarak demonstrated the military's declining role in ordinary governance. The percentages of military officers in Nasser's and Sadat's cabinets were 33 and 20, respectively.[3] Some have argued on this basis that Egypt's military was ruling but not governing in recent years.[4]

Also included in Mubarak's coalition were the security services and a new class of businessmen with close ties to the president's son and rumored heir, Gamal Mubarak. The remaining component of the regime was the NDP hierarchy, which managed an important patronage network. When challenged by labor strikes, political activists, independent judges, leading journalists, or groups like the banned but partially tolerated Muslim Brotherhood, the regime's constituents united to safeguard the power of the president. Mubarak, a former air force general and Sadat's vice president, wielded centralized authority over the political arena, and regime elites worked in various ways to enable the president's office to encroach on other potential sites of contestation.

The security services grew in importance during Mubarak's final years in power. Charged with disrupting expressions of dissent, the General Intelligence Service (GIS) and the Interior Ministry's State Security Investigative Service (SSIS) suppressed public anger and maintained a façade of political stability. The GIS, led by Omar Suleiman, was the more powerful of the two, though it was principally concerned with external threats. The SSIS and the 300,000-strong Central Security Forces were the agencies used most frequently to quash domestic unrest or criticism. The Egyptian government spent more on internal security than on housing or health,[5] with the security apparatus employing approximately 1.5 million people by 2010.[6] As the coercive arms of the regime penetrated society and worked ever harder to prevent the spread of dissent, police brutality expanded in scope. Cases such as that of Khalid Said, a young man who was beaten to death by police in 2010, became matters of national public outrage.

Even as the use of force increased, the legal manipulation that characterized Mubarak's presidency grew more sophisticated. New laws restricted the space in which opposition elements could organize and enabled state officials to silence

dissenting voices in a variety of ways. Key opposition demands such as the cancelation of emergency rule, in place since 1981, remained unfulfilled. Popular objections to domestic and foreign policies were disregarded. Redundant courts and the restriction of judicial autonomy also became more pronounced in the late Mubarak period. The judiciary, which had once been a meaningful arbiter of political disputes, was emasculated after a surge of judicial activism in 2006 (see Rule of Law).[7] Physical and legal attacks on journalists also became a fact of life in Egypt.

The regime's initial response to the popular uprising in early 2011 consisted of extreme coercion. However, when this failed, a change in the ruling coalition became the most preferable option for the regime's surviving elites. The military returned to the apex of power, while the privileged business class and the NDP were sacrificed as the security forces were at least superficially dismantled. Leading figures—with the notable exception of Omar Suleiman—were charged or fled into exile, but the security apparatus is being reconstituted. Despite a name change from State Security to National Security, there is little evidence of meaningful structural reforms in the country's most reviled security agency.[8] While the future course of the ongoing transition remains uncertain, it is now possible to illuminate the breakdown in governance that occurred during Mubarak's last years in power.

ACCOUNTABILITY AND PUBLIC VOICE 1.64

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	0.80
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	2.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	1.43

National and local elections were held regularly during Mubarak's 30-year rule, but the state orchestrated the results, leaving the NDP with little electoral legitimacy. As in many authoritarian regimes, the leadership was generally hostile to the notion of election monitoring by independent organizations,[9] and the electoral framework was so decidedly skewed toward the ruling party that vote rigging on election day itself was often superfluous. Law No. 173 of 2005 stipulates that there is universal suffrage, but voter lists and balloting procedures were so deeply flawed that most Egyptians declined to participate. This low turnout served the interests of the NDP by increasing the influence of fraudulent ballots and loyalist voters who could be mobilized through the misuse of administrative resources.

Opposition-oriented voters were frequently exposed to violence. It was not unusual, particularly in hotly contested areas, for gangs of hired thugs (*baltagiya*) to prevent voting for an opposition candidate.[10] Similarly, the state often deployed truncheon-wielding riot police to physically bar would-be voters from

the polls.[11] Nine people were killed in such confrontations during the 2010 parliamentary elections. Given the risk of violence, the citizenry overwhelmingly stayed home during elections, and official turnout figures were routinely dismissed as inflated. In 2010, the state claimed that 27.5 percent of the 41 million registered voters participated in the parliamentary elections,[12] but this figure, even if accurate, would be one of the lowest in the world for national legislative balloting.[13] The Egyptian Association for Community Participation Enhancement claimed that the actual turnout was around 10 percent, citing research by 1,000 monitors covering 40 of the 222 electoral districts across Egypt.[14] The Egyptian Organization for Human Rights reported figures as low as 5 percent.[15] Previous parliamentary elections in 2005, 2000, 1995, and 1990 all had similarly low rates of voter participation.

Those who did vote were often enticed or compelled to do so by the state. In addition to the small number of people who directly benefited from the status quo, rank-and-file state employees were bused to polling stations and instructed to vote for their director's chosen candidate, inevitably an NDP member. The poor were also drawn to the polls by direct payments or threats that their limited public services and state assistance would be cut off if they failed to turn out for the ruling party.[16]

A major exception to the trend of low participation pertained to supporters of the banned Muslim Brotherhood, whose candidates ran as independents. Critics accused the Islamist group of exploiting religion to win electoral support, but the 83-year-old organization was the only true grassroots entity in Mubarak's Egypt. It has offices and members spread across much of the country, particularly in the Nile Delta, and most of its candidates actually lived in their constituencies.[17] When the state chose to ease its repression of the group, it fared well at the polls. In 2005, the Muslim Brotherhood won 88 of the 150 legislative seats it contested in the parliament's 444-seat lower house, the People's Assembly. With this 20 percent bloc, the group was able to influence the behavior of NDP lawmakers, though not how they voted.[18]

The People's Assembly grew in 2010 under a new law that set aside 64 new seats for women. At the same time, the Brotherhood reduced its electoral participation, contesting only 130 constituencies. Unlike in 2005, however, it failed to win a single seat. As one outgoing Brotherhood lawmaker said of the elections, "The process was fraudulent from start to finish."[19]

Indeed, while 22 parties were operating legally in 2010, only the NDP increased its parliamentary bloc. Counting both official NDP candidates and allies running as independents, the ruling party won 478 of 508 elected seats, or 94 percent, in 2010, up from 330 of 444 seats, or 74 percent, in 2005. Among the smaller opposition parties, the New Wafd Party took six seats; Tagammu (National Progressive Unionist Party) won five; and Al-Ghad (Tomorrow), the Social Justice Party, the Democratic Generation Party, and the Democratic Peace Party each captured one seat.

NDP secretary general Safwat el-Sherif argued that "the results of the elections reflect the real strength of political forces in Egypt with the NDP the most dominant."[20] Opposition leaders rejected such assessments and publicly called the newly elected chamber "Ezz's Assembly" in reference to steel tycoon Ahmad Ezz, a close Gamal Mubarak associate who was believed to be responsible for the ruling party's push to dominate the parliament. Former opposition lawmakers who had lost their seats protested the election results by forming a shadow assembly,[21] which reportedly drew derision from the president.[22]

The presidential and parliamentary elections of 2005, while seriously flawed, had given the appearance of a slight political opening. The presidential contest was the first to feature multiple candidates, and the Muslim Brotherhood greatly increased its parliamentary representation. Even if the specter of hereditary succession loomed on the horizon, political reform seemed inevitable. As Mohamed Kamal of the NDP explained on the eve of the 2005 parliamentary elections, "A lot of things have already changed in the past year: economic policies, the presidential election, political reform issues. So we have proven already that we have changed. We have new faces, we have evidence already that things are changing. . . . Once the genie of democracy is out of the bottle, you can't bring it back in."[23]

However, by the end of 2010 it was beyond doubt that Egypt's authoritarian leadership had placed the electoral arena on lockdown. The 2010 parliamentary elections proved to be the most fraudulent in the country's history. As political scientist Mona el-Ghobashy argued, "The Egyptian parliamentary elections . . . defied expectations, not because the ruling National Democratic Party again dominates the Parliament but because of the lengths to which it proved willing to go to engineer its monopoly."[24] Most Egyptians had long understood that their country's elections were a farce. Nevertheless, given the advancing age of their then 82-year-old president and rampant speculation that he would seek to pass the office to his son,[25] the blatant fraud and manipulation of the 2010 elections exacerbated the citizenry's frustration.[26] While there is not a direct causal link between the elections and the uprising of early 2011, the rigged balloting certainly gave Egyptians an additional reason to mobilize against the regime when the opportunity presented itself.

If the 2010 parliamentary elections definitively slammed the door on political liberalization, earlier, subnational elections between 2005 and 2010 provided strong hints as to what was in store. The municipal elections originally scheduled for 2006 took on new importance in light of recent reforms to the constitution's Article 76, which required future independent presidential candidates to receive the nominations of a certain number of local officeholders. The Muslim Brotherhood vowed to participate in the voting, in which 52,000 local council seats were at stake.

In early 2006, however, Mubarak asked the parliament to delay the local elections for two years, ostensibly to help ensure cleaner balloting. By 2008

it appeared that the state had used the time to reinforce the NDP's electoral dominance as popular concerns about hereditary succession grew louder. For example, the Muslim Brotherhood claimed that it wished to field 10,000 candidates.[27] Over 6,000 Brotherhood members filed the requisite paperwork, and 2,664 of those obtained court orders affirming their right to compete after being excluded by security agencies and the bureaucracy. The authorities ignored the judicial decisions, and only 20 Brotherhood candidates made it onto the ballot.[28] None of them won seats, and hundreds of the Brotherhood's candidates and campaign workers were imprisoned. The government claimed that the NDP won 92 percent of the seats, but so many opposition contenders had been prevented from running that the result was essentially predetermined.

Given the constraints on elections and the overwhelming power of the executive, the parliament became a hollow institution. In a symbolic blow, the building housing the Shoura Council, the largely advisory upper chamber, caught fire in August 2008. People gathered on the streets of downtown Cairo to watch the authorities try to put out the conflagration. One man, who refused to give his identity for fear of government retribution, told a journalist, "I'm just sorry parliament wasn't in session."[29] In the days that followed, many editorialists and commentators argued that the destruction was yet another sign of the government's incompetence. But it was this unidentified citizen who expressed Egyptians' feelings about the degraded state of their representative institutions under Mubarak.

The leadership's determination to maintain control of the political system led to the unjustified imprisonment of thousands of people, including for the expression of political ideas in the media. According to some estimates, the number of prisons increased more than fourfold during Mubarak's tenure, and the number of detainees held for over a year without charge grew to more than 20,000.[30] Journalists were not exempt from the government's repressive efforts. For example, Abd al-Nasser al-Zuhairi and two of his colleagues were jailed and forced to pay damages to a cabinet minister for libeling him in *Al-Masry al-Youm* in 2006.[31] Ibrahim Eissa, the editor in chief of the independent newspaper *Al-Destour*, was sentenced in March 2008 to six months in prison for "publishing false information and rumors" about Mubarak's health. An appeals court upheld the decision that September. Eissa remarked that his conviction "opens the gates of hell for the Egyptian press."[32] Although Mubarak intervened with a pardon before he began his sentence, the case sent a message to all journalists that they would be targeted for addressing politically sensitive topics.[33] More recently, prior to the 2010 election, Eissa was targeted again when he was fired as editor of *al-Dustour* after writing a column critical of Mubarak.[34] In light of these and many other examples, international press freedom organizations agreed that Mubarak's Egypt was an inhospitable place for independent journalism.[35]

CIVIL LIBERTIES 1.91

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	1.13
GENDER EQUITY	2.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	2.50
FREEDOM OF CONSCIENCE AND BELIEF	2.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	1.25

While torture in the general sense was largely reserved for men, women held by the authorities reported that they were raped in detention.[36] Assumptions about the security services' sexual abuse of women were pervasive. For example, when Esraa Abd al-Fattah, a founder of the activist April 6th Youth Movement, was released after being held for over two weeks in 2008, she immediately reassured her family that her virginity was not compromised, declaring to her mother, "They treated me well! They let me remain a girl."[37]

Abuse by police and other security personnel was sometimes fatal. The June 2010 death of Khalid Said, a 28-year-old Alexandrian, came to symbolize the authorities' unchecked aggression and lack of legal accountability in the late Mubarak period. Said was shaken down by two plainclothes police officers at an internet café, and when he failed to produce money for them, the officers started to beat him. His head bounced off a marble table, and he started to bleed.[38] He was then dragged out of the café and taken next door, where the beating continued. He ultimately died on the scene. In addition to other visible signs of trauma, his face was fractured in several places, his jaw was dislocated, and his nose was broken.[39] Images of his mutilated face circulated on the internet and galvanized ordinary Egyptians against police brutality and impunity.[40] The regime, however, moved to protect its officers from the law. The police report on the incident indicated that Said had choked to death on illegal drugs. The officers also claimed that he had been wanted for theft, had a weapon, and resisted arrest, despite eyewitness testimony to the contrary. The two officers were jailed for four days pending an investigation, then released. Their trial was repeatedly postponed, and the case likely would have been dismissed or resolved with a lenient sentence behind closed doors had Mubarak not be forced to resign in early 2011.

The injustice surrounding the case led to the creation of a "We are all Khalid Said" page on the popular social-networking website Facebook. The online group was one of the major organizers behind the January 25, 2011, uprising that drove Mubarak from power; the initial day of protests was timed to coincide with the country's National Police Day. The trial of the two officers has resumed since Mubarak's resignation in February 2011.

By the time of the uprising, the Mubarak presidency and the security services had become thoroughly intertwined. While there is little evidence that the

security forces operated on their own initiative or amounted to an autonomous "state within a state," years of impunity and close association with the ruling party and president had conditioned them to behave as if they were above the law. Because the regime relied on violence to maintain power, the actions of security personnel took place in a legal free zone where brutality against the citizenry was routine and often calculated. With respect to political cohesion, Egypt is fortunate in its relative ethnic homogeneity. The population is 99.6 percent Egyptian, with Bedouins, Nubians, and others (mainly Europeans) making up the tiny remainder. Despite this advantage, legal discrimination based on religion and a worrying increase in violence between religious communities did occur in the late Mubarak period.

Roughly 90 percent of Egypt's population is Sunni Muslim, and the non-Muslim minority is predominately Coptic Christian.[41] Other minorities, such as Baha'is, are not recognized by the state.[42] Sunni Islam has come to dominate popular culture and political expression, as demonstrated in part by significant public support for the Muslim Brotherhood.

Islam is Egypt's official religion. Article 2 of the constitution states that Islamic law (Shari'a) is the principal source of legislation. The constitution also respects freedom of religion (Article 46). Though these two articles could complement one another, the actions of the Egyptian government have undermined that possibility. This is particularly evident in the increasingly tense relations between religious communities in recent years, which has disproportionately affected the Coptic Christian minority.

The problem largely stems from the Mubarak government's failure to allow diversity among the faiths. The state bred discrimination in its attempts to control different religious sects in a centralized fashion while relying on the security apparatus, rather than the courts, to mediate conflicts. When communal clashes occurred, the state-controlled media consistently blamed instigation by outsiders.[43] The government went to great lengths to convince Egyptians and the world that its Muslim and Christians citizens were unshakably united, but it failed to lead a dialogue or set an agenda aimed at truly integrating the two communities.[44] This gulf between rhetoric and action caused the concepts of national community and citizenship to lose credibility.[45]

Discrimination against the Copts was common under Mubarak, but it was not systematic. Instead, it tended to occur haphazardly and was particularly noticeable surrounding issues that should have been universally Egyptian. For example, when young Egyptians protested unemployment or political repression, the country's intelligentsia praised their patriotism. But if Coptic youth in particular complained of similar problems and attributed their marginalization to religious bias, they were denounced for threatening national cohesion. As Mariz Tadros has argued, "This double standard shows the pervasiveness of a normative framework that denies the legitimacy of religious discrimination as a grievance in Egypt."[46]

The condemnation of activism as religiously divisive, particularly in the context of society's increasing Islamism, caused many Coptic Christians to withdraw from politics during the late Mubarak period.

However, there was ample precedent for this trend. Since the fall of the monarchy, all of Egypt's presidents had sought to keep the Coptic Church under executive control. The effort was so successful that many of the authoritarian structures that stifled politics on a national level were are at work within the church.[47] The resulting dearth of independent activism, engagement, and true political representation on behalf of ordinary Coptic citizens left them largely unprotected and at risk of violence. Moreover, the government failed to act in a predictable or responsible way when violence occurred. Not only did this mean that perpetrators escaped justice, but it also reinforced a culture of discrimination.

Violence against Coptic Christians increased dramatically in the final years of Mubarak's rule. According to the Egyptian Initiative for Personal Rights, 53 incidents of communal conflict occurred between January 2008 and January 2010.[48] Among others since then, the Nag Hammadi massacre in January 2010, clashes in Marsa Matruh in March 2010, and an Alexandria church bombing in January 2011 have been the most prominent.[49]

The Nag Hammadi case serves as an illustrative example. On January 6, 2010, as the Coptic Christmas Eve mass let out, a drive-by shooting left eight Copts and one Muslim guard dead in the Qina Governorate village of Nag Hammadi. Many others were wounded. Riots broke out after the shooting, resulting in additional deaths and the destruction of property. At the time, it was Egypt's most lethal episode of communal violence since 2000. The state reacted with force to contain the strife. It dispatched riot police to keep the Coptic and Muslim populations separate, and blocked access to the village. Security officials claimed that the initial shooting was intended to avenge the rape of a 12-year-old Muslim girl by a Christian the previous November,[50] but no evidence on that alleged incident was provided. Although three people were arrested for the shooting, the trial was delayed 12 times in 2010. Other suspects who were allegedly involved in the killing of Copts or the destruction of property in the unrest that followed the gunfire were not prosecuted.

Many Copts maintained that the security forces had ignored their pleas to intervene when they received threats before the shooting incident. But lax preemptive security was only a part of the problem. The lack of justice after the event left the Coptic community with the impression that they were being subjected to collective punishment. The government heightened a sense of alienation among Copts by refusing to address communal strife through the legal system.

Rather than turning to courts, the security apparatus often created "reconciliation committees" to bring both parties together and ultimately force one side to compensate the other. When reconciliation had supposedly been

reached, the cases were closed to further legal deliberation. This extrajudicial model encouraged vigilantism and violence, because perpetrators were not sent to prison when they destroyed property or committed murder in the course of interreligious clashes. And given the sizes of the populations involved, more Muslim perpetrators went unpunished than Christians. The incidents that followed the Nag Hammadi case can therefore be attributed in part to the climate of impunity it helped foster.

Mubarak personally had nothing to do with the violence some Muslims directed at the Coptic minority. Nevertheless, it was his state and security apparatus that failed to create space for minority integration. By not enforcing a basic framework of citizenship, circumventing the competent judicial system, and treating interreligious relations only as a security issue, Mubarak's government contributed to the rise in communal strife until he was forcibly removed from office in February 2011.

The regime also viewed civil society activism as a threat to its security. The restrictive Law No. 84 of 2002, which regulates nongovernmental organizations (NGOs),[51] endowed the authorities with wide discretion to interfere in the activities and operations of the country's NGOs. Security services were allowed to vet the personnel and activities of over 16,000 civil society organizations that operated in the late Mubarak period. The law was often interpreted in ways that contradicted the constitution's guarantees on freedom of association (Article 55),[52] and effectively put Egypt's growing and fearless civil society sector at the mercy of a state that could act arbitrarily. During the last decade of Mubarak's rule, NGOs defending human rights, land rights, women's rights, property rights, and labor rights sprung up around the country. In many respects, because the Mubarak regime intentionally atrophied the formal political opposition, civil society became the main battleground where political and policy issues were contested.

In 2009, the government unexpectedly announced that it was considering amending Law No. 84.[53] After a draft bill was circulated in early 2010, a group of 41 NGOs issued a statement condemning the "militarization" of civil society.[54] The bill would have more tightly regulated foreign funding of NGOs, forced them to participate—like trade unions—in state-run federations, barred NGOs from working in more than two fields, prevented NGO participation in independent domestic and international coalitions, and forbidden NGOs registered as civil companies. The last restriction was especially aggressive because many of the most political NGOs used that tactic to avoid registering as an association with the Ministry of Social Affairs. Eliminating the loophole would have imposed new constraints on some of Egypt's most vibrant civic groups. The proposed legislation was not sent to the parliament during 2010, but Law No. 84 itself had been passed some three years after discussion on its provisions began. Had the regime retained power through 2011, it seems likely that the government would have completed its revision of the law on associations.

RULE OF LAW 2.68

INDEPENDENT JUDICIARY	3.20
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	1.00
PROTECTION OF PROPERTY RIGHTS	4.33

Egyptian jurists have traditionally had the strongest legal training in the Arab world. Because of their institutionalized education and merit-based hierarchy, the country's judges have been models for the rest of the region. Indeed, many of the court systems in the Persian Gulf monarchies to the east are predominately staffed with Egyptian judges.[55] At the same time, Egypt's relatively vibrant and independent judiciary is something of an anomaly among its counterparts in other Arab countries, such as Syria, where authoritarian elites have exercised tight political control over the courts.

The role of the judiciary in Egypt is a product of the nationalist struggle against colonialism in the late 19th and early 20th centuries.[56] Nasser tried to raze the judiciary following the 1967 military defeat, but Sadat resuscitated it as a pillar of legitimacy while seeking to be a "rule of law" (*siyadat al-qanun*) president.[57] This was particularly evident in his move to empower a Supreme Constitutional Court (SCC) in 1979. Mubarak largely left the judiciary independent, with some exceptions, including attempts to expand the executive's power over judicial appointments, new legal initiatives aimed at circumventing the courts, and moves to revive defunct courts that were willing to issue verdicts in conformity with the government's wishes.[58] The near-ritualistic renewal of emergency rule every three years allowed state security courts to try civilians with few procedural protections. The Mubarak regime also frequently engaged in ostensibly legal practices that effectively trampled on the rights of citizens, such as recurrent detention.[59]

NDP lawmakers declined to pass a proposal by the country's Judges' Clubs that would have safeguarded judicial independence following the so-called Judges' Uprising in 2006.[60] Instead, the government passed its own judicial law (Law No. 142 of 2006). While it included elements suggesting that the judges' demands had been met, it arguably curtailed judges' ability to resist executive influence. For example, the new law released the judiciary's budget from the control of the justice minister, but made it subject to parliamentary approval. The effect of the change was negligible given the executive branch's tight grip on the legislature. The law ignored other key demands, such as restrictions on the executive's extensive power of appointment. It reaffirmed Mubarak's ability to name the prosecutor general, the heads of the SCC and the Court of Cassation (the highest appellate court), as well as the head of the Supreme Judicial Council. The British Broadcasting Corporation (BBC) correspondent in Cairo described

the law as a "setback," while reformist judge Assem Abdel Gabbar said, "We called for dialogue but unfortunately the government ignored us."[61]

The decline in judicial independence during Mubarak's final years in office was not as sharp as the deterioration in other areas, such as civil liberties, government accountability, and corruption. This is a testament to the strength of the Egyptian judiciary prior to the executive's encroachment. Indeed, many Egyptians continue to view their judges as leading figures in the push for democracy.[62] However, a hallmark of the Mubarak presidency was the use of parallel courts, which left the main court structure relatively independent but powerless in the face of abuses by the state. Bodies such as the state security courts had constitutional mandates that loosely defined their purview while tying them to the executive. There was also a growing trend of amendments to the constitution that conflicted with principles of judicial independence (enshrined in Articles 65, 165, and 166). For example, Article 76 gave the Presidential Elections Commission final legal competency over presidential election results and procedures, sidelining the courts. And in accordance with a host of constitutional amendments introduced in 2007, Article 88 was revised to remove the provision requiring direct judicial supervision of elections. While judges would remain involved in the process, their presence was not required at polling stations.

Civil society groups also frequently cited Article 179 as problematic, because under the 2007 amendments it facilitated the trial of civilians in special courts for alleged terrorist activity.[63] The regular renewal of Egypt's emergency law also provided the executive with extraordinary legal powers, and the practice of trying civilians in military courts was revived in 2008. All of these measures heavily tilted the power relationship between the judiciary and the executive toward Mubarak.[64] Observers often raised suspicions that the aggressive moves to subjugate the court system were connected to the president's alleged plans to orchestrate a hereditary succession.[65]

The Mubarak regime's attempted emasculation of the judiciary produced numerous abuses. The most direct violations were often those that took place in plain view. The ordeal of Khairat al-Shatir, a leading businessman and member of the Muslim Brotherhood, is a case in point. Al-Shatir and 33 of his Brotherhood colleagues were held without charges in late 2006 before the state prosecutor filed allegations of money laundering, financing banned political activity, and reviving the Brotherhood's paramilitary wing. On January 29, 2007, al-Shatir and others appeared in a Cairo criminal court, where the judge dismissed the case due to a lack of evidence and ordered the defendants' immediate release. But as they left the courthouse, the police rearrested them. A week later, Mubarak sent the group to a military tribunal, marking the first use of a military court against Egyptian civilians since 2001, when the tactic was also aimed at the Muslim Brotherhood. In April 2008, the tribunal sentenced the defendants to between three and eight years in prison, and no appeal was permitted. Human Rights Watch remarked that the military convictions

"demonstrated the Egyptian government's continued determination to crush any organized political opposition."[66]

The use of military tribunals returned the country to a darker period, but the abuses that were increasingly taking place outside any courtroom were even more troubling. These ranged from unlawful detentions, ubiquitous torture, and disappearances to the public beating of citizens by police. Indeed, as protests engulfed Egypt in January 2011, Human Rights Watch issued a 95-page report detailing torture by the security services and the state's failure to prosecute the perpetrators.[67]

ANTICORRUPTION AND TRANSPARENCY 1.70

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	1.40
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	1.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	1.75
GOVERNMENTAL TRANSPARENCY	2.33

Despite being a party to the UN Convention against Corruption, Egypt suffers from high levels of graft, which continues to pervade most aspects of daily life. Corruption often takes the form of bribery and the exploitation of personal connections (*wasta*) to obtain government assistance or facilitate basic bureaucratic transactions, such as the processing of applications for birth documents, passports, and driver's licenses.

Surveys conducted in 2009 by a government-sponsored think tank, the Ahram Center for Political and Strategic Studies, revealed that nearly 30 percent of Egyptians interpreted even an increase in commodity prices as a consequence of systematic corruption.[68] The study also showed that 88 percent viewed low wages as a side effect of corruption, while 42 percent of small and medium-sized enterprises made illegal payments to operate.[69]

Members of the parliament also pointed to rising levels of corruption in the late Mubarak period. In December 2009, lawmaker Ahmad Abu Baraka, a member of the Muslim Brotherhood, lodged a formal interpellation on the issue with Prime Minister Ahmad Nazif. He cited a Cairo University research center's finding that corruption cost the country 63 billion Egyptian pounds ($11 billion) annually.[70] Abu Baraka emphasized extensive graft in the educational system, tax collection, and the steel and cement monopolies. After pointing to "73,000 corruption cases before the courts," he called for a vote of no confidence in the government. However, the NDP majority decisively defeated the motion.

Much of the outrage expressed by the parliamentary opposition, which reflected popular sentiment, stemmed from the disturbing number of corruption cases that surfaced between 2008 and 2010.[71] For example, in late 2008 the newspaper *Al-Masry al-Youm* published documents showing that Housing Minister Ibrahim Suleiman had illegally sold public land to his family and

political clients. The allegations were supported by a citizen group that filed a complaint against Suleiman with the prosecutor general. The petition stated that he had acquired 50 apartments meant for low-income families. Suleiman was charged with profiteering and wasting public funds, but despite being stripped of his cabinet position, he was not jailed until after Mubarak was deposed. As with brutality cases involving security officials, his trial was repeatedly postponed. Since the 2011 revolt, the case against Suleiman has grown to include allegations that the corruption surrounding his office extended to close relatives of Hosni Mubarak.[72]

The domestic survey research, parliamentary activity, and high-profile corruption cases matched the findings of international NGOs. Transparency International ranked Egypt 98 out of 178 countries in its 2010 Corruption Perceptions Index. Egypt scored a mere 3.1 on the index's 10-point scale. While it fared better than Arab countries such as Syria, Yemen, and Iraq, it trailed Jordan, Tunisia, and most of the Gulf monarchies.[73] Even the Egyptian officials seemed to recognize the problem. A joint project was set up by the government and the UN Development Programme to help Egyptian companies combat corruption related to "an overall culture of informality and nepotism" that prevailed in the civil service.[74]

As the Nazif government deepened its market-oriented economic reforms, it expressed its commitment to fight corruption through words and deeds. It assembled teams of experts to produce reports, pushed new laws through the parliament, and created new agencies to prevent graft. For example, laws amending the penal code were enacted in 2006 (Law No. 146), 2008 (Law No. 126), and 2009 (Law No. 71). The government also amended legislation on money laundering (Law No. 181) and auditing standards (Law No. 166) in 2008. The following year, a presidential decree (No. 192 of 2009) organized nonbanking instruments and markets.

However, many of the same problems that plagued the Mubarak regime in the fields of political rights and civil liberties extended to the areas of corruption and transparency. Corruption thrived because of the weakness of legal accountability. The new laws and the creation of watchdog agencies were not followed up with proper implementation and enforcement, in large part because they collided with the economic and political interests of the ruling elite. Moreover, the regime was ultimately unwilling to permit the investigative journalism and civil society activity that are essential to any successful anticorruption campaign.

Corruption prosecutions increased exponentially after Mubarak's fall.[75] In addition to serving as an important source of legitimacy that the transitional authorities can use to counter or assuage the demands of prodemocracy protesters, the prosecutions are a means of eliminating potential rivals. The series of cases against former ministers as well as the former president and his family have come to dominate Egypt's contemporary political discourse.[76] However, the current anticorruption drive remains selective and lacks the legal

and institutional framework needed to ensure impartial justice in ongoing and future cases. As one researcher argued, "Having ousted the president and sacked or imprisoned the worst offenders, the country is now poised to turn a new leaf. But corruption will keep coming back unless we have strong watchdogs in place."[77] Meaningful improvements on corruption and transparency, as with other aspects of democratic governance, will require a decisive break from the model of an all-powerful, unaccountable executive.

RECOMMENDATIONS

- In advance of the 2011 parliamentary elections, the Supreme Council of the Armed Forces (SCAF) should allow meaningful supervision of the electoral process by the judiciary and election monitoring nongovernmental organizations.
- An equitable electoral system must be implemented to ensure fair access for all political factions and minority communities.
- Several unjust laws such as Law No. 84 of 2002, which governs associations, and the new protest law enacted by the SCAF in March 2011, which threatens protesters with possible jail time and fines of 500,000 Egyptian pounds ($90,000), should be abolished.
- The government should fully decriminalize libel and slander to help ensure freedom of the press.
- The state must hold those who engage in violence against religious minorities accountable through the formal legal system. It must stop the use of informal "reconciliation committees." The Egyptian state must move to a more robust concept of citizenship for all religions.
- The security services must be made accountable to independent courts, and those who commit torture must be prosecuted to the full extent of the law.
- Military tribunals/courts should never under any circumstances be used to try civilians.
- The Egyptian government should fully implement and improve upon its recent transparency-related legal reforms and empower the regulatory agencies that it has set up to combat corruption. This process must include allowing an independent judiciary to serve as the final arbiter in cases of corruption. The authorities should also continue streamlining the registration process for businesses to reduce opportunities for civil servants to extract bribes.
- In the post-Mubarak Egypt, state officials and civil society groups must resist the urge to use corruption allegations merely to settle political or personal scores.
- The government must accept the proper role of civil society organizations and journalists in exposing corruption. The authorities should view the cases that are brought to light as opportunities to improve governance and safeguard public wealth.

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ERITREA

CAPITAL: Asmara
POPULATION: 5.2 million
GNI PER CAPITA (PPP): $580

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	0.24	0.12
CIVIL LIBERTIES:	0.93	0.79
RULE OF LAW:	0.63	0.27
ANTICORRUPTION AND TRANSPARENCY:	0.80	0.56

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Dan Connell

INTRODUCTION

Eritrea won recognition in 1993 through a UN-sponsored referendum in which over 99 percent of voters chose sovereignty.[1] This closed three decades of war and centuries of occupation by a succession of powers, from the Ottoman Turks to Egypt, Italy, Britain, and finally Ethiopia, which was backed first by the United States and then the Soviet Union. Each left its mark, and fostered a deep distrust of outsiders among Eritreans and a fierce commitment to Eritrea's separate identity. Upon independence, the country's diverse population—half Christian and half Muslim, from a medley of ethno-linguistic groups—appeared united in purpose, with a widely scattered diaspora, which had been mobilized to support the armed struggle, poised to contribute to reconstruction. Though the war- and drought-ravaged country had few resources and a devastated infrastructure, it was debt-free and largely without crime or corruption, and it began with considerable promise, albeit short-lived.

The transitional government, drawn from the victorious Eritrean People's Liberation Front (EPLF), established new state institutions and managed a highly participatory constitution-making process from 1994 to 1997. However,

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the government refused to permit exiled rival nationalists to return or alternative parties to form, leaving Eritrea a tightly centralized, one-party state under former guerrilla commander, now president, Isaias Afwerki. A series of conflicts with its neighbors, including Sudan, Djibouti, and Yemen and a bloody Border War with Ethiopia, plunged Eritrea into a cycle of military mobilization and repression that stymied its development prospects and sharply reversed progress toward democracy. Implementation of the constitution and national elections were postponed indefinitely, and the leadership circle steadily contracted. Eritrea and Ethiopia slipped into a tense state of "no-peace-no-war" that kept the entire Horn of Africa off balance, even as the region—the southern flank of the Middle East—became a new theater of global conflict. Today, the ongoing power struggle with Ethiopia, which Eritrea seeks to weaken by engaging it on multiple fronts through proxies within Ethiopia and on the country's periphery (mainly Somalia), serves to justify the regime's brutal authoritarian rule and acts as the main driver of Eritrea's regional policy.

In the early 2000s, people who challenged the regime began to disappear. In September 2001, high-level critics within the ruling party—dubbed the Group of 15 (G-15) after signing an open letter calling for democratic reforms—were jailed, and the private press, which had covered the reformists' demands, was shut down. Over subsequent months, hundreds suspected of disloyalty or dissent were rounded up and imprisoned as President Isaias[2] consolidated his control. In April 2002, the government banned what it termed "new churches," denominations dating from the postcolonial period, and began jailing their members alongside political prisoners. No charges were brought against any of them, leaving people unsure of what could get them arrested. This uncertainty engendered a pervasive terror of the authorities and a growing mistrust of neighbors, co-workers, and others who might turn someone in for a slip of the tongue. This condition persists to this day, and thousands remain jailed in a vast network of secret prisons.

Nearly two decades after independence, the façade of normalcy in Eritrea masks a remarkably efficient tyranny. The elaborately constructed institutions of the state have little relation to the actual exercise of power, which is heavily concentrated in the hands of President Isaias. There are minor competing power centers within the military, but evidence indicates that he remains in full control of all factions. Isaias has no obvious successor, and there is no mechanism in place to select one, should the need arise.

ACCOUNTABILITY AND PUBLIC VOICE	0.12
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	0.00
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	0.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	0.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	0.14

The present government was established by decree on May 19, 1993, with three branches to oversee a four-year transition to constitutional rule. The legislative branch, initially composed of the EPLF Central Committee and an equal number of handpicked representatives from regional assemblies, became the new National Assembly; it confirmed Isaias as president and chair of the assembly in the country's only such election for the top office. In February 1994, the EPLF became the People's Front for Democracy and Justice (PFDJ). The PFDJ's new 75-member Central Council comprised half of the reconstituted National Assembly, whose remaining members were selected from party-controlled regional elections and diaspora groups. The judiciary was established in 1992 as a separate body, but its leading members were appointed, and sometimes removed, by the president. Thus, power over the party and all branches of government was concentrated in the hands of President Isaias.

Since then, these institutions have functioned not as counterbalancing powers that create policy or hold individuals accountable for their actions, but as enforcers of executive will. The president maintains a structure parallel to the Council of Ministers, with advisers who gather in closed meetings with Isaias to make policy decisions outside of the formal governing structure. The National Assembly also holds closed meetings, and its numbers have steadily dwindled as members have been jailed or gone into exile. The PFDJ Secretariat and the top echelon of the Eritrean Defense Forces report directly to the president and each group has responsibilities parallel to those of appointed government officials. It is these informal channels linked to Isaias, rather than formal institutions, that have genuine governing power in Eritrea.

Eritrea's constitution, ratified by a 527-member constituent assembly on May 23, 1997, guarantees citizens "broad and active participation in all political, economic, social, and cultural life of the country."[3] Government officials originally promised that the constitution would go into effect after national elections were conducted. The government delayed these elections, which were first scheduled for 1998, and subsequently delayed them again due to war. When they were rescheduled for 2001, the government again put them off because of a political crisis. The government has not yet set a new date for elections, and the president has declared publicly that he sees no reason to hold them.

The PFDJ is Eritrea's only legal political party. It manages all local and regional elections, which are open to men and women of all religious and ethnic backgrounds, although no forms of political organization outside of the PFDJ are permitted. Voting for local office is conducted in town meeting style sessions presided over by PFDJ cadres, who enforce public participation even as they manage outcomes. Campaigns are not permitted, nor are candidates allowed to set up political operations. Public discussion centers on the character of the individual candidates and their loyalty to the party. There is no public debate or discussion about policy and no outlet for new proposals or critiques of existing policies. New initiatives are only allowed if prepared by party functionaries and carefully

vetted by the president's office. In 2001, a parliamentary commission drafted a law to legalize multiple parties and lay the groundwork for national elections, but the president refused to implement it and instead sacked the commission chair, minister of local government, and unofficial Vice President Mahmoud Ahmed Sherifo. The following September, Isaias ordered Sherifo's arrest, along with that of other high-ranking reformists identified with the G-15.

Isaias's political vision and autocratic leadership have dominated the nationalist movement since the 1970s. His political instincts first emerged when he rose to the top of the student movement. Upon joining the liberation front, he was sent to China for training at the height of the Cultural Revolution. He subsequently operated through a pattern of nested organizations, using the clandestine Maoist Eritrean People's Revolutionary Party (EPRP) to control the newly formed Eritrean People's Liberation Front. He claimed to have dissolved this party abruptly in the early 1990s, but his method of leadership remains one of opaque, secretive decision-making and complete intolerance for disagreement. The countervailing force exercised by other party and front founders during the independence war and in Eritrea's early postwar years disappeared with the crackdown in 2001, during which most dissenting voices were imprisoned, leaving the president with no serious rivals and no designated successor.[4] The limited centers of influence that still exist are to be found in the military and the ruling party. The most important in the armed forces—whose positions were substantially strengthened during and after the 1998–2000 war with Ethiopia—are Generals Tekle "Manjus" Kiflai, Filipos Weldeyohannes, Haile "China" Samuel, Gerezghier "Wuchu" Andemariam, and Teklai Habteselassie. Each controls significant economic assets, as well as military prisons and administrative hierarchies that parallel—and have come since 2001 to outrank—those of civilian governors in their theaters of operation. Conscripts under their command are routinely used for public works projects and revenue-generating enterprises, though Isaias periodically rotates their assignments to prevent the emergence of entrenched power bases. On the civilian side, the most important figures are the department heads in the PFDJ secretariat, particularly the head of political affairs, Yemane Gebreab, and the head of economic affairs, Hagos Gebrehewot. The two have worked together since the 1970s and were elevated to leadership positions by the president in 1994. Yemane is one of Isaias's most trusted advisors. In 2010, his name was appended to a U.S. presidential order detailing sanctions against persons accused of "contributing to the conflict in Somalia" and posing an "extraordinary threat to the national security and foreign policy of the United States."[5] Hagos is the most important figure in Eritrea's command economy and heads the party's complex web of financial and commercial enterprises. Another rising star is Information Minister Ali Abdu Ahmed, an Isaias protégé and a zealous hardliner.

With no space in Eritrea for competing political parties, independent media, or autonomous civil society groups, and with all avenues for dissent closed, organized opposition to the PFDJ-controlled government has been

visible only outside the country since 2001. The dissent that exists within Eritrea today either takes the form of passive resistance or clandestine organizing. Outside, the main opposition consists of the 12-member Eritrean Democratic Alliance (EDA), whose headquarters are in Ethiopia, a fact that undermines their credibility with Eritreans at home. The EDA includes a wide range of parties and fronts, many of them small and regionally focused, which until recently have had little more in common than hatred for Isaias. In 2009 and 2010, however, they gelled into several blocs or coalitions, including one large unarmed political party—the Eritrean People's Democratic Party (EPDP), drawn from offshoots of both the PFDJ and its liberation-era rival, the Eritrean Liberation Front (ELF)—and two armed blocs, the Eritrean Solidarity Front, built mainly around Muslim rights issues, and the Democratic Front of Eritrean Nationalities, focused on the rights of ethnic minorities. The two identity-based blocs announced a unified military command in May 2010, signaling a decision to step up armed operations, while underlining the primary cleavage in Eritrean politics—that between the highland Tigrinya-speaking Christians who make up half the population and dominate both the government and the secular EPDP and the lowland, politically-marginalized Muslims from Eritrea's eight ethnic minorities.[6] All share a commitment to oust Isaias from power, though they differ over the degree to which they should cooperate with Ethiopia and whether to use violence against the Asmara regime.

Many Eritrean refugees and exiles distrust these parties, however, as nearly all are led by people who have fought among themselves to dominate the national movement since the 1960s. Many of the younger members of Eritrea's growing diaspora have lived in societies that are more politically liberalized than their home country, and are trying to promote that openness back home. They have focused on building community centers, human rights organizations, and NGOs, as well as alternative media—web-based and broadcast. These media projects not only knit the youth activists together but also reach people inside of Eritrea, as numerous postings on Eritrean websites demonstrate, often at considerable risk to the sender.

Despite the amorphous and highly individualized nature of many non-party activist diaspora organizations, this sector plays a crucial role in sustaining Eritrean identity and engaging Eritreans in a global dialogue over present conditions in the country and the future of their homeland. By 2010, this sphere was experiencing a degree of consolidation, with the emergence of such formations as the South Africa-based Eritrean Movement for Human Rights and Democracy, the Network of Eritrean Civic Societies-Europe (a coalition of rights-focused organizations), the London-based Citizens for Democratic Rights in Eritrea, and a largely North American alliance, Eritrean Global Solidarity, none of which operate within Ethiopia.

The civil service in Eritrea, initially based on a mix of merit and political loyalty, has become increasingly dysfunctional, as experienced personnel have fled the country and been replaced by unskilled national service conscripts,

many of whom are subject to petty corruption and political manipulation (see Civil Liberties). There are no published guidelines, no legal recourse in the event of dismissal, and no transparent competitive process for securing civil service positions or gaining advancement. Ministerial portfolios are frequently shuffled to keep rivals from developing power bases of their own. High-ranking officers and government officials who question the president's judgment over minor issues often find themselves subjected to the practice of *midiskal* (freezing), in which they are removed from their posts and kept on salary but not permitted to work.

Eritrea has not permitted the formation of autonomous civil society groups, think tanks, policy organizations, or other NGOs since the mid-1990s. The only indigenous NGO not directly under the control of the PFDJ is Citizens for Peace in Eritrea, which focuses solely on the conflict with Ethiopia. With two exceptions—Planned Parenthood and the Red Cross Society—international groups are not permitted to establish local chapters, and global human rights organizations are blocked from visiting and carrying out investigations.[7] In 2005, the government decreed that international aid agencies should pay taxes on all goods imported into the country, including food and medicine, and expatriate employees should pay income tax. Agencies allowed in the country were limited to relief and rehabilitation programs. The government prohibited these groups from engaging in political and economic development activities, and required that they have a minimum of $2 million in easily accessible cash deposits. The parallel requirement for national NGOs was $1 million. There was an exodus of foreign NGOs as a result of these onerous requirements and most local agencies were inadvertently forced into closure because of their inability to comply.

Upon the country's independence, all media were extensions of outlets developed and controlled by the EPLF and came under state ownership and control. However, some newly formed civil society organizations, charitable societies, and other nongovernmental sources began producing publications. Following the 1996 promulgation of a new press code, privately-owned newspapers were allowed for the first time in a half-century.[8] In September 2001, however, the government abruptly closed these newspapers and arrested their reporters and editors during a crackdown on all forms of public dissent and individual expression. Independent media has not operated within Eritrea since that crackdown. The Ministry of Information publishes three newspapers: the Tigrinya daily *Hadas Eritrea*; the Arabic daily *Eritrea Al-Hadisa*; and the English-language *Eritrea Profile*.[9] The PFDJ also publishes a monthly magazine, *Hidri* (Trusteeship), in Arabic and Tigrinya.

Dimtsi Hafash (Voice of the Broad Masses), which the EPLF started in 1979, is Eritrea's only legal radio service. It broadcasts from Asmara and reaches most of Eritrea, with programming in 10 languages. The opposition EDA and several of its affiliates use facilities in Ethiopia and Sudan to broadcast irregularly into Eritrea. After the crackdown in 2001, programming originating in

North America, Europe, and in South Africa was broadcast via shortwave and satellite, as well as over the Internet. All television programming is produced by the state-owned Eri-TV, which programs in Tigrinya, Tigre, Arabic and English. EriNa, the government-operated Eritrean News Agency, collects local, regional, and international news, vets it for subversive content, and distributes selections to the state-owned media for publication.

Eritrea gained access to the Internet in 2000. There are four operational local service-providers, and all are required to rent bandwidth from the state-owned EriTel, which occasionally shuts off access to the Internet when state officials order it to do so. State-owned print and broadcast media are posted online on the Ministry of Information's website, shabait.com. The most widely read alternative sources of information are oppositional and independent websites, such as awate.com, asmarino.com and assena.com, which produce original reporting and commentary, in addition to providing extensive links to other sources of information. These sites have come under frequent distributed denial of service (DDOS) attacks that they ascribe to the government and its supporters. The government restricts online access for public sector employees to terminals monitored by their supervisors, but efforts to limit or monitor access by private users have so far been unsuccessful, as enterprising Eritreans, like their counterparts around the world, have easily found ways to get around such restrictions through remote-access servers and other means. However, there are no independent local media to report on conditions within Eritrea or to provide a platform for debate among Eritreans. Eritreans working for foreign media have also been harassed and jailed; by 2007 none were officially working as contributors. Multiple watchdog groups consider Eritrea among the worst abusers of the press in the world.[10]

CIVIL LIBERTIES 0.79

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	0.88
GENDER EQUITY	2.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	0.75
FREEDOM OF CONSCIENCE AND BELIEF	0.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	0.00

Violence at the hands of the state is common in Eritrea and there are few protections or methods of redress. The constitution guarantees the right of habeas corpus and the penal code limits detention without charge to 30 days, but over the past decade, arrests for political infractions have been frequent, arbitrary, and rarely accompanied by formal charges. Many dissidents, particularly members of the military who have fallen out of favor, have been incarcerated in shipping containers in the desert along the Red Sea coast and on islands in the Dahlak Archipelago, where they are beaten and held for long periods with

inadequate water and food. Former prisoners and escapees tell similar stories about torture techniques, including one known as "the helicopter," in which victims are stripped of their clothing, tied with their arms behind their back and laid on the ground face down or hung from a tree and left for several days and nights.[11] No officials have been prosecuted for these human rights abuses. As many as nine of the G-15 reformists jailed in 2001 are reported to have died at a secret prison at Eiraeiro (see Rule of Law), one by execution and the others from disease and injury. No one detained for political beliefs has ever been brought to trial. Instead, imprisoned dissidents are left to languish in prisons indefinitely.

All citizens between the ages of 18 and 50 are required to participate in national service. Conscripts are assigned work not only in state-run reconstruction programs but also in administrative offices and party-owned companies. They are paid approximately $30 per month. Since 1998, this obligation has been arbitrarily extended for an indefinite period for hundreds of thousands of young men and women.[12] To ensure compliance among Eritreans abroad, the government made proof of national service a requirement for the renewal of passports and required those seeking exit visas to post a bond of $4,000 at official exchange rates. By 2010, the total in service was estimated at over 500,000, and the UN reported a surge among Eritreans fleeing the country to avoid national service. Conscripts caught trying to escape the country are held in military prisons and subjected to intensive interrogation and torture. Those trying to cross the border risk being shot on sight by snipers posted to deter escape. Refugees who have reached Sudan, Egypt, Libya, and Malta have been forcibly repatriated despite a 2008 UNHCR recommendation that all refoulement to Eritrea should end. In 2010, Human Rights Watch, which has repeatedly called on Egypt to halt deportations of Eritreans, reported that Egyptian border guards had killed 85 asylum seekers over three years, most of them Eritreans.[13] By 2010, the size of the Eritrean refugee group in Israel was approximately 8,500, at the time the largest refugee group in the country.[14]

Women played a central role in Eritrea's armed struggle, but they have not always enjoyed that same equality in postindependence public life. By the nationalist victory in 1991, women made up a third of the 95,000-strong EPLF and 13 percent of frontline fighters. They also served as teachers, paramedics, political organizers, technicians, garage mechanics, drivers, and other positions, while thousands of women civilians supported the war effort. This active participation in the national struggle positioned women to challenge traditonally submissive roles in the strictly patriarchal society and demand equal participation in the country's economic and political life.

Upon gaining independence, the government started to reform marriage laws, enacted policies intended to block trafficking of children and women, included women in the land reform and national service programs, and promoted educational opportunities for women and girls. The 1998 outbreak of war with Ethiopia slowed progress, however. Thousands of women who were conscripted into the armed forces were subjected to sexual abuse and assault

by their male commanders, none of whom have been prosecuted.[15] Despite the government's declared intentions to improve gender equality, women were marginalized from the outset, as conservative factions reasserted themselves and destructive traditional practices, such as female circumcision, child marriage, and virginity testing, became common.

In 2011 women held four ministerial portfolios—Health, Justice, Tourism, and Labor and Social Affairs—but no women held top positions in the military or the PFDJ. The only recognized women's organization, the party-sanctioned National Union of Eritrean Women, provides services, runs job-training programs, and advises the government on women's issues, but it does not engage in public advocacy, and it has repeatedly blocked efforts to organize independent women's groups.

Eritrea, like most African states, consists of a patchwork of ethnicities. Officially, there are nine, which the government refers to as "nationalities": the predominantly Orthodox Christian Tigrinya, who make up half the population and dominate the state and the national economy, and eight, mostly Muslim minorities (Afar, Bilen, Hedareb, Kunama, Nara, Rashaida, Saho, and Tigre). Religious divisions, which overlap with ethnicity and geography, have at times created political cleavages in the society and are an increasing source of tension today.

The situation of the disabled is similar to that of women; the government runs programs for them and places disabled people, most of whom are disabled war veterans, in jobs, but there is no policy to which disabled people can hold the government accountable and no institutional body to which they can appeal when discrimination occurs. The government has shut down independent NGOs organized by disabled veterans. Those with disabilities not arising from national service are forced for the most part to rely on family support or a handful of charities in Asmara, most of which are for the blind and deaf.

The government outlawed all forms of religious discrimination upon independence, and the constitution guarantees all citizens "the freedom to practice any religion and to manifest that practice," but freedom of religion is in practice sharply restricted. In April 2002, the government banned what it called "new churches"—the rapidly growing evangelical and Pentecostal Christian denominations, as well as Baha'is—and "deviant trends" within legally-recognized faiths, which include Sunni Islam, the Eritrean Orthodox Church, the Roman Catholic Church and the Evangelical Lutheran Church. Relations between the state and the Orthodox Church deteriorated in August 2005, when government authorities stripped Patriarch Abuna Antonios of his ecclesiastical authority and placed him under house arrest after he protested the arrest of three Orthodox priests.[16] The government then effectively took control of the Orthodox Church, appointing a lay administrator who managed its finances and in 2007 oversaw the appointment of a new patriarch. Monitors of religious freedom describe a pattern of continuous abuses, with more than 2,800 Christians from various denominations imprisoned in 2010 for participation in religious activities

that the government prohibits.[17] In 2010, the U.S. Commission on Religious Freedom designated Eritrea one of 13 states considered a "country of particular concern" (CPC), and Eritrea was the only country to face sanctions on that basis.[18]

The pattern of religious discrimination is reflected in the treatment of nonreligious membership-based organizations, too, with only those under the party's control permitted to operate—the National Confederation of Eritrean Workers, with 20,000 members, the National Union of Eritrean Women, with 200,000, and the National Union of Youth and Students, with 170,000.[19] Trade unions are not permitted to organize any segment of the workforce without state and party permission, and strikes are prohibited. All three labor organizations are service providers and do not engage in policy advocacy or protest, and the PFDJ selects their leaders and sets their priorities. The state closely monitors donations to these organizations, and organizations that the government does not recognize are not allowed to receive outside funding.[20]

RULE OF LAW	**0.27**
INDEPENDENT JUDICIARY	0.40
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	0.00
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	0.00
PROTECTION OF PROPERTY RIGHTS	0.67

The Eritrean judiciary has long functioned as an arm of executive authority, and the president appoints and dismisses all judges at his own discretion. Initially divided between civilian and military courts and later complicated by the addition of special courts, the judiciary suffers from shortages of trained personnel and inadequate funding, as well as frequent executive interference. In some cases, panels of military and police officers sentence offenders in secret proceedings in which detainees are not informed of the accusations against them, have no right to legal counsel or to defend themselves, have no recourse to challenge official abuses, and are denied the right to appeal to the High Court, which is nominally Eritrea's highest judicial authority.

Special courts, Eritrea's system of secret military tribunals, were created in 1996 to hear cases of corruption and other abuses by government and party officials. These courts are directly accountable to the president's office and are presided over by military officers with no formal training in the law. The attorney general determines what cases are sent to the special courts, which are not governed by habeas corpus. There is no presumption of innocence on the part of the defendant, who has no right to counsel or to appeal. There is no limitation on the punishment that can be meted out by special court judges, who also serve as prosecutors and are expected to rule not on law but on conscience.

With the outbreak of the Border War in 1998, referrals to the courts expanded from cases of embezzlement and tax evasion to a wide range of felonies and misdemeanors and national security cases, a broad designation that has come to embrace all forms of protest and dissent. Today, the special courts issue directives to civilian and military courts on administrative matters and can, at the discretion of the attorney general, retry cases already heard by these courts. The abolition of the special courts was a key demand of the G-15 reformists prior to their detention in 2001. Although there has never been official confirmation, it is widely believed that their cases were heard and their sentences determined by a secret special court.

According to former guards, high-value political prisoners are held mainly at the Naqura facility in the Dahlak Islands, at Ala in the Debub Administrative Region, and at a high security prison at Eiraeiro, in the coastal lowlands north of the Asmara-Massawa road. Numerous other jails scattered across the country hold military deserters, jailed evangelical Christians and political dissidents, alongside common criminals. In 2009, Human Rights Watch estimated the total prison population held without formal charges at between 5,000 and 10,000, most for political reasons.[21] Accused criminals and those with civil claims fare little better in an understaffed system of overlapping jurisdictions, in which personal connections matter more than legal principles. A new civil code was announced in 2001. It has a three-tiered system resting on community courts of elected magistrates whose decisions are supposed to be based on local custom, but executive interference is common and the application of the law decidedly uneven.

In August 2009, the London-based website assena.com released a report based upon what it claimed were secret documents taken from the president's office that detailed the death in detention of nine of the 11 former government officials identified with the G-15 reformists in 2001and held at the Eiraeiro prison.[22] In May 2010, Reporters without Borders, citing the testimony of an escaped prison guard, claimed that four of the detained journalists had perished there as well.[23] In 2009, the UNHCR advised member states not to send any Eritreans back to the country, regardless of the circumstances of their asylum claims, due to the dangers they faced upon repatriation.[24]

Eritrea's armed forces, built out of the EPLF and reorganized as the Eritrean Defense Forces (EDF), consist of air, naval, and ground forces whose commanders report directly to the president, as they did during the armed struggle. The EDF's main official tasks are defending the country against external attack, ensuring peace and security along its borders, and helping to consolidate a national identity out of the diverse social forces that make up the new country. The EDF's role has grown considerably, however, since the Border War with Ethiopia, after which Eritrea assumed a semi-permanent state of military readiness. Since 2003, all secondary school students have been required to complete the 12th grade at the Sawa military camp, both to curb the outflow of secondary

school graduates to neighboring countries and to increase the size of the armed forces. Eritrea—today one of the most militarized countries in the world—does not recognize the practice of conscientious objection.[25]

The military remains under the president's personal control, and he exercises direct command over the five theater-operation generals—the de facto governors of the country's five *zobas* (provinces)—while frequently ignoring General Sebhat Ephrem, his minister of defense. The country's feared national security service is independent of the armed forces and is headed by a long-time Isaias loyalist, Brigadier General Abraha Kassa, but, like the armed forces, it remains under the president's personal control.

Under Eritrean law, all land is the property of the state, which can grant lifetime use-rights to citizens and fixed-term leases to businesses and private or semi-private agricultural schemes. However, the law has never been consistently implemented, apart from peri-urban areas around large cities, as the state lacks the capacity to do so. As a result, much of Eritrea's intensively farmed highlands remains with those who controlled them at the time of independence, though it cannot be transferred through market mechanisms. At the same time, the government's seizure of grazing land from pastoralists in the western lowlands and its transfer to highland migrants and returning refugees—many of them Tigrinya-speaking farmers—have become a major source of friction with the indigenous, mostly Muslim herders. This accelerated after the Border War, exacerbating tensions there as resistance to it became a major issue for local residents and the externally-based EDA. After the sharp decline in Eritrea's economy following the outbreak of the Border War, the government also began offering long-term leases for cash payments and threatened to strip the land rights of citizens living abroad if they became involved in dissident political activities or failed to fulfill their tax obligations. With exports extremely low and new investment lacking in most sectors, the economy has survived largely on remittances from the diaspora, whose members are required to pay a 2 percent asset tax in order to maintain rights to purchase land, secure inheritances, and take advantage of other privileges within Eritrea. However, Eritrea is poised on the brink of a gold rush that the government views as a potential lifeline, leading it to sharply limit its interference with foreign firms, of which there were 30 by 2011.[26]

ANTICORRUPTION AND TRANSPARENCY	**0.56**
ENVIRONMENT TO PROTECT AGAINST CORRUPTION	0.40
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	1.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	0.50
GOVERNMENTAL TRANSPARENCY	0.00

The systematic denial of civil liberties and the continuing failure to respect the rule of law occur against the backdrop of a declining economy. With major

enterprises owned by the state or party, the private sector languishes, limited to domestic trade and small businesses. Eritreans are major players, however, in trade, transport, tourism, and other businesses throughout the region, from southern Sudan, Kenya, and Rwanda to Dubai and Qatar. Eritrean citizens were also owners or managers of numerous businesses in Ethiopia until the Border War, when most had assets confiscated. Though many returned to Eritrea after independence, few are investors today as the state and party's demands have discouraged them. Most party and state enterprises draw on national service conscripts for their work force, which further tilts the playing field, already skewed by preferential treatment in securing licenses and permits, access to power sources, and other resources controlled by the state.

Eritrea's civil code recognizes contracts, but these laws have at times been suspended or undergone sudden, unanticipated revisions announced in public proclamations drawn up by the president's office and promulgated by the National Assembly, as happened after the Border War for a number of import/export businesses and international aid agencies. Numerous Eritrean-run businesses have found themselves required to cede a significant percentage of their holdings to the PFDJ, which in many cases had driven them out of business. Today, the PFDJ controls currency markets, the insurance industry, the transportation industry, the publishing industry, the IT sector, maritime commerce, and high-end tourism. The government has banned private-sector companies from the construction sector, which it reserves for PFDJ companies on what it claims are grounds of national security. The only domestic mining firm is the state-owned Eritrean National Mining Corporation (ENAMCO). Accurate economic statistics are extremely difficult to come by, as the government does not publish a national budget. Inflation runs between 35 and 50 percent, and efforts to maintain a fixed exchange rate have created a yawning gap with the black market. All banks are owned by the state or the ruling party.[27]

Brigadier General Estifanos Seyoum, a high-ranking member of the PFDJ and a veteran of the independence war, was relieved of his post in the ministry of finance in August 2001 after questioning the equity of tax collection from PFDJ-owned enterprises. A signatory of the May 2001 "Open Letter to the PFDJ," he was detained with the other members of the G-15 in 2001 and has not been heard from since.[28] No questions about tax collection or government expenditure have been raised in public since then, nor is there any independent auditing body to take up such issues. Under the constitution, the president appoints an auditor general, but this position has not been functional. There is no public record of the party's economic operations, no published line-item national budget for the state, no detailed accounting for tax collection or remittances—essentially no fiscal transparency for state or party finances. In fact, the line items for the national budget remain a well-guarded secret—not only from the public but from most members of the cabinet and the ruling party.[29]

Corruption among individuals has historically been low in Eritrea and severely punished when uncovered, but the state and the ruling party have made extensive use of economic levers for political ends, often acting in concert, and the prosecution of corruption cases today reflects political expediency rather than consistent application of the law. It is common, for example, for the PFDJ to pressure enterprises to include it as a partner in new ventures and then exact payment or a percentage of profits for government cooperation. Meanwhile, strict controls on travel by Eritrean citizens have generated a lucrative business in exit visas. Graft and corruption among state bureaucrats has also grown, particularly at middle and lower levels where pay rates have stagnated as inflation rates have soared. The militarization of much of the country, with zonal commanders outranking civilian administrators, has also fostered widespread corruption in the allocation of housing, management of local businesses, and control of trade.[30]

RECOMMENDATIONS

- Eritrea's constitution, which has been ratified, should be implemented without delay. All special courts should be abolished and their functions taken over by civilian bodies, and all political prisoners released or brought to public trial.
- The government should allow the formation of political parties, lay the groundwork for national elections, and permit exiled opposition political movements who have renounced violence to return to Eritrea to join the political process on equal footing with the PFDJ.
- The 1996 Press Law should be rescinded and the reestablishment of independent newspapers and broadcast media permitted.
- Legal protections should be extended to all religious groups, and prompt legal action should be taken against those who attack members of minority faiths.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

1 *Eritrea: A Country Handbook* (Asmara: Ministry of Information, 2002), 23–24.

2 Eritreans go by first names.

3 "Draft Constitution of the State of Eritrea," art. 7, 26, http://www.shaebia.org/constitution.html.

4 Dan Connell, "Inside the EPLF: The Origins of the 'People's Party' and its Role in the Liberation of Eritrea." *Review of African Political Economy*, no. 89 (Sheffield, UK: September2001),http://eritrearealclearpolitics.wordpress.com/2009/04/05/inside-the-eplf-the-origins-of-the-'people's-party'-its-role-in-the-liberation-of-eritrea.

5 "Blocking Property of Certain Persons Contributing to the Conflict in Somalia," Executive Order 13536, 75 *Federal Register*, no. 72, April 12, 2010, http://www.treasury.gov/resource-center/sanctions/Documents/13536.pdf.

[6] For a "family tree" tracing the origins and interrelationships of these and other Eritrean political movements, see "Eritrean Political Organizations: 1961–2007," Awate Foundation, March 4, 2007, http://www.awate.com/portal/content/view/4485/9; for a breakdown of EDA membership, see "EDA will hold its congress," Awate Foundation, February 15, 2007), www.awate.com/portal/content/view/4469/3.

[7] Amnesty International delegates were refused visas in July 2002 and have not been permitted to enter Eritrea since then. Neither Human Rights Watch nor the Committee to Protect Journalists has had representatives in Eritrea since 2003.

[8] Passed by the National Assembly in its January 22–24, 1996, session as Proclamation 90/98 and published by the Ministry of Information, Asmara.

[9] Back issues are available on the website of Eritrea's Ministry of Information, http://www.shabait.com.

[10] The Committee to Protect Journalists (CPJ) labeled Eritrea one of the world's worst jailers of journalists in 2010, alongside China, Iran, Uzbekistan and Burma ("Eritrea: Number of jailed journalists hits 14-year high," CPJ, December 8, 2010, http://www.cpj.org/africa/eritrea), while Reporters Without Borders rated Eritrea last of 178 countries in its Worldwide Press Freedom Index, just after Turkmenistan and North Korea ("Press Freedom Index 2010," Reporters Without Borders, October 20, 2010, http://en.rsf.org/press-freedom-index-2010,1034.html).

[11] Kjetil Tronvoll, *The Lasting Struggle for Freedom in Eritrea: Human Rights and Political Development, 1991–2009* (Oslo: Oslo Centre for Human Rights, 2009), 80–85, http://www.oslocenter.no/index.php?option=com_content&task=view&id=213&Itemid=1.

[12] Human Rights Watch (HRW), *Eritrea: Service for Life: State Repression and Indefinite Conscription in Eritrea* (New York: HRW, 2009), http://www.hrw.org/node/82284.

[13] Human Rights Watch (HRW), *Sinai Perils: Risks to migrants, refugees and asylum seekers in Egypt and Israel* (New York: HRW, 2008), http://www.hrw.org/en/reports/2008/11/12/sinai-perils-0.

[14] Ben Hartman, "UNHCR: Eritreans by far largest refugee group in Israel," *Jerusalem Post*, March 10, 2010, http://www.jpost.com/Israel/Article.aspx?id=170593.

[15] In 2004, Amnesty International reported that "some of the new female recruits were selected by commanders for sex under duress, through being threatened with heavy military duties or being sent to the battle-front during the war or to a remote and harsh posting, or being denied home leave. In some cases, this may be termed rape or possibly sexual slavery" ("UN Must act now on Sri Lanka war crimes report," Amnesty International, April 26, 2011, http://www.amnesty.ca/resource_centre/reports/view.php?load=arcview&article=1563&c=Resource+Centre+Reports). Five years later, UNHCR reported that "a pattern of sexual violence against female conscripts exists within the military. . . . No effective mechanism for redress or protection exits within or outside the military, and perpetrators generally go unpunished" (UN High Commissioner for Refugees [UNHCR], *Assessing the International Protection Needs of Asylum-Seekers from Eritrea* [Geneva: UNHCR, 2009], http://www.unhcr.se/Pdf/Positionpaper_2009/Guidelines_Eritrea_April_09.pdf).

[16] "Eritrean Patriarch Uncanonically Deposed," *Glastonbury Review* 12, no. 113 (2006), http://www.inchainsforchrist.org/pdf/ABOUNE%20ANTONIOS%20IN%20THE%20GLASTONBURY%20REVIEW.pdf.

[17] Open Doors ranked Eritrea 11 out of 50, just after Uzbekistan and ahead of China, on its 2010 World Watch list of countries that persecute Christians ("Country Profiles: The worst 50 countries for persecution of Christians," Open Doors UK, http://www.opendoorsuk.org/resources/country-profiles.php, accessed April 26, 2011).

[18] "United States Commission on Religious Freedom (USCRF): Annual Report 2010," USCRF, May 2010, http://www.uscirf.gov/images/ar2010/eritrea2010.pdf.

[19] *Eritrea: A Country Handbook,* 50–52.

[20] Numerous interviews by the author with leaders and members of NUEW, NCEW, NUEYS, Asmara, 2001–2002, and subsequent interviews with high-ranking youth and women's union leaders in the U.S. in 2005–2006, including the former head of NUEYS, Mohedin Shengeb, after he fled Eritrea in 2005.

[21] Human Rights Watch (HRW), *Eritrea: Service for Life: State Repression and Indefinite Conscription in Eritrea.*

[22] "All but two of the former 11 senior government officials of Eritrea confirmed dead," Asena Foundation, August 4, 2009, http://assenna.com/index.php?option=com_content&view=article&id=1868:all-but-two-of-the-11-former-senior-government-officials-of-eritrea-confirmed-dead&catid=18:news&Itemid=70.

[23] "Prominent journalist arrested, ex-prison guard reveals fate of other detained journalists," Reporters Without Borders, May 12, 2010, http://en.rsf.org/eritrea-prominent-journalist-arrested-ex-12-05-2010,37459.html.

[24] "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea," UN High Commissioner for Refugees (UNHCR), April 2009, http://www.unhcr.org/refworld/docid/49de06122.html.

[25] The International Institute for Strategic Studies (IISS) has termed Eritrea the second most militarized country in the world, after North Korea and ahead of Israel, with nearly 40,000 soldiers for every one million people. ("The Military Balance 2009," IISS, August 30, 2009, http://www.iiss.org/whats-new/iiss-in-the-press/press-coverage-2009/august-2009/eritrea-worlds-second-biggest-militarized-state-report.)

[26] The Canadian firm Nevsun Resources began production for export at the end of 2010, and Chalice Gold Mines (Australia) and Sunridge (Canada) were close behind; the Eritrean government, with a 40 percent stake, was projected to break even on its investment by 2012.

[27] The World Bank ranked Eritrea in the bottom 5 percent of friendly business environments in 2011, placing it 180th out of 183 countries. ("Economy Rankings," World Bank–Doing Business, February 2, 2011, http://www.doingbusiness.org/rankings.)

[28] "Another Critical Official Sacked," IRIN, August 7, 2001, http://allafrica.com/stories/200108070236.html.

[29] Eritrean government officials, in discussion with the author, Asmara, August–September 2001, February–March 2002.

[30] Transparency International placed Eritrea 123 out of 178 in its Corruption Perceptions Index 2010, scoring the country 2.6 on a scale of 1 to 10. ("Corruption Perceptions Index 2010 Results," Transparency International, October 26, 2010, http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results.)

ETHIOPIA

CAPITAL: Addis Ababa
POPULATION: 85 million
GNI PER CAPITA (PPP): $930

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	1.72	1.33
CIVIL LIBERTIES:	2.80	2.75
RULE OF LAW:	1.98	1.98
ANTICORRUPTION AND TRANSPARENCY:	2.35	2.30

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Leonardo R. Arriola

INTRODUCTION

Ethiopia's long-awaited democratization has stalled over the last half decade. Although the ruling party, the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), has continued to pursue reforms aimed at state decentralization and local empowerment, the potential impact of such institutional changes has been stymied by the manner in which the party exercises power. Alongside its reforms, the EPRDF also continues to pursue authoritarian political strategies that impede the contestation of elected office as well as the creation of independent organizations. Opposition parties remain subjected to legal and physical harassment, members of the media face unrelenting persecution, and civil society organizations are constrained by restrictions on their operations, all while citizens experience increasing pressure to become members of the ruling party in exchange for access to socioeconomic opportunities. Today, there are fewer constraints on the EPRDF's power than at any other time in its 20-year rule.

After coming to power in 1991, when a coalition of rebel forces led by current prime minister Meles Zenawi overthrew the military dictatorship of Mengistu Haile Mariam, the EPRDF initiated an unprecedented period of political stability and economic development.[1] The party implemented a constitutional order that fundamentally altered not only the organization of the

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Ethiopian state, but also the very nature of state-society relations. The 1994 constitution established a federal system in which representation is largely based on ethnicity.[2] It offered legal recognition to the country's ethnic diversity and adapted state institutions to provide ethnic groups with national representation and local control, including the right to secede.[3] Internal boundaries were redrawn along ethnolinguistic lines, and regional governments were empowered to administer their own economic and social affairs, including the adoption of local languages for government and education. The EPRDF enabled many of the country's ethnic groups, including those that had been historically marginalized, to effectively do what no previous Ethiopian government had ever permitted: articulate their respective policy interests and elect their own political representatives.

However, the promise of a democratic constitutional order that combines political representation for ethnic groups with civil liberties for individual citizens has yet to be realized in Ethiopia. The EPRDF has instead entrenched a hybrid regime that combines the institutions found in democracy with the practices typically associated with authoritarianism. The balance appears to have shifted toward the latter since 2005, when the EPRDF signaled its intention to hold onto power at all costs. National elections held that year were the most competitive in the country's history, with opposition parties winning at least one-third of the parliamentary seats. The balloting resulted in a political impasse, however, when the Coalition for Unity and Democracy (CUD), the largest opposition group, accused the ruling party of electoral fraud and refused to accept the officially declared results. The EPRDF ultimately chose to use force to resolve the dispute over vote tabulation. In the crackdown that followed, opposition leaders were imprisoned, while thousands of their supporters were arrested and some 200 others were killed.

The aftermath of the 2005 elections cast a shadow over Ethiopia's democratization. The EPRDF subsequently ensured that similar challenges to its authority would not be repeated. It has sought to insulate its hold on power by using legal and coercive measures to further restrict the scope of independent mobilization.[4] Despite constitutional protections for basic civil liberties, since 2008 the EPRDF has enacted legislation—the Mass Media Law, the Charities and Societies Proclamation, and the Anti-Terrorism Law—designed to punish open dissent and discourage autonomous organization. At the same time, the EPRDF has sought to strengthen its own capacity by reinforcing the mechanisms of party control at the local level and recruiting millions of new party members nationwide.

The EPRDF has consolidated its political monopoly through recent electoral landslide victories. It secured over 99 percent of all seats in the 2008 local elections and again in the 2010 national elections. International human rights organizations criticized the party in both instances for failing to fulfill international standards for free and fair elections, pointing to credible claims of voter intimidation and opposition harassment. Human Rights Watch alleged that

members of the ruling party manipulated food aid for electoral advantage.[5] Ethiopia's donors, conversely, recognized irregularities in the electoral process but largely refrained from publicly criticizing the EPRDF.

EPRDF leaders dismiss allegations that their regime violates democratic norms by asserting that their emphasis on the representation of all ethnic groups, coupled with the mass participation of citizens, will provide a foundation for the country's democratization over the long term. EPRDF leaders claim, in this respect, to be pursuing the goals of "revolutionary democracy," also referred to as "developmental democracy." According to this view, liberal democracy is not only inappropriate for the Ethiopian context, but the EPRDF itself must lead the transformation of society by retaining control of the state, directing changes in the economy, and mobilizing the population as a whole.[6] In the meantime, the party has wagered that its ability to combine political stability with economic development will ensure popular legitimacy. But as the EPRDF continues to blend its party apparatus with state institutions, all while suppressing the expression of political alternatives, the prospects for Ethiopia's democratization remain grim.

ACCOUNTABILITY AND PUBLIC VOICE 1.33

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	1.00
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	1.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	1.00

Ethiopia's electoral framework is consistent with international standards for holding free and fair elections. The country is a signatory to major international treaties, including the 1966 International Covenant on Civil and Political Rights and the 2007 African Charter on Democracy, Elections and Governance. The 1994 constitution provides for the basic freedoms of association, assembly, and expression necessary to ensure that citizens can participate in all aspects of the electoral process, as well as universal suffrage with access to a secret ballot, the right to compete for office, and the right to form political parties.

The National Electoral Board of Ethiopia (NEBE) is the constitutionally mandated independent electoral authority. Its powers include regulation of all aspects of the electoral process: registering voters, candidates, and parties; investigating electoral violations; and, when necessary, annulling election results and ordering new elections. The NEBE's nine-member board is accountable to the country's lower house of parliament, the House of Peoples' Representatives (HPR), which appoints board members upon the prime minister's recommendation. However, Ethiopia's electoral law contains provisions that restrict the involvement of civil society in the electoral process; for instance, civil society organizations are required to choose between voter education or election observation, and they are required to obtain a license

from the NEBE to engage in these activities (and the NEBE's decision is final and cannot be appealed in court).

Following the controversy associated with its handling of the 2005 post-election crisis, the EPRDF purported to establish a level playing field for all parties by reforming the electoral framework. However, when the EPRDF amended the electoral law in 2007, the opposition United Ethiopian Democratic Front (UEDF) criticized the reforms for failing to limit ruling party dominance over the NEBE's composition. In 2009, the EPRDF negotiated an electoral code of conduct with some opposition parties to regulate campaign activities and establish interparty committees to investigate electoral abuses. Again, however, UEDF leaders refused to endorse the code, claiming that it would complicate the adjudication of electoral violations rather than enhance the independence of the NEBE in resolving them. The EPRDF nonetheless enacted the code into law, making its provisions binding on all parties.

In the absence of substantial reforms, elections continue to be marred by persistent claims of opposition harassment and voter intimidation. While the EPRDF dismisses such claims, independent country experts have documented numerous substantiating incidents.[7]

The NEBE, while displaying increasing technical competence in conducting elections with limited resources and across difficult terrain, remains a politicized body incapable of ensuring impartiality. The EPRDF refuses to compromise with opposition parties on the composition of the NEBE's board. Moreover, the temporary offices operated by the NEBE in each of the country's 547 constituencies during electoral periods are largely staffed by local government employees who have proven unable to resolve persistent opposition grievances concerning the closure of party offices, the detention of candidates, and the obstruction of campaign rallies.

The electoral framework provides public financing for all party campaigns as well as access to state-owned media, but the EPRDF's electoral advantage is secured by its command of state resources. Government offices and vehicles are routinely used for the ruling party's campaigns, while civil servants are pressured to become party members and vote for the party. Local government officials reportedly compel citizens into supporting the EPRDF by claiming that social services, such as state-owned housing or fertilizer and food aid, will be withdrawn if they fail to do so. Given the opposition's inability to mount an effective electoral challenge under current conditions, most citizens have little choice but to acquiesce to the ruling party's demands if they wish to retain access to essential goods and services.

Recent elections reflect the extent to which the EPRDF's strategies have enabled it reconsolidate its political position and neutralize the opposition. Postponed for over two years, the April 2008 elections for *wereda* (district) and *kebele* (neighborhood or village) councils were noteworthy for the lack of competition faced by the ruling party, which won over 99 percent of approximately 3.6 million local council seats. The councils have considerable impact on the

daily lives of citizens because they exercise authority over the distribution of basic social services and the organization of local courts and security. Despite such stakes, most opposition parties had neither the candidates nor the resources to compete effectively, particularly after the EPRDF dramatically increased the number of local council seats in the run-up to the elections. Kebele councils, for example, were expanded to about 300 members even though the average kebele only has 400–500 households. Since opposition parties like the UEDF chose to boycott the elections, claiming that their candidates had been prevented from registering or pressured to withdraw, the EPRDF was ultimately able to place a representative in nearly half of the country's households.

Parliamentary elections for the HPR and the state councils that govern the country's regions were held on schedule in May 2010. The EPRDF and its affiliate parties together took all but 3 of 547 HPR seats and all but 4 of 1,904 state council seats. The Ethiopian Federal Democratic Unity Forum (Medrek), an opposition coalition, won a single parliamentary seat among its 487 candidates.[8] Longtime opposition leaders Merera Gudina and Beyene Petros, both of whom served in the outgoing parliament and stood as Medrek candidates, lost their seats. Evidence of bias and harassment led European Union observers to conclude that "the electoral process fell short of international commitments for elections, notably regarding the transparency of the process and the lack of a level playing field for all contesting parties."[9]

The EPRDF's electoral victories serve to reinforce a one-party regime that undermines the constitutional system of checks and balances. The 1994 constitution established a parliamentary system that ensures oversight by the legislative branch as well as an independent judiciary. In practice, however, the executive powers of the prime minister's office are unrestrained. The centralized authority structure of the ruling party, combined with its control of all elected bodies, means that the EPRDF executive committee is the only relevant decision maker. Its decisions are rubberstamped by the HPR. The House of Federation, the upper house of parliament, which has the authority to settle constitutional questions, is unlikely to issue decisions contrary to party wishes because its 112 representatives are elected by the EPRDF-controlled state councils.

The government has invested in the professionalization of civil servants by collaborating with international donors to strengthen administrative capacity and improve service delivery, particularly at the local level. The state has made a concerted effort to enhance the training of civil servants working outside urban areas. The Ethiopian Civil Service College, for example, annually graduates more than 500 degree and diploma holders, a majority of whom are recruited from the country's less-developed regions. Such investment helps to explain why Ethiopia is among the few African countries to have made real progress toward achieving the Millennium Development Goals. Nevertheless, civil servants are routinely pressed to serve as agents of the ruling party. Failing to produce the expected results might result in job loss or relocation to a less desirable area.

The federal system, which the EPRDF espouses as an institutional mechanism for promoting ethnic self-determination, is similarly subverted by the ruling party's political monopoly. Because the state council of every region is controlled by the EPRDF or an affiliate, state leaders' tenure depends on the approval of the executive committee. Career concerns induce party members in elected positions at lower levels of government to implement decisions handed down from Addis Ababa, thereby fusing party and government functions from top to bottom.

The increasingly intertwined relationship between EPRDF party structures and federal institutions has bolstered the ruling party's influence at the local level. Weredas, the third tier of government defined in the constitution, are empowered with administrative and fiscal autonomy, which enables locally elected councils to arrive at their own decisions regarding service provision in areas such as agriculture, education, and health. However, local governments remain largely dependent on fiscal transfers from the federal government. While such intergovernmental transfers are ostensibly calculated through transparent formulas based on economic and demographic factors, research by scholars suggests the federal government has actively manipulated these transfers as a means of inducing political support in areas of concentrated opposition.[10] Local authorities' discretionary authority then further magnifies the political impact of such resource manipulation. It is wereda and kebele officials who are typically implicated of intimidating voters and harassing opposition candidates in the run up to elections.[11]

Complementing its efforts to fortify institutional mechanisms of control, the EPRDF has sought to weaken the capacity of civil society to act independently of government. The number of Ethiopian civil society organizations (CSOs) has grown tremendously, but given the country's historically narrow political space, relatively few groups have sought to openly lobby for policies or influence legislation in non-economic areas. Indeed, such attempts have been viewed as challenges to the ruling party's authority, resulting in punitive measures by the government.

Government measures to control civil society have intensified since the 2005 elections, when independent organizations and private media came to be seen by the ruling party as active supporters of the opposition. The ensuing arrest of Netsanet Demissie, founding director of the Organization for Social Justice in Ethiopia (OSJE), one of the leading groups that was instrumental in bringing together the coalition that sought to observe the 2005 elections, is illustrative. Concurrent with the arrests of opposition party leaders and Demissie in November 2005, the government also chose to arrest Daniel Bekele, a policy manager with ActionAid, the international nongovernmental organization (NGO) that funded OSJE's activities.[12]

Moreover, to ensure that civil society leaders would be unable to mobilize similar initiatives, the EPRDF subsequently issued the Proclamation to Provide for the Registration and Regulation of Charities and Societies adopted by

Ethiopia's parliament in January 2009. It effectively forbids NGOs from working in areas considered to be politically sensitive by the government. This CSO law, as it is known, classifies organizations as "Ethiopian charities," "Ethiopian resident charities," or "foreign charities" on the basis of funding: organizations that receive more than 10 percent of their income from international sources are registered as foreign. The law prohibits foreign organizations from undertaking programs in the areas of governance, human rights, conflict resolution, or criminal justice.[13] Individuals leading or belonging to organizations found to be violating the law's provisions can be imprisoned.[14] In effect, CSOs founded and operated in the country by Ethiopian citizens, but sustained through foreign funds, are legally barred from undertaking, for example, voter education programs. A government body, the Charities and Societies Agency (CSA), has been established to enforce the law through its powers to license and supervise NGOs. The new law required all organizations to reregister with the CSA between September 2009 and February 2010; of the 1,615 organizations that registered, 283 were designated as foreign.[15]

While the government claimed that the CSO law was aimed at improving NGO transparency and accountability, it has affected the most established and well-respected organizations working toward the protection of civil liberties in the country: the Ethiopian Lawyer's Association founded in 1966, the Ethiopian Human Rights Council (EHRCO) founded in 1991,[16] and the Ethiopian Women Lawyers Association (EWLA) founded in 1995. In April 2010, the CSA, whose board is chaired by an EPRDF member of parliament, suspended the Ethiopian Lawyer's Association's activities on grounds that another association, which happens to be linked to the ruling party, had already registered the same name in English. The CSA also found that EHRCO and EWLA had violated the terms of their registration by relying on foreign sources of funding. It then froze the organizations' bank accounts. Such regulatory zeal has forced the organizations to divert their limited resources toward defending their registration rather than advancing civil liberties.

The government's growing influence over civil society parallels its power over all forms of mass media. Through its control of organizations such as the Ethiopian Radio and Television Agency and the Ethiopian News Agency, the state is not only the largest employer of journalists, but also the principal broadcaster of news and information in the country's multiple languages. The state owns the sole television network, Ethiopian Television, along with two radio stations that remain the primary source of information for Ethiopians, particularly the vast majority who live outside urban areas. The EPRDF runs its own radio station, Radio Fana. The state-owned Ethiopian Press Agency also publishes four newspapers in Amharic, Arabic, Afaan Oromo, and English.

Freedom of expression is constitutionally guaranteed in Ethiopia, but the law provides the government with considerable discretionary authority in controlling the press. The licensing of two private radio stations in 2006 and the 2007 release of 15 journalists detained under sedition charges related to the 2005

post-election crisis were viewed as signs that the government was loosening restrictions on independent media. However, the press has been subjected to continued official harassment through legislation that limits the broadcast or publication of alternative voices to the official discourse. The Mass Media and Freedom of Information Proclamation adopted in July 2008 was meant to reform a 1992 law that regulated the press. While the new law stipulates the conditions for accessing government information and prohibits the pre-trial detention of journalists without charge—which was allowed under the previous law—its other provisions widen the scope of prosecutable offenses. Defamation of government officials is also criminalized, even without the alleged victim being required to file a complaint, and the associated fines have been increased from about $60 to nearly $6,000. The new law transferred the registration of media outlets from the Ministry of Trade and Industry to the Ministry of Information, which also has the authority to revoke licenses. Another law, the Anti-Terrorism Proclamation adopted in July 2009, further encourages self-censorship among journalists by allowing the government to prosecute and imprison for up to 20 years anyone who publishes statements deemed by officials to encourage acts of terrorism.

According to the Committee to Protect Journalists, 41 journalists were forced into exile between 2001 and 2009,[17] with at least 24 journalists imprisoned in the same period.[18] In 2008, for example, Ezedin Mohamed and Maria Kadim, respectively the editor and publisher of *Al-Quds*, were jailed for two weeks and charged with defamation for publishing postings from a website that criticized the Ministry of Education's proposed policy on school prayer.[19] Throughout 2008 the government actively prosecuted journalists reporting on the controversial trial of Tewodros Kassahun, the popular Ethiopian singer known as Teddy Afro, whose critical lyrics resulted in a ban on his songs on state-controlled radio. Tewodros' subsequent arrest in relation to a hit-and-run incident was interpreted by many as being politically motivated. Four employees of the magazine *Enku* were jailed for reporting on the case; the magazine was shut down as a result.[20] The judge in the case also ordered Mesfin Negash, editor of the independent newspaper *Addis Neger*, arrested on contempt charges for publishing an interview with Tewodros' lawyer, who was also arrested for participating in the interview. *Addis Neger* closed down in 2009 and three of its editors fled the country for fear of terrorism charges being brought against them.[21]

The fear of prosecution provoked by such cases has led journalists to exercise greater self-censorship; combined with state control of most media, Ethiopians have few alternative sources of information. The government began jamming radio signals for Voice for America and Deutsche Welle prior to the 2010 national elections. Although a relatively small percentage of the urban population has access to the internet, the Ethiopian Telecommunications Corporation, the state monopoly that is the country's sole internet provider, uses web-filtering technology to block websites critical of the regime, many of which are run by

Ethiopians in the diaspora. Reporters Without Borders has identified Ethiopia as one of 15 global "internet enemies." The 2009 Anti-Terrorism Proclamation provides the government's intelligence services with additional powers to conduct surveillance over the internet.[22]

CIVIL LIBERTIES 2.75

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.25
GENDER EQUITY	3.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.00
FREEDOM OF CONSCIENCE AND BELIEF	4.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	1.50

The Ethiopian constitution explicitly guarantees the fundamental rights of its citizens. Since coming to power in 1991, the EPRDF has sought to modernize the legal and police instruments used to protect such rights, including expanding its counterterrorism capacity.[23] Although long benefiting from a relatively low crime rate, Ethiopia faces severe institutional constraints in ensuring the basic protection of its citizens. It faces special challenges due to its location at a regional crossroads for trafficking in arms, money, and people,[24] yet has among the lowest per capita ratios of police, prosecutors, and judges in the world.[25]

The governmental Ethiopian Human Right Commission (EHRC) issued a report in July 2008 acknowledging that the country's prisons fall short of international standards, including inadequate sanitation and 100 percent overcapacity. The EHRC claimed to have found no evidence of torture in the prisons,[26] but credible reports by independent domestic and international observers indicate that detainees in Ethiopia are routinely subjected to mental abuse and physical torture while in the custody of local police, federal police, or the army.[27] These same security forces often ignore or fail to carry out court-ordered releases of detainees.

Due to its status as a source of labor for countries in the Middle East and North Africa, Ethiopia faces a serious human trafficking problem. The U.S. State in 2010 classified Ethiopia as a Tier 2 country, which means it is taking steps to combat trafficking but remains noncompliant with minimum standards.[28] Ethiopia is not a signatory to the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. However, in 2009, in response to mounting reports of trafficking-related abuses, the government banned Ethiopians from traveling to work in Lebanon, Syria, and Qatar. It also established a Human Trafficking and Narcotics Section within the Federal Police.

The protection of civil liberties deteriorated following the wide-scale arrest of opposition party leaders, civil society activists, and independent journalists in the aftermath of the 2005 elections. Neither the EHRC nor the Ethiopian

Institution of the Ombudsman (EIO), both of which began operations in 2004, are perceived as capable of curbing abuses of power. On the contrary, the government has readily manipulated legal instruments to intimidate and thus neutralize the opposition. In June 2007, the Ethiopian High Court found 38 senior leaders of the opposition CUD guilty of attempting to overthrow the constitutional order and sentenced them to life in prison, despite a lack of evidence.[29] After 18 months in prison, these leaders were officially pardoned in July 2007 after they accepted the government's terms for their release, including submission to the government of a signed document in which they acknowledged having attempted to undermine the constitution and foment violence.[30] Two activists, Netsanet Demissie and Daniel Bekele, refused to seek a pardon, preferring to prove their innocence through the normal legal process. When the High Court convicted them, again despite a lack of evidence, they too were obliged to request a pardon to secure their release in March 2008.

The government's pardons, rather representing forgiveness for alleged crimes, reflect its ability to command the submission of political opponents. Many pardoned activists have chosen to go into exile. Those who chose to remain active within the country are harassed. Birtukan Mideksa, one of the CUD leaders pardoned in 2007, subsequently became the chairperson of the Unity for Democracy and Justice (UDJ) party, one of the successors to the CUD. In December 2008, Birtukan was rearrested and her life sentence was reinstated after publicly questioning the terms of the 2007 pardon. She was released once again in October 2010 after formally requesting a pardon and apologizing for her earlier statements.[31]

The systematic violation of civil liberties is most pronounced in regions of the country where long-lived insurgent movements remain active. While the government has sought to placate ethnic nationalist claims through both formal federal institutions and informal cooptation mechanisms, tensions surrounding the political demands of some of the country's larger ethnic groups persist. The government claims that its militarized response to such political demands, particularly since 2001, is a fight against terrorism. Since rebel groups such as the Oromo Liberation Front (OLF) and the Ogaden National Liberation Front (ONLF) collaborate with Eritrea, Ethiopia's regional enemy, the government justifies its use of force as counterterrorism. However, in the parts of Oromia and Somali regional states where the government has concentrated its counterterrorism efforts, domestic and international observers have documented the frequent use of arbitrary detention, physical abuse, and extrajudicial execution by both government security forces and insurgents.[32]

The OLF remains the focal organization for Oromo nationalism due to its historic role in fighting for the ethnic group's collective rights. Although the rebel group is no longer a credible armed threat to the EPRDF's hold on power or the territorial integrity of Ethiopia, the government continues to perceive the OLF as the only alternative to the ruling party's regional affiliate, the Oromo People's Democratic Organization (OPDO). It has therefore targeted

the region for more systematic repression than is seen other parts of the country, routinely persecuting individuals it suspects of being OLF supporters or sympathizers. Leaders of the region's legal opposition parties, like the Oromo People's Congress (OPC) led by Merera Gudina and the Oromo Federalist Democratic Movement (OFDM) led by Bulcha Demeksa, regularly decry security sweeps in which members are detained without charges—often after courts have dismissed cases for lack of evidence—and physically abused. In October 2007, Prime Minister Meles publicly accused Oromo parties of serving as fronts for the OLF.[33] In November 2008, OFDM Secretary General Bekele Jirata was arrested, along with scores of opposition members, businesspeople, and students on charges of conspiring with the OLF to engage in terrorist activities. Bekele fled the country before he and several others were sentenced to serve 10 to 13 years in prison.

The worst human rights abuses have occurred in Somali regional state, where the ONLF stepped up its separatist rebellion soon after Ethiopia began a military campaign in support of the teetering transitional government in neighboring Somalia. A series of ONLF attacks on civilian targets in the spring of 2007, reportedly with the aid of Eritrea, prompted the Ethiopian government to undertake a sustained counterinsurgency campaign. After the ONLF attacked a Chinese-managed oilfield in April 2007, the Ethiopian military sought to flush out the rebels among the local civilian population through a scorched-earth strategy, producing wide-scale extrajudicial killing, forced displacement, and the destruction of entire villages.[34] The seizure of food and livestock, coupled with a trade blockade imposed by the military, aggravated the region's food insecurity. Sporadic fighting throughout 2008 and 2009 led to further human rights violations by both the Ethiopian military and the rebels. The government restricted humanitarian operations in the region and prevented domestic and international groups from undertaking independent investigations of human rights violations. The scale of violence appeared to decline toward the end of 2010, when the government reached a peace agreement with a faction of the ONLF.

Gender equity in Ethiopia has been limited by traditional religious and social practices that sanction discrimination against women. Since coming to power, however, the EPRDF has pursued a progressive strategy of imposing legal penalties for gender discrimination. Article 35 of the 1994 constitution guarantees women the same rights and protections as men. The family code revised in 2000 raised the minimum legal age to marry to 18 for both women and men and provided women with greater rights within marriage. Criminal code revisions in 2004 further outlawed practices historically targeted at women, including female genital mutilation, early marriage, and domestic violence. In 2005, the government also created a National Commission for Children's and Women's Affairs under the supervision of the EHRC.

The EPRDF has also accelerated its recruitment of women into public life. The number of women in the HPR has risen considerably in successive

elections: 15 in 1995; 42 in 2000; 116 in 2005; and 152 in 2010. An unprecedented eight women served as cabinet ministers between 2005 and 2010. Women's participation has similarly increased among the country's regional state councils. Given that the EPRDF controls all levels of government, the increased proportion of women participating in policymaking can be directly attributed to the regime's efforts.

But these legal and political gains belie entrenched social patterns of gender discrimination that continue to afflict the daily lives of many, particularly in socially conservative rural areas. According to the 2005 Demographic and Health Survey, approximately 74 percent of women have been subjected to female genital mutilation, though that figure is declining over time.[35] Despite legal penalties, early marriage, domestic abuse, sexual harassment, and rape are rarely prosecuted, in part because societal norms and ignorance of the law lead to underreporting. The same 2005 survey found that that 81 percent of women believed that husbands had a right to beat their wives. Moreover, since regional state governments are constitutionally empowered to regulate social concerns, the less developed and most conservative have lagged behind in enforcement efforts. In rural areas, women are often disadvantaged in traditional courts that apply the customary norms of their respective ethnic groups despite legal prohibitions on doing so.

The government has increased its cooperation with international organizations to address persistent problems of gender inequality, particularly in the areas of education and health. Over the last decade, the number of girls enrolled in primary school more than doubled from 2000 to 2008,[36] while the rate of women who die in childbirth dropped from 750 per 100,000 live births to 470, reflecting improved health services for women in rural areas. However, the government's imposition of greater controls on civil society through the CSO law may undermine recent gains.

Ethiopians of different ethnic backgrounds live peaceably enough in multiethnic areas, including the capital and other towns. Yet despite the institutional mechanisms developed in recent years, perceptions of political and economic marginalization, combined with resource competition, continue to spark conflicts across the country. According to the 2007 report by the UN Committee on the Elimination of Racial Discrimination (CERD) (and reiterated in its concluding observations issued in August 2009 following an examination of Ethiopia's report to the Committee), government responses to these conflicts appear to involve human rights violations that target specific ethnic groups.[37] The use of the federal police and army to forcibly put down protests related to specific ethnic demands has disproportionately affected certain groups like the Oromo, whose members are singled out in security operations. Similar patterns arise in other regional states, as in Gambella and Southern Nations, Nationalities, and People's Region, where government forces have relied on coercion to pacify areas where groups have mobilized to demand greater political representation or access to economic resources.

EPRDF leaders recognize the need to meet growing demands for ethnic representation if Ethiopia is to enjoy sustained political stability. They have implemented a legal framework that is specifically designed to recognize the political rights of the country's more than 80 ethnic groups. Indeed, the 1994 constitution treats ethnic groups, not individuals, as the essential constituents of the country. All groups, regardless of size, are constitutionally empowered to use their language, be represented at state and federal levels, and seek to self-determination, including the right to secession.

Two federal institutions deal with questions relating to the recognition of ethnic rights and resolving cases of conflict and discrimination. The House of Federation is responsible for adjudicating the rights of ethnic groups by specifying institutional solutions to inter-group or group-state disputes. For example, in 2004 the House of Federation ordered a referendum to be carried out in districts where the Oromo-Somali boundary had been contested by the titular ethnic groups of those regional states. The House of Federation can order the federal government to intervene in any state where conflict threatens peace and stability. In practice, however, it limits its mediation to regions where the risk to central authority is relatively low.[38] The institution that is most directly involved in protecting the rights of groups as well as peace among them is the Ministry of Federal Affairs (MoFA). Tasked with resolving conflicts that arise between and within the country's regional states, MoFA manages federal intervention, including the deployment of the federal police, in communal conflicts. In recent years, MoFA has sought to implement early-warning mechanisms and promote grassroots peace-building initiatives to mitigate conflicts before they escalate into violence. Similarly, regional states like Oromia and Southern Nations have also developed their own bureaus for ameliorating conflicts.

The 1994 constitution guarantees freedom of religion and the separation of church and state. The government nevertheless closely regulates the activities of religious organizations, which must register with the Ministry of Justice to gain legal standing and are prohibited from forming political parties. All religious organizations are equal before the law, but the Ethiopian Orthodox Church and the Ethiopian Islamic Affairs Supreme Council appear to have greater political influence because they represent the largest religious traditions. With a population largely divided into Ethiopian Orthodox (43.5 percent), Muslim (33.9 percent), and various Protestant traditions (18.6 percent), the government has actively sought to prevent the rise of sectarian conflict through peace-building programs managed by the MoFA. In addition, a 2008 law makes it a crime to incite religious hatred and permits the criminal prosecution of religious defamation. While there is little overt conflict between religious groups, in localities where members of different faiths compete for adherents and resources, Protestant and Muslim leaders complain that local officials unfairly block access to the land needed for religious buildings.[39]

Protection for the freedoms of association and assembly, though constitutionally guaranteed, has been weakened in recent years by government practice

and legal statute. There are clear procedures for securing permission to hold public demonstrations, but the government has continued to suppress the right of citizens to protest either by stalling the authorization or using excessive force to disperse them. Students, for example, have been subjected to indiscriminate detention even when demonstrating peacefully.[40] The government also arbitrarily denies permits for demonstrations unless they were organized by the ruling party or non-political groups on non-political issues. More generally, the government attempts to discourage public demonstrations by arresting the leaders of organizations, intimidating their members, and imposing additional legal restrictions on their activities. Even on the rare occasion when a demonstration is allowed, the government often chooses to limit the number of people participating, as occurred during the UDJ demonstration on Birtukan Midekssa's 2008 re-arrest.

The 1994 constitution is explicit in recognizing the right of Ethiopians to form and join labor unions. The 2003 Labor Proclamation further outlines the regulation of union organization and participation.[41] The country's principal labor organization is the Confederation of Ethiopian Trade Unions (CETU), a national umbrella organization linked to the ruling party. Although only a small part of the working-age population participates in unions, the government actively intervenes in their activities, undermining organizational autonomy and ensuring compliance with ruling party objectives.[42] The Ethiopian Teachers' Association (ETA), among the country's oldest trade unions, was subjected to persistent government harassment once the organization, in the 1990s, criticized education reforms and threatened to strike over compensation for teachers. The government has since responded by jailing the organization's leaders, freezing its assets, and revoking its registration. The ETA's dismantling was finalized in June 2008, when the Supreme Court upheld a lower court decision that transferred the organization's name and assets to a government-controlled counterpart that had been founded to replace it.

RULE OF LAW	**1.98**
INDEPENDENT JUDICIARY	2.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.00
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.25
PROTECTION OF PROPERTY RIGHTS	1.67

Ethiopia's 1994 constitution provides for the independence of the judiciary and guarantees universal access to the courts. The judicial system mirrors the country's federal organization, with courts organized at the local, regional, and federal levels. As part of the broader effort to improve public sector governance, the government has undertaken a donor-supported Justice System Reform Program (JSRP) to strengthen the judiciary since 2004. According to the World

Bank, the JSRP has already helped to improve the performance of the judiciary through the professional training of over 22,000 judges and 2,000 support staff along with the introduction of a modern case management system within the federal courts.[43]

Despite the progress made in improving the dispensation of justice, the rule of law in Ethiopia continues to be weakened by limited institutional capacity. The constitution guarantees the right to independent counsel and a timely public hearing, but the state lacks competent personnel who can adjudicate, prosecute, and administer the law in a consistent manner. The 120 federal court judges in Addis Ababa and Dire Dawa constitute the bulk of the entire federal judiciary.[44] Most Ethiopians must rely on so-called "social courts" organized at the kebele or community level and recognized under state, rather than federal, law. Supervised by locally appointed nonprofessional judges, these courts adjudicate property disputes and other small claims. Ethiopians living in rural areas also rely on customary forms of justice provided by councils of elders and customary courts, including Sharia courts for Muslims in cases of family or religious disputes. These local courts and traditional mechanisms often issue decisions that conflict with constitutional guarantees, particularly in cases involving gender issues. Most impoverished Ethiopians simply lack the resources to exercise their right to appeal to higher courts—which are increasingly seen as susceptible to corruption.[45] As a result, relatively few Ethiopians trust their inefficient and overburdened judicial system. According to a July 2007 Gallup poll, only about one-quarter of respondents expressed confidence in the courts, a rate half the regional average.[46]

The rule of law in Ethiopia is further undermined by the EPRDF's political monopoly. The House of Federation has the authority to settle constitutional questions, while the HPR confirms nominations of the president and vice president of the Supreme Court, as well as all federal judges. But because the EPRDF controls both chambers, the parliament is unlikely to support decisions or appoint justices not endorsed by the party's executive committee.[47] The government regularly intervenes in the application of the law—by prosecutors, judges, and the police—in politically sensitive cases. In certain cases, state agents ignore court orders regarding the release or treatment of defendants, as occurred when a federal court ruled that holding Birtukan Mideksa in solitary confinement violated her constitutional rights. This subversion of judicial independence to political interests occurs at all levels of government. Reports suggest that judges who do not conform to those interests are disciplined or dismissed, and several have fled the country since 2005.[48]

Civilian oversight of the security forces is enshrined in the 1994 constitution, which recognizes the prime minister as commander-in-chief of the armed forces and requires a civilian minister of defense. Since taking power in 1991, the EPRDF has sought to modernize and professionalize the Ethiopian National Defense Forces, transforming its former guerrilla army into a national institution. Civilian control of the military is assured, in part, by the dominance of the

prime minister's fellow ethnic Tigrayans in the military's command structure.[49] Nevertheless, the government appears to be concerned by the potential threat posed by disaffected officers and soldiers from other ethnic groups. In 2009, the government arrested some 40 current and former members of the military, including a former air force general, on charges of allegedly planning to carry out assassinations as part of a plot organized by Ginbot 7, a group led by exiled opposition leader Berhanu Nega.[50] While the armed forces are celebrated during periods of national emergency, as occurred during the border war with Eritrea, the abuse of civilians by security personnel in parts of Oromia and Somali regional states undermines their popular support. Lack of accountability for such abuses of power may help to explain why the July 2007 Gallup poll found that only 46 percent of Ethiopian respondents express confidence in their armed forces, a far lower rate than the nearly 70 percent average found in the other African countries surveyed.[51]

The 1994 constitution guarantees Ethiopian citizens the right to own private property, but restricts the ownership of rural and urban land to the state. Land is treated as the common property of the ethnic groups that constitute the country, and therefore cannot be sold. The constitution guarantees farmers and pastoralists access to land, but such rights are weakly enforced. Rather than privatize land, as lobbied for by some foreign donor and domestic groups, the government has worked to implement a large-scale registration and certification program to provide citizens in rural areas with greater land tenure security as well as flexibility in transferring holdings.[52] The government has also taken steps to decentralize and streamline procedures for transferring property. The judicial system, however, lacks both the capacity to properly enforce property rights and the resources to resist corruption.[53] Particularly controversial in this largely agrarian economy is the government's strategy of luring foreign investors through long-term land leases for the cultivation of agricultural exports. Ethiopia is not self-sufficient in food production, and there is concern regarding the extent to which domestic farmers will be displaced by the entry of foreign-controlled agricultural firms and how the revenue from such investment will be shared between federal and regional states.[54]

ANTICORRUPTION AND TRANSPARENCY 2.30

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.60
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	2.00
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.25
GOVERNMENTAL TRANSPARENCY	2.33

Ethiopia has the necessary legal and administrative mechanisms to combat corruption. The criminal code updated in 2004 and the anticorruption statutes revised in 2005 explicitly prohibit the abuse of power, including the offering and receiving of bribes and the use of public resources for private gain.[55]

Relevant legislation specifies clear penalties that range from the imposition of fines and the confiscation of property to prison terms. The Federal Ethics and Anti-Corruption Commission (FEACC), whose members are appointed by the government, serves as the principal institution for combating graft in the public and private sectors. It was established by parliament as an independent agency in 2001 to investigate and prosecute acts of corruption as well as to conduct education campaigns for civil servants and the public at large. The FEACC maintains a toll-free phone number where complaints can be registered anonymously. The FEACC reports that, between 2009 and 2010, it won 85 court cases that led to the conviction of 213 individuals, confiscated thousands of square meters of land and hundreds of thousands of dollars, and initiated investigations into 405 of the 2,915 complaints filed.[56]

Nonetheless, corruption continues to be perceived as a pervasive problem. Ethiopia's score on Transparency International's 2010 Corruption Perceptions Index was 2.7 on a 10-point scale, placing it 116 out of 178 countries measured.[57] In 2008, Transparency's Ethiopia chapter conducted a survey in Addis Ababa to gather information on citizens' confidence in public institutions as well as their perception of public institutions' effectiveness in combating corruption.[58] Fifty-five percent of respondents claimed that corruption had worsened over the previous two years, though a majority believed it would improve in the next two years. Respondents reported having the lowest levels of trust, on average, in the government authorities running kebeles, the neighborhood councils through which many public services are delivered. Respondents paid the highest bribes, on average, for transactions involving driver's licenses, property registration, and judicial, and tax records.

While citizens decry corruption at all levels of government, many do not trust the government's anticorruption efforts to be free from political manipulation. According to the 2008 Transparency survey, respondents have relatively little trust in the courts, the federal police, and the FEACC. In the same year that the survey was conducted, Addis Ababa city officials at various levels were implicated in unlawful acquisition of state lands and properties. These instances of corruption were not uncovered by the FEACC, but confessed to by the perpetrators themselves while participating in one of the EPRDF's self-evaluation meetings known as *gimgema*. The EPRDF uses these periodic gimgema sessions to enforce accountability among its members by assessing the work of individual party officials and civil servants. As a result of such evaluations, individuals may be removed from their positions, though it remains unclear whether they also face criminal prosecution.[59]

Not only are FEACC board members appointed by the EPRDF, in some cases they are members of the party, leaving the commission's ability to conduct investigations and pursue prosecutions without political interference in doubt. The commission targets low-level officials or those who have fallen out with the regime while failing to pursue offenses committed by high-level ruling party members. The June 2007 corruption conviction of Siye Abreha, a

former defense minister who fell out with the regime, conforms to the perception of politicized prosecutions.[60] By contrast, other EPRDF central committee members who have been implicated in acts of corruption may be temporarily removed from party posts, but not prosecuted.[61] Moreover, given the restricted conditions in which the media operate, particularly the Media Law's defamation clause, journalists rarely undertake the kind of investigative reporting that would help shed light on patterns of corruption.

Corruption remains especially problematic in public procurement, loan financing, land distribution, public utilities, and customs administration—all critical areas for the survival of business in a highly regulated economy like Ethiopia's.[62] The state's active intervention in the economy affords low-level officials the discretion to solicit bribes, while offering high-level officials the opportunity to enrich themselves by colluding with economic interests to evade regulation or commit fraud. Several public officials have been prosecuted by the FEACC on charges of corruption, including managers within the Privatization and Public Development Enterprise Agency, the Ethiopian Telecommunications Corporation, and the Ethiopian Revenues and Customs Authority. Since 2007, the National Bank of Ethiopia, the country's central bank, has been tarred by a series of embezzlement scandals that raise questions about its independence and management.[63] The government has responded by seeking to impose greater transparency on its own operations as well as the wealth of public officials. A new public procurement law was enacted in September 2009 that established an autonomous agency to manage open bidding as well as to administer public properties. In an additional move to improve transparency, the parliament adopted a law in March 2010 requiring public officials and their relatives to register their assets and properties.[64]

The opacity associated with the state's control of the economy, while creating opportunities for corruption, also benefits the EPRDF politically. Businessmen linked to the ruling party, government officials and military officers–turned–entrepreneurs, and entities directly linked to the ruling party appear to gain unfair advantage in securing economic opportunities.[65] The Endowment Fund for the Rehabilitation of Tigray (EFFORT), a consortium of companies headed by members of the ruling party, operates over 20 businesses across a range of sectors, including construction, finance, manufacturing, and transport. Such economic links not only allow EPRDF allies to gain control of scarce resources, but also permit its members to amass and channel resources that may later be deployed on behalf of the party itself.

The EPRDF has taken an important step in meeting its obligation to provide citizens with information through the July 2008 Mass Media and Freedom of Information Proclamation. While the law imposed new restrictions on journalists, it also included unprecedented provisions to guarantee citizens the right to access information of public interest from government agencies. The law, however, grants officials considerable discretion in determining whether information can be withheld due to its sensitivity. Appeals of such decisions must

first work their way through the concerned government agency before being transferred to the Ethiopian Institution of the Ombudsman (EIO) and then the courts. The EIO is also tasked with coordinating the federal government's implementation of the law, which has been delayed due to a lack of capacity and training across agencies.

The EPRDF has taken steps to improve the country's fiscal governance through measures aimed at enhancing accountability in the budget process.[66] These auditing and reporting measures have been motivated by the government's commitment to expand the provision of social services under its Plan for Accelerated and Sustained Development to End Poverty (PASDEP). The measures also reflect foreign donors' reporting requirements for the aid provided in both direct budgetary support and the Protection of Basic Services (PBS) program, which redirected funds to social service spending by wereda or district authorities following an aid suspension in the aftermath of the 2005 national elections. Although the accountability and transparency of the budget-making process has improved appreciably, the government's own audit capacity remains underdeveloped and civil society's role remains weak, particularly at subnational levels. District budgets are now posted at public offices, but most citizens lack the education needed to scrutinize those figures. Moreover, the ERPDF's political monopoly undermines the HPR's oversight role in the budget process. Indeed, the government has often refused to implement recommendations put forward by the federal auditor general.[67] However, following controversies associated with unexplained budgetary expenditures,[68] the government in 2010 amended the law governing the federal auditor general, reestablishing the office as an autonomous entity and fixing the auditor's tenure for a six-year term.[69]

RECOMMENDATIONS

- The EPRDF should establish a formal negotiation model with opposition parties over the composition of the National Electoral Board of Ethiopia to build confidence in the integrity of future elections.
- The law regulating civil society organizations should be revised, particularly provisions that restrict operations on the basis of funding sources, to enable them to play a greater role in promoting good governance, conflict resolution, and the protection of human rights.
- Existing legal restrictions on the media, including punitive defamation clauses, should be revoked.
- The training of judicial officials and law-enforcement personnel, particularly at the local and regional levels, should be accelerated and improved.
- Additional measures should be taken to increase the organizational autonomy and transparency of the Federal Ethics and Anti-Corruption Commission (FEACC), including the appointment of board members through broad consultation with representatives of civil society.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

1 Under the EPRDF, between 1995 and 2009, Ethiopia attained an average annual economic growth rate of 7%, which is nearly two-thirds higher than the 4% regional average for all Sub-Saharan African countries.

2 Parliamentary representation occurs largely through ethnicity. Candidates for seats in the lower house of parliament, the House of Peoples' Representatives, are required to speak the language from the region they seek to represent. Members of the upper house of parliament, the House of Federation, are elected by State Councils to serve as representatives of their respective ethnic groups and are selected in proportion to their population.

3 Article 39 of the constitution grants Ethiopia's regions the right to secede.

4 The EPRDF is a coalition of parties that are supposed to represent the country's principal ethnic groups: the Tigray People's Liberation Front (TPLF), the Amhara National Democratic Movement (ANDM), the Oromo People's Democratic Organization (OPDO), and the Southern Ethiopia People's Democratic Movement (SEPDM). The EPRDF's affiliate parties, which represent the peripheral regions of the country, are the Afar National Democratic Party (ANDP), the Benishangul-Gumuz People's Democratic Party (BGPDP), the Gambela People's Unity Democratic Movement (GPUDM), the Harari National League (HNL), and the Somali People's Democratic Party (SPDP).

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GREECE

CAPITAL: Athens
POPULATION: 11.3 million
GNI PER CAPITA (PPP): $28,800

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	N/A	5.99
CIVIL LIBERTIES:	N/A	5.86
RULE OF LAW:	N/A	5.90
ANTICORRUPTION AND TRANSPARENCY:	N/A	5.02

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Dr. Dimitri A. Sotiropoulos

INTRODUCTION

Greece became front page news in 2010 after an economic crisis erupted when the country proved unable to raise sufficient funds to refinance its mounting debts. Greece has never been rich in natural resources nor able to develop heavy industry, but its economy has benefited from political stability since the 1974 transition to democracy as well as economic growth in the late 1990s and the first half of the 2000s. A relatively old member state of the European Union (EU), which it joined in 1981, Greece did not engage in much-needed structural economic reforms and public sector reforms in order to sustain economic prosperity on a par with other EU member states.

Greece also caught attention in 2010 because of the extent of social mobilization against government austerity measures. In a May 2010 demonstration in downtown Athens, three bank employees were killed after a petrol bomb was thrown inside their bank office, which caught fire. In December 2010, demonstrators physically attacked a former minister of the previous center-right government (2007–2009). Other similar, if not as violent, reactions and recurring general strikes indicate that at least part of the Greek public is extremely distrustful of political and economic institutions.

The Greek economy is based on agriculture, construction, tourism, banking, and other services, which have contributed to rising living standards

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since the early 1980s. Greece is a member of the Organization for Economic Co-operation and Development (OECD) and is among the 30 richest countries in the world. However, long-term structural problems, the lack of access to or interest in innovation and new technologies, a disconnect between education and employment, and the bloated state sector have made Greece a laggard in terms of economic competitiveness.

Greece's recent history includes short-lived dictatorships (1925–1926, 1936–1940, and 1967–1974) and a civil war between royalists/conservatives and communists (1946–1949) followed by a democratic but strongly anti-communist parliamentary regime that restricted the political freedoms of left-wing voters (1949–1967). In 1967, a group of right-wing colonels installed a military dictatorship, which fell in 1974 after the colonels staged a short-lived coup d'état against the democratically-elected government of the Republic of Cyprus. In the midst of a security crisis with Turkey, which had invaded the island, the junta transferred power to a civilian government under Constantine Karamanlis. He founded a center-right party (New Democracy, ND), won the November 1974 elections, and ruled until 1981.

Andreas Papandreou, the populist/socialist leader of the Panhellenic Socialist Movement (PASOK) and de facto leader of growing anti-right opposition, won the 1981 elections and governed until 1989 and again in 1993–1996, after a brief, center-right government interlude. The socialists remained in power from 1996 to 2004 under the leadership of Costas Simitis, a pro-European social democrat.

The ND came back to power in 2004–2009, this time led by Costas Karamanlis, nephew of the founder of the postauthoritarian Greek democracy. While the Karamanlis governments pursued some necessary reforms, for example concerning property rights and university education, they proved unable to reform the economy. Moreover, in 2007–2009 ND lost control of the fiscal management of the state and let unemployment rise and the negative balance of payments worsen. Karamanlis lost the October 2009 election to George Papandreou, the leader of PASOK and son of the party's founder.

Greece has been in grave economic crisis since the end of 2009. Greece's deficit soared to well over 12 percent of its gross domestic product and more than four times the official Eurozone limit. The government's efforts to address the crisis, including freezing public sector salaries and bonuses and increasing taxes, have spurred massive national antigovernment and anti-austerity strikes and protests.

In addition to the constraints of the economic crisis, Greece's political landscape is characterized by enduring patterns of patronage, polarization between the center-right and the center-left parties, and a correspondingly polarized political culture.

Until 2010, when the new PASOK government drastically cut recruitment to public sector jobs because of the crisis, the top echelons of state bureaucracy, including management positions in state-owned enterprises, were heavily

politicized and were affected by every government turnover. Civic associations have low mobilizing capacities, nongovernmental organizations (NGOs) find difficulties raising funds and attracting members, and political parties strongly influence labor, farmers', and students' unions. All this has led to a weak state apparatus, unable to implement laws and collect taxes; a weak civil society, unable to press the state and parties to proceed with reforms; and a frail economy, which is not reliably steered by the state.

ACCOUNTABILITY AND PUBLIC VOICE 5.99

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	6.60
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	5.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	6.00

Greece is a parliamentary democracy with a strong executive comprised of the prime minister and government. Parliamentary elections take place regularly and are free and fair, with universal and equal suffrage. Electoral laws are effectively implemented and ballots are honestly tabulated without fraud or intimidation. Candidates occasionally raise minor electoral complaints or call for recounts. For example, in the European Parliament elections of June 2009 two small parties, the Greens and the ultra-nationalist Golden Dawn, complained that their ballots were not distributed to voters in some polling stations. Generally, however, the results of elections are not disputed.

Campaigning opportunities are formally equal for all competing parties, but the cost of campaigning, particularly through TV advertisements, is prohibitive for small parties. Parties are obliged to publish their balance sheets annually, candidates are prohibited from passing a certain threshold of campaign spending, and a parliamentary committee is entitled to review campaign costs and sanction individual trespassers. In practice, however, this committee has never sanctioned anyone, even though it is commonly assumed that private businesses fund selected ND and PASOK candidates in excess of the limit. Until 2009 it was common for the party in government to use state money to hire temporary government employees and advertise policy successes in order to attract votes.

The Greek government was highly centralized until 1994, when the first prefectural elections took place. Local government and prefectural authorities used to be largely dependent on the central government for funds and personnel. EU funding to the subnational level has contributed to the emancipation of subnational authorities from the Athens-based central services.

Legislation enacted in 2010 empowered the country's regional authorities and the first-ever regional elections were held in November 2010, coinciding with local government elections. The government itself and parties of the opposition considered these elections a referendum on the ruling socialist party's policies. Relatively low voter turnout notwithstanding,

government-supported candidates prevailed in 8 of the 13 regions. In large cities, government-nominated or -affiliated mayoral candidates, such as those in Athens, Thessaloniki, Volos, and Herakleion, also won.

Parliament elects the President of the Republic, who has weak powers. The 300-seat unicameral parliament is controlled by the government. Since the 1974 transition to democracy the Greek party system and electoral legislation have favored the formation of single-party majority governments. The electoral system is only nominally based on proportional representation. Specifically, only 260 of the 300 seats are allocated to parties based on their nationwide performance; the system allocates to the front-running party the remaining 40 seats to secure a solid majority government. Any party that reaches the threshold of 3 percent of the national vote is represented in parliament.

In 1974–2010, with the exception of a brief 10-month interlude of coalition cabinets in 1989–1990, all governments were either ND or PASOK party governments. As a result, for almost four decades (1974–2010), governments have been able to pass legislation but also to politicize the public administration and handle domestic and foreign affairs, almost unopposed. The two main parties represent competing policy perspectives, but have converged ideologically on some policy issues, including foreign policy and privatization.

In the 2007 elections, ND won 152 of the 300 seats. PASOK controlled 92, the Communist Party 22, the nationalist/populist LAOS 14, and the Coalition of the Left 10. In the 2009 elections, PASOK won 160 of the 300 seats. ND won 91 seats, the Communist Party 21, LAOS 15, and the Coalition of the Left 13.

The parliament is not an effective check on executive power because of the weakness of the opposition and of parliamentary committees. There is a tradition of very strong party discipline, resulting in the expulsion of dissidents. Moreover, members of parliament lack adequate resources and staff to meaningfully participate in the legislative process. The government initiates legislation and draft bills are rarely rejected by Parliament, as governments rely on solid parliamentary majorities. The Higher Council for Administrative Personnel Selection (ASEP) administers civil service entrance examinations, and employment in ministries and other public bodies is supposed to be on the basis of open competition and merit. The civil service is not regarded as competent by the general population or informed observers, however; its notoriously bloated and politicized nature has played a prominent role in coverage of the recent financial crisis. Civil servants cannot be dismissed by an incoming government, but the selection and promotion of civil servants is in practice almost always permeated by party patronage. The party in power can heavily influence the composition of service councils responsible for promotions in the civil service hierarchy. In 2010 there were 768,000 civil servants (about 17 percent of the labor force)[1] and about 300,000 state-owned enterprise employees. The longstanding practice of appointing political supporters to fixed-term or

project-based jobs as a form of patronage ended in 2009, when PASOK eliminated such openings because of the economic crisis.

Civil society operates freely without legal impediments, harassment, or onerous registration requirements and domestic and foreign donors are not subject to state pressures with regard to their contributions. However, civic associations do not attract adequate members or funds, and the state does not consider civic associations to be its natural interlocutors in the policymaking process. Citizens understand that the only organizations shaping policy are political parties, and divisions within civil society—e.g., within the labor or the student movement—mirror national-level divisions between political parties. Legal provisions require policy consultation with civic groups, for instance on environmental issues and consumer protection, but such provisions are rarely implemented and relevant groups rarely consulted.

Since the 1974 transition to democracy, the Greek media have operated in an environment in which basic freedom of expression is well respected. The state does not pressure privately owned media but can potentially influence views presented because it subsidizes the cost of paper for printed media and allocates state-paid advertisements. However, even subsidized media are free to express opposition to government policies, as they did during the recent period of austerity measures taken by the government.

Despite a generally free media environment, the first journalist to be killed in 20 years was murdered in July 2010. Sokratis Giolias, a blogger who had recently contributed to an anonymous website covering political corruption and scandals, was shot dead outside of his Athens home by four assassins disguised as security guards. The website often carried undocumented stories in a yellow press style of reporting. The blogger's identity was revealed after his death, when other bloggers claimed that he was to publish a report on political corruption. No one had been apprehended for his murder at the end of 2010.

There are 20 daily newspapers with nationwide circulation. Political views in the daily press range from the communist left to the far right. There are three state-owned and seven private TV channels. The government appoints the management and board of directors of the state-owned TV channels; until the mid-1990s this meant that the government enjoyed favorable coverage, but since the 2000s the coverage of political opinions by state TV channels has been balanced, and state funding of these channels does not limit access by opposition parties and civic critics.

Journalists and commentators who scrutinize government officials and policies rarely face libel or other legal harassment. Government intimidation and attacks are uncommon, although police were reportedly hostile to journalists covering the recent antigovernment demonstrations. According to some newspapers, such harassment included the use of physical violence and forcing journalists to delete pictures of the protests. The government does not censor print, broadcast, or web-based media, and internet access is generally

unrestricted, although Greek officials blocked Google Maps' "street view" function in May 2009.[2]

CIVIL LIBERTIES 5.86

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	5.38
GENDER EQUITY	6.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	5.50
FREEDOM OF CONSCIENCE AND BELIEF	5.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	6.75

Individual and collective rights are protected in Greece. However, protection from physical abuse by officers of the state is uneven for irregular immigrants, asylum seekers, and Roma.[3] Police have also used excessive measures, such as very large quantities of tear gas, against citizen demonstrations. When police abuses occur, perpetrators are rarely punished, not so much due to a cover up by the bureaucracy as because of the dysfunctional justice system (for example, long delays in the distribution of justice, corruption, and a plethora of regulations that, if adroitly exploited by the defense, can lead to acquittal). An extreme case of police brutality was the murder of 15-year-old Alexandros Grigoropoulos, who in early December 2008 was shot dead by a policeman with whom the victim and his friends had exchanged insults. The incident provoked outrage among students, unions, human rights groups, and anarchists. The ensuing weeks of violent demonstrations and street blockages in Athens and Thessaloniki lasted until Christmas and shook the country.[4] In 2010, the policeman involved in the case was sentenced to life imprisonment.

Prisons suffer from overcrowding (in a few cases the number of inmates exceeds capacity by 50 percent). In 2003–2010 the number of prison inmates rose by 26 percent and the number of prison detainees by 41 percent (excluding detainees who are irregular immigrants and kept in detention centers).[5] International organizations, such as the Council of Europe, have publicly criticized the Greek government for tolerating unacceptable living conditions in prisons and for the degrading treatment of prisoners.[6] Even before the economic crisis that erupted in 2009 the Greek state did not possess adequate resources to manage this problem. In November 2008, 7,000 prison inmates went on an 18-day hunger strike; 9,000 inmates participated in another in December 2010. The state lacks the resources to upgrade prisons and in December 2008 decriminalized select acts in order to release some prisoners.

The state refrains from attacking activists and from arbitrary arrests. According to the constitution, detention without trial can last up to 18 months, and it is not uncommon for pre-trial detention to reach that time limit, after which detainees are released. This is not the case, however, for foreigners who have unlawfully entered the country; immigrants are detained between 10 days

and 6 months. Immigrants from Iraq, Iran, Syria, and Georgia may even be held longer in an effort to convince Turkey (the borders of which they cross to enter Greece) to take them back.

The increase in the numbers of people detained and imprisoned is associated not only with the influx of irregular immigrants, which dates back to the fall of communism in Eastern Europe in 1989, but also to a rise in crime in 2000–2008. The number of serious crimes reported to the police jumped from 45 per 100,000 people in 2000 to 67 in 2008. However, violent crimes did not increase as dramatically: in the same time span there was only an 11 percent increase in instances of bodily harm and a 7 percent increase in the number of murders.[7] Greek officials have also attempted to suppress this increase in crime with police officer deployments and motorbike patrols.

Greece is one of the major human trafficking channels from South Asia, Sub-Saharan Africa, and Eastern Europe towards Western Europe, particularly for women and children. A 2010 U.S. State Department report ranked Greece among the countries least able to meet the minimum standards to eliminate trafficking. Greece has made some progress, however, particularly with regard to prosecuting labor and sex trafficking offenses and child crime prevention.[8]

Over the last 30 years the state was unable to protect the highest ranks of the Greek elite from violent attacks. Until the early 2000s, small domestic anticapitalist terrorist organizations, such as the Revolutionary Organization 17th November and the Revolutionary Popular Struggle, targeted high-profile politicians, businesspeople, and Western diplomats. Gradually, since the early 2000s, security forces have succeeded in arresting the members of these organizations, most of whom are now imprisoned. A similar organization under the name of Conspiracy of Fire Nuclei was active in 2009–2010, alongside the Sect of Revolutionaries. In June 2010 a high-ranking police officer, who served as chief of staff of the Greek minister of public order, was killed when a parcel bomb exploded in his hands.

In April 2010, the police arrested the leader and almost all members of the terrorist organization Revolutionary Popular Struggle. In winter 2010 the Greek police caught several of the Conspiracy group's members, who were in the process of mailing parcel bombs to top politicians in other European countries.[9] From January to June 2010 there were 10 bomb attacks, usually late at night. Terrorists used makeshift bombs intended to cause damage to government buildings, police centers, and private bank branches. Further bomb attacks took place in fall 2010, including one that blasted the facade of an Athens court on December 30, 2010. Terrorists always call in advance in order to have the affected buildings evacuated by the police. Parties of the left and the right vehemently reject such forms of political violence, but there is a rising political culture of violent challenges posed to the state from below.

When their rights are violated Greek citizens can resort to the courts or other legal institutions, including various services or ministry hotlines. The ombudsman is an independent public agency that intervenes between citizens and

the public administration. The ombudsman can make recommendations to the administration and alert the prosecutor's office of criminal law violations, but has no prosecutorial powers.

For at least 20 years, large numbers of people have tried to enter the EU through countries at the European periphery, including Greece. The actual number of persons who have sought to enter Greece illegally is unknown, but the total numbers apprehended at the country's borders by police and coast guard forces are telling: in 2009, 126,000 people were apprehended, while in the first nine months of 2010, the corresponding number was 96,000.[10] In a country with a population of 11 million, there are presently more than 1 million immigrants, among whom about 350,000 to 450,000 are estimated to be without legal papers.[11] Immigrants who enter Greece irregularly normally try to continue their journey, aiming to reach other EU member states. The EU assigned some resources and staff in the fall of 2010 to help Greek authorities monitor the country's land and sea borders, but both Greece and the EU lack the administrative capacity and political resolve to adequately undertake this task.

There are frequent instances of mistreatment of and discrimination against minorities, including the Roma, immigrants, and asylum seekers. Immigrants in particular are vulnerable to mistreatment by authorities and to violent attacks by far-right extremists. Mistreatment of immigrants takes several forms, including physical abuse and abnormally long detention periods. In June 2007, a video was leaked showing police officers hitting two detained immigrants and forcing them to hit each other. The government opened a judicial inquiry against the involved officers and dismissed the station's chief officer from his post. In October 2009, a Pakistani immigrant died in his home after being released from police custody; his relatives claimed that the police tortured him and that he succumbed to internal wounds. Detention centers often have appalling living conditions and lack sufficient medical and social services, particularly for unaccompanied minors.[12]

Greece has been criticized by international organizations and NGOs for its unusually stringent asylum policy. For example, in 2008, no Afghans seeking asylum received it, despite the ongoing conflict there.[13] Moreover, there is a huge backlog of asylum petitions on appeal: about 45,000 such cases were pending at the end of 2010.

The state generally protects the civil and political rights of women equally well with those of men, but it has proven unable to address the problem of domestic violence effectively. There are state, municipal, and NGO services available to women who have fallen victim of such violence.[14] The General Secretariat for Gender Equality, an independent government agency, has trained police to work with victims of domestic violence and provides victims with counseling and assistance.

In 2000, the EU adopted directives for eliminating gender discrimination in the workplace, and there have since been improvements in adapting domestic legislation to EU standards of nondiscrimination, law enforcement, and

education. The General Secretariat of Gender Equality has been pivotal in this work. Women earn an average of 80 percent of men's earnings, and women's unemployment is much higher (16.1 percent for women as compared to 9.7 percent for men in the third trimester of 2010).[15] In Western Thrace, Muslim women face official discrimination, as among that minority Sharia law is implemented by muftis in matters of family and inheritance law. Their decisions are sanctioned by Greek courts, which rarely dispute the muftis' judgments.

Estimates about the size of the Roma community in Greece range between 110,000 and 500,000 people.[16] The central government has made efforts to integrate Roma communities into broader society, primarily through educational and healthcare programs, but efforts have been inconsistent. For instance, according to the NGO Greek Helsinki Monitor and the Greek chapter of Amnesty International, from June 2007 to January 2008 a group of about 100 Romany families, living in shacks made of cardboard, plastic, and tin, were forcibly evicted four times from different neighborhoods of western Athens.[17]

Acquiring Greek citizenship, which is based on having parents who are citizens rather than on place of birth, remains extremely difficult. However, in March 2010, the socialist government passed a law allowing permanent residents of Greece to vote in municipal elections and granting immigrant children born in Greece the opportunity to acquire citizenship. In the November 2010 municipal elections, about 13,000 immigrants voted. Despite some cumbersome processes, this policy shift is a step forward.

The state does not recognize special status for ethnic and linguistic minorities, such as the Turkish- and Pomak-speaking groups residing in northeastern Greece close to the border with Turkey. Greece does not recognize a collective but only an individual right to self-identification, and Greek courts have rejected the claims of associations of Greeks who wish to collectively identify themselves as Turkish or Macedonian. On the other hand, the rights of the Muslim minority of Thrace are protected under the clauses of the Treaty of Lausanne, signed between Greece and Turkey in 1923 after the end of the war between the two countries. Greek authorities face criticism for the practice of appointing the religious leaders (muftis) of the Muslim minority.

People with disabilities face discrimination in the form of inaccessibility, despite the existence of comprehensive accessibility legislation since 2000. They can rarely use public buses and are mostly unemployed. State-run schools often neglect the special needs of disabled children.[18] Such children face social exclusion, have difficulties accessing school buildings, cannot count on specialized social care, and may be forced to leave school altogether owing to the lack of trained personnel able to work with them in school classrooms.

Freedom of religion is well protected, even though the constitution grants the Greek Orthodox Church preeminent status. The vast majority of Greeks (97 percent) are Christian Orthodox. There are small but historically important minorities of Protestants and Catholics, the latter mostly residing on a few islands of the Aegean. The Greek Orthodox Church's personnel are on the state

payroll and the sees of Christian Orthodox metropolitan bishops enjoy the legal status of a public body, equivalent to that of state hospitals or state universities.

In the past, metropolitan bishops were asked to give their consent before a building license was given by town planning authorities for a new house of worship of a religion or dogma other than Christian Orthodox. Under the socialist government that came to power in 2009, this requirement was abolished; bishops are now consulted on the matter without enjoying decision-making powers. However, bureaucratic hurdles remain and have a negative impact on the religious life of Muslim migrants who live outside Thrace.

While in Thrace there are approximately 300 mosques, serving about 100,000 Muslims, there is still no official mosque for the approximately 200,000 to 300,000 Muslim residents of Athens and Thessaloniki. As result, Muslims in these areas worship in converted apartments or warehouses. The Greek Orthodox Church, the populist-nationalist party LAOS, and the nationalist media have reacted strongly to the prospect of an official mosque in Athens for which the PASOK government allocated space in 2011 in a converted naval base in Athens.

Freedoms of association and assembly are guaranteed and protected. The right to collective protest is freely exercised, including sit-ins in university buildings and the headquarters of state-owned enterprises and blocking of major thoroughfares. For example, a citizens' movement by the name of "Can't pay, won't pay" has periodically used force to close down toll booths on national highways protesting the rise of tolls. Also, in the 12-month period between when Greece resorted to the financial rescue mechanism (May 2010) and April 2011, the center of Athens was closed to traffic at least one to two days per week because of protests against wage cuts, transfers, or dismissals, mostly by public sector employees. Often such protests were hijacked by more violent elements among the demonstrators or by left-wing groups that attacked shops or banks. Police rarely intervened on such occasions, unless social protest escalated to violence that put people at risk.

Trade unions have ample institutional space to mobilize and influence decision making. Public sector labor unions have an organizational density of 70 or 80 percent, although private sector unions have an average density of only 15 percent. Negotiations with business representatives on compensation and labor relations take place every two years, under the monitoring of the central government. Certain unions of state-owned enterprises have been strong enough to block recurrent attempts at pension reform (eventually voted by PASOK in 2010) and keep average annual salaries for their members above the salary levels of civil servants and private sector employees. The average salary in the public sector can be higher than the corresponding one in the private sector by a margin as high as 40 percent. The Greek system of interest representation resembles a corporatist one, with a nationwide association for private sector workers and employees and a second nationwide peak association for civil servants. These associations mostly represent permanent workers. Weaker unions, such as those

of fixed-term and temporary workers, enjoy much less protection. A dramatic example of this is the case of Constantina Kouneva, a Bulgaria immigrant worker and union activist of an association of cleaners, who had acid poured on her in December 2008 by people allegedly in the service of the cleaning company owner. Kouneva survived the attack but is still ailing, and the offenders were never apprehended.

RULE OF LAW 5.90

INDEPENDENT JUDICIARY	5.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	5.80
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	6.00
PROTECTION OF PROPERTY RIGHTS	6.00

The Greek justice system is independent and courts are managed autonomously by the magistrates themselves. According to the Constitution, the government appoints the presidents and vice presidents of all three higher-level courts (the Supreme Court, named *Areios Pagos;* the highest administrative law court, named the Council of State; and the state's Audit Office). However, in 2010 PASOK passed legislation granting a high-profile parliamentary body the power to nominate the justices of the three courts. This body, which selects justices by reinforced majority rule, is composed of the president and the vice presidents of the parliament, meaning that no political party can handpick the justices it favors. As a result, the upper echelons of the justice system are much less politicized than before, and the leverage the government previously had in the appointment of justices and the outcomes of politically-sensitive trials has diminished.

Judges obtain training in the National School of Judges. Access to the school is based on competitive entrance examinations. After they graduate from that school, judges are appointed in a fair and transparent manner.

Executive and other government authorities do not always comply with judicial decisions. From time to time, for example, municipal authorities delay implementing court decisions on property disputes and ministries do the same with regard to disputes about promotions and employee compensation. The sporadic refusal of municipal and ministerial authorities to comply with court decisions can be accounted for by the lack of mechanisms overseeing the functioning of central and local government authorities and a tradition of diminished expectations about the pace at which the Greek bureaucracy reacts to any external stimulus. Moreover, mayors sometimes claim political credit by showing their local voters that they are independent from the central administration or even the courts. These issues are resolved through initiation of further court procedures on the same case. In very extreme cases (e.g. criminal law violations), mayors are removed from their post.

Anyone charged with a criminal offence is presumed innocent, and due process is followed by independent tribunals. Prosecutors are free from political pressure, except in cases of domestic terrorist organizations, such as the 17th of November and Revolutionary Popular Struggle groups; in these cases, prosecutors have worked closely with the minister of public order. Citizens have access to independent counsel, and lawyers represent citizens without fear of repercussion. The state provides competent counsel to indigent defendants through the appointment of lawyers from among members of the Athens Bar Association or the corresponding associations in other cities.

All branches of justice (civil, criminal, and administrative) share a series of common problems, namely a plethora of regulations, particularly as far as labor, social security, and tax legislation are concerned, leaving room for courts to pass contradictory decisions; the concomitant propensity of the state to allow courts to decide on numerous labor and tax-related disputes, thus turning courts into policymaking agencies; the serious understaffing of courts that, combined with the high number of cases, leads to long delays in distributing justice depending on the district in question (for instance, in Athens civil law cases may take between one and three years and administrative law cases can take between three and five years to be introduced to first-instance courts); the high fees citizens pay when seeking judicial protection; the fact that judges may lack the necessary skills to decide on complicated issues of economic transactions and economic crimes; and the fragmentation and overlap of competences, particularly of administrative courts, which provokes insecurity among those seeking judicial protection.

A wide range of law breakers, from those committing large-scale tax evasion to civil servants who abuse their power for personal gain to policemen abusing immigrants, benefit from the dysfunctions of the justice system. Often it is not so much the inefficiency of the system but the lack of political will that amounts to very few among those prosecuted being eventually sanctioned. Such a lax attitude toward trespassing of rules reigns not only in state-citizen relations but also within the boundaries of public administration. For example, successive ministers of interior, who are in charge of civil service personnel, have discovered that civil servants brought in front of disciplinary councils for violations of the civil service code are seldom sanctioned within reasonable time.

There is full civilian control over security forces and the military, which never interfere with the political process. Still, the lack of adequate mechanisms to control corruption throughout the state apparatus has a negative impact on security and military forces. It is difficult to estimate the extent of corruption involved in the interaction between police officers, on the one hand, and owners of night clubs, drug dealers, and ringleaders of human trafficking networks, on the other. Apprehended officers charged with corruption offences or violation of human rights are subjected to disciplinary measures that damage their careers, but trials in criminal courts may take a long time to complete.

Problems with implementing the rule of law have an impact on the country's business environment. The 2011 World Bank Doing Business report rated Greece 109 of 183 countries overall, and 88 of 183 countries for contract enforcement.[19] Greece's overall ranking marks a 12-position drop from the previous year. Although the same report acknowledges that doing business in Greece has become easier since 2006, Greece is ranked in the bottom sixth of all 183 countries in terms of the ease of starting a business, registering property, and protecting investors.

Property rights are guaranteed by law, but it is telling that the process to create a nationwide land registry began only four years ago and is still not complete. The state protects citizens from unfair confiscation of property, however it is not uncommon for privately owned empty plots of land in downtown areas to be claimed by municipal authorities as land earmarked for erecting municipal buildings. Long legal disputes follow such decisions, as landowners fight for fair compensation.

ANTICORRUPTION AND TRANSPARENCY 5.02

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	4.00
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	4.00
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	6.25
GOVERNMENTAL TRANSPARENCY	5.83

Greeks, regardless of social status, associate their encounters with the central public administration and local government with loss of time and low quality of service. As Eurobarometer attitudinal surveys indicate, in Greece there is very high distrust of political and administrative institutions, comparable to that in postcommunist European societies.[20] Resorting to petty corruption by bribing a lower-ranking civil servant or pressing a member of the political elite to intervene in one's favor can reduce the time wasted because of bureaucratic red tape. In a 2008 survey, 13 percent of Greeks admitted to paying bribes in order to pay less in doctors' fees, permits, tax payments, and other expenses. The total of such payments was reportedly equal to $950 million in 2008.[21]

Higher-level corruption also has structural causes, including the overconcentration of power in the hands of a few scores of politicians and heads of state-owned enterprises; the sprawling nature of the Greek public sector, which dominates major sectors of the economy, including electrical power and land transport; and a lack of transparency in relations between the state and private actors. Allegations of corruption against politicians of both major parties include the swapping in 2007 of high-priced state-owned property in downtown Athens with agricultural lands belonging to the Vatopedi monastery in Northern Greece, and ongoing shadow deals between higher officials of the

Greek Ministry of Defense and a German company for the purchase of submarines at very high cost in 2000 and 2002; upon delivery, the first of these submarines proved defective. Neither of these cases has been cleared, and it remains to be seen whether allegations will be substantiated by facts.

In October 2010, Transparency International ranked Greece 78 among 178 countries. Greece's Corruption Perceptions Index (CPI) score (3.5 on the scale from 0.0 to 10.0) was far lower than other EU member states, including Bulgaria and Romania. In the past, Greece fared better; in 2001, it was ranked 42 among 91 countries, with a score of 4.2; and in 2005 it was ranked 47 among 158 countries, with a score of 4.3.[22] While this is just an indication of perceptions of corruption, it is probably true that corruption has increased in specific quarters of the administration. On the other hand, the CPI does not reflect recent efforts to increase transparency. The legal right to information has been expanded, the budget-making process is subject to close legislative review, and expenditure accounting is required and enforced, even though ailing public companies may take more than reasonable time to publish their accounts.

In his latest report (2009), the General Inspector of Public Administration—an independent public authority founded in 2002—has noted that corruption is extensive in local government, town planning, transport, public works, public health services, and education.[23] In all these sectors, corruption takes two forms: petty and higher-level corruption. In the first case, individuals, such as small entrepreneurs, may offer bribes to officials for a small favor (e.g., paying a small rather than a large fine for illegalities in their records); in the second case, organizations, such as large businesses, may make under-the-table arrangements with the top officials of a taxation authority to avoid heavy fines for tax evasion.

With regard to education, even though university entrance examinations are very well monitored by national authorities, there is a high probability of corruption related to the distribution of overpriced academic textbooks to students of state universities. Students are entitled to one such textbook per academic course for free, and the state pays the inflated cost to publishers.

Various anticorruption agencies are responsible for channeling corruption cases to the justice system. In addition to the General Inspector mentioned above, the Financial and Economic Crime Unit (SDOE) of the Ministry of Finance fights money-laundering, fraud, and large-scale tax and customs evasion. In addition, the Office of the Ombudsman, which can also unearth cases of corruption by investigating complaints of individual citizens against the central public administration and local government, was founded in 1997. Whistleblowers, anticorruption activists, and investigators are protected by law, but the dysfunctions of the justice system do not help them or the prosecutors working on cases of corruption to quickly arrive at tangible results. This includes the prosecution of officials implicated in corruption. After assuming office in 2009, Prime Minister George Papandreou acknowledged the systemic corruption and red tape in the state and set out an anticorruption plan. In 2009 the staff of the General Inspector examined 4,440 cases of allegedly illegal

conduct of civil servants; in 20 percent of these cases they concluded that there were indications of violation of criminal law.[24] The relevant evidence was passed on to the prosecutors of the Areios Pagos court in order to press charges against civil servants involved.

After a slow start in the mid-1990s, privatization and deregulation have spread in the banking sector and in public utilities. Today, most banks and large formerly state-owned enterprises, such as the National Telecommunications Organization, are in private hands. However, in 2007–2009 there was little progress in that field, with the exception of state-owned Olympic Airways, which was finally privatized after sustaining heavy losses for many years. The state remains the sole owner in sectors such as electrical power, mail service, waterways, and railways. Resistance to privatization is the result of a lack of political will and adequate planning on the part of successive governments. There is also opposition by strong public sector unions, and considerations of social justice: after privatization takes place, there is the prospect of the creation of oligopolies and a rise in consumer prices. This prospect may not be the result of regulatory capture but of the fact that wherever large private businesses dominate a sector (for example, dairy products, sea transport lines linking major ports to the Greek islands, and domestic airlines), the Greek state authorities have been incapable of monitoring the quality of products and services and protecting consumers from unpredictable changes in the price policies of the one or two companies that completely control the market.

Corruption in Greece is related not so much to the process of privatization, as the processes have been reasonably competently managed, but to the entanglement of the public and private sectors in the process of public tenders (for example, the construction of national highways) and the financing of electoral campaigns of political parties. Greek laws for government contracting have periodically been amended in order to improve transparency; the tendency to inflate the cost of projects, which hides side payments made to politicians and high-ranking officials; and the forging of bonds among businesspeople, decision makers, and the mass media. A 2010 law that requires all ministerial decisions to be publicized on the official websites of the relevant ministries is a step forward. However, further progress toward transparent public contracting may be halted by the lack of relevant managerial skills among civil service personnel, the slowness of ministerial planning, and the clientelist reflexes of political elites always ready to resort to sole-source rather than competitive processes.

The lack of public access to executive branch information has contributed to low transparency. Past legislation on freedom of information (FOI), dating back to 1986 and 1999, has been underutilized either because citizens and organizations were not interested in asking for information or because the law allows for wide-ranging exceptions. While this is a common issue with FOI laws, the relevant Greek laws include among the exceptions any cases of conflict with privacy rights of individuals, the minutes of sessions of the Greek cabinet, as well as any instances in which judicial, administrative, police, and military

authorities judge that disclosing information may endanger official research on any violation of criminal or public administrative law. Responses to formal requests for information by the central government are often slow, as public organizations are unable or unwilling to provide the required data because they have not kept proper statistical records.

RECOMMENDATIONS

- Specific measures should be implemented so that public employees acquire the necessary training to facilitate the provision of services to immigrants, starting from basic information regarding their human rights.
- With regard to the treatment of Roma and immigrants, civil servants should be trained to understand discrimination and how it affects members of these groups; which Greek and international laws protect them; and what can be done to ameliorate the discriminatory treatment minority members receive from state authorities.
- The electoral system should be changed: multiple-seat districts, where too many candidates compete to be elected, should be divided up into smaller districts. The preference vote system should be changed to a party list so that candidates will not have to compete against members of their own party.
- With regard to public procurement, a separate branch of the justice system should be created from among the currently-serving magistrates and entrusted with swiftly processing all cases related to tenders that are pending in the courts for any reason.
- Anticorruption measures should be strengthened. Specific anticorruption units should be organized within each ministry, which will function as the local antennae of the General Inspector of Public Administration.

NOTES

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GUYANA

CAPITAL: Georgetown
POPULATION: 770,000
GNI PER CAPITA (PPP): $3,270

SCORES	2006	2011
ACCOUNTABILITY AND PUBLIC VOICE:	4.51	4.35
CIVIL LIBERTIES:	4.80	4.60
RULE OF LAW:	4.80	4.54
ANTICORRUPTION AND TRANSPARENCY:	3.97	3.74

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Joan Mars

INTRODUCTION

Guyana is situated on the northern coast of South America, with a land mass of approximately 215,000 square kilometers. According to the Guyana Bureau of Statistics, the country's estimated population at mid-year 2008 was 766,183 people, with 90 percent living on the narrow coastal plain bordering the Atlantic Ocean. The country's population is diverse, consisting of descendants of immigrants from India (43.4 percent), the largest of six ethnic groups, followed by the descendants of African slaves, who comprise about 30.2 percent of the population. Among the other ethnic groups, 16.7 percent identify as being of mixed race, and native Amerindians represent 9.2 percent of the population. The population growth rate has remained marginal in recent years, increasing by only 0.1 percent between 2007 and 2009, a probable result of increasing net emigration and an almost stagnant crude birth rate.[1]

Guyana's economic activity is concentrated primarily in the mining and agricultural sectors, as reflected in its exports, 82.8 percent of which in 2010 were comprised of gold (34.1 percent), rice (16.4 percent), bauxite (15.8 percent), sugar (10.1 percent), and timber (6.4 percent).[2] In 2009, per capita gross domestic product was $2,309.[3]

After centuries of colonial rule, Guyana gained its independence from Britain in 1966 and became a cooperative republic in 1970. The country shares a common history and culture with the English-speaking Caribbean, but is unique in the impact that racial divisions have had on the political process, as well as their corrosive influence on democratic governance and social stability. The East Indian population-based People's Progressive Party/Civic (PPP/C) has

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ruled the country since 1992, when it won control of the government from the People's National Congress (PNC), which is rooted in the Afro-Guyanese population, in national elections.

As it prepares for elections in 2011, the country is facing significant challenges in the security sector, increasing ethnic polarization, and charges of marginalization by Guyanese of African descent. Opposition parties have for several years emphasized support for the concept of shared governance, understood as a government of national unity that will formally include non-PPP/C members within the ministries and ensure pluralism in policymaking. Viewed as a necessary step toward postelection consensus-building, the concept has not yet been endorsed by the incumbent PPP/C government, nor has any other strategy emerged from the contenders for political power for resolving the grievances that promote alienation and suspicion in this ethnically diverse, plural society. The history of election disturbances and the deteriorating security situation, however, mandate that urgent, collaborative efforts be made to promote national unity, representative democracy, and adherence to the rule of law.

ACCOUNTABILITY AND PUBLIC VOICE 4.35

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.40
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.00
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.00

Guyana is a parliamentary democracy based on the Westminster model, where the party obtaining the most electoral votes occupies the majority of seats in parliament and controls the executive branch of government under the leadership of a president, who is both head of state and commander-in-chief of the armed forces. The electoral framework provides for free and fair elections to be held every 5 years, as established by the constitution.

Independent international election monitors have been regularly accepted since 1992, although the implementation of electoral laws has not always been perfect. Indeed, there have been challenges to electoral outcomes by opposition parties in the past. Postelection protests against election results by supporters of opposition parties in 1992 and 1997 resulted in public demonstrations and disorder as well as targeted political violence. In the case of the 1997 elections, there was also a temporary boycott of parliament by the major opposition People's National Congress Reform (PNCR) party, followed by two peace agreements brokered by the Caribbean Community (CARICOM).[4] Lack of confidence in the electoral process also resulted in disruptions after the 2001 elections.[5] In response, the UN Development Programme (UNDP) implemented several multifaceted electoral initiatives during the intervening years,[6] and the results of the 2006 national elections were accepted by the political opposition. In the 2006 balloting, the PPP/C garnered 54.6 percent of the

votes, giving the party 36 seats, while the People's National Congress Reform/ One Guyana (PNCR/1G), the leading opposition party, obtained 34 percent of the votes and 22 seats, followed by the Alliance for Change (AFC) with 8.4 percent of the votes and 5 seats. The presidency therefore remained in the hands of Bharrat Jagdeo, who originally took office in 1999 following the resignation of Janet Jagan and was first elected in 2001.

Elections are constitutionally due to be held in 2011. Calls by the political opposition for shared governance have not been endorsed by the ruling PPP/C administration headed by President Jagdeo; with its consistent absolute majority in parliament, the PPP/C has had little incentive to agree to share power, but the idea may be gathering momentum as a major rallying point in the forthcoming elections.

The constitution allows for equal campaigning opportunities for all parties and guarantees the possibility of periodic rotation among a range of contending political parties through national elections. However, because of entrenched voting patterns along ethnic lines, an ethnic-based party can hold on to power indefinitely if it is affiliated with the majority ethnic group and maintains its appeal to ethnic loyalties. Thus, since 1992 the PPP/C, which is affiliated with the majority population of East Indian descent, has dominated the political system and state power. Opposition parties also remain rooted in ethnic constituencies, especially the PNCR with its Afro-Guyanese base, which hinders the ability to strip away support from the PPP/C. The rise of the multiracial AFC signaled a potential shift in the rigidity of ethnic voting, but the party remains a distant third in popular support.

There are currently no effective campaign finance regulations in the country. The relevant provisions under the Representation of the People Act, Cap 1:03, section 120(1)-(5) are dated and unenforced by the Guyanese Electoral Commission (GECOM). A significant proportion of the financing for the various political parties comes from supporters in the Guyanese diaspora in developed countries. Generally, however, the PPP/C possesses an advantage over other parties because it has greater access to state resources for campaign purposes. In the case of the 2011 elections, critics have objected to the participation of Donald Ramotar, the party's presidential candidate, in governmental outreach to various regions of the country as these activities utilize public funds in a way that puts other contenders within and outside the party at an unfair disadvantage.[7]

Checks and balances in the exercise of powers remain underdeveloped. Despite the fact that independence and fiscal autonomy of the judiciary are constitutionally mandated, the judiciary is plagued by operational problems and challenges, public mistrust, and criticism and derision of some of its decisions by the executive.[8] Separation of powers between the executive and the legislature, while difficult to clearly define given the legacy of the Westminster parliamentary model, is also called into question by the dominant influence of the executive over the deliberations of the parliament, which functions almost

exclusively as a means for legislative implementation of the executive's agenda. Although the president does not sit in parliament, he may attend, address, or send messages; summon, prorogue, or dissolve parliament; and otherwise exert influence through the ruling party's majority control. No steps have been taken in recent years to limit the overwhelming influence of the executive over the parliament.

Although by and large civil servants are selected in open competition and based on merit, in some cases claims have been made that political criteria are used for promotions and dismissals. The case of a senior school administrator, Genevieve Whyte-Nedd, exemplifies this problem. As part of a lengthy public service career, Whyte-Nedd has served in the position of chief education officer for several years, but no action was ever taken to confirm her in the position. Despite public protests and the intervention of the Public Service Union and the Guyana Teachers' Union, the Public Service Commission refused confirmation on July 6, 2010. The PNCR accused the government of political interference and discrimination in public service decision making.[9] Protestors led by the Guyana Trade Union Congress picketed the Ministry of Education, and Whyte-Nedd has since sought redress from the High Court.[10]

There are few obstacles to the registration or operation of nongovernmental organizations (NGOs) in Guyana. The government supports and works collaboratively with NGOs whose mandates fall within national objectives such as domestic violence prevention and youth development, but has been known to be selective in the award of state funding and enforcement of tax laws, in particular with reference to the funding of legal aid. For instance, the Linden Legal Aid Centre, a nonprofit organization incorporated in 2007 to provide free and largely subsidized legal services to economically challenged citizens in the predominantly Afro-Guyanese town of Linden and surrounding communities, has been denied state funding as well as tax-exempt status.

Civic groups and NGOs in Guyana have ample opportunity to comment on government policy and legislation, mainly through the press. The media also maintain a presence in parliament and comment freely on its deliberations, but that does not necessarily translate into influencing government policies and legislation. Opposition parties frequently raise issues and concerns in parliamentary debates on legislation, but are invariably outvoted by governing party legislators.

The constitution of Guyana guarantees freedom of expression, including freedom to hold opinions and to receive and communicate ideas and information (Article 146). Several independent daily newspapers operate freely, including *Stabroek News*, *Kaieteur News*, and the more recently established *Guyana Times*. The other main newspaper with nationwide circulation, the *Guyana Chronicle*, is government-owned. The Government Information Agency (GINA) provides a conduit for the steady flow of information to the public through press releases and its website.

The government continues to own and control the only radio station in the country, which broadcasts on three frequencies. However, in December 2008 Chief Justice of the High Court Ian Chang ruled that excessive delay by the government in considering applications for the issue of licenses to operate a radio and television network in Region 10 amounted to a violation of the applicants' fundamental right to freedom of expression; he ordered the government to consider the applications immediately.[11] This was followed by a similar ruling by the Guyana Court of Appeal in October 2009 concerning the failure of the state-owned National Frequency Management Unit (NFMU) to consider an application for a radio license to Veira Communications Limited (VCT), a local television company. In delivering the unanimous decision, Chancellor Carl Singh affirmed the appellant's contention that the fundamental rights to freedom of expression and to receive and communicate ideas and information had been violated, declared the government's monopoly and control of broadcast communications to be inconsistent with democratic principles, and ordered NFMU to consider VCT's application for a radio license.[12] However, the courts limited themselves to a ruling only on the government's duty to consider the applications, and the government has yet to take any action to end the monopoly.

Apart from the government's National Communications Network Television, there are several privately owned television stations. Guyana still awaits the tabling of the long-promised Broadcast Bill, first proposed in 2003. The government has claimed that it is merely ensuring proper time for draft and debate, while opposition parties credibly allege that the long delay is the result of government stalling.

Official advertisements are an important source of revenue for the independent print media, and the government uses this power to influence coverage. Between January 2007 and April 2008, government agencies and state-owned enterprises pulled notices from the independent *Stabroek News*, a move that was decried by various international press watchdog groups despite government claims that it was merely a response to declining circulation of the newspaper. On August 9, 2010, the office of the president announced that henceforth state advertisements would appear on a government website established primarily for the placement of official notices, advertisements, and the conduct of the procurement process for goods and services.[13]

The president holds the portfolio of minister of information. President Jagdeo's increasingly contentious relationship with the independent media has resulted in frequent condemnatory outbursts, in which he accuses them of distorting his utterances and, on one occasion, of becoming the "new opposition."[14] In April 2008, the president suspended the television license of opposition party leader C. N. Sharma, allegedly due to the airing of broadcast material that amounted to an incitement to crime. In both July 2008 and August 2010, journalists were arbitrarily denied entry to cover events at the office of the president.

Journalists may face civil lawsuits for the publication of allegedly erroneous information in their newspapers. In July 2010 a US$50,000 civil lawsuit was filed by President Jagdeo against *Kaieteur News* and its columnist Frederick Kissoon, editor Adam Harris, and the National Media and Publishing Company Ltd. for an allegedly libelous newspaper article accusing the president of practicing racism and discriminating against Guyanese of African descent.[15] In November, agriculture minister Robert Persaud filed suit against a television station on similar charges. Preliminary injunctions against republication or rebroadcasting of the allegedly libelous material were issued in both cases, but neither trial was under way by early 2011. There are no restrictions on internet access or content in Guyana.

CIVIL LIBERTIES 4.60

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.75
GENDER EQUITY	5.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.25
FREEDOM OF CONSCIENCE AND BELIEF	5.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	5.00

Guyana's constitution specifically prohibits torture or other inhumane or degrading treatment by the state (Article 141(1)). In addition, during the period of constitutional amendments and democratic reforms (1999–2003), a new provision was added incorporating several international human rights treaties into national law, including the 1985 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Despite these protections, a disturbing record of allegations of the use of torture as an interrogation technique by the security services has emerged during the past three years, with the brutal torture of a 15-year old boy in October 2009 serving as a particularly stark example.[16] Although the government has condemned the use of torture and promised investigations, calls for an international inquiry into incidents of torture and other grave rights abuses—notably, hundreds of extrajudicial executions (see below)—have been ignored.[17]

The most serious issue involving state violence is the use of deadly force by the Guyana Police Force (GPF). The so-called fleeing-felon rule, a historical anachronism, is still in effect, allowing the police to use deadly force against unarmed, fleeing suspects. The Police Complaints Authority (PCA), a civilian oversight body that functions mainly in an advisory capacity, receives complaints from the public on police misconduct, including the use of unnecessary violence, and reported an increase in complaints during the past three years. The most recent statistics released by the Office of Professional Responsibility of the GPF, which is charged with investigating abuses including those referred to it by the PCA, indicated an 85.7 percent increase in complaints against members

of the GPF during the first six months of 2008 as compared with the same period the previous year.[18] The U.S. State Department reported that the PCA received over 400 complaints in 2010, of which 13 were for allegedly unlawful killings by police.[19] Prosecutions do sometimes occur: several members of the security services have been prosecuted for an array of criminal offences, including murder and assault.[20] However, cases sometimes result in dismissals as in the case of the 15-year old torture victim, or drag on for an extended period, and the perception of impunity creates friction between Guyanese citizens and the GPF.

Many of the recommendations for prison system reform that have been made during the past decade by various commissions of inquiry are yet to be fully implemented. In May 2004, for example, the *Report of the Disciplined Services Commission,* which contained 28 recommendations for improvement of the prison system, was presented to the speaker of parliament, but it was only approved by the legislature in June 2010. Apart from the problem of overcrowding, which has persisted for decades and is exacerbated by the fact that 41 percent of prisoners are in pretrial detention, there is a need for concerted efforts to comply with basic international standards.[21] Juveniles continue to be exposed to victimization in police lock-ups while awaiting trial, and offenders above 16 years of age are incarcerated in adult prisons.

The constitution protects against arbitrary arrest and detention without trial and provides for access to counsel and pretrial release, as well as the right to compensation for unlawful arrest or detention. Persons who are arrested are usually brought to court within 72 hours, failing which the police are required to release the suspect or apply to the High Court for an extension. In light of the large number of pretrial detainees, the High Court has in recent years been enforcing the right to trial within a reasonable time by granting bail to murder defendants who have spent an inordinately long period in detention awaiting trial.[22]

There is no persistent problem of targeting of opposition activists for arbitrary arrest or imprisonment. However, prominent trade union leader Lincoln Lewis, in 2008, and well-known social critic, journalist, and college professor Frederick Kissoon, in May 2010, each have publicly complained of acts of harassment and intimidation by unknown assailants that they believe are linked to their criticism of the government and other powerful actors. The attack on Kissoon was condemned by the media, political parties, and the government.[23]

The inability of the government to provide public safety and security has remained a matter of grave concern in recent years. A steadily rising murder rate, together with increased levels of domestic and interpersonal violence, armed robberies, home invasions, and other forms of gang and gun violence associated with drug trafficking and piracy, have resulted in the enactment of a plethora of measures. For example, the Hijacking and Piracy Act of 2008 makes special provision for the punishment of armed robbery, hijacking, and piracy, including the imposition of the death penalty for homicides occurring during

the commission of these crimes; the Telecommunications (Amendment) Act of 2008 requires providers of cellular phones and their accessories to maintain records that may aid the police in conducting investigations; the Prevention of Crimes (Amendment) Act of 2008 mandates varying periods of police supervision for certain classes of convicted offenders; the Firearms (Amendment) Act of 2008 increased penalties for the possession of unlicensed firearms and made such possession into a nonbailable offence; the Criminal Law Procedure (Amendment) Act of 2008 dispensed with the preliminary inquiry phase for certain indictable offenses; the Interception of Communications Act of 2008 allows for warrants to be issued by a judge for the monitoring of transmissions made by the internet, fiber-optic cable, or other forms of electromagnetic communications; and the Sexual Offences Act of 2009, which came into force in May 2010, modernized sexual offenses legislation while imposing harsh penalties for sexual violence against children. However, none of these have so far produced noteworthy improvements in the crime situation.

In 2008, three instances of gang-related mass killings opened a new chapter in the homicidal violence plaguing the country. The first occurred in Lusignan on January 26, when 11 people, including five children, were attacked and killed in their homes. On February 17, in the town of Bartica, 12 people were murdered execution style, including three police officers. On June 21, at Lindo Creek, a remote mining camp in the interior of the country, eight miners were killed and their bodies burnt. Although several alleged perpetrators were subsequently arrested, the failure to capture and bring to justice the ringleaders responsible for the planning and execution of these crimes, and to shed light on their true motives, has inhibited the search for solutions to prevent further incidents of extreme violence in the future.

Crime statistics are published in the GPF's annual reports, but these tend to be dated by the time they are released to the public. The media is often the only readily available source of current crime data. Notwithstanding conflicting media reporting, a disturbing picture emerges of a significant increase in serious crime in recent years. In November 2008, the police reported that the number of serious crimes had increased by 9 percent over the previous year and that 135 murders had taken place in that year, a 36 percent increase over the same period the previous year.[24] This upward trend has continued and in November 2010, a 58 percent increase in the number of murders was reported when compared to the same period in 2009.[25] Equally disturbing is the fact that the majority of these murders remain unsolved. An important contributor to the violence is Guyana's status as a transit country for cocaine and marijuana, and a safe haven for smugglers and drug traffickers.[26]

Local initiatives, such as those included in the Justice Sector Reform Strategy (2006–2010) and the Citizens Security Programme (implemented in 2007), have had little impact on the investigative capability and professionalism of the police or the continuing crisis in public safety. The regional crime-fighting

solutions that were expected from Guyana's participation in the July 2006 agreement establishing the CARICOM Implementation Agency for Crime and Security (IMPACS) failed to materialize, and efforts at international security collaboration ended with the collapse of negotiations for the implementation of the Security Sector Reform Action Plan (2007–2011), which was to be funded by the British government. The PNCR has identified the deteriorating security situation in the country as the most pressing problem facing a postelection administration.

In 2007 Guyana established a National Task Force for Combating Trafficking in Persons within the Ministry of Home Affairs to implement preventive measures, especially with respect to indigenous women who are trafficked from the interior to work in other regions. Nevertheless, in 2010, Guyana retained its place on the Tier 2 Watch List of the U.S. State Department's Trafficking in Persons Report.[27] After release of the report, Guyana recorded the first successful prosecution under the 2005 Combating Trafficking in Persons Act, and a three-year sentence was imposed for the crime.[28]

Guyana's system of providing redress for violations of human rights remains underdeveloped. The constitution states that all persons who are aggrieved as a result of the violation of their human rights may apply to the High Court for redress, and appeal to the Court of Appeal if necessary. In addition, another level of judicial review is provided by Guyana's acceptance of the Caribbean Court of Justice as its appellate court of last resort.[29] However, with respect to complaints against the police, the PCA has no independent investigative authority and plays no part in internal police disciplinary procedures; rather, the PCA may direct the police to record and investigate complaints. Complaints of human rights violations may also be made to the ombudsman, but this position has been vacant since 2005. In addition, the constitution calls for the creation of a Human Rights Commission, but as of early 2011, this body was not yet operational. The sole nongovernmental, independent human rights body, the Guyana Human Rights Association, can receive complaints but has no power to provide redress.

Social discrimination in all its forms is constitutionally prohibited, and the Convention on The Elimination of All Forms of Racial Discrimination was incorporated into the reformed constitution. Domestic legislation on this subject includes the Prevention of Discrimination Act 1997, which prohibits employment or service discrimination, and the Racial Hostility Act, which outlaws acts of racial intolerance or hatred. An Ethnic Relations Commission mandated by the constitution is fully operational and receives frequent complaints, but has been repeatedly accused of bias in the conduct of its deliberations. Notwithstanding this antidiscrimination framework, the United Nations Independent Expert on minority issues, Gay McDougall, issued a scathing report after holding widespread consultations with the government and other interested parties during the summer of 2008. The report highlighted

perceived racial discrimination, economic marginalization, the stereotyping of Afro-Guyanese, and the nonobservance of minority rights in practice.[30] Afro-Guyanese report discrimination in employment, the award of government contracts, and the allocation of resources to their communities.

Some of the most severe allegations relate to the extrajudicial killing of hundreds of young Afro-Guyanese males deemed to be "suspects" by police quick-reaction squads and an alleged police "phantom" death squad. Unrestrained security operations in their communities are allegedly sanctioned, resulting in the destruction of farmland and private property and the killing of innocent civilians.[31] In November 2009, an opposition coalition composed of the AFC, PNCR, Guyana Action Party (GAP), National Front Alliance (NFA), and the Working People's Alliance (WPA), prepared a dossier calling for an international inquiry into what it described as "grave human rights violations" in Guyana. Their report lists, inter alia, 449 cases of extrajudicial and other killings between 1993 and 2009.[32] The government has consistently refused to sanction such an investigation.

Guyana has always adopted a progressive legislative agenda with respect to gender equity, including incorporating the UN Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women into the reformed constitution. In 2009, 15 nominees were appointed by the National Assembly to a constitutionally mandated Women and Gender Equality Commission.[33] Women's property rights are protected.[34] Workplace discrimination is outlawed by the Prevention of Discrimination Act, which applies to both the public and private sectors; this law protects women (among other groups) from discrimination in the workplace (including sexual harassment) and promotes equal pay for equal work by women. However, little has changed with regard to patriarchal societal attitudes and beliefs. Despite the passage of measures to protect women from physical and sexual victimization, including the much-anticipated Sexual Offenses Act passed into law in May 2010, women continue to be frequent victims of the brutality and homicidal violence plaguing the country.

Sex between men is criminalized, though the relevant laws are not enforced. Transgendered persons have protested the enforcement of archaic laws against cross-dressing as an infringement on their right to privacy and freedom of expression. This includes, for example, the 2009 prosecution and conviction of seven transgendered persons for cross-dressing in public. One organization working in the area of sexual and gender rights, the Society Against Sexual Orientation Discrimination (SASOD), has also alleged that transgendered sex workers are targeted for police harassment.[35]

Disabled rights received a boost with the 2010 enactment of the Persons with Disabilities Act. The National Commission on Disability, an advisory

body that was established in December 1997, receives an annual subvention from the government to provide services for disabled persons.

Amerindians comprise approximately 9 percent of the population. An Amerindian Act was passed in 2006 to provide social and economic justice to indigenous groups, but four years went by before action was taken to bring it into force.[36] Titling of the remote lands on which many indigenous groups live is a particular problem: the delay in implementation of the Amerindian Act deprived these communities of nearly US$1 million in royalties from mining activities that the act had authorized.[37] In September 2010, members were sworn in for the first time to the constitutionally mandated Indigenous Peoples Commission.

The constitution also guarantees freedom of conscience, which includes the freedom to worship and propagate one's religion without hindrance, and this is generally respected in practice. Christianity (both Protestantism and Roman Catholicism), Hinduism, and Islam are the main religions in Guyana, with slightly more than 50 percent of the population identifying as Christians. No significant violations of the religious freedom of Guyanese citizens have been reported in recent years.

Freedom of assembly is constitutionally protected. Trade unions loudly voice their concerns and grievances in the streets, in industrial action, and in the press, but with little influence on governmental policies. In fact, there is a serious conflict developing between the labor movement and the Guyana government due to the latter's failure to perform its proper role in the settlement of industrial disputes and inaction on workers' cost of living concerns, as well as charges of discrimination by Afro-Guyanese in the bauxite and mining industries. The government generally allows peaceful public demonstrations in public places, provided that laws requiring police permission are complied with. Small picketing exercises have occasionally taken place without incident, mainly in the capital city of Georgetown, but there have also been cases where trade unionists and social activists have been arrested, detained, and subsequently charged by police for engaging in alleged illegal picketing and other protest activities.[38]

RULE OF LAW 4.54

INDEPENDENT JUDICIARY	4.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	4.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	4.50
PROTECTION OF PROPERTY RIGHTS	4.67

The independence of the judiciary is specifically mandated under the constitution, which provides that all courts and persons presiding over them "shall exercise their functions independently of the control and direction of any other

person or authority; and shall be free and independent from political, executive and any other form of direction and control" (Article 122A(1).The charter also provides for the funding of the courts directly from the general fund into which all state revenues flow, thereby providing the judiciary financial control over its operations (Article 122A(2)). According to the chancellor of the judiciary, 2008 was the first year that some level of financial autonomy was achieved in practice, with funds made directly available to the judiciary.[39]

Political impartiality in the appointment of judges is achieved through the requirement that the minority leader (leader of the opposition) concur in the selection of candidates for appointment to the highest judicial offices—chancellor of the judiciary and chief justice of the High Court. However, the dysfunction of this provision in practice is demonstrated by the absence of a mechanism to resolve disagreement between the president and the minority leader. As a result, both the chancellor and the chief justice have been "acting" in their respective positions for several years, without the security of tenure and concomitant independence that flow from permanent appointment.

The president is required to act in accordance with the advice of the Judicial Service Commission in appointments for other judges, including part-time judges, raising the question of the independence of the Judicial Service Commission. The chancellor, chief justice, and chairman of the Public Service Commission (whose appointments require consultation with the minority leader) are automatic members of the Judicial Service Commission, with the chancellor acting as chairman. The fact that the president can only appoint the other members of the Judicial Service Commission, who come from the bench and the bar, after consultation with the minority leader allows for some degree of independence. In addition, decisions of the Judicial Service Commission can be challenged in the High Court; there are at least two pending cases challenging the Commission's decisions, one concerning sanctioning of a magistrate and the other concerning a magistrate's summary dismissal. Although the independence of individual judges has sometimes been called into question, the 2008 and 2009 court decisions regarding the government's monopoly on radio broadcasting (see Accountability and Public Voice) indicate that the government cannot take judicial subservience for granted.

In November 2010 the National Assembly approved the first set of rules governing the conduct of judicial officers, whereby they are prohibited from indulging in any activity that may involve a conflict of interest or compromise their ability to dispense justice without fear or favor. They are also required to abstain from political activism, may not accept appointments as officers of any political party, and may not engage in any activity that may cause the integrity of the judicial service to be called into question.[40]

Persons charged with criminal offences are constitutionally entitled to a fair hearing before an impartial and independent tribunal within a reasonable period of time. Provisions to secure the protection of the law include the

presumption of innocence and customary due process rights such as the right to the assistance of counsel. For those who cannot afford a private attorney, legal aid is available in some administrative regions, and the director of public prosecutions (DPP) appoints defense counsel by fiat in capital cases in the High Court when the defendant cannot afford an attorney. Lawyers are free to represent their clients, regardless of the nature of the case, without fear or hindrance. However, in the predominantly Afro-Guyanese Region 10, which includes the town of Linden and its environs, government funding for legal aid has so far been denied. Prosecutorial independence is also guaranteed by the constitution, which provides that the powers conferred upon the DPP "shall be vested . . . to the exclusion of any other person or authority" (Article 187(3)). The DPP is appointed by the Judicial Service Commission.

The autonomy of the security forces and their separation from political interference is problematic, since the commissioner of police is responsible to the minister of home affairs for the administration and good governance of the GPF. In the case of the Guyana Defence Force, the president is chairman of the Defence Board, which is responsible for "command, discipline and administration."[41] Under the constitution, the president is also commander-in-chief of the armed forces. Although any aggrieved member of the public can seek redress in the High Court for violations of their constitutional rights by any member of the security services, many alleged victims do not possess the financial resources to take advantage of this remedy. Corruption within the security forces is considered a serious problem.

The protection of property rights is guaranteed by the constitution, including rights to Amerindian lands. Privately-owned land can only be compulsorily acquired by the government if the minister declares that the land is required for "public work,"[42] which can be challenged in court. However, a provision under the Amerindian Act 2006 allows Amerindian lands to be compulsorily acquired if the minister determines that the acquisition is "in the public interest." Six Amerindian Captains have moved to the High Court seeking a declaration that the provision violates their communities' constitutionally-protected property rights. As of spring 2011, evidence was still being taken in the case. Amerindians have also been vociferous in their dissatisfaction with current mining and logging practices, which show scant regard for their property rights, and the impending implementation of the government's Low Carbon Development Strategy, which they fear will threaten the ownership and enjoyment of their ancestral lands.[43]

ANTICORRUPTION AND TRANSPARENCY 3.74

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.80
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	4.00
GOVERNMENTAL TRANSPARENCY	3.83

In Transparency International's 2010 Corruption Perceptions Index, Guyana ranked 116 out of the 178 countries surveyed, with a score of 2.7 out of a possible 10.[44] When compared with the past three years,[45] the current ranking reflects only marginal improvement. The absence of sufficient accountability and transparency at every level of government, along with weak enforcement of anticorruption measures, result from failures by the ruling party, opposition political parties, and civil society groups to exercise due diligence in safeguarding the pillars of a parliamentary democracy supposedly governed by the rule of law.

Guyana has acceded in recent years to several international treaties that are intended to combat corruption, organized crime, money laundering, and other illicit activities, including the United Nations Convention against Transnational Organized Crime (2000), to which Guyana acceded in September 2004; the Protocol against the Smuggling of Migrants by Land, Sea and Air, acceded to in April 2008; the Inter-American Convention against Corruption, acceded to in April 2007; and the United Nations Convention Against Corruption, acceded to in April 2008. Nevertheless, little has been done with respect to effective implementation of the measures prescribed, such as the seizure of property obtained through corrupt acts.

Similarly, amendments incorporated in the reformed constitution to strengthen the office of the auditor general by providing for financial autonomy and removing constraints on independence failed to provide adequate remedy for suspected wrongdoing by public officials. Nor has the Public Accounts Committee within parliament engaged in adequate oversight of the auditor general's annual reports. Domestic anticrime legislation enacted in recent years to authorize wiretapping and to curtail money laundering, drug trafficking, and organized crime has also had limited results in curbing corruption. The worst offenders, such as those responsible for facilitating the production or distribution of drugs, money laundering, and other drug-related financial transactions, continue to face only weak threat of prosecution.

There have been few thorough investigations of allegations of corruption by government officials. Corruption at the middle and lower levels remains endemic, with the GPF generating a steady stream of offenders within its own ranks.[46] In addition, calls for change are hampered by severe "corruption fatigue" in the society at large. It is difficult to measure the deterrent effect of piecemeal anticorruption measures. For example, polygraph testing was introduced for officers attached to the Customs Anti-Narcotics Unit (CANU), the Guyana Revenue Authority, the Guyana Energy Agency, the Narcotics Branch of the GPF, and employees at Cheddi Jagan International Airport. However, dismissals based solely on the results of lie detector tests may call into question the government's commitment to fundamental due process rights.

Corruption is prosecuted under the general criminal law, and there is no specialized anticorruption unit in the office of the DPP. In the case of police

corruption, reports can also be made to the Police Complaints Authority and the GPF's Office of Professional Responsibility.

Two commissions have been established under the current administration to promote transparency and accountability. The Integrity Commission requires disclosure of the annual income, assets, and liabilities of all persons in public employment, including the president, employees of public corporations, and other companies owned or controlled by the state.[47] Nevertheless, these requirements are largely unfulfilled, and the commission has been dormant since the resignation of the chairman three years ago. The Public Procurement Commission, mandated by the constitution and regulated by the 2003 Public Procurement Act, had not been constituted as of late 2010.[48] However, disclosure is provided through the National Procurement and Tender Administration (NPTA), through which government contracts are advertised and awarded. Information is published regarding the identity of bidders, minutes of the bidding process, and specifics of the contracts that have been awarded. The government ensures open bidding through advertisements on a procurement website, although there have been complaints (frequently by the independent media) of lack of transparency in the details of the awards, personal biases in the award of contracts, and inadequate vetting and supervision of contractors.[49]

The budget-making process is generally the sole preserve of the government. The annual budget is usually presented for debate in parliament by the minister of finance. The majoritarian principle inherent in the parliamentary system affords the government little incentive to vary its budget allocations as a result of expressions of disapproval by the parliamentary opposition. More generally, the ruling party's expressed commitment to inclusive governance supports the expectation of free and open disclosure in all policymaking matters. However, in practice, access to government information is limited. There is currently no law regulating access to information. A Freedom of Information Bill was first compiled and presented in parliament by Raphael Trotman, an AFC parliamentarian, in 2006. In March 2010, the first reading of the bill was deferred when the government officially informed the AFC that it would not support the legislation—even though President Jagdeo had announced in April 2009 that such legislation was being drafted by the government in keeping with the PPP/C's 2006 election manifesto.[50] Several deadlines for the tabling of the bill in the National Assembly passed before the head of the presidential secretariat, Roger Luncheon, announced on April 8, 2011, that the drafting of the bill had been completed and it would be tabled in the National Assembly within weeks.[51] In the meantime, the public has relied on the Government Information Agency (GINA) and its affiliates as well as the independent media for information on government affairs.

RECOMMENDATIONS

- The current system of majority rule should be reformed to provide for a power-sharing model that is representative of the ethnic diversity in the population. This would reduce the adverse effects of racial voting and promote minority inclusion in governance.
- The recommendations of the Disciplined Services Commission for the improvement of the Guyana Police Force, the Guyana Defence Force, and the Guyana Prison Service, adopted by the National Assembly in June 2010, should be implemented.
- The fleeing-felon rule, which allows the police to use deadly force against unarmed, fleeing suspects, should be abolished.
- The Freedom of Information Bill should be tabled in the National Assembly without further delay.
- All commissions mandated by the constitution should be fully constituted and made fully operational, in particular the Human Rights Commission, the Integrity Commission, the Public Procurement Commission, and the Women and Gender Equality Commission.

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ITALY

CAPITAL: Rome
POPULATION: 60.5 million
GNI PER CAPITA (PPP): $31,870

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	N/A	5.91
CIVIL LIBERTIES:	N/A	6.00
RULE OF LAW:	N/A	5.92
ANTICORRUPTION AND TRANSPARENCY:	N/A	5.08

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Alberto Vannucci, Donatella Della Porta

INTRODUCTION

Since the fall of dictator Benito Mussolini and the subsequent end of World War II, the republic of Italy has been characterized by a stable party system combined with frequent government rotation. For much of this era, the centrist Christian Democracy (DC) party played a pivotal role within the institutional framework of a parliamentary democracy. During the 1960s, along with urbanization and industrialization processes—Italy's "economic miracle"—the governing coalitions expanded to the center left, including the Socialist Party. The Italian Communist Party (PCI) led the left-wing opposition. In spite of its "anti-system" ideology, especially since the 1960s, the PCI played a central and pragmatic role through informal negotiations with the ruling majority and on several occasions influenced policy toward a progressive extension of social rights and the improvement of working conditions.

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Party control over the public sector and the economic system gradually degenerated into "partitocracy," the dominance of party leadership over national executives (who from 1948 to 1994 averaged less than one year in power), public policy, and bureaucratic patronage. An absence of genuine rotation of power encouraged unofficial collusion and clientelism. In fact, the less policy-based support political parties had, the more they relied on clientelism to succeed. Meanwhile, they increased public expenditure, and their capacity for long-term planning and effective policymaking diminished.[1] In the 1980s, Italy's public debt almost doubled, from 56.9 to 94.6 percent of the GNP, and in 2010 was estimated at 118 percent, the eighth highest in the world.[2]

Italian democratic institutions have faced four main challenges: coup attempts in 1964 and 1970 by right-wing extremists colluding with members of the military and intelligence; a long period of terrorism carried out by both left and right;[3] widespread systemic corruption; and the Mafia offensive against state institutions, which peaked in 1992 and 1993 with the assassination of judges Giovanni Falcone and Paolo Borsellino and a terrorist bomb campaign against national monuments. A more general attempt at undermining democratic decision-making was discovered in 1981, when a list of one thousand affiliates to the secret Masonic Lodge Propaganda 2 (P2) was confiscated by judges to the Grand Master Licio Gelli.[4] In order to manage these attacks, special emergency laws were adopted that limited the rights of defendants, increased penalties, and deteriorated prison conditions.

The combination in 1992 of a massive corruption scandal involving numerous high-ranking politicians and a dramatic financial crisis led in a few months to the electoral downfall of most political parties, among them the DC and the Socialist Party. The political system continued to lack stable political majorities and many leading political figures were put under inquiry, condemned, and forced to resign or even go into exile. Other parties underwent radical transformation (as in the case of the post-fascist Social Movement/National Alliance), and new political actors filled the political vacuum, including Silvio Berlusconi, media tycoon and the richest man in Italy.

The corruption scandals provoked a drastic transformation of the party system. A new electoral system with a strong majoritarian bias favored rotation of power among competing coalitions: the center-right under Berlusconi won in 1994, 2001, and 2008, and the center-left in 1996 and 2006 under Romano Prodi. Since 1994, formerly marginalized political parties such as the post-fascist National Alliance, the xenophobic Northern League, and post-communist parties have regularly been included in ruling coalitions. These coalitions have been unstable, however: many new parties emerged and disappeared from the political arena, competing within those coalitions or creating new centers of power.

Despite the alternation of power, Berlusconi has been the dominant actor in Italian politics since the mid-1990s. For much of this time, his influence on the media, the lack of a serious criminal conviction or other mortal political wound

(in part linked to "ad hoc" laws to neutralize criminal accusations), and the weakness of the opposition have allowed him to maintain high levels of popularity and consent, maintaining a crucial role in Italy's democracy. However, his often polarizing politics, continuous blurring of the lines between policy and personal interest, and penchant for becoming the subject of dramatic scandals have brought worldwide notoriety and strong criticism. By spring 2011, commentators started to talk of the decline of the Berlusconi era in Italian politics. In the early months that year, judicial evidence of the prime minister's private parties, frequented mainly by young women who were rewarded for their participation, scandalized the public. As of June 2011, Prime Minister Berlusconi is on trial for accusations that he paid for sex with a 17-year-old girl and then allegedly used his influence to secure her later release from police custody. Such episodes dramatized the longstanding conflict between the prime minister and the judiciary and have finally resulted in a decline in support for Berlusconi and his party, as was evident in the party's disappointing performance in the May 2011 local elections.

In addition, difficulties concerning the Berlusconi government's economic policy have recently become more evident, as stated by the National Institute of Statistics: "In the decade 2001–2010 [when Berlusconi was prime minister for more than 8 years] Italy realized the worst performance in terms of economic growth among all EU countries, with an average GNP increase of just 0.2 percent, compared with 1.3 percent in the EU." In the same years, the fiscal burden on families—notwithstanding that tax reduction has always been the main feature of Berlusconi's electoral program—increased from 27.9 percent of salaries in 2000–2005 to 29.9 percent in 2010.[5]

Finally, internecine conflicts emerged within Berlusconi's People of Freedom (PDL) party, where criteria for succession are undefined and several factions are trying to increase their influence. At the same time, Berlusconi benefits from the divisions among heterogeneous opposition parties, which have not managed to put forward a credible opposition alliance, and by the electoral law, which has a strong majority bias. As in the last decade, Berlusconi's influence on traditional media may strengthen the appeal of his populist messages. There is a risk, however, that the uncertainty over Italy's transition to a post-Berlusconi era may lead to a new phase of institutional and political instability.

ACCOUNTABILITY AND PUBLIC VOICE 5.91

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	6.00
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	5.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	6.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	5.29

General elections are held regularly and within a legal framework that guarantees universal participation and equal opportunity to compete. Voters elect their

representatives in the National Parliament; in regional, provincial, and municipal assemblies; and in the European Parliament, each with a different electoral system. The parliament is bicameral and consists of the 630-seat Chamber of Deputies and the 315-seat Senate, plus former presidents and 5 presidential nominees. The national government requires the vote of confidence of the two chambers. The Chamber of Deputies and the Senate have the same competences and authority, and serve five-year terms. The president, mainly a symbolic role, is elected for seven-year terms by the parliament, plus representatives of each Region. Electoral authorities composed of judges chosen by lottery in the Supreme Court and the Appeal Courts regulate elections. An internal commission (*Giunta delle elezioni*) nominated by the president of the respective assembly, with a composition reflecting the relative size of the various parliamentary groups, verifies candidate eligibility and validity of elections for each chamber.

The electoral law was changed in 1993 from a proportional to a mixed system, with single-member districts determining three-quarters of parliamentary seats. While it is not formally laid out as such in the constitution, the prime minister has since then been in effect directly invested, strengthening the role of the premiership within the executive and in its relationships with the legislature. The electoral system was reformed again in December 2005 by the center-right majority, following intervention by Prime Minister Berlusconi,[6] reportedly to prevent the anticipated victory of the center-left coalition led by Romano Prodi in the April 2006 election.[7] A closed-list system of proportional representation was established with a strong premium given to winning coalitions—at least 54 percent of the seats, whatever the margin of victory—for the Chamber of Deputies, and a similar premium in each region's allotments of Senate seats. As a consequence, party leaders largely control the selection of parliamentarians. After the center-left coalition, fragmented in a dozen parties, won the 2006 Senate elections by a few seats, Berlusconi denounced the results as electoral fraud and demanded a recount.[8]

Romano Prodi's fragile coalition government lost the parliament's confidence in February 2008. The subsequent elections, held in April, were won by Berlusconi's center-right coalition, which consisted of the PDL (an aggregation of Berlusconi's Forza Italia and the post-fascist National Alliance) and the Northern League. The coalition garnered 46.6 percent of votes in the Chamber of Deputies and 47.7 percent in the Senate. Following a steady decline of electoral participation over the last few decades, the 2008 general elections registered the lowest participation in the history of the republic, with 19.5 percent abstention.[9]

The mainly center-left opposition continued to struggle, losing control of several regions in the March 2010 local elections. In the May 2011 local elections, however, the center-right parties suffered a significant decrease of electoral success, especially in central and northern Italy: in Milan, for the first time since 1993, the mayor came from the center-left coalition, as well as in Naples, where

a political outsider and former judge won with 65 percent over the center-right candidate. The disappointing result for the right increased tensions with the allied Northern League, whose electorate has become gradually more critical of the alliance with Berlusconi. Moreover, the split with former allies Pier Fernando Casini (leader of the Union of the Center, a Catholic party) and Gianfranco Fini (leader of the right-wing Future and Freedom party) has weakened the center right's parliamentary majority.

Regulation of public financing of political campaigns was introduced in 1974. Since then, repeated modifications—with little public support—have consistently increased electoral reimbursement limits, funneled funds to central party offices, and failed to effectively control private financing sources or electoral expenses. Since 1993, when a popular referendum abolished public financing of political parties, there has been an automatic *reimbursement calculated as a fixed quota of each vote* garnered. Further regulation in 1999 and 2006 increased the per-vote reimbursement amount, distributed it over the entire legislature, and established mechanisms to ensure media access and electoral opinion polling. *Legal* private contributions are rare due to strict regulation and general public skepticism. However, formal controls and enforcement of finance regulations are lacking and ineffective, and parties have no incentive to reveal (often irregular or illegal) revenues and expenditures, resulting in massive underreporting of private contributions.[10]

In four regions of southern Italy (Sicily, Calabria, Campania, and Apulia), an extensive market for votes, controlled by criminal organizations, undermines the quality of the political process. Blocks of votes are exchanged for judicial protection, contracts, information, and favorable political decisions.[11] Political collusion with criminal organizations is rampant. Salvatore Cuffaro, for example, was re-elected as president of Sicily in 2006 while under trial for collusion with organized crime. Cuffaro was convicted in 2008 and sentenced to seven years, and later jailed in 2011. Similarly, the Tribunal of Naples in November 2009 requested permission from the parliament to arrest Nicola Cosentino, then vice-minister of the economy in the Berlusconi government and regional coordinator of the PDL in Campania, for providing support to the organized crime group Camorra. The request was denied by the Chamber of Deputies but confirmed in 2010 by the Supreme Court.[12]

The constitution establishes, and the Constitutional Court enforces, the balance of power. A third of the Constitutional Court's 15 members are appointed each by the president, a qualified majority in the parliament, and the Supreme Judicial Courts. Disputes between the executive and the judiciary do arise, however. A frequent subject of judicial inquiries for corruption and financial crimes, Silvio Berlusconi accused the Constitutional Court of political bias when it partly abrogated laws that might have granted him immunity from trial.[13] Berlusconi has repeatedly criticized judges investigating him as "subversives," "members of a criminal association," "mentally disturbed," and "cancer of our democracy that we have to sever."[14]

Recruitment and advancement in the public service, which had 3,312,000 employees in 2009, are competitive and generally based on length of service. Exceptions in the bureaucracy are numerous, however.[15] Since 1998, senior civil servants have been directly appointed and dismissed by the political authorities, generally on the basis of personal relationships and partisanship rather than merit.[16]

There are few access points through which civic groups and nongovernmental organizations (NGOs) can influence national policy, although some opportunity for consultation exists at the local level. Civic groups and NGOs are free from legal impediments from the state and onerous registration requirements. Many of them have, however, lamented limited access to public funds and lack of incentives for private funds.[17]

Italians enjoy freedom of expression and open media access without censorship. There has been since 1994, however, a flagrant conflict of interests involving Berlusconi's political positions and his role as head of an economic empire of insurance, banking, construction, advertising, cinema, football, and news media. Berlusconi owns Mondadori, one of Italy's major press and publishing groups, and Mediaset, which controls three commercial national TV and radio channels. Law 112/2004, approved under Berlusconi, lowered the limits on concentration in media ownership and advertising. Moreover, the executive indirectly controls the three channels of state-owned broadcaster Rai, fostering self-censorship and political interference.[18] Agcom, the communication oversight authority has occasionally criticized the imbalance, but there are limited means for redress, as Agcom has inadequate punitive powers.[19] Since television represents 80 percent of the population's primary news source,[20] the state's control of television has a noteworthy effect on electoral choices and public debate. There is a correlation between political majorities and emphasis in the news on issues of crime and security, which are traditionally center-right priorities. In 2010, public coverage of these issues was more than double that in the United Kingdom, Spain, France, and Germany.[21]

A draft law, published in June 2009, approved by the Senate and under discussion at the Chamber of Deputies, would severely punish with up to three years imprisonment and heavy fines journalists and editors who publish information from wiretaps on individuals involved in a judicial procedure before the conclusion of its preliminary phase, which generally last years.[22] Critics noted the potential use of the draft law by Silvio Berlusconi and members of his coalition involved in judicial inquiries.

Legal harassment of journalists is rare, even if the threat of criminal defamation charges and civil lawsuits has been used to discourage investigative journalism. Several journalists investigating organized crime were subject to intimidation, and ten live under permanent police protection,[23] including Roberto Saviano, author of bestseller Gomorrah, who denounced the dominance of the Casalesi clan over economic and political life in Campania.[24] In

November 2009, Berlusconi declared he "would strangle" writers and filmmakers who tarnish Italy's image by focusing on Mafia affairs.[25]

Diffusion of information and communications technology is slow because of inadequate infrastructure and scarce public investment. In 2010, only 59 percent of Italian families had at least one member with internet access, putting Italy in the bottom 5 of 27 European countries.[26] Decree 144/2005, supposedly enacted to fight terrorism, requires a license to offer wireless services, official identification of users, and recording of personal data. The number of Italian wireless hot spots is consequently 75–80 percent lower than many European countries.[27] In December 2010, a decree cancelled the obligation to identify those with public wireless connections.

State funding of press, local radio, and other broadcasting, introduced in 1981, was reduced by Decree 112/2008, which limited the access of official party newspapers, cooperatives, and nonprofit media to a fixed and decreasing amount of direct subsidies. Since almost two-thirds of advertising revenues are collected by television broadcasters and the remaining quota mainly shared by major editorial groups RCS and Mondadori, many small-scale newspapers and radio are now at risk of closure.

CIVIL LIBERTIES 6.00

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	5.50
GENDER EQUITY	6.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	5.75
FREEDOM OF CONSCIENCE AND BELIEF	6.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	6.75

Italy performs relatively well in terms of formal protection against extrajudicial execution and other violence by officers of the state, but there is still no law against torture, in spite of the signature of the UN Convention in 1987.[28] Occasional instances of detainee abuse persist, as demonstrated by judicial investigations and even sentences against police officers for excessive use of force, especially against migrants, young people, and protesters. For example, in a couple of recent scandals, two young people—Federico Aldrovandi in 2005 and Stefano Cucchi in 2009—were allegedly beaten by police officers during and after their arrest, leading to death in both cases (in the case of Aldrovandi, the Italian state admitted its responsibility and paid damages to the family). Public outcry enabled magistrates to initiate inquiries and prosecute the responsible parties.[29]

Most prominent among police abuses are the two trials against 75 police officers for mistreatment of anti-G8 protestors at the 2001 Genoa summit, when law enforcement officers were alleged to have committed numerous

human rights violations against Italian citizens and foreign nationals.[30] In March and May 2010, the Court of Appeal of Genoa convicted 69 police officers, among them senior officers who did not prevent or stop violence. Other charges included excessive use of force by 13 police officers during police raids of a demonstrators' dormitory in Diaz School and by 15 police officers in Bolzaneto prison, where protesters were held and allegedly tortured after their arrest. The judges of the trial on violence in Bolzaneto prison lamented that most of the crimes had expired due to the statute of limitations, which would not have applied if Italy had introduced torture as a specific crime.[31] The prosecution of officers of the state for violent crimes has in other cases been limited by an informal code of silence among police officers and by the lack of transparent procedural rules. Long-running trials and the consequent postponement and obstruction of some charges have thwarted effective punishment when evidence of abuses has emerged.

A 2005 Amnesty International report documented the unhygienic conditions in holding cells for undocumented migrants, and the denial of basic rights to migrants, in addition to other violations.[32] A 2009 immigration law extends from two to six months the maximum period of detention without charge permitted for undocumented migrants. According to a Doctors without Borders report, in such centers, "malfunctioning continued to occur in numerous forms and there were episodes of scant respect of fundamental rights . . . including lack of contact with the National Health Service, insufficient health, legal, social, and psychological assistance, and numerous signs of malaise among those interned."[33] As in the case of other national emergencies such as organized crime and international terrorism, irregular immigration became a criminal offence as of July 2009 and has been treated as a security emergency, resulting in the use of extraordinary measures that raise the risk of arbitrary detention and other violations.[34] Moreover, law 94/2009 allows detention without trial of immigrants who fail to show proof of legal residency. In April 2011, the EU's Court of Justice ruled that law 94/2009 conflicts with the European directive on repatriation and should not be enforced.[35]

The state refrains from violent attacks on political opponents, NGO workers, and members of civic groups. Protections against arbitrary arrest are effective. However, cases of long-term detention without trial are frequent, given the inefficiency of the judiciary system. In February 2011 42.1 percent of inmates—almost 28,500 people—were under pre-trial detention, against an average among EU countries of 24 percent.[36] Italy's rate of prison overcrowding is one of Europe's highest,[37] and one of the consequences of poor conditions is frequent suicides among convicts.[38] Despite a 2006 pardon that decreased sentences for a wide range of offenses, the government has not addressed prison overcrowding, and has actually criminalized additional offences, which has worsened the situation. Situations of arbitrary detention may also result "from the unreasonable length of criminal proceedings and from excessive recourse to remand detention."[39]

Powerful and widespread organized crime has heavily undermined state capacity to protect citizens, especially in the south. Organized crime hampers economic development, as racketeering discourages investment. Organized crime also threatens basic rights of the population that lives in these areas, given the groups' capacity to control territory.[40] While police action and judicial investigations have been effective at times, judges and public prosecutors have asserted that new laws reduced their investigative capacity—as in the case of law 45/2001, which limits informants' roles in inquiries on criminal organizations, or the legal restriction on wiretapping. There have also been budget cuts in the areas of public order and security, including a cut of 0.7 percent in 2010–2011 and further reductions of 0.5 and 0.2 percent in the coming years.[41]

Despite antitrafficking laws, Italy is a transit and destination country for trafficked men, women, and children, specifically for forced prostitution and exploitation of labor. Major antitrafficking crackdowns, with hundreds of arrests, were carried out in 2006 and 2007, but the government did not sufficiently follow up on these operations, leaving potential trafficking victims with inadequate protection.[42]

Although some Italian regions and local administrations have ombudsmen, these institutions are rare and their powers insufficient. A 2010 law abolished the position of municipality ombudsman because of shortage of resources and lack of trust in its effectiveness.

The constitution recognizes that men and women are entitled to equal enjoyment of civil and political rights. Many institutions have groups designated for the promotion of equal opportunity, in charge of protecting women from discriminatory or abusive customs and practices that infringe on their personal autonomy and security. Nonetheless, Fascist-era legislation, late to be recalled, made women legally dependent on their fathers and, later, their husbands. The Catholic Church has also lobbied against certain women's rights, especially reproductive rights. Abortion has been legal since 1978, but medical doctors can invoke conscientious objections to avoid the procedure, meaning the right to this procedure is jeopardized in practice. A 2004 church-supported fertility law prevents sperm and egg donation, limits the number of implantations that can be administered at one time, and bans the use of unused embryos for disease research. Italy has also been very late to approve the drug RU-486, which can only be administered in hospitals.

In 2010, Italy scored 74 out of 134 countries in the Global Gender Gap report, losing 7 positions since 2008 due to wage inequality, the low level of women's public and private enterprise leadership, and the limited presence of women in ministerial positions and national and local legislative bodies.[43] Labor market reforms put in place in 2003 increased flexibility, but have further penalized working women, who are usually employed in less protected sectors.

The constitution recognizes equal civil and political rights for all citizens regardless of ethnic and religious group. This notwithstanding, in 2009, according to a Eurobarometer survey, 22 percent of Italians—the highest level in the

European Union—reported that they personally felt discriminated against on the basis of age, gender, ethnic origin, disability, religion, or sexual orientation, while 26 percent witnessed someone being discriminated against or harassed on the basis of such characteristics.[44]

In January 2010, 7 percent of the regular resident population of Italy were immigrants, a figure that has more than doubled since January 2004. Larger ethnic groups are from Romania, Albania, Morocco, China, Ukraine, the Philippines, and Tunisia. This rapid increase has exacerbated social tensions.[45] In 2009, Amnesty International denounced increasing intolerance, especially against the Romany community.[46] In a comparative study on eight European countries, Italy showed severe signs of mistrust and intolerance: Italy had the highest percentage (62.5 percent) of people who thought there are too many immigrants in their country, and the highest percentage of anti-Muslims statements such as "Muslims are too demanding" (64.7 percent).[47] Moreover, 71 percent believe that discrimination on the basis of ethnic origin is very or fairly widespread.[48] According to the European Network Against Racism, "in 2009 there has been a dramatic increase in the vulnerability of migrants to racism and discrimination. Although some categories such as Roma and Sinti or Northern Africans have experienced more incidents of racism, strong anti-immigrant feelings have generally affected *all nationalities* and groups."[49] The Berlusconi government has taken an increasingly hard line against irregular migrants and asylum seekers, with restrictive and criminalizing provisions included in the 2009 "security package." Moreover, policies of control and forced evictions for Roma and Sinti have been systematically applied at the local level, while "basic human rights of asylum seekers such as *nonrefoulment* have been violated by the policy of interception at sea and by special agreements with Libya."[50] In the first months of 2011 the political crises in Libya and Tunisia increased the flux of migrants coming by sea dramatically, generating a "humanitarian crisis."[51] In January 2010, the southern town of Rosarno, in Calabria, saw the outbreak of race riots, which were reportedly sparked when local organized crime groups provoked African immigrants working in the area.

There is very limited recognition of civil rights for sexual minorities. While discrimination by sexual preference is formally prohibited, all attempts to ensure legal protection for homosexual couples to date have failed because of heavy opposition from the Catholic Church and the center-right political spectrum, as well as divisions in the center-left coalition. In May 2011, after almost three years of debate and attempts to find bipartisan agreement, a bill to prevent discrimination and violence against homosexuals was rejected in the justice commission of the Chamber of Deputies by the center-right majority. This was notwithstanding the support of the Ministry for Equal Opportunities.[52]

Despite formal equality, the labor market remains polarized, particularly in sectors such as construction, agriculture, and domestic services, where migrants and/or women are the majority and irregular forms of employment dominate.[53]

While regulations to improve accessibility for disabled people exist, voluntary associations decry their low degree of implementation.

The constitution guarantees freedom of religion, stating that "all religious faiths are equally free under the law." However, while there is no official state religion, the Catholic Church enjoys several privileges, including 0.7 percent of tax returns, several fiscal exemptions for its commercial and religious activities, and the power to appoint religion instructors in public schools. The state has no influence over religious appointments. Agreements with other religions also exist (with the exception of Islam) but there is no general law of religious freedom. Mosque construction has been a source of debate; center-right local governments oppose construction because of presumed risks for security and religious purity. In 2007, the national government began to monitor mosques for extremist messages, with the declared aim of fighting terrorism.

The constitution recognizes every person's right to freedom of association and assembly. The state also respects the right to form, join, and participate in free and independent trade unions, as well as the rights of civic associations, business organizations, and political organizations to organize, mobilize, and advocate for peaceful purposes. State material support for voluntary associations has been declining in recent years, however, due to the financial crisis. Trade union density in Italy is above the EU average: 35.6 percent of employees were members of one of the three main trade unions in 2008 (retired employees excluded), representing a decrease from 38.1 percent in 1995.[54] The three major union confederations are the General Confederation of Italian Workers (CGIL), with 47.8 percent of total union membership in 2008; the Italian Confederation of Workers' Unions (CISL), with 36.7 percent; and the Union of Italian Workers (UIL), with 15.5 percent.[55] While CGIL has traditionally been linked to leftist parties, CISL to Catholic parties, and UIL to the non-communist, reformist left, since the 1960s the three main unions had developed instruments of coordination that allowed them to influence labor and economic policy effectively for decades. Recently, however, the internal divisions widened after the refusal of CGIL to support the reform of the collective bargaining system in January 2009 and to agree with an industrial restructuring plan presented by manufacturer Fiat and submitted to a workers' referendum in June 2010 and January 2011. In recent years the divisions among the three unions, combined with their declining membership and the fragmentation of workers' representation in an increasing number of other confederations and independent unions—especially in the transport and public services sectors—have weakened their role in industrial relations and policymaking.

Demonstrations and public protests are allowed, but there are constraints on protest rights, with considerable state discretion in prohibiting public demonstrations or imposing limits on their development. Public criticism against the use of excessive force against demonstrations is occasionally made, particularly in the case of antiglobalization protests like those in Genoa in 2001.

Unconventional forms of political participation are particularly widespread in Italy. This was especially true in the 2000s, when protests focused on issues of social justice and peace.[56] In a 2005 comparative study of eight European countries (among them Germany, France, and the United Kingdom), Italian young people (aged 15 to 25 years) were by far the most inclined to political protest, including illegal and violent forms.[57]

RULE OF LAW	**5.92**
INDEPENDENT JUDICIARY	5.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	5.80
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	5.75
PROTECTION OF PROPERTY RIGHTS	6.33

Italy has a tradition of civil law but since 1988 has used a hybrid of inquisitorial and adversarial procedures. The government generally respects judicial independence, though a number of cases of judicial corruption have arisen, particularly in relation to judges' relationships with organized criminal networks and wealthy entrepreneurs.[58] The Italian judiciary's principle weakness remains the excessive delays that plague court proceedings, which defendants can take advantage of to prolong trials until the statute of limitations has lapsed.

Italian judges and magistrates are formally protected from interference by the executive and legislative branches. The doctrine of compulsory prosecution, according to which a prosecutor must press charges in cases with evidence sufficient to support a conviction, generally prevents the government from interfering in the administration of justice on behalf of its allies. Judges themselves consider the requirement an important protection against political use of the law.[59] Recruitment into the magistracy is based on competitive examinations open to all with a university degree in law. Career and disciplinary issues are decided by the Supreme Council of the Magistracy (CSM), which is composed of members of the judiciary elected through the lists of associations with different political orientations.

The appointment, promotion, and dismissal of judges and public prosecutors is the responsibility of the CSM. The Berlusconi government recently proposed several laws to increase the number of political appointees to the CSM, to separate the ranks of judges and public prosecutors, and to empower the Ministry of Justice to define priorities in criminal prosecution. The National Association of Magistrates (ANM) has strongly resisted these attempts, with frequently high tension between the ANM and the government.

Several conflicts have developed, particularly over political corruption, between the judiciary on the one side, and the legislative, executive, and other governmental authorities on the other. The parliament has systematically denied judicial requests for investigations or arrest against its members, especially in

corruption investigations. Only after the Supreme Court issues a final judgment against a member of parliament is the corresponding chamber unable to prevent arrest.

Laws related to the statute of limitations have been particularly controversial. Many of these measures were reportedly pushed through parliament quickly in order to serve Berlusconi's judicial interests. The 2002 law allowing the transfer of jurisdiction based on the legitimate suspicion that a fair trial was unlikely, for example, was reportedly proposed on behalf of Berlusconi to allow his defense attorneys to drag out cases against him long enough to exceed the statute of limitations. The perception that these laws were intended to benefit Berlusconi and other government allies likely provoked a high number of adverse judgments of the Constitutional Court, which was asked to evaluate the laws' conformity with the constitution. In particular, complete and partial abrogation by the Constitutional Court, in December 2010, October 2009, and January 2004, has sunk three measures on penal immunity and suspension of participation in trials that were directly designed to provide legal safeguards for Prime Minister Berlusconi against pending judicial inquiries into his affairs. As a result, the tensions between the executive, supported by its parliamentary majority, and the judicial branches of the state have escalated, with a shift of the focus of public debate from the issue of corruption to the allegation that judges are politically biased. Following the Constitutional Court rejection of the law providing his immunity from prosecution, Berlusconi evoked the prospect of a civil war between what he considered to be subversive prosecutors and an executive legitimized by its electoral majority.[60]

Berlusconi has been the center of numerous ongoing trials and has been notoriously uncooperative in those procedures. Some of these cases implicated members of the judiciary. In 2006 and 2007, for example, Judge Vittorio Metta was sentenced for corruption in two major cases, Imi-Sir and Mondadori. The latter case concerned a trial that ended with the handover of the Mondadori editorial group to Berlusconi, whose lawyer and former defense minister, Cesare Previti, was also found guilty of bribe-paying.[61]

There is indication that organized crime groups exert pressure and influence to secure the appointment of preferred judges and that those judges rule in favor of said groups in return. In May 2011, a judge in Imperia was arrested for decreasing sentences for affiliates of organized crime.[62] In 2008, 86 individuals were accused of corruption in judicial procedures, more than double the 2006 figure.[63] Judicial involvement in anticorruption investigations, however, demonstrates the degree of judicial autonomy.

The constitution guarantees presumption of innocence, the right to counsel, and due process. The judicial system's main problem is the excessive length of time to complete judicial procedures, which the European Court of Human Rights has repeatedly criticized.[64] For example, the conclusion of a penal trial in 2008 in Italy required an average of 1,291 days, almost 4 years.[65] A proposed law that limits the possible duration of civil and penal trials, which would expire

when limits are exceeded, was under discussion in the Chamber of Deputies as of spring 2011 after Senate approval in January 2010. According to the ANM, however, if it is not accompanied by reforms capable of notably reducing the length of the procedures—none of which have been proposed—such a law would cause the termination of about 50 percent of trials in Rome, Bologna, and Turin, and 20 to 30 percent in Florence, Naples, and Palermo. The CSM estimated the cancellation of a percentage ranging from 10 to 40 percent of all trials, up to 47 percent in some areas. The Ministry of Justice limited the estimate to 1 percent of trials.[66] Such a measure, besides encouraging the use of delaying tactics among defense lawyers, would benefit Berlusconi in an ongoing case regarding his former tax lawyer, David Mills, who was charged with accepting bribes in exchange for giving false testimony.

Italy has a tradition of civilian control over the security forces, which in the past have had limited autonomy from the executive. While the *Carabinieri* and financial police are part of the army, the Italian police force is civil. Nevertheless, it was only in 1981 that legal reforms recognized the rights of police officers as workers, allowing unionization. The abolition of provisions against the recruitment of women in the police forces has increased their presence to up to one-third of the force. An antidiscrimination provision that mandates equal treatment in employment regardless of age, sexual orientation, or religion, further opened employment opportunity in the force. In 2000, the Carabinieri became an autonomous branch of the armed forces.

Police, military, intelligence services, and internal security services refrain from political interference and involvement, however abuses of power and corruption within the police and military forces are not uncommon. Judges have lamented interference (especially from the police) that risked jeopardizing investigations into these abuses.[67] Perceptions of corruption within the security forces are significant. According to the 2009 Global Corruption Barometer, 30.9 percent of Italian citizens perceive police to be extremely or quite corrupt.[68] Similarly, according to the 2009 Eurobarometer, 32 percent of Italians think that bribes and abuse of power for personal gain are widespread in the police service, an increase of 10 percent since 2007.[69] There has been no reform in this area, where limitations on independent inquiries and high ésprit de corps increase the potential for corruption.

There is limited accountability and low professionalism among the Italian police. Police unions have lamented that budget cuts on security issues have reduced their capacity. The creation of specialized bodies for intervention in public demonstrations has been ineffective: since the Italian police forces have been accused, and sometimes sentenced, for maltreatment of demonstrators—especially during the anti-G8 protests in Genoa in 2001—some of these bodies have been abolished.[70]

The constitution and legislation guarantee private property rights. Expropriation is strictly limited to cases defined by the law for reasons of general interest, with due compensation. Such robust formal protection of rights is sometimes

undermined in practice, however, as the slowness of judicial procedures weakens the effectiveness of enforcement.[71]

ANTICORRUPTION AND TRANSPARENCY 5.08

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	5.00
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	4.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	5.50
GOVERNMENTAL TRANSPARENCY	5.50

While corruption was the catalyst of the 1990s political crisis, the issue quickly disappeared from the Italian political agenda. Electoral losses for politicians involved in corruption scandals have gone from mild to nonexistent in the last decade, as epitomized by Berlusconi's electoral victories despite his several corruption and accounting fraud charges. Public interest in corruption has consistently decreased.[72] A protest campaign, "Clean Parliament," launched by the satirical actor and blogger Beppe Grillo, denounced the presence in parliament of 25 convicts (in some cases for corruption) in 2006 and 18 in 2008.[73] In February 2010, the Anti-Mafia Parliamentary Commission approved an "ethical-electoral code" to prevent those implicated in Mafia-related crimes from contesting seats. However, 45 candidates convicted in Mafia-related crimes stood for local election in May 2010, and 11 won.[74]

In 2010, Italy scored 3.9 out of 10 on Transparency International's Corruption Perceptions Index.[75] This was its lowest ranking since 1998, falling from 41 among 179 countries in 2007 to 67 of 178 countries, putting it among the bottom four EU states. According to the Council of Europe's Group of States against Corruption evaluation report on Italy, "corruption is deeply rooted in different areas of public administration, in civil society, as well as in the private sector. The payment of bribes appears to be a common practice to obtain licenses and permits, public contracts, financial deals, to facilitate the passing of university exams, to practice medicine, to conclude agreements in the soccer world, etc."[76] The General Prosecutor of the Court of Accounts in 2009 estimated the monetary cost of corruption in Italy at between $72 and 86 billion annually.[77]

Such a high level of perceived corruption, uncommon for an advanced liberal democracy, is related, among other variables, to the structural inefficiency of the Italian public administration, fragmented in a wide plurality of offices and levels communicating with each other through highly bureaucratic channels.[78] In decision-making processes, moreover, excessive formal regulation coexists with the frequent attribution of special or emergency powers, which are more vulnerable to corruption due to the lack of effective controls. This was demonstrated in a February 2010 case involving the Civil Defense Authority. The authority is able to award large public contracts without undertaking a competitive bidding process in situations that the government has deemed to be emergencies, for example during the aftermath of the powerful earthquake that hit central Italy in 2009. It

was alleged in 2010, however, that the government had declared emergencies in a broad range of nonemergency situations, including the building of facilities for the 2009 G8 summit, and that bureaucrats accepted bribes in exchange for high-value contracts for these so-called emergencies.[79]

The overregulation of economic and social activities, combined with the formalism of administrative procedures and controls, produces uncertainty over rights and increases the arbitrary power of agents who have the authority to apply or interpret norms.[80] As a consequence, in the Italian political-institutional environment, confidential information and the capacity to address or accelerate decision making, especially in sectors where considerable resources are at stake—e.g. public contracting procedures, licenses, concessions, etc.—have often been exchanged for bribes by public officials.[81]

Law 215/2004 on conflicts of interest outlines the incompatibility between the management of a company—not ownership as such—and government roles. However, it does not create any effective monitoring or prosecution mechanisms.[82] The law does not constrain Berlusconi's overwhelming influence, for example, over the media and the economic system. Ironically, the only potential conflict of interest identified for Berlusconi was his position as president of the Milan football club, a position from which he was forced to resign in 2004 and 2008, prior to assuming his role as prime minister. Moreover, the law does not include preventive measures for resolving potential conflicts of interest. Government members can only be investigated ex-post on a case-by-case basis by the Antitrust Authority, in respect of acts or omissions that have "a specific, preferential effect on the assets of the office holders" and "to the detriment of the public interest." This general formulation has made regulation ineffective. In recent years the spread of public/private partnerships in the management of local public services has multiplied potential conflicts between private interests and public roles of officeholders, but similar situations are not regulated or enforced. The obligation of disclosure of public officials' patrimonial assets, introduced for elected politicians in 1982 and extended in 2009 to the salary of senior officials and public consultancy fees, is in practice undermined by the ineffectiveness of verification of their truthfulness.

Italy lacks a well-organized and coordinated anticorruption strategy and has no method for determining the efficacy of anticorruption measures already in place.[83] Anticorruption action has consequently been restricted to the sphere of investigation and punishment. In a cross-national study sponsored by the European Commission, based on opinions of high-level bureaucrats and citizens, Italy ranked 24 among the 27 EU countries for the quality and effectiveness of its anticorruption policies.[84]

An outline of the main measures that have shaped the existing Italian anticorruption framework over recent years shows a contrasting panorama. A pessimistic outlook—69 percent of Italian citizens in 2009 believed that Italian governments have proved ineffective in the fight against corruption, and only

16 percent had a positive opinion[85]—is justified by the quantity and relevance of several potentially corruption-enhancing laws approved in the last decade, including the decriminalization of false accounting (law 61/2002); the guarantee of immunity for holders of the highest offices of state (laws 140/2003 and 124/2008); the requirement of parliamentary authorization for prosecutors' collection of evidence on members' crimes and imposition of restrictive measures (law 140/2003); and the possibility of regularizing financial assets hidden abroad, even if derived from illegal or corrupt activities (law 102//2009). Several measures have been broadly characterized as explicitly designed to shelter Berlusconi from accusations. They also have had a more general adverse symbolic effect on the popular belief in impunity of rulers from corruption charges. Other measures produced broader adverse consequences, including the reduction of the statute of limitations—law 251/2005, which discouraged the recourse to abbreviated trial procedures and enhanced the ability of defendants to prolong trials, reducing the efficiency of the entire judicial system.[86] An alarming—and increasing—proportion of all prosecutions for corruption fail simply because of such expiration, undermining the credibility of criminal law and the dissuasive power of sanctions.

Other legislative measures could further undermine judicial anticorruption efforts. A law proposal sponsored in 2008 by the former Minister of Justice Angelino Alfano would amends the rules concerning special investigative techniques and wiretapping, restraining also for corruption-related investigations the condition to start wiretapping, the time limit for which they can be used, and their cost. Even though investigation of Mafia and terrorism crimes is formally excluded from the limitations introduced by the law, often the existence of terrorist groups or criminal organizations is revealed by operations initiated with evidence of other related crimes (e.g., extortion, usury, falsification of notes and documents, etc.). Thus, the limitations on investigating these related violations could prevent authorities from identifying Mafia and terrorist crimes.[87]

Anticorruption measures have not developed systematically. An Anti-Corruption High Commissioner established in 2003 was abolished in 2008, due to its inefficacy. A new body instituted in 2008, the Anti-Corruption and Transparency Service (SAET), is functionally dependent on the minister for the civil service and lacks adequate resources.[88] Moreover, SAET, like its predecessor, has advisory, research, promotion, and coordination functions, but no investigation or prosecution powers. Its most notable activity is a report to the parliament and the October 2009 signature of two preliminary agreements with the Authority for Public Contracts and the Association of Italian Municipalities. The aim is to introduce, with Transparency International's input, integrity pacts as a model for best practices in public contracting procedures. Since adherence to best practices would be voluntary, there is a risk that the outcome will be a patchwork of anticorruption initiatives, whose implementation would depend on the goodwill of local political and business actors.

In March 2010 the executive proposed an anticorruption draft-law, which has been approved in June 2011 by the Senate and is under scrutiny at the Chamber of deputies. This was arguably intended to reassure public opinion on the government's ability to face the scandal that in February 2010 had hit several high-level bureaucrats and leading figures of the ruling center-right coalition with charges of bribery in public contracting procedures. The law consists of a heterogeneous set of norms on transparency and slightly increased legal sanctions.[89]

In December 2010, a grassroots anticorruption initiative was launched by LIBERA (a network of anti-Mafia associations) and Avviso Pubblico (a network of local administrations). The initiative compiled 1.5 million signatures to send to the president expressing support for parliamentary ratification of international anticorruption treaties and implementation of a norm introduced in 2007 but never implemenred that allows confiscation and social use of corrupt administrators' assets.

There has been a constant decline in media coverage of corruption since the mid-1990s. Newspaper coverage of corruption decreased rapidly in the last decade and in 2009–2010 reached the lowest level since the 1980s. Political pressure and media control, and the public's habituation to corruption stories, may explain this trend.[90] Not only Italians seem increasingly difficult to scandalize, but also coverage of political corruption tends to be highly partisan. Allegations, especially those leveled at center-right politicians, tend to be presented as evidence of the political bias of the magistrates.

There is no whistleblower protection in corruption cases. In state services including public contracting, city planning, and the public health system, where corruption was systemic and internally regulated, reporting corruption has had adverse consequences for whistleblowers' careers within the public administration. Whistleblowers have been ostracized by accomplices of corrupt agents as a form of punishment.[91]

Sporadic cases of corruption within the education sector have emerged as well, including bribes to pass examinations or obtain diplomas, but they are not as pervasive as other types of corruption.[92] There have also been allegations that nepotism and favoritism based on academic affiliation, rather than merit, have an undue influence on the awarding of jobs and promotions in the academic community.[93]

The public's right to access to information about public activities is the cornerstone of the administrative reforms that started in the 1990s. Legislative decree 150/2009 has strengthened its application. Transparency relates to total accessibility of information on any aspect of an organization, following a model of open government.[94] Implementation has been slow, however. The monitoring activities of the National Commission for the Evaluation, Transparency and Integrity of Public Administration (CIVIT), which coordinates reforms, have been indefinitely postponed.[95]

Italy scored 58 out of 100 on the 2010 Open Budget Index, tying for the lowest score in Western Europe. The parliament exercises strong oversight over

the budget, but the budget lacks information on outputs, which is necessary to monitor its impact. The executive's preparation of the budget does not typically include consultation with members of parliament, nor does civil society have any consultative role in the process. The Court of Accounts' budget oversight is effective, but it does not have channels to communicate with civic groups, either to disseminate its reports or to receive complaints and suggestions.[96] Sporadic small-scale experiments of participatory budgeting are promoted only at a local level.

Corruption and collusion are pervasive in public procurement[97] because of the extent of resources at stake (79.4 billion euros in 2009), their inefficient allocation, and payment procedures.[98] A government procurement code was approved in 2006 to simplify procedures and adapt to EU parameters. The implementation of new norms has been delayed and complicated by legal disputes and bottlenecks.[99] In 2009, only 46.2 percent of public contracts exceeding 150,000 euros were awarded through an open and competitive procedure, 10.4 percent with a direct negotiation, and 24.6 percent with direct negotiation without public notice.[100]

RECOMMENDATIONS

- The duration of both civil and penal proceedings should be reduced through a simplification of judicial procedures, decriminalization of minor offences, organization of tribunal administrative offices according to management criteria, and public investment in the use of information and communication technologies for legal purposes.
- Political candidates with criminal records in corruption and Mafia-related crimes should be prohibited from running for both national and local office.
- Conflicts of interest, both potential and actual, should be more rigorously and severely regulated at all levels of government, defining clear and unequivocal criteria for incompatibility and limitations. This is especially true in the media sector, which is crucial for the formation of public opinion. Effective controls by independent authorities, backed by enforcement mechanisms, should be correspondently implemented.
- The parliament should ratify the Council of Europe anticorruption convention, introduce regulations on private sector corruption and influence-trafficking, authorize the confiscation of corrupt administrators' assets, simplify anticorruption regulations and extend their statutes of limitation, and introduce whistleblower protection.
- The anticorruption authority, made independent from the political power, should be assigned the authority to exercise effective and in-depth controls and investigations, with adequate financial and human resources.
- Procedures should be improved for redress in cases of citizens' mistreatment by public officers and a law against torture should be passed.
- Democratic decision making procedures within political parties should be established.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

[1] Cotta, Maurizio, «La crisi del governo di partito all'italiana,» in M. Cotta and P. Isernia (eds.), *Il gigante dai piedi di argilla* (Bologna: Il Mulino, 1996), 11–52.

[2] United States Central Intelligence Agency, "The World Factbook," https://www.cia.gov/library/publications/the-world-factbook/rankorder/2186rank.html, accessed February 11, 2011.

[3] Between 1969 and 1982, 4,362 terrorist attacks have been counted, of which about three quarters have been attributed to the radical right; 164 people died in left-wing attacks, 186 in right-wing ones. Among them was the secretariat of the Christian Democrat party, Aldo Moro, kidnapped and killed in 1977. See D. Della Porta and M. Rossi, *Cifre crudeli. Bilancio dei terrorismi italiani* (Bologna: Istituto Cattaneo, 1984).

[4] Thirty-six members of Parliament, more than fifty generals, many functionaries, journalists and entrepreneurs (among them Silvio Berlusconi) were affiliated to the P2 lodge. According to the Parliamentary Commission of inquiry, the political strategy of the Masonic lodge P2 was characterized by "a strong anti-system connotation and consequently by an indirect subversive orientation, reflected by Gelli's allusions to eventual authoritarian solutions, which could also include a military contribution." Cfr. Parliamentary Commission of inquiry on the P2 lodge. *Final Report*, approved on July 3, 1984. Cfr. http://italy.indymedia.org/news/2003/04/266325_comment.php, accessed May 20, 2010.

[5] Istat – Istituto nazionale di statistica (ISTAT), *Rapporto annuale. La situazione del paese nel 2010*, (Roma:, ISTAT, 2011),1, in http://www.istat.it/dati/catalogo/20110523_00/rapporto_2011.pdf, (accessed May 20, 2010).

[6] M. Brunazzo, "Gli avvenimenti del 2005," in G. Amyot and L. Verzichelli, *Politica in Italia. I fatti dell'anno e le interpretazioni, edizione 2006* (Bologna: Il Mulino, 2006), 34.

[7] *La Repubblica*, March 15, 2006.

[8] The Parliamentary Electoral Commission verified the result, stating on September 2007 its correctness. See S. Legnante and P. Corbetta, "Brogli immaginari e sindrome della cospirazione," in *Il Mulino*, n.1, 2007. An opposite thesis conjectured an electoral fraud organized by the executive to favour the Forza Italia party, observing the unusual reduction of unmarked ballot papers (4.2 percent of votes in 2001, 1.1 percent in 2006 elections), their abnormal distribution in the country, and the steady reduction of the gap between centre-right and centre-left coalitions as votes were scrutinized. See E. Deaglio and A. Cremagnani, "Uccidete la democrazia!", in *Diario*, November 24, 2006.

[9] Istituto Cattaneo, "Elezioni politiche 2008. La maggior crescita dell'astensionismo elettorale del dopoguerra, assieme a quella del 1996," http://www.cattaneo.org/pubblicazioni/analisi/pdf/Analisi_Cattaneo_Politiche2008_Astensionismo.pdf, accessed February 10, 2011.

[10] D. Della Porta and A. Vannucci, "Corruption and political financing in Italy," paper presented in the workshop on corruption and political party funding, Villa La Pietra, Florence, October 2000.

[11] D. Della Porta and A. Vannucci, "The Godfather's party. Organized crime and political financing in Italy," in K. Casas-Zamora (ed.), *Dangerous Liaisons: Organized Crime and Political Finance in Latin America and Beyond* (Washington, DC: Brookings Institution Press, forthcoming).

[12] According to the judges, he "received punctually electoral support from elections in which he was candidate," reciprocating with his "guarantee of stability in relationships between

Mafiosi entrepreneurships, public and municipal administrations." See Tribunale di Napoli, Ordinanza cautelare contro Casentino Nicola, November 7, 2009, n.36856/01 R.G.N.R., n.74678/02 R.G.GIP.

[13] *La Repubblica*, October 7, 2009.

[14] *Corriere della Sera*, September 4, 2003; *La Repubblica*, June 21 2008, p.2; *La Repubblica*, October 1, 2010; *Il Giornale*, May 8, 2011.

[15] The frequency of "extraordinary recruitment" without public concourse in the civil service has increased since 1999, when 6.8 percent of personnel in the public administration had a temporary contract. The percentage increased to 11.4 percent in 2003 and more than 14 percent in 2008: most of these—several hundreds of thousands—have been assumed without concourse due to the budget laws of 2007 and 2008. The lack of merit in recruitment is mirrored by the low qualification; only 23.6 percent of Italian public servants have a University degree. See L. Torchia, ed. *Il sistema amministrativo italiano* (Bologna: Il Mulino), 286–290.

[16] In 2009 16.6 percent of the 9,500 public managers in local administration and 7.5 per cent of the 68,700 public managers in Ministers has been politically nominated: authors' own elaboration on data from the Ministry of Economy, General State Accounting, *Personnel accounts 2010*.

[17] Marcon Giulio, *Le utopie del ben fare* (Roma: l'Ancora, 2004).

[18] Reporters Sans Frontieres, *World Report 2010: Italy*, http://en.rsf.org/report-italy,111.html, accessed February 11, 2011. The impact of political majorities on news content and orientation in Italian public television after the 2011 general elections has been demonstrated by Ruben Durante and Brian Knight, "Partisan Control, Media Bias, and Viewer Responses: Evidence from Berlusconi's Italy," working paper, October 22, 2008, http://www.business.uzh.ch/professorships/entrepreneurship/workshops/media/DuranteKnight221008.pdf.

[19] In 2008 the executive and its centre-right political majority had 54.2 percent of time in national broadcaster political news, the opposition 31.4 percent; in 2009 the gap increased: 58.3 percent versus 23.6 percent (ISIMM Ricerche, *2009: Un anno di informazione televisiva* [Perugia: Morlacchi, 2010]). Over the period of 2001–2010, Berlusconi spoke directly in national broadcaster news for 10,260 minutes, while in the same period the leaders of the centre-left spoke 3,668 minutes altogether (*La Repubblica*, February 7, 2011, p. 9). During the 2011 administrative campaign, the Agcom fined up to 250,000 euros almost all national television news broadcasters for having offered a disproportionate amount of time to Silvio Berlusconi's messages and speeches. Fines, however, do not seem to discourage effectively the imbalance of political information; moreover, they are always appealed to the administrative court and rarely paid (*La Repubblica*, May 23, 2011).

[20] More specifically, in 2009, 93.5 percent of Italian citizens collected information on politics from TV channels (23 percent as unique source), 49.9 percent from newspapers, and 31.2 percent from radio. See "La partecipazione politica: differenze di genere e territoriali," Instituto nazionale di statistica, March 8, 2010, http://www.istat.it/salastampa/comunicati/non_calendario/20100308_00/testointegrale20100308.pdf.

[21] "La sicurezza in Italia e in Europa 2010: Significati, immagine e realtà," Osservatorio europeo sulla sicurezza, January 26, 2010, http://www.demos.it/2011/pdf/1648report_sicurezza_2010_unipolis_sintesi.pdf.

[22] Cfr. Camera dei deputati, Atto n. 1415-B, http://www.senato.it/leg/16/BGT/Schede/Ddliter/35538.htm, accessed February 11, 2011.

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LAOS

CAPITAL: Vientiane
POPULATION: 6.4 million
GNI PER CAPITA (PPP): $2,200

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	1.03	1.03
CIVIL LIBERTIES:	2.39	2.37
RULE OF LAW:	1.80	1.68
ANTICORRUPTION AND TRANSPARENCY:	1.70	1.63

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Martin Stuart-Fox

INTRODUCTION

In December 1975, after a thirty-year struggle, the Lao People's Revolutionary Party (LPRP) seized power from the former Royal Lao regime, abolished the monarchy, and established the Lao People's Democratic Republic (LPDR). The new institutions of government were modeled on those of the former Soviet Union and Laos is today one of only five remaining Marxist-Leninist states, two of which (China and Vietnam) are its powerful neighbors. It is also one of only five Theravada Buddhist countries, three of which (Burma/Myanmar, Cambodia, and Thailand) comprise its other three neighbors. The paradox of Laos today reflects its position on this fault line between communist leadership and Buddhism.

During its first 10 years in power, the LPRP pursued orthodox socialist policies: it nationalized industry and cooperativized agriculture. But plummeting production and peasant opposition forced a reconsideration. In 1986, the ruling party introduced what it called the "new economic mechanism." Over the next decade, land rights were returned to peasant owners, state-owned industries were privatized (except for a few strategic industries), the economy was opened up to foreign capital, and development aid welcomed. Laos reduced its close dependency on Vietnam, and in 1997 both countries joined ASEAN, the Association of Southeast Asian Nations.

Like other countries in the region, Laos was affected by the Asian economic crisis of 1997–98. Capital inflow collapsed, inflation mushroomed, and some,

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but not all, of the economic gains of the previous decade were lost. From 2000 on investment picked up, with China emerging over the past five years as a principal player, along with Vietnam and Thailand. In 2009, a prime ministerial decree established two special economic zones in northern Laos, to be developed by foreign companies.[1] While most foreign direct investment has gone into hydropower, mining, plantation agriculture, light industry for export, and tourism, China has also invested in infrastructure development to improve transport links between southern China, Laos, and northern Thailand. A new bridge will be constructed across the Mekong at Ban Houeixai and a rail link is planned. Elsewhere road construction designed to make Laos a transport hub in mainland Southeast Asia is being funded by the Asian Development Bank as part of its Greater Mekong sub-region development plan. Improved infrastructure is stimulating development, and the current economic outlook is healthy, with projected GDP for 2010 estimated at 7.8 percent. But there is a downside. Benefits are unevenly distributed,[2] and land grabbing by corrupt officials has fueled popular resentment.

The LPRP has not relaxed its grip on power. Taking China and Vietnam as its models, the party has presided over the change from a centrally planned to a free-market economy while refusing to contemplate even the most minimal democratic reforms. The LPRP is the sole political party. It determines who may stand for election to the National Assembly (NA), controls the government, and directs all mass organizations. The bureaucracy is a highly politicized arm of the party, as is the media. As a result, what passes for civil society is severely stunted. Corruption has become endemic, and rule of law is honored more in the breach than in the observance.

The degree of control exercised by the LPRP is not readily evident to visitors to Laos, however. While the tiny Christian community is suspect for its overseas links, Buddhism is encouraged. Lines of orange-clad monks make their daily begging rounds, while members of the Politburo make their obeisance to senior monks at important Buddhist festivals. Most Lao pursue their daily lives as they have always done: the power of the party is felt mainly by those who would challenge it. No criticism, or even political debate, is permitted outside the confines of the highly secretive party, which recruits its membership from the elite and the educated. Without the support of the party, promotion in government and the bureaucracy, or success in business, is impossible. As everyone knows in Laos, a powerful political patron is the key to advancement.

ACCOUNTABILITY AND PUBLIC VOICE	**1.03**
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	0.80
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	1.00
CIVIC ENGAGEMENT AND CIVIC MONITORING	1.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	1.00

For the first 15 years of the Lao PDR, the LPRP ruled without a constitution. During this period revolutionary justice prevailed: the party was the law. The 1991 constitution was extensively amended in 2003, the better to reflect the political and economic reality of contemporary Laos. The amended constitution was passed by the NA and promulgated by presidential decree, but only after first being endorsed by the Politburo. In fact, the president of the Politburo was also the state president who decreed the promulgation of the constitution. Such is the overlap between the ruling party and the organs of state in Laos.

Article 3 of the 2003 constitution states that the political system ensures the rights of the multiethnic Lao people "with the Lao People's Revolutionary Party as its leading nucleus."[3] Article 5 stipulates that the parliament (the NA) and "all other state organizations" function by a process of "democratic centralism." What this means is that they are organized in the same way as the ruling party, as hierarchical organizations in which information (about social issues and concerns, for example) flows up the hierarchy, and decisions flow down. This effectively concentrates all power in the hands of a tiny ruling elite at the apex of the party and the state. The degree of concentration of power is all the more apparent when it is remembered that all but one of the 29 ministers comprising the government, all but four of the 132 deputies in the NA, and almost all senior bureaucrats are party members, subject to the party discipline implicit in the concept of democratic centralism.

Articles 3 and 5 of the 2003 constitution essentially define the political system, for they define the role of the LPRP and the mode of functioning that enables it to monopolize political power. While they remain in place, it is difficult to see how multiparty democratic processes could constitutionally be introduced. In any case the LPRP leadership has repeatedly stated it has no intention of initiating democratic reforms.

Because the ruling party is all-powerful in Laos, it is necessary to understand how it works before turning to the NA or the government. The LPRP has a typically Leninist cellular structure. Party branches exist at all administrative levels, from the village through to the district and province. Cells also exist in all government ministries, in the four officially sanctioned mass organizations (the Lao Front for National Construction, the Lao Women's Union, the Lao People's Revolutionary Youth Union, and the Federation of Lao Trade Unions), and in the military and security apparatus. Theoretically each lower level delegates a representative to the next level up. In practice, delegates are appointed through the patronage of senior party officials, who thus gain networks of clients to support their ambitions to gain membership of the higher organs of the party.

Patron-client relationships are central to Lao political culture, and they function in communist Laos as traditionally they have always done. Clients include, first and foremost, members of the patron's extended family. They also include personal friends and their relations from the patron's region of origin (still very important in regionally divided Laos), from school and university, and through party connections and business interests. At the higher levels, patron-client

networks may be cemented by intermarriage between families. Patronage is provided in a variety of ways, for which gratitude is shown in monetary form. The culture of patronage encourages intervention in staffing and promotion issues in the civil service, in cases of law, in business dealings, even in school and university enrollments and health care. Political advantage is gained by placing members of one's network in key positions in the party or the government or the bureaucracy. Thus, much of the matter of politics is about whose clients get what positions, for which trade-offs are essential. As a result, the public service is corrupt and incompetent, with officials loath to make decisions or take responsibility. Political maneuvering within the LPRP is highly secret and nothing is discussed in the press, so rumors abound in response to important political events, as when former Prime Minister Bouasone Bouphavanh resigned in December 2010.[4] Party cohesion is maintained because all members concur that as the LPRP provides their principal, if not sole, access to power and wealth, it must be preserved.

The most significant events in the Lao political calendar are the five-yearly LPRP congresses, the eighth of which took place in 2006 and the ninth in March 2011. It was expected that several aging generals who had dominated the Politburo for the previous decade would retire at the eighth congress, but the only one to do so was the party (and state) president, General Khamtay Siphandone, who made way for Lieutenant-General Choummaly Sayasone to take his place (in both offices). At the ninth congress, two more generals did retire, and disgraced former prime minister Bouasone Bouphavanh lost his position. This allowed the promotion of three new members to the 11-member Politburo. The Party Central Committee was expanded from 55 to 61 members, and a nine-member Secretariat was named. Needless to say, no democratic political reforms eventuated.

Within weeks of the Ninth Congress, NA elections were held, to enable the new assembly to endorse a new government. Suffrage in Laos is universal for all aged over 18. All NA candidates require endorsement by the party-controlled Lao Front for National Construction, whose structure parallels that of the party. Only a handful of independent candidates were permitted to stand, four of whom were elected. The other 128 are members of the LPRP, including a number of senior party officials slated to become key figures in the new government. The entire electoral process was closely supervised by the party, with no outside observers permitted. At its first sitting, the new NA elected Thongsing Thammavong as prime minister.

Though the elections in Laos are not free and fair in a democratic sense, individual candidates can try to convince people to vote for them, mostly by promising to present local issues at the national level. Candidates try to outbid each other, but voters are not coerced into voting for one candidate or another. Each slate contains three or four more candidates than seats, but from the party's point of view it matters little who gets elected as all candidates are either party members or committed to supporting the party. Preferred candidates

head each provincial list, which is enough to ensure their election as many voters vote down the slate. Nevertheless a substantial number of new deputies is usually elected (as high as sixty percent in 2006). No elections are held for other levels of government. A proposal a decade ago that elections should be held in the larger municipalities has been shelved. Village chiefs, district leaders, and province governors are all appointed by the party. So are senior members of the public service. Upper echelons of the judiciary are appointed by the NA, which simply endorses party nominees. The total dominance exercised by the party thus effectively eliminates any checks and balances that might apply between the executive, legislative, and judicial branches of government.

The first acts of the newly elected NA members are to appoint the state office holders (president and vice president) and endorse the composition of the government that had already been decided upon by the ruling party. Though constitutionally the government is answerable to the NA, in reality it is answerable only to the LPRP Politburo, of which the prime minister and his four deputy prime ministers are all members. A majority of the remaining 24 ministers are members of the party Central Committee. Though the new ministers appointed in 2011 are younger and better educated than those they replaced, their appointments are unlikely either to improve governance or promote transparency. All policy is decided by the party without public discussion. As the media are tightly controlled, no criticism or even discussion of party policy is permitted. NA members have, however, begun to exercise their right to question government ministers and criticize government failings in general terms. For example, deputies have questioned what the government is doing about the increasing disparities of wealth and rising levels of corruption. As all but four are party members, criticism seldom specifies details or names names—but at least the debate does get reported in the Lao media.[5]

Civil society hardly exists in Laos. Organizations such as the Lao Bar Association, established by government decree in 1996,[6] or the Lao National Chamber of Commerce and Industry, established by a statute passed by the NA in December 2001, are semi-governmental and not fully independent.[7] The only popular associations permitted in Laos prior to 2009 were organizing committees for religious functions, peasant producer and water-user associations, school associations, and sporting clubs, none of which were remotely political. Even attempts to set up cultural and historical associations failed to receive permission from the Ministry of Information and Culture (MIC), for fear discussions might become political.

After three years in the drafting, however, in May 2009 a Decree on Associations was finally signed into law, which provided the legal basis for establishment and registration of local nongovernmental organizations (NGOs).[8] The decree, which came into effect in November 2009, permits two or more Lao citizens to set up an association to promote economic and professional interests, creative endeavors, and social welfare. Registration provides legal status for as many as 100 such organizations believed already to be in existence, though it

brings them under closer official scrutiny by the Public Administration and Civil Service Authority. It does not free them of political control. Foreign NGOs are free of such control, but they must apply to and be registered by the Ministry of Foreign Affairs.[9]

The MIC controls all media in Laos. There is no freedom of the press and no legal protection for Lao journalists who fail to reflect the party line. Most Lao journalists are actually party members attached to the MIC. Even though the NA finally passed a Media Law in July 2008 (that took seven years to draft), there have been no improvements in media freedom since. Laos still ranked 169 out of 175 countries on the Reporters Sans Frontières Press Freedom Index for 2009.[10] Official censorship does not apply prior to publication, but self censorship is very evident, which is hardly surprising given that "slandering the State, distorting party and state policies, inciting disorder, or propagating information or opinions that weaken the State" can all be applied to journalists under the Lao penal code.[11] The new media law does permit foreign media organizations to establish an office in the Lao PDR, but under such strict constraints that none has yet done so.

Use of the internet has increased rapidly in urban areas over the past four years. An estimated 527,400 Lao were using the internet by December 2009, representing a 7.5 percent penetration rate, though connections were entirely confined to urban areas.[12] In 2002, the Lao National Internet Committee installed filters to block unwanted information. Anyone attempting to bypass the filters can be fined, while anyone circulating news reports critical of the party or the government can be prosecuted under the penal code. The internet is not being used by young Lao for political organization—except by expatriates who are opposed to the regime and who have little traction in country. Television is a more popular form of entertainment, and satellite TV dishes are widely available on payment of a license fee. As content on the Lao state channel is of limited interest, most Lao viewers along the Mekong tune in to Thai TV stations.

In addition to monitoring the internet, the government keeps an eye on cultural expression to ensure that no political criticism creeps in. The Lao Writers' Association, with a membership of just over one hundred, is closely tied to the Ministry of Information and Culture. Visual and performing arts sound two themes, traditional and revolutionary, and eschew social criticism. Effectively, therefore, though the government does promote traditional Lao and ethnic minority culture, there is no artistic freedom.

CIVIL LIBERTIES 2.37

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	1.50
GENDER EQUITY	3.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	2.50
FREEDOM OF CONSCIENCE AND BELIEF	3.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	1.50

Civil liberties for Lao citizens are set out under Chapter 4 of the 2003 amended constitution, which covers obligations and fundamental rights. Four of the 18 articles were new additions to the 1991 constitution—the rights to vote, to work, to lodge complaints and petitions, and to be free of arrest or search without a court order. Of these, the third is disregarded, but the fourth does provide some assurance against arbitrary arrest and so reinforces the slow evolution toward rule of law.

The constitution guarantees Lao citizens equality before the law, in terms of "gender, social status, education, beliefs and ethnic group" (Article 35). A separate article stipulates gender equality, while another guarantees freedom of religious belief. These constitutional guarantees are reassuring, but a large gap exists in Laos between the letter of the law and the reality of the limited human rights enjoyed by Lao citizens.

Take, for example, "the right and freedom of speech, press and assembly" that Article 44 guarantees Lao citizens, along with the right "to set up associations and to stage demonstrations which are not contrary to the laws." As one of the constitutional obligations of all citizens is to respect the laws of the land (Article 47), and as the penal code has very broad definitions of what constitute "betrayal of the nation," rebellion, and improper gathering and use of intelligence (Articles 51, 52, and 53),[13] the state effectively has the means to curtail any or all of these rights at any time.

Often administrative procedures are sufficient for the state to exert control. Public demonstrations of any kind, for example, require a permit. As such permits are never issued, the constitutional right to stage demonstrations is effectively denied. Even planning a peaceful demonstration is prohibited. On November 2, 2009, Lao security forces detained and questioned some 300 "farmers and others" planning to submit petitions to the government during the Southeast Asian Games due to be held in Vientiane the following month. The petitions expressed grievances over land seizures by party officials and poor rural services.[14] Nine leaders were reportedly arrested before any petitions could be presented, though Lao authorities denied their arrests. Nothing has been heard of them since.

Given the heavy hand of the state, it is hardly surprising that Lao citizens are most reluctant to test any of the rights they supposedly enjoy. While a degree of freedom of speech is permitted in private,[15] no public freedom of speech exists. The last time an actual public demonstration took place was in October 1999, when a small group of about 30 students tried to unfurl a banner calling for greater political freedom. The demonstration was immediately broken up by police, who arrested five ringleaders. The five were sentenced in June 2001, though the Lao authorities have never officially confirmed that a trial took place. Since then one student has reportedly died, apparently from mistreatment, while the whereabouts of three of the others is unknown.[16] Some progress was made on the civil liberties front, however, when in September 2009, nine years after it had signed up to the International Covenant of Civil

and Political Rights, Laos finally ratified the treaty. At the same time it ratified three other conventions, on the rights of people with disabilities, on economic, social and cultural rights, and against corruption. It remains to be seen, however, whether the government is serious with respect to implementation. The state does protect citizens from crime and terrorism, and it cooperates with neighboring states to prevent human trafficking (though not very effectively). New highway construction threatens to facilitate human trafficking, as it has drug smuggling, prostitution, and HIV/AIDS. Threats to the rights and liberties of citizens comes more from state authorities than from non-state actors, however, and for these there are no means of redress.

Access to prisons in Laos is denied to human rights organizations, but former inmates report that conditions are appalling. Amnesty International has long accused the Lao government of using torture and other degrading treatment on prisoners, charges which the Lao authorities reject.[17] Political prisoners may be held incommunicado for long periods, even before charges are laid. Families of prisoners with the right political connections (and enough money) may provide additional food and medicines to inmates and even arrange to have their cases brought to the appeals court. Prison authorities always require payment for any service performed, even to act upon an order for release. Prisoners who have completed their sentences may be released only if they have paid all the costs they are deemed to have incurred in prison.

Several political prisoners known to be held in Lao jails are Hmong. The Hmong insurgency goes back to the earliest years of the regime and has its roots as much in fear of reprisals as in political opposition. It has been kept alive largely through support from Hmong resettled in third countries, principally the United States. After a quiescent period, a series of attacks on buses in 2003 was blamed on Hmong "bandits" and led to a crack-down by government security forces. The following year, the first Western journalists managed secretly to make contact with Hmong insurgents and brought their plight to public attention. After that small groups of mainly women and children surrendered to Lao authorities. Others fled to join Hmong in Thailand who had been given refugee status by the UNHCR. Thailand refused to accept the newcomers as refugees, and under an agreement with Laos, repatriation began in 2006 and was completed in December 2009 when more than 4,700 Hmong were sent back to Laos from camps in Petchabun and Nongkhai provinces in Thailand. These included a group of 158 who, according to the UNHCR, were eligible and been accepted for resettlement in third countries. After insistent demands for international access to resettled Hmong, a visit to a resettlement village was stage-managed for UNHCR and diplomatic representatives in March. The presence of Lao officials made it impossible to discover whether former refugees had been mistreated.[18] Since then access has continued to be restricted.

The Hmong are only one of 49 ethnic groups listed in the 2005 census, though with a population of 451,946 they are the second largest minority, after the Khamu (with 613,893), out of a total population of 5.62 million.

During the Vietnam War, the Hmong were divided: some were recruited into the CIA's secret army; others fought for the Pathet Lao revolutionaries. While most Hmong associated with the secret army were either airlifted out with their leader, General Vang Pao,[19] or fled as refugees, those who fought for the Pathet Lao were rewarded. Hmong have risen through the Lao People's Revolutionary Party to become province governors and members of the Central Committee, and in 2006 a Hmong woman (Pany Yathothu) was elected to the powerful Politburo. She is now president of the National Assembly, and another Hmong is minister of justice.

Other upland ethnic minorities have also been resettled from hilltop villages, where they practiced slash-and-burn agriculture, to land where supposedly they can practice permanent agriculture and have better road access. There has been considerable criticism of this internal resettlement program, whose stated purpose is to preserve forest resources and improve government services, but whose actual effect is to threaten minority cultures.[20] Resettlement is supposed to be voluntary, but coercion has been used at times. Promised government services have not materialized, and poverty has increased.

Minority representatives are, like the Hmong, recruited into the party and the army, and some have reached positions of power. Additional political influence has been exerted by minorities through membership of the Lao Front for National Construction (LFNC). Over the past few years, however, the LFNC has been losing political influence. It is now little more than an arm of the party whose principal task is to quell any political criticism or social unrest. So far the government has done little to improve living conditions and opportunities for ethnic minorities, despite proclaiming its good intentions. Neglect, rather than discrimination, is the problem, and as a result disparities between urban and rural standards of living and incomes continue to grow.

Many ethnic minorities are animists of one kind or another, but some have converted to Buddhism or Christianity. Indeed, while a large proportion of Catholics are ethnic Lao, the majority of Protestants (most members of the Lao Evangelical Church) are from ethnic minorities (including Hmong and Khamu). All Christians are regarded with some suspicion because of their international links, though most is focused on minority Protestants.[21] Churches previously closed have been reopened, but evangelization, though theoretically permitted by the 2002 decree on religious practice, is effectively prohibited on the grounds that it would create social division.[22] By contrast the first ordination of a Lao Catholic bishop took place in April 2010.

Other religions have not been so targeted. There are tiny congregations of Baha'i and Muslims in Laos, but almost two thirds of the population (including virtually all ethnic Lao) are Buddhists. The remainder is classed as animists, whose religious practices are accepted as part of their culture. Freedom to practice their religious beliefs has improved for both groups.[23]

The Lao United Buddhists Association functions under the watchful eye of the party, but monks no longer have to study Marxism–Leninism. Buddhism

is even encouraged as being central to Lao culture and history by a ruling party seeking to bolster its ideological appeal through embracing Lao nationalism. There is reason to believe that the party takes a hand in deciding who becomes head of the Lao monastic order, but as Buddhism in Laos becomes increasingly free of direct party control (provided it remains apolitical), direct intervention appears to be decreasing.

Another minority is the roughly 8 percent of the total population who have some form of disability.[24] A declining proportion of people with disabilities suffered war injuries. In the more than 55 percent aged between 6 and 18 years who were born after the war ended, disabilities are overwhelmingly congenital (36 percent) or due to illness (41 percent). In only 1 percent were they due to unexploded ordnance (UXO), though these accounted for 65 percent of all amputees, plus 13 percent of all cases of paralysis.[25]

Very little is being done to assist these people. There is some physical and mental rehabilitation for UXO victims, especially children, but little in the way of special training or employment for the disabled. A decree has been issued on the rights of people with disabilities and a national strategy has been drawn up, coordinated by the Ministry of Labor and Social Welfare, but most assistance is provided by international NGOs, UN agencies, and some aid programs of friendly states. Meanwhile Laos has taken a lead in applying the recent convention on cluster munitions, and in clearing UXO, though officials doubt that the job can be done in ten years. So in the meantime there will be more victims.

The Lao government has been more active in proclaiming its commitment to gender equality than in promoting programs aimed at improving the lot of women. The 2004 Law on the Development and Protection of Women[26] enshrines the leading role of the Lao Women's Union (LWU) in promoting both goals. It defines development as ensuring "good health, knowledge, capabilities and revolutionary ethic." In November 2005, the Gender Resource Information and Development Center, a project of the LWU, published the first *Lao PDR Gender Profile*.[27] This comprehensive report was drawn up to provide the basis for all future policies with respect to women in Laos. It sets out the enabling legal environment for gender equality, the role of women in the economy, their health and education, their special vulnerabilities, and their involvement in decision making.

This was a good first step, but since 2005 progress has been mixed. Of the practical measures recommended in the *Profile*, programs to empower women through increasing educational participation to parity by 2015 and to enhance gender awareness among senior (male) officials have made slow progress. Other programs to promote socioeconomic development, especially among ethnic minority women, and to increase political participation by women have had more success. According to the 2005 census, 31 percent of government employees are women, though they were disproportionately represented at the lower levels. A quarter of the members of the NA are women; three government

ministers (out of 29) are women, and one woman is a member of the Politburo (out of 11). At the provincial and district levels, however, female participation in decision making is far less evident. Progress has also been made in women's health, and in the treatment of HIV/AIDS.

The *Profile* took special note of the growing problem of trafficking of women and proposed a number of legal and educational measures to combat it. Though the *Profile* provided no figures, it is believed that up to 20,000 Lao are trafficked annually to neighboring countries. About a third are men who are exploited as bonded labor. Some women and girls are sold as wives, but most end up in prostitution. The Lao government is aware of the problem but has done little about it. In 2005, the government amended the penal code to include child trafficking and imposed penalties of 20 years' imprisonment.[28] A few cases have been prosecuted, but outside Vientiane some local officials are believed to be protecting the perpetrators. Most of the impetus for the government to improve matters and to provide care for victims of trafficking has been due to pressure from international organizations.

Workers' rights are supposedly protected and promoted by the Federation of Lao Trade Unions. But this is an organization under close party control, whose purpose is rather to keep wages to levels that will attract foreign investment. All unions are organized by the party, and workers are not free to form their own trade unions.

RULE OF LAW 1.68

INDEPENDENT JUDICIARY	2.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	1.40
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	1.00
PROTECTION OF PROPERTY RIGHTS	2.33

Upon coming to power, the LPRP replaced all the laws of the former Royal Lao regime with its own "socialist law" administered by people's courts controlled by the party. Not until January 1983 was a Supreme People's Court (SPC) established that could act as a court of appeal to review decisions taken by these people's courts. Civil and criminal codes were not promulgated until 1989 and 1990, respectively. Only when the constitution of the LPDR was finally enacted in August 1991 was the Lao legal system provided with a proper constitutional underpinning.

Under the amended 2003 constitution, the NA appoints the president of the Supreme People's Court and the supreme public prosecutor, on the recommendation of the state president. They in turn appoint and preside over a supposedly independent judiciary. Judges are appointed by the National Assembly Standing Committee, on the recommendation of the president of the SPC, but

the party decides on the names to be submitted. Judges may have limited legal training and experience, but over recent years several foreign-assisted programs have helped improve their command of the law and legal procedures.

The Public Prosecutor's Office (PPO) is supposed to monitor implementation of all laws by the government, the civil service, and mass organizations and to take them to court for any transgressions. This is an impossible task, both because the PPO is understaffed and because it too is an arm of the party (which has been most reluctant to prosecute itself or its members). Not surprisingly, no government department or instrumentality has been charged with any breach of any law. The legal provisions of the constitution make no mention of either the ruling party, which is supposedly policed by its own Control Commission, or the security apparatus or the military (which has its own courts.)

Inadequate channels exist for making new laws known to the people, apart from a column in the party newspaper. Among urban professionals, knowledge of the growing body of laws and decrees is often sketchy, although increasingly, educated and informed Lao citizens do refer to the law to defend themselves or others against arbitrary decisions or actions by party or government officials. As a large proportion of the rural population is illiterate and ignorant of the law, however, peasants tend not to use it. Instead they resort to the methods they understand: the influence of relatives, friends, and patrons and the payment of bribes. So in rural areas the party still determines the law. The deficiencies in the dissemination of information about legal rights, especially with respect to land, are widely recognized and are the focus of several NGO and government programs.[29]

The interpretation of many laws requires testing, but in Laos there is no constitutional court in which to do this. Whether or not a law is constitutional or an interpretation valid is decided by the Standing Committee of the National Assembly, composed of the president and vice-president, plus the presidents of the six NA commissions. In any case, the application of the law seldom depends on the letter of the law and its legal interpretation. Three other factors influence judgments: payment of bribes; conformity with party policy (in Lao *nayobay*, a term that has taken on the additional meaning of bending the law in cases where a "policy ruling" is made in favor of an individual); and extralegal pressure in the form of intervention by politically powerful friends or relatives. This is the most efficacious means of winning a legal case, especially a civil dispute. So, as the Lao say, it all depends on who has "the strongest string." Those who have the right connections, or who bribe the right people, routinely escape sentence or are lightly punished—to the increasing anger of ordinary Lao.[30]

From the point of view of legal authorities, political intervention in sensitive cases may be a two-edged sword, for they may find themselves evaluating a case not on the basis of law but on which of two conflicting sets of phone calls and other private interventions represents the more powerful political interests. Failure to get this right has reportedly cost at least one justice official his job.

For those arrested, there is no presumption of innocence even in criminal cases, much less in political ones. Prisoners may be held for months while prosecutors assemble their case against them. There is no legal aid program, though the United Nations Development Program is assisting in establishing one. Finally, it should be noted that judgments on all cases with political or security ramifications are routinely submitted to senior party leaders before being handed down. Despite frequent statements by the party and government that they are committed to establishing the rule of law, until the court system is fully independent of the party, this will remain a chimera.

In the meantime, the rule of law in Laos is highly compromised. The police and security forces are under close party control and are beyond the reach of public scrutiny. They are not held accountable for any abuse of power they commit, and there is no means by which they could be, for no independent body exists to investigate complaints against the police. It is routinely assumed that anyone charged with an offence by the security forces must, prima facie, be guilty—otherwise they would not have been arrested in the first place. Judges, whatever the level of their training, are not free and independent in cases "endangering the security of the state:" they are expected to hand down guilty verdicts. Politically sensitive trials are often held in secret, with no announcement of the sentence. It can be difficult, in the face of a wall of official silence, to discover whether a trial has taken place at all, or even whether a political prisoner has been released after serving his or her sentence.[31] Needless to say, the accused have no access to independent counsel in such cases.

Lao citizens do enjoy the protection of law with respect to crimes against person and property, including their homes and personal possessions. Land is another matter. For two decades land titling has been underway for urban areas, beginning with Vientiane. This has led to a large number of disputes, which are resolved by a court of arbitration. Once again payments and influence are crucial to obtaining a desired outcome, so disputed land frequently ends up in the hands of the wealthy and well connected.

In the rural areas, most farm land reverted after cooperativization to its original owners, who were given 'use rights', which can be transferred (through sale or exchange) or passed on to designated family members. The ownership of all land resides in the 'national community' and is managed by the state. All land not in agricultural use belongs to the state, including forest land traditionally used for slash-and-burn farming by ethnic minorities.[32] This "protected forest" can be leased for a fee to villagers (provided they can pay) but most often to loggers or large companies for plantation agriculture.[33] Across Laos large areas of land have been lost to local villagers in this way, while party officials pocket substantial bribes for signing off on the long-term lease of the land to Chinese entrepreneurs. The topic of arbitrary appropriation of land has produced much anger and social conflict, and the matter has been raised in the NA.[34] In 2007 the government decreed a moratorium on land concessions, and the NA passed

a law designed to strengthen the State Inspection Authority, which is responsible for monitoring the activities of civil servants. Implementation has been patchy, however.

This is not so say that incremental improvements are not being made in introducing and enforcing the rule of law. A body of law is slowly being developed and applied in the courts. For people to have more confidence in the legal system and the courts, however, a rigorous separation will be necessary between the judiciary and the party. It is not sufficient for the LPRP to urge its cadres to respect the law: senior party members must not interfere in legal procedures. Wide acceptance and application of the rule of law will also require an improved level of education and better understanding of individual rights than exists at present among the general population. Conservatively, it will require another generation before the rule of law holds sway in Laos—and even then law is unlikely to be free of patronage politics, even if the LPRP eventually loosens its hold on power.

ANTICORRUPTION AND TRANSPARENCY 1.63

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	1.60
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	1.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	1.25
GOVERNMENTAL TRANSPARENCY	2.33

What counts as corruption depends to a large extent on how it is defined and what is considered acceptable or unacceptable in a given culture. In traditional Lao society, it was considered natural for resources (wealth) and power to be concentrated in the hands of the ruling elite (the nobility), by virtue of their *karma*, which determined their birth and social status. Power is derived from networks of obligation and loyalty given in return for protection and assistance in times of need; in other words, for the judicious distribution of resources. But for that to happen, ruling elites had to gain control over resources to distribute.

Under the French, the traditional structure of Lao society hardly changed, except that the punitive tax regime encouraged evasion and contempt for the law. Once Laos obtained independence, the flood of American aid provided the opportunity for those in positions of power to enrich themselves. So scandalous did corruption become that it provoked U.S. congressional investigation. Criticism of the corruption of wealthy families gained the Pathet Lao considerable public support and became a factor in their campaign to seize power in 1975.

Under the Lao People's Democratic Republic, corruption was initially limited to the exercise of power rather than the accumulation of wealth, but within a decade, with the introduction of a free-market economy, party cadres began using personal power for financial gain. Some middle-level bureaucrats were imprisoned in 1983–84 on charges of corruption, but this was political payoff.[35] Over the decade from 1986 to 1996, corruption became widespread

within the LPRP and it was clear that the party's internal watchdog, the Party Control Committee, was completely ineffectual. Two new anti-corruption bodies were thereafter established: the State Audit Organization (1998) reporting to the minister of finance, and the State Inspection Authority (2001) reporting to the prime minister. In 2005 the NA passed an anti-corruption law,[36] and in 2009 Laos ratified the UN Convention against Corruption. Other measures include establishment of a State Audit Authority, a Customs Law (2005), and a new Taxation Law (2005).

None of the measures introduced has had much effect on the prevalence or level of corruption.[37] In the year 2007–2008, just 25 people were prosecuted for minor offenses such as smuggling timber and soliciting bribes for issuing identification papers.[38] No senior officials were prosecuted. In both China and Vietnam, high-ranking officials convicted of corruption have been given long prison sentences or even executed (in China) as a warning to others. All that has happened by way of punishment of corrupt officials in Laos is that they have been quietly transferred to another position in the bureaucracy. Party cadres guilty of massive corruption have been demoted in the party ranking, only to be restored later to powerful positions in the party and government.[39]

By the time Laos entered the 21st century, corruption had become deeply rooted in the political culture of the country.[40] Apart from the usual bribes and evasion of duties and taxes, the most damaging forms have been the plunder of the banking system by those with political connections, who obtain loans, often by way of state-owned enterprises, that are never repaid; and debasement of the legal system through rulings decided by bribery and political pressure. Illegal timber smuggling (especially by the military), cronyism in the awarding of contracts, and land grabbing are also widespread, lucrative forms of corruption. In tertiary education, the powerful make sure that their children obtain good marks and overseas scholarships, which means that more talented but less well-connected students miss out.

Despite being nominally Marxist–Leninist, direct state involvement in the economy in Laos has been reduced to some two dozen 'strategic' state-owned enterprises (SOEs), including natural monopolies such as electricity generation and distribution and water supply, plus enterprises like the state printer. The financial management of the remaining SOEs is non-transparent, but it is known that they have received substantial government loans. Meanwhile the military pursues its own economic interests with minimal scrutiny. The involvement of individual party and government officials in the economy is widespread, since businesses often protect themselves from repeated demands for bribes through buying the protection of a powerful senior party cadre. In this way members of the Politburo and Central Committee and their families build up extensive business interests.

One area in which there has been improvement is in the registration and regulation of foreign business ventures. Delays and corruption associated with foreign investment were reduced by passage in October 2004 of a Law on the

Promotion of Foreign Investment,[41] which streamlined application procedures through a Planning and Investment Committee, presided over by a senior minister. Subsequently responsibility for foreign investment was taken over by the Department of Domestic and Foreign Investment located within the Office of the Prime Minister. This limited the bribery required for investment applications to be approved, but shifted the focus of corruption to the land and facilities necessary to operate. Party officials misappropriate payments made to lease land, which in the case of plantation agriculture has often been fraudulently seized from traditional owners. Most foreign enterprises operating in Laos routinely ensure that they obtain the cooperation of local party officials through generous donations to party functions, a portion of which finds its way into the pockets of individuals.

Ironically, some laws have actually increased corruption because officials can demand larger bribes not to apply them, or more officials can demand payment to turn a blind eye. For example, the Environment Protection Law has done little to protect the environment. Officials responsible for its enforcement are still paid off, and it has added another layer of local officials to those at the district and provincial levels—in this case the rangers appointed to police 'protected areas.' The laws on customs and taxation passed in 2005 have had a similar effect.

As no protection is provided by the state (in the form of an ombudsman's office or legislation protecting whistleblowers) for those who report corruption, no one does. It is assumed that whatever is happening has been cleared with someone in authority (in the party), and so people prefer to mind their own business. And speaking of business, senior public officials from the president on down have business interests on the side, to which no conflict-of-interest rules apply. As no public official in Laos is required to reveal personal assets, rumor and word of mouth are the only means of knowing who owns what.

In such an environment, permeated by the power of a single ruling party, no auditing system can be independent of political pressure. Instead, auditors simply become complicit in the corruption they are supposed to contain. The State Audit Organization is not independent of either the government or the party: any action in response to its reports requires a political decision. So great have been the losses of some state-owned enterprises, however, that their financial management has been taken over by the Ministry of Finance. State-owned banks have twice had to be recapitalized as the extent of unpaid loans to state-owned enterprises and party officials brought them to the brink of bankruptcy.[42]

Under the constant urging of international organizations such as the World Bank and the Asian Development Bank, the government has instituted a number of reforms designed to improve governance and transparency (such as establishing an Audit Office). More information is being published, in the form of policies, reports, and legal statutes and decrees (by the Lao Bar Association, with support from the UNDP). Lack of effectiveness is due to poor enforcement—which comes down to a lack of political will on the part of the LPRP. Nothing is publically available on the deliberations of the party, except for bland statements of

decisions adopted. And there is no free media able even to speculate on what might be going on—let alone a freedom of information law.

This lack of transparency extends from the party to the government to the bureaucracy. Even relatively senior civil servants are reluctant to take decisions in their areas of competency, preferring to refer them up the (party) hierarchy. When decisions are made, no reasons are given. It is expected that they will be acted upon in the spirit of "democratic centralism;" that is, unquestioningly. This equally applies to areas where corruption is prevalent, such as the award of government contracts and other decisions with financial implications, including tax rulings and exemptions—with the result that revenue collection is often severely compromised.

International financial institutions have long criticized the lack of transparency in Laos. Under such pressure a procurement monitoring office was established in 2003 within the Ministry of Finance, which is supposed to improve procurement processes, and since 2002 documentation on the budget has been regularly published in the official government gazette. The budget itself is debated by the NA, but its provisions are seldom questioned, and it is always passed as presented, along with the financial statements of government ministries. Extra-budgetary expenditures are not reported, and military expenditures are completely opaque and subject to no public scrutiny.

Only in the areas of foreign investment (see above) and foreign aid have attempts been made to provide more transparent procedures—for the obvious reason that senior Lao authorities want the projects and programs to go ahead. Investment provides employment and aid improves living conditions and services, for both of which government officials not only take credit, but also recommend employees. So the system perpetuates itself, without checks and balances, but with indirect foreign support through the aid that Western governments continue to provide, despite leakages, in preference to permitting Laos to slip entirely into China's widening orbit.[43]

RECOMMENDATIONS

- The Lao authorities should further amend the 2003 constitution to eliminate both the special role allotted to the Lao People's Revolutionary Party and all reference to democratic centralism in order to allow the organization of other political parties and their participation in NA elections.
- The government should permit citizens to exercise their freedoms as set out in the constitution and should refrain from using penal provisions to punish them when they do so.
- The government should introduce measures to protect citizens from abuse by the security forces, including defining the powers of the police by law and establishing a complaints tribunal or an independent ombudsman's office.
- The government should enforce the provisions of its anticorruption legislation and prosecute corrupt officials in the courts.

- The media should be permitted freely to discuss government policy and decisions, and should be allowed to investigate and report on corrupt practices.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

1 "Lao Govt approves decree on special economic zones," *Vientiane Times*, November 27, 2009, http://www.asianewsnet.net/home/news.php?sec=2&id=8835.

2 Ekaphone Phouthonesy, "Assembly: unbalanced wealth distribution limits benefits of growth," *Vientiane Times*, June 16, 2010, http://laovoices.com/2010/06/16/assembly-unbalanced-wealth-distribution-limits-benefits-of-growth/.

3 Constitution of the Lao People's Democratic Republic, http://www.un.int/lao/constitution.htm.

4 Martin Stuart-Fox, "Family Problems," Inside Story, January 19, 2011, http://inside.org.au/family-problems/.

5 See, for example, Ekaphone Phouthonesy, "National Assembly conference opens," *Vientiane Times*, June 15, 2010, http://laovoices.com/2010/06/15/national-assembly-conference-opens-na-president/.

6 See http://www.laobar.org/index.html. This site disseminates useful legal documents, in English and Lao, in an attempt to increase awareness by Lao of their legal rights.

7 For a list of member associations of the Lao National Chamber of Commerce and Industry, see http://www.laocci.com/index.php?option=com_content&view=article&id=46&Itemid=53&lang=en.

8 For the text of the Decree, see "Decree on Associations," Prime Minister's Office of Lao People's Democratic Republic, April 29, 2009, http://www.iccsl.org/pubs/Lao_PDR_Decree_Law_on_Associations.pdf.

9 Foreign NGOs play an important role in Laos, but most are careful not to be too critical of the government. At last count 66 foreign NGOs were operating in Laos; see http://www.directoryofngos.org/pub/ngoindex2.php for listing. The decree permitting foreign NGOs to operate in Laos can be found at http://www.mofa.gov.la/decrees/DecreeOnNGO.htm. See also "A Study of NGOs–Lao People's Democratic Republic," Asian Development Bank, 1999, http://www.adb.org/NGOs/docs/NGOLaoPDR.pdf, accessed August 18, 2011.

10 "Press Freedom Index 2009," Reporters Without Borders, http://en.rsf.org/press-freedom-index-2009,1001.html, accessed April 26, 2011.

11 Quoted in http://www.rsf.org/country-50.php3?id_mot=577. For Lao Penal Code, Preliminary Provisions, see http://www.apwld.org/pdf/lao_penalcode1989.pdf.

12 "Asia Marketing Research, Internet Usage, Population Statistics and Facebook Information," Internet World Stats–Usage and Population Statistics, http://www.internetworldstats.com/asia.htm#la, accessed August 11, 2011.

13 Accessible at Lao People's Democratic Republic, *Penal Code: Preliminary Provisions*, November 23, 1989, http://www.apwld.org/pdf/lao_penalcode1989.pdf.

14 "Laos: Peaceful protestors must be released immediately," Amnesty International, December 7, 2009, http://www.amnesty.org/en/library/info/ASA26/004/2009/en; "Corruption High in Laos As SEA Games Approach in Vientiane," Online PR News, November 18, 2009, http://www.onlineprnews.com/news/11963-1258560873-corruption-high-in-laos-as-sea-games-approach-in-vientiane.html.

[15] Laos is not a police state. The authorities do not attempt to prevent Lao citizens from complaining to each other about the government in private, or even to foreigners.

[16] "Lao People's Democratic Republic: Submission to the UN Universal Periodic Review, Eighth session of the UPR Working Group of the Human Rights Council," May 2010, http://www.amnesty.org/en/library/info/ASA26/003/2009/en.

[17] Laos has so far failed to ratify the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment.

[18] Some did, however, ask for resettlement. See "Old wars never die: The unhappy fate of the Hmong," *Economist*, July 15, 2010, http://www.economist.com/node/16592276?story_id=16592276&fsrc=rss.

[19] In 2007 Gen. Vang Pao was charged with leading a conspiracy to overthrow the government of the Lao PDR. See Tim Weiner, "Gen. Vang Pao's Last War, *New York Times Magazine*, May 11, 2008, http://www.nytimes.com/2008/05/11/magazine/11pao-t.html.

[20] See, for example, Olivier Evrard and Yves Goudineau, "Planned Resettlement, Unexpected Migrations and Cultural Trauma in Laos," *Development and Change* 35, no. 5 (2004): 937–62, http://laos.efeo.fr/IMG/pdf/EFEO_Resettlement_evrard_goudineau.pdf.

[21] There are approximately 45,000 Catholics in Laos and roughly 100,000 Protestants ("Laos: International Religious Freedom Report 2007," U.S. State Department–Bureau of Democracy, Human Rights, and Labor, http://www.state.gov/g/drl/rls/irf/2007/90142.htm, accessed May 2, 2011). In 2007, the first Lao Catholic priest in 50 years was ordained ("More than 3,000 attend the ordination of a Laotian Oblate," AsiaNews.it, January 10, 2008, http://www.asianews.eu/news-en/More-than-3,000-attend-the-ordination-of-a-Laotian-Oblate-11214.html), followed by two more in 2008 and 2009. By contrast, restrictions on Protestants, including forced renunciations of faith, led the U.S. Commission on International Religious Freedom to return Laos to its watch list in 2009 (after dropping it in 2005). See "Annual Report 2010," United States Commission on International Religious Freedom, May 2010, http://www.uscirf.gov/images/ar2010/laos2010.pdf.

[22] Under Article 9 of the constitution, all acts "creating divisions between religions and classes or people" are banned. So on these grounds requests for permission to proselytize, required under the 2002 decree that permits such proselytizing, can be routinely rejected.

[23] For a useful report on the religious demography of the Lao PDR, see "International Religious Freedom Report 2009," U.S. Department of State–Bureau of Democracy, Human Rights, and Labor, October 26, 2009, http://www.state.gov/g/drl/rls/irf/2009/127276.htm.

[24] United Nations Secretariat of the Economic and Social Commission for Asia and the Pacific (UNESCAP), *Disability at a Glance: A Profile of 28 Countries and Areas in Asia and the Pacific* (Bangkok: UNESCAP, 2006), http://www.unescap.org/esid/psis/disability/publications/glance/disability%20at%20a%20glance.pdf. If this estimate is correct, as many as 400,000 people in Laos suffer from some form of disability.

[25] Japan International Cooperation Agency, *Country Profile on Disability: Lao People's Democratic Republic* (Tokyo: Japan International Cooperation Agency, 2002), http://www.jica.go.jp/english/global/dis/pdf/lao_eng.pdf.

[26] For the text of the law passed by the Lao National Assembly, see "Decree of the President of the Lao People's Democratic Republic On the Promulgation of the Law on Development and Protection of Women," November 15, 2004, http://www.na.gov.la/docs/eng/laws/soc_cult/Development%20and%20Protection%20of%20Women%20%282004%29%20Eng.pdf.

[27] Lao Women's Union–Gender Resource Information and Development Centre (GRID), *Lao PDR Gender Profile* (GRID, 2005), http://siteresources.worldbank.org/INTLAOPRD/Resources/Lao-Gender-Report-2005.pdf.

[28] Laos Penal Code (2005 Update), Chapter 6: Breach of Marital and Family Relationships and of Customs, http://www.protectionproject.org/wp-content/uploads/2010/09/Laos_Penal-Code-TiP_2005.pdf, accessed August 18, 2011.

[29] See, for example, the program outlined in "Rights-Link Lao: Rights, Land, Information and Knowledge in Laos," Village Focus International, January 13, 2007, http://www.villagefocus.org/programs/environment/RightsLINK%20Lao%20Program%20Concept.pdf. The Asia Foundation is one organization active in this area. See "The Asia Foundation–Projects," The Asia Foundation, http://asiafoundation.org/project/projectsearch.php?country=llaos&programLimit=11&year=, accessed April 26, 2011.

[30] Somsack Pongkao, "NA questions court sentences," *Vientiane Times*, June 23, 2010, http://laovoices.com/2010/06/23/na-questions-court-sentences/.

[31] "Lao People's Democratic Republic: Submission to the UN Universal Periodic Review, Eighth session of the UPR Working Group of the Human Rights Council," May 2010.

[32] See Amended Land Law (2003) at "Decree of the President of the Lao People's Democratic Republic: On the Promulgation of the Amended Land Law," November 5, 2003, http://www.la.emb-japan.go.jp/jp/laos/Law_on_Land_&_Decree.pdf. Some land was distributed to villages under the Land and Forest Allocation Program, in accordance with the 1997 Land Law. See http://sunsite.nus.edu.sg/apcel/dbase/laos/primary/laalnd.html.

[33] A good study of the issues involved is Cor. H. Hanssen, "Lao Land Concessions, Development for the People?," September 2007, http://www.recoftc.org/site/fileadmin/docs/Events/RRI_Conference/Proceedings/Paper_20_Hanssen.pdf.

[34] See also Beaumont Smith, "Golf and the great Lao land grab," *Asia Times Online*, January 21, 2010, http://www.atimes.com/atimes/Southeast_Asia/LA21Ae01.html. No one knows how much land has been leased to foreigners, but estimates go as high as 15% of the total land area, according to Brian McCartan: "Farmers forgotten in oil-for-food deals," *Asia Times Online*, July 31, 2009, http://www.atimes.com/atimes/Southeast_Asia/KG31Ae04.html.

[35] Martin Stuart-Fox, *A History of Laos* (Cambridge: Cambridge University Press, 1997), 188.

[36] The text is available at "Decree of the President of the Lao People's Democratic Republic: On the Promulgation of the Law on Anti-Corruption," May 25, 2005, http://www.mfa.gov.sg/vientiane/Laws/Anti%20Corruption%20Law%20&%20Decree%20FINAL%2014-03-06.pdf.

[37] Transparency International ranks Laos at 158 out of the 180 countries it surveyed in 2009: "Corruption Perceptions Index 2009," Transparency International, http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table, accessed August 16, 2010.

[38] According to a senior official from the Supreme Public Prosecutor's Office. See UNAFEI, the Office of the Attorney General of Thailand, and the UNODC Regional Centre for East Asia and the Pacific, *Corruption Control in Public Procurement* (Tokyo: December 2008), http://www.unafei.or.jp/english/pdf/2nd_Regional_Seminar.pdf.

[39] For example, Sisavath Keobounphanh was dropped from the Politburo at the Fifth Party Congress in March 1991 and demoted to 15th position on the LPRP Central Committee. No reason was given, but popular rumor focused on corruption. Yet at the Sixth Party Congress in March 1996, Sisavath regained his place in the Politburo and was appointed vice-president of the LPDR. In the government reshuffle of 1998, which saw Khamtay Siphandone become state president, Sisavath took his place as prime minister.

[40] See Martin Stuart-Fox, "The Political Culture of Corruption in the Lao PDR," *Asian Studies Review* 30, no. 1 (March 2006): 59–76; see also Patrick Keuleers, *Corruption in the Lao PDR: Underlying causes and key issues for consideration* (Bangkok: United Nations Development Programme [UNDP], March 2004).

[41] Lao People's Democratic Republic, Law on the Promotion of Foreign Investment, October 22, 2004, http://www.invest.laopdr.org/investlaw04.pdf.

[42] See "Banking" in Martin Stuart-Fox, *Historical Dictionary of Laos*, 3rd edition. (Lanham: Scarecrow Press, 2008).

[43] Martin Stuart-Fox, "Laos: The Chinese Connection." Daljit Singh, ed. *Southeast Asian Affairs 2009*. Singapore: Institute of Southeast Asian Studies, 2009, 141–169.

LIBYA

CAPITAL: Tripoli
POPULATION: 6.6 million
GNI PER CAPITA (PPP): $16,400

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	0.58	0.55
CIVIL LIBERTIES:	1.53	1.48
RULE OF LAW:	1.51	1.33
ANTICORRUPTION AND TRANSPARENCY:	0.69	0.69

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Luis Martinez

INTRODUCTION

Libya emerged from more than three decades of Italian colonial rule in 1943 and was ruled as a monarchy from 1951 to 1969, with El Bayda in Cyrenaica as the capital. In 1969, Mu'ammar al-Qadhafi, then a 27-year-old army captain from the small Qadhafa tribe in the Sirte region, led a bloodless coup and took over the country as Brother Leader and Guide of the Revolution. Sirte became the capital, and Tripoli a hub of administrative and political support. The new regime was hostile to Cyrenaica as the home of the monarchy, and regional antagonism between the areas has remained strong to this day.

Early in his rule, al-Qadhafi nationalized the country's significant oil reserves and established an anti-Western foreign policy, including alleged involvement in a number of high-profile terrorist attacks against Western interests. The United States imposed sanctions on Libya in 1981 and bombed targets in the country five years later. Two Libyans were implicated in the 1988 explosion of a U.S. aircraft over Lockerbie, Scotland, in which 270 people were killed, which prompted the UN Security Council to impose trade sanctions on the country. Libya became an international pariah and political development remained stagnant.

Seeking to rehabilitate the country's international standing, al-Qadhafi took advantage of the September 11, 2001 attacks and the March 2003 invasion of

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Iraq to promote Libya as a partner in the global war on terrorism. Promoting a perception of his country as a Mediterranean Eldorado, al-Qadhafi tailored his rhetoric of Libya's transformation to international community standards, including references to the concepts of transparency, the fight against corruption, and democracy. Libya's conversion was swift and comprehensive, emphasizing the convergence of its interests with those of the United States and Europe. It terminated its program of weapons of mass destruction and encouraged other countries to do the same. It liberalized its petroleum sector and offered Europe guarantees for its energy supply. The new elites that emerged in the fields of oil and security, trained in the United States, gradually sidelined the revolutionaries trained in Eastern Europe.

This modernization campaign was the product of a new national economic strategy to encourage international investment and economic growth in Libya. The reformers, who considered communist China a model, hoped to combine a market economy with the legacy of the revolution and al-Qadhafi's unique political philosophy, outlined in his *Green Book*. As al-Qadhafi's son, Saif al-Islam al-Qadhafi, put it, "Libya will be a modern country with modern infrastructure and a high GDP. Its citizens will enjoy the best standard of living in the region. Libya will have closer relations to the rest of the world and to Africa, as well as a partnership with the EU. It will join the [World Trade Organization]. Libya will be the bridge between Europe and Africa."[1] In August 2007, Saif al-Islam called for the end of the revolutionary era and the conversion of the revolution into a constitutional state. In 2008, he invited reputed professors from the West to take part in drafting a constitution for Libya, paving the way for a succession to the Guide without altering the nondemocratic nature of the regime.[2]

Libya's considerable oil reserves and a spike in oil prices in the mid-2000s also facilitated the country's triumphant return to the world stage. Ahmed Abdulkarim, former chairman of the National Oil Company (NOC) and current head of OilInvest (the state-owned oil holding company), announced that the government was seeking to attract $10 billion in foreign investment in the hydrocarbon sector by 2010. Only 25 percent of the oil and gas reserves are in production and the government is seeking to increase its production capacity considerably.

Libya's transformation did briefly result in a warmer diplomatic relations with the West, and international sanctions were lifted in 2004. In 2008, Italian Prime Minister Silvio Berlusconi apologized for the damage inflicted on Libya during Italy's 1911 occupation and subsequent colonization. In September 2009, Scottish courts released convicted Lockerbie bomber Ali Basset Meghari on humanitarian grounds, after lobbying by the Libyan government and Libya's year-long presidency of the UN Security Council in 2008. In May 2010, Libya was elected to the UN Council for Human Rights. Against all expectations, in February 2011 the Libyan population began demonstrating for al-Qadhafi's

departure. Inspired by the success of movements in Tunisia and Egypt, the protestors took the risk of defying the regime, beginning in the east. Predictably, government forces did not hesitate to retaliate with violence, and the protest movement quickly developed into an insurgency. Taken by surprise, the regime seemed on the verge of collapse before regaining control of the situation and retaking some of the cities that had fallen into insurgent hands. In a few weeks, Libya slid into violence and the al-Qadhafi regime again became a pariah in the international community. This destroyed the slow and costly strategy of reintegrating into the international community that it had undertaken.

The Libyan uprising demonstrates that the fear the regime inspired in its opponents has been overcome, particularly in the region of Cyrenaica; in contrast in Tripolitania, the government uses ruthless force to spread terror in hopes of inhibiting protest attempts. The uprising is due in part to the Libyan regime's lack of political freedom. Despite Saif el-Islam's experiments with relative liberalization between 2007 and 2009, the regime's hardliners appear to see political opening as far too dangerous.

When the city of Benghazi, Libya's second largest, fell into rebel hands on February 20, the former flag of the monarchy reappeared. Ensured of the population's support in Cyrenaica, the rebels united in their determination to bring down one of the oldest dictatorships in the region.

The uprising has placed the regime on the verge of collapse, prompting it to use force against the rebels in order to survive. With the country cut in two, the east of Libya came under the control of the interim National Council for Libya (NCL), while the west has remained under the domination of al-Qadhafi's forces. Control over the oil fields and terminals ensure al-Qadhafi the financial means to survive. The defection of some tribal leaders that had backed him, particularly the Warfallas, the army's gradual rallying to the rebels' cause, and the inability of foreign mercenaries to take control of the cities deserted by the Revolutionary Guard and revolutionary committees has placed the regime in survival mode. As demonstrated over the past decades, al-Qadhafi's regime has a remarkable ability to overcome all manner of threats.

ACCOUNTABILITY AND PUBLIC VOICE	0.55
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	0.20
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	0.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	0.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	1.00

Libya is a *Jamahiriya* or "state of the masses," a system based on the combination of socialist, revolutionary, Islamic, and egalitarian principles outlined in al-Qadhafi's *Green Book*. According to al-Qadhafi, the country's political arrangement, the Third Universal Theory, is based on a system of political and

economic egalitarianism that refutes democratic and multiparty systems. Political parties are prohibited on the grounds that they allow a minority to seize power from the people, and those who join parties are considered traitors.

A stark divide exists between the manner in which the Libyan government is supposed to operate according to theory and the ways in which power is exercised in reality. The Libyan political system is officially defined as a direct democracy in which the interests of the people are expressed through a set of committees and groups. There are 2,000 Basic People's Congresses that channel ideas and grievances to the 760-seat General People's Congress. In theory, the Guide, al-Qadhafi, provides suggestions to the population, who then discuss those suggestions in the Basic People's Congresses. The delegates of these committees transmit the public's perspective to the General People's Congress, which selects which policies to implement. The members of the Basic People's Congresses also indirectly elect the General People's Congress, though the process is completely opaque. Theoretically, the General People's Congress is the most important power center because it appoints the general secretaries, who act as ministers. Elections for the General People's Congress are held every four years, but they lack even the most basic features of free and fair electoral contests—in addition to the ban on political parties, there is no secret ballot or electoral authority that monitors their conduct, for example, and elections do not allow for the rotation of power.

In reality, the core of the political system is the revolutionary committees, which were established in 1977 and function as a state militia for the al-Qadhafi family. The revolutionary committees are an instrument for mobilizing and controlling the masses and exercising political influence on behalf of the revolutionary leadership. Over time, they have also become an armed political force responsible for regulating the Basic People's Committees and for eliminating the regime's potential adversaries. Al-Qadhafi directly appoints the members of the revolutionary committees.

A restricted circle around al-Qadhafi is the real source of political decision-making in Libya. The top figures of the political system do not systematically occupy official functions but are instead spread throughout the state apparatus. The chief qualification for inclusion in these circles is absolute loyalty to al-Qadhafi. In his view, the leaders of the revolutionary committees, which have approximately 10,000 members, are the most trustworthy people in the political system. Loyalty is guaranteed in a number of ways, including marriage between leaders' children and the interdependence between generations.

The distribution of power in Libya is based on proximity to al-Qadhafi and tribal and regional balance. The opaque informal decision-making process is the result of personal exchanges. The Jamahiriyya is equipped with considerable resources resulting from hydrocarbon exports, income from which is not controlled in any way by political institutions. Part of the redistribution of this income depends entirely on the goodwill of al-Qadhafi's family, which uses it to maintain loyalty and stability. Al-Qadhafi has built a complex family

and tribal network that makes all political, economic, and diplomatic decisions, ensuring the stability and maintenance of the government. It is an informal process that mobilizes important figures from the various family branches, clans, and tribes that control the strategic structure of the Jamahiriyya. Instead, decisions are made in informal meetings composed of well-connected members of different movements and factions: revolutionary, pan-Arabist and pan-Africanist, pro-occidental, state-socialist, liberal, etc. Their influence on al-Qadhafi depends on the regional and international conjuncture. All these important figures are related to al-Qadhafi through blood, allegiance, and long-time relationships.

In 1998, the regime created people's social leadership committees (PSLCs) to regain control of local politics after slow erosion to local communities, and to broaden the support base for the regime by integrating leaders from outside the traditionally-progovernment tribes. The PSLCs are established in all regions of the country and consist in part of tribal chiefs. Given their relative newness, the PSLCs have more legitimacy among the general population than the long-standing and feared revolutionary committees, with authority exceeding that of all other government structures. Officially intended to empower the masses, the PSLCs oversee the General People's Congress and the General People's Committee, and monitor and control the Basic People's Congresses. In October 2009, Saif al-Islam was designated general coordinator of the PSLCs, which effectively made him the second most powerful person in the regime.

In 2000, al-Qadhafi decided, in a moment of anger, to abolish the current system: "You [members of the General People's Congress] want to stick to your old ways to justify the waste of oil. . . . The present system shall be no more. Once the Basic People's Congresses have been held and the General People's Congress has met, what is known as the General People's Committee shall be no more. Hereafter, there is no 'government'. . . . Power will henceforth belong to the people, the communes and the Sha'abiyat [administrative districts]."[3] A dismayed al-Qadhafi decreed decentralization mandatory: "At the Sha'abiyat level, you have everything you need and secretaries for every sector: health, education, agriculture and industry. Therefore there is no need to refer upwards to anyone with higher authority." In the process, 31 administrative districts were established, whose powers theoretically embraced the management of local resources, including budgeting and other matters. The Basic People's Committees were distributed among the 31 administrative districts to guarantee, in theory, representation of the people. Each district had its people's committee, its own executive authority, and secretariats for education, health, and other areas.[4] The decentralization policy, however, raised the problem of resource allocation: since the towns do not levy taxes, they remain dependent on the transfer of revenues from the capital. From this standpoint, the regime merely transferred the burden of working with citizens and addressing their grievances to local officials.

Tribes also represent a powerful force in Libyan politics. Government leaders deny that the tribes have a role in government power, but they are in fact a

central force in Libya's political organization. All of the tribes that have pledged loyalty to al-Qadhafi are represented in the strategic political structures, and the tribes play an essential role in maintaining security and ensuring the stability of the government. Most high-level figures in the state come from two large tribes, the Warfallas (with which the al-Qadhafi's tribe, the Qadhadfa, have blood ties) and the Magharha. Members of the Warfallas confederation, who were historically considered the protectors of the Qadhadfa, constitute a majority in the army. Since the failed 1993 coup attempt, which was led by captains of the Warfallas confederation, the regime has been folded up around the clans that form the Qadhadfa. The latter are present in the revolutionary committees and the revolutionary guard. Each year, al-Qadhafi invites the tribe's chiefs to come to the town of El Bayda to make their act of allegiance.

The extent of al-Qadhafi's control throughout the government structure ensures that there are no checks and balances on his power. The only form of resistance the regime faces is debate between traditional revolutionary forces and reformers who seek to adapt the regime to new political and economic realities. Even those that seek to modernize the regime stop far short of resisting al-Qadhafi directly.

Like all other arms of government, the civil service is based on loyalty and proximity to power within the tribal system, as opposed to merit. It is not perceived as competent by the general public.

The Libyan state is paralyzed by the lack of institutions perceived as legitimate enough to formulate and implement policy. Al-Qadhafi regularly exhorts the basic delegates to be more effective and denounces them as lacking courage: "I tell them: Don't be afraid of anybody, there is nobody above you." In this authoritarian and arbitrary system, however, no one takes the risk of making even the smallest political or economic decision without the certainty that al-Qadhafi will approve. Libya's political institutions have never played a genuine role in the decision-making process, and as such lack any real experience in policymaking. As for the views of citizens, Libyan public opinion has no real channels for expression and is therefore politically unreadable.

Association Act no. 11 of 1970 prohibits organizations whose purpose goes against the tenets of the September 1969 revolution. The establishment of a nongovernmental organization (NGO) in Libya requires special approval from a certain political agency. Only a few organizations have been approved, including the Libyan Red Crescent, the Boy Scouts, the Libyan National Society for Anti-Drugs and Mental Stimulants, the Society for the Vulnerable on Earth, the Association to Fight Landmines, the Association for the Brotherhood of the South (a medical organization established to aid Libya's southern neighbors in Africa), the Human Rights Association, and the Qadhafi International Foundation for Charity Associations, an umbrella organization set up in 1999. All NGOs and other associations are expected to work within and for the revolution.

There is no independent press in Libya. State-owned media act as regime mouthpieces and the pervasive harassment and violence that journalists face encourage strict self-censorship. In 2007, the government authorized the launch of semi-autonomous media, most of which are owned by Saif al-Islam's al-Ghad Media Group, but it heavily monitored and repressed the new media outlets. In April 2008, Saif al-Islam argued that Libyan society needed "several media outlets that expose corruption, rigging, and violations. These establishments have to be independent and not reporting to the Information Minister, the Parliament, the Cabinet, or even Saif al-Islam."[5] Media liberalization gave the impression that Libya was moving toward political reform, but these measures were not unanimously supported within the government and were opposed by the director of national media, Briki Ramadan. In May 2009, those opposed to media liberalization apparently won official support, and a government decree to nationalize certain elements of private media (including the satellite channel al-Libi, radio station Eman Al Libya, and newspapers *Quryna* and *Oea*) terminated the media liberalization process.

Many incidents of official harassment of journalists have been reported, including physical attacks and defamation lawsuits. On November 4, 2010, 20 Libya Press News Agency journalists were arbitrarily arrested and held for three days. On February 17, 2010, four radio journalists from the program *Good Evening Benghazi*, which covers corruption scandals in local government and other sensitive topics, were arrested.[6] The only uncensored media are satellite television channels. The government controls the country's only internet service provider and routinely blocks social networking and video-sharing websites, and the websites of opposition groups are routinely hacked.

CIVIL LIBERTIES 1.48

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	1.25
GENDER EQUITY	3.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	1.00
FREEDOM OF CONSCIENCE AND BELIEF	1.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	0.50

Torture is a crime under Libyan law and the government claims to investigate cases in which torture is suspected, but allegations of torture, incommunicado detention, and unexplained disappearances remain extensive. According to a 2009 Human Rights Watch report, 500 political prisoners who had either been acquitted of all charges or who had completed their prison sentences were still being detained without cause.[7] Migrants from Sub-Saharan Africa and political prisoners, particularly those suspected of membership in the Muslim Brotherhood, have been subjected to torture in the form of electric shocks,

beatings with wooden sticks, hanging on the wall, and sexual assault. This treatment has been used to force the prisoners to confess, and such extracted confessions are permissible as evidence in court.

Libyan prisons are notoriously dire, plagued by overcrowding, disrepair, poor sanitation, and a lack of medical services. Detainees often suffer from medical mistreatment. Perhaps the most infamous of Libyan prisons is Abu Salim, where in 1996 an estimated 1,200 inmates were massacred by prison guards after an uprising in protest of bad conditions. For more than a decade, Libyan officials refused to acknowledge the massacre and the prison even continued to accept packages and supplies for the deceased from their families, who had not been notified of their loved ones' deaths. In 2009, the government appointed a seven-judge panel to investigate the incident, but the panel has not yet published its findings, despite passing the March 2010 deadline. Some families have received death certificates (without information on the cause of death) and limited compensation from the government, but the provision of these benefits is said to be contingent on the families' willingness to legally absolve the government of responsibility.[8]

Dr. Idris Boufayed, an outspoken critic of the Libyan leader who has advocated peaceful change to promote the rule of law and respect for human rights, was detained by internal security agents in November 2006 after he wrote critical letters to Libyan opposition websites. In June 2008, a state security court sentenced him to 25 years in prison for planning to overthrow the government after he organized a demonstration. However, due to international pressure, he was freed in October 2008.

Libya has made some efforts to improve its bleak human rights situation, but violations remain common. Penal code reform, which took place in 2009, reduced the sentences from execution to imprisonment for a range of offenses, although political activists continue to be held arbitrarily for making public comments.

Libya contends with a significant Islamist threat. Al-Qaeda continues to view the Libyan state as an enemy, particularly since its rapprochement with the West. In the words of Cheikh al Libi, an al-Qaeda commander in Afghanistan who died in 2009, "Qadhafi is the tyranny of Libya. After long years, he has suddenly discovered that America is not an enemy and is turning Libya into another crusader base."[9] Unlike in Iraq and Algeria, however, the al-Qaeda rhetoric has not been carried out in deed in Libya, and the country has yet to have a suicide attack on its territory. It is highly likely that the return of Libyan combatants from Iraq will have consequences on security in Libya. But for the moment, the Libyan regime is faced with forms of protest that seem harmless compared to Algeria and Iraq.

In September 2009, on Saif Al-Islam's initiative, the regime released 56 prisoners from the Libyan Islamic Fighting Group (LIFG) as a gesture of national reconciliation. In the same year, the regime ordered the demolition of the Abu Salim prison, a symbol of repression against the Islamists in the 1990s.

Migration and human trafficking are another serious area of human rights abuse in Libya, which is a common transit point for migrants and refugees fleeing Sub-Saharan Africa for Europe. Libya's 2009 Treaty of Friendship with Italy was in part designed to stem the flow of these migrants into Europe, and Italy has provided Libya with significant funding, patrol boats, and weapons to target these groups. Libyan security forces have been criticized for using live fire against boats they suspect of carrying migrants to Europe, and they routinely repatriate refugees to hostile countries, particularly Eritrea. Libya does not recognize the existence of refugees in the country and in 2010 expelled the local office of the UN High Commissioner for Refugees (UNHCR), although it later allowed the UNHCR to continue to process some cases. Libya has recently agreed to place some refugees in camps, but conditions in these camps are very poor.

Libya does have a human rights monitoring organization, the National Commission on Human Rights in Great Jamahiriyya, but it is not clear that this organization has made any inroads on the human rights situation in the country. Instead it focuses on foreign actions: in October 2009, for example, the organization denounced Switzerland's referendum prohibiting the construction of minarets.

Women's rights in Libya are curtailed by certain laws and social norms that perpetuate discrimination, particularly in areas such as marriage, divorce, and inheritance. In January 2010, the General People's Committee passed a law granting Libyan women the ability to pass citizenship along to their children, but the lack of implementation directions and the inclusion of a number of seemingly contradictory clauses make unclear the extent to which the law will result in enhanced rights for women. Libyan women are sometimes subject to forced participation in social rehabilitation camps, which essentially amount to arbitrary arrest and detention. Women are sent to these camps when they have allegedly compromised their families' reputation, including by being raped.

There is very strong tribal discrimination in Libya. The tribes living in Cyrenaica (around Benghazi) such as the Kargala, Tawajeer, and Ramla are excluded from the state apparatus. Berbers, who constitute 20 percent of the population, are the country's largest ethnic minority. They have complained about the dominance of the Arabic language over their own.

The government is generally tolerant of religious practice, but controls the appointment of all imams and religious leaders, as well as religious curricula and sermons. The government closely monitors mosques for Islamist activity and Islamist gatherings are strictly forbidden. The few non-Muslims in Libya are permitted to practice their faiths with relative freedom, if for no other reason than that these communities are very small and relatively innocuous.

Freedom of assembly is severely restricted in Libya. Individuals have no right to gather with the aim of criticizing the Jamahiriya political system or al-Qadhafi. The only demonstrations that are allowed to take place are generally organized by the regime to show support for the aims of the Jamahiriya. Anyone

who tries to violate this rule by expressing opposition or by criticizing the political system faces unfair trials and prison terms.

The only organization that is allowed to criticize the government and the Libyan political authorities is the quasi-official Qadhafi International Charity and Development Foundation, which is headed by Saif al-Islam. It has condemned government corruption and called for a free press and a constitution, and also participated in the 2006 release of 132 political prisoners. Saif al-Islam had some influence over the government and was able to criticize it, both as al-Qadhafi's son and because he refrained from crossing specific red lines related to the revolution's core tenets.

In February 2007, 14 people were arrested for planning a demonstration, the aim of which was to peacefully commemorate the anniversary of a violent clash between the police and demonstrators in Benghazi. These 14 demonstrators are on trial and could be subject to the death penalty for planning to overthrow the government, meeting with a U.S. official, and arms possession. According to Human Right Watch, none of the detainees were violent. Two of the men have disappeared since their arrests, and the government has refused to share information on the place of detention or allow access to the detainees by their relatives. According to Human Rights Watch, among the other detainees is a Danish citizen, Jamal al-Haji, to whom Libya refuses to grant the Danish government access, in violation of the Vienna Convention on Consular Relations.[10]

There are no independent labor unions in Libya. Independent trade unions are banned, and all workers are required to be members of the government-run General Trade Union Federation of Workers.[11] The right to strike exists in theory, under chapter 150 of the Labor Code, but workers cannot legally protest without union consent, which is never granted because of government control. Migrant workers cannot unionize, and a significant proportion of workers suffer harsh working conditions.

RULE OF LAW	**1.33**
INDEPENDENT JUDICIARY	0.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	1.60
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	0.25
PROTECTION OF PROPERTY RIGHTS	2.67

Libya's judicial system consists of courts of magistrates, courts of first instance, courts of appeal, courts of justice, and the Supreme Court. They also hear cases of delinquency and crime. The Supreme Court is the top of the Libyan judicial hierarchy. It is based on specialized departments, each of which has five judges.

In January 2005, al-Qadhafi issued a directive to the General People's Congress requesting the abolition of the People's Court, which conducted secret political trials and was infamous for issuing death penalty sentences with great frequency. Members of the People's Court were in theory elected by the people of Libya but were actually al-Qadhafi appointees. Their main objective was "prosecution of persons accused of corruption during the period from 1952 to 1969 (i.e., the prerevolutionary period)," who in reality was anybody suspected of dissident activity. This court also served to spread fear and repression among the population and discourage dissent of any kind. The court was abolished partly to reduce the extensive criticism that Libya had received from international actors and NGOs regarding its terrible human rights record. The Libyan League for Human Rights, which had challenged the legitimacy of the court since its establishment in 1989, remarked, "The abolition of the People's Court and the exceptional laws is undoubtedly a commendable step in the right direction but should be followed by other measures if the purpose of their abolition is to remedy the deplorable human rights situation in Libya. In fact, respect for human rights has been obstructed not only by the People's Court but, more particularly, by the total lack of an equitable and independent judiciary."[12]

Regular citizens who are accused of crimes of an apolitical nature can receive a relatively fair and timely trial, but detainees have no access to independent counsel. Prosecutors are subject to pressure from the regime in politically-sensitive cases.

There are four main deficiencies in the judiciary. First, Libya's system does not incorporate accepted international standards, especially those related to the protection of human rights and the establishment of an equitable judicial system. Second, the revolutionary authority has undue influence on judges and frequently uses that power to shape rulings in their favor. Third, the judicial system lacks standards and procedures for fair and equitable trials and the judiciary is perceived by the population as corrupt. Finally, the judicial system fails to exercise any kind of oversight over the regime, which is not bound to comply with judicial rulings.

An additional political obstacle to judicial independence is al-Qadhafi's almost unlimited power. The "Charter of Revolutionary Legitimacy," for instance, gives al-Qadhafi control over all of Libya's political, judicial, and economic institutions. Thus, his directives are prioritized vis-à-vis the law, including judicial rulings. Consequently, al-Qadhafi has practically monopolized all power and has become the primary and only source of authority in the country. Moreover, the Charter of Revolutionary Legitimacy also gives him the right to intervene in judicial issues by changing court judgments or obstructing the administration of justice, which he often does in cases in which he has a political interest. Al-Qadhafi can, through the powers that this charter affords him, establish special or emergency courts that can override other courts' verdicts.

The security forces continue to benefit from a judicial system that guarantees them impunity by virtue of the regime's complete control of the judiciary. The revolutionary committees are a political police force whose mission is to eliminate opponents, silence dissent, and impose on the Basic People's Committees the political directives that al-Qadhafi would like them to follow.[13] In a rare moment of compassion, al-Qadhafi denounced the infamous excesses of the revolutionary committees in 1988: "They have deviated, harmed, tortured. The revolutionary does not practice repression. On the contrary, I want to prove that the committees are lovers of the masses."[14] In fact, as pointed out by Amnesty International, "there are security forces, including internal security, with no requirement for accountability, which have sweeping powers, which are ubiquitous."[15]

Although Colonel al-Qadhafi remains an active member of the military, the Libyan army is not a central power broker. In fact, with the collapse of the army due to the impact of international sanctions, the strength of the Revolutionary Guard, which reached 40,000 members, exceeded that of the army. The military is based on a balance of paramilitary forces whose composition is representative of those tribes that have sworn allegiance to the regime.

The Libyan state has tried in recent years to modernize its private property legislation and to better protect property rights and contracts. The state does not seize land from private citizens and its desire to promote private enterprise is a strong incentive to protect property rights.

ANTICORRUPTION AND TRANSPARENCY 0.69

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	1.00
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	0.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	0.75
GOVERNMENTAL TRANSPARENCY	0.67

Complete centralization of power and the absence of civil and political liberties have provided Libyan decision makers with unlimited control over public resources and extensive opportunities for personal enrichment. The exploitation of these resources takes place without any safeguards and often in pursuit of objectives that have little to do with the public good. As the regime sees it, the nation's wealth exists to promote the realization of the revolutionary project. The inspection of public spending is arbitrary. The distribution of oil wealth is not substantiated by public authorities. The state's use of public resources for personal or political ends is a factor in the role of the state in Libyan society and elsewhere. French historian Michel Seurat described the perception of the government as that of a very successful tribe that continuously extends control over its distributive mechanisms rather than as a political instrument serving the society and guaranteeing the public good.

Transparency International, in its 2010 Corruption Perceptions Index, ranked Libya 146 out of 178 states surveyed.[16] Corruption in Libya is relatively subtle, however, and is often not perceived by Libyans as a morally or commercially reprehensible practice. Contracts are usually the result of the culmination of personal relationships involving family members or friends with shared political, military, or diplomatic interests. Commercial relationships among groups with similar interests are seen as completely legitimate and in no way related to corruption.

The oil and gas sectors and their 35,000 employees are under the close surveillance of the revolutionary committees. These sectors are essentially the funding source for Libya's redistributive state. Corruption in the oil sector has become an important part of the management and control of hydrocarbon sales. The almost exclusive domination in these sectors exercised by the al-Qadhafi family and those policymakers who enjoy al-Qadhafi's trust render any attempt at curtailing corruption both very uncertain and extremely risky.

On October 10, 1999, at a conference in Durban, South Africa on anticorruption measures, Abdurrahman Musa al-Abbar, the secretary-general of the Popular Committee at the Council for Popular Control, gave an account of the measures Libya has taken against corruption: "The Law concerning economic crimes related to fighting all kinds of economic corruption in the state (Law number 2 of 1979), the law concerning prevention of favoritism (Law number 6 of 1985), and law prohibiting improper gains through requiring the disclosure of the source of benefits (law number 3 of 1986). This was enacted to fight all kinds of corruption in the community. This law compels all general employees and self-employed citizens to submit annual declarations on their financial positions and the extent of their modification during the period covered by the declaration.[17] These disclosures have not been made, however. In reality, corruption forms part of a process of interaction that is not perceived by the Libyan leadership as reprehensible, given that the concept of public assets is not well developed.

The main challenge in the fight against corruption in Libya is the institution of a procedure of public assessment of the state's resources. There is no law to ensure access to information and citizens have very little information on public spending. After undertaking a high-level consultancy mission to Libya in August 2003, representatives of the International Monetary Fund (IMF) recommended implementing controls on additional budgetary funds, especially on the Oil Reserve Fund, reevaluating the distribution of oil wealth between current expenditures and capital. Another important recommendation was budget transparency.[18]

As with political power, wealth is also concentrated in the hands of a small group of people. The country's riches are at the disposal of the al-Qadhafi family and those nearest to them, without any mechanisms for accountability. No political institution is empowered to scrutinize the use of state resources,

the officials who carry out transactions, or the sums involved. According to a report published by *Jeune Afrique*, more than $360 billion have passed through the hands of the authorities between 1973 and 2003. A journalist declared that a part of this sum has been used for arms purchasing expenditures, and another portion for infrastructure investment. Many questions remain unanswered concerning al-Qadhafi's personal wealth, his family's holdings in overseas companies, and investments in offshore funds.

It is important to note the incredible generosity of al-Qadhafi toward African leaders. He presented the presidents of Ghana and South Africa with Mercedes S500 cars (each with a monetary value of $100,000), and the president of Guinea Bissau with a suitcase containing $1.35 million. Ghana, Zambia, DR Congo, Liberia, Gabon, and Congo Brazzaville benefitted from an investment of $4 billion from the Libyan Arab African Investment Company (LAAICO), which has supported more than 130 projects throughout Africa.

As part of its economic modernization program, which included an anticorruption component, the government has been forced to charge several high-level civil servants with graft. The Libya Human and Political Development Forum created a website for the reporting of corruption within the country, including the exposure of business fraud and bribery.[19] After the launching in September 2001 of an anti-corruption campaign, the People's Court charged several high level civil servants, including the Finance Minister, of forgery and bribery.

In March 2008, the government announced a series of reforms, including allowing a greater role for private enterprises and establishing a wealth distribution program intended to give the general population a direct share in oil revenues. However, most of these reforms were put on hold just one year later because of their complexity and the uncertainty of their impact.[20] Between 2006 and 2008, the consulting firm Monitor Group was hired to assist Libya to reform the economy and to better exploit its potential. In fact, these reforms were cosmetic and designed only to make Libya attractive to the international community.

There is virtually no reporting on corruption in Libya because of the extreme controls imposed on journalists, particularly those who investigate corruption. In 2010, the Libyan government created the position of press deputy in order to monitor and control journalists that report on corruption, although the position has not begun to operate.

NOTES

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MADAGASCAR

CAPITAL: Antananarivo
POPULATION: 20.2 million
GNI PER CAPITA (PPP): $990

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	N/A	2.30
CIVIL LIBERTIES:	N/A	4.48
RULE OF LAW:	N/A	2.45
ANTICORRUPTION AND TRANSPARENCY:	N/A	2.13

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Jerome Y. Bachelard, Richard R. Marcus

INTRODUCTION

In March 2009, after weeks of street protests, Andry Rajoelina took control of Madagascar through a military-backed and unconstitutional seizure of power. The ousting of President Marc Ravalomanana was a large step backwards for the country's already backsliding democratization, embroiling the country in a political crisis that remains unresolved.

Street demonstrations have long been principal drivers of political change in Madagascar. The events of 2009 should thus be considered in historical context. In 1947 Madagascar experienced one of the most significant anti-colonial insurrections in the world. An estimated 100,000 people died in the conflict, and the memory of 1947 still plays a cardinal role in shaping Malagasy political culture. All demonstrations since have been urban. When institutions have failed to provide the forum necessary for the legal contestation of ideas, some people have taken to the streets to bring about change.

In 1991, over 100,000 people staged demonstrations and strikes to force President Didier Ratsiraka to accept a transitional government. This led to the

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adoption of a new constitution in 1992, and was followed by the election of opposition leader Albert Zafy in multiparty elections in 1993. Ratsiraka was reelected in 1996 after Zafy was impeached.[1]

Official results for the December 2001 elections between Ratsiraka and Marc Ravalomanana, a successful businessman and the popular mayor of Antananarivo, indicated that no candidate won an absolute majority and called for a run-off. Ratsiraka had reportedly used the country's weak electoral institutions to manipulate the results in an attempt to retain power. The population demanded a comparison of the official results with those collected at the ballot stations by a consortium of domestic observers and by Ravalomanana supporters. Hundreds of thousands of people demonstrated, eventually forcing Ratsiraka out of Antananarivo. The country then reached the point of near-Balkanization when Ratsiraka and his partisans established control in his home province of Toamasina and invited the other provinces to establish independent governments. International mediation failed, and Ravalomanana rode the support of part of the army and the ever-growing street demonstrations, which continued for six months. Ratsiraka finally fled for France, and Ravalomanana became president after the majority of the army moved in his favor and defeated Ratsiraka's troops.[2]

During his one and a half terms in office, Ravalomanana conducted significant reforms that were beneficial both to the population as a whole and to his personal interests as the owner of the country's most important private company, the Tiko Group. Reforms included a relatively successful fight against corruption, the strengthening of the judiciary and other state institutions, and the extension of political and economic liberties. Ravalomanana was, however, highly criticized for centralizing power, making decisions alone, and eschewing alternative views and critics.[3] The result was an ever-centralizing hold on power, a narrowing base of confidants and decision-makers, a growing reputation for secrecy, and a conflation of business and public interests.

With the end of a full election cycle in late 2007 came new challenges to President Ravalomanana from opposition leaders, civil society, and even some international donors with whom he had long enjoyed a strong relationship. Ravalomanana was profoundly challenged for quietly entering into a land deal with the South Korean Daewoo corporation which would have leased 1.3 million hectares (about 18 percent of Madagascar's arable land) and for purchasing "Air Force II" for his use at public expense. The tipping point came on December 13, 2008, when Ravalomanana closed down the private TV station, Viva, owned by the then-mayor of Antananarivo, Andry Rajoelina.[4] On January 17, 2009, Rajoelina staged a large rally for the naming of the *Place de la Démocratie* in Antananarivo, which was intended to be an affront to the perceived centralizing and increasingly authoritarian tendencies of President Ravalomanana. Rajoelina served as a lightning rod to a largely marginalized, if disparate, opposition and some 30,000 demonstrators. While support for

Ravalomanana was weak, street movements supporting Rajoelina quickly dropped to an estimated 3,000 to 5,000 people daily in Antananarivo, largely because Rajoelina had proclaimed himself in charge of the country's affairs, discrediting his democratic aims. On February 7, 2009 Ravalomanana's presidential guard opened fire on unarmed Rajoelina supporters protesting in front of the presidential palace. An estimated 31 people were killed and more than 200 wounded. This significantly undermined Ravalomanana's legitimacy, but did not necessarily buoy Rajoelina's popularity. On March 17, 2009, under significant pressure, Ravalomanana attempted to hand power over to a military leader. This failed and a group of military mutineers installed Rajoelina in power. Within weeks it became clear that public sentiment challenged Ravalomanana's centralization and his legitimacy while condemning the militancy and patrimony of Rajoelina's rule. This fissure has helped to expose significant structural problems in the Malagasy polity ranging from persistent patterns of personal rule that undermine the institution of the presidency, a significant urban-rural rupture, the persistence of historically entrenched families in the political decision-making process, the failures of decentralization, and the massive divide between those engaged in the export-led growth of a vibrant business economy and the nearly 80 percent rural poor.[5] Today Ravalomanana is in exile in South Africa[6] and Andry Rajoelina has consolidated his rule as the unelected president of the *Haute Autorité de Transition* (HAT).

Initially the HAT brought together a broad array of political opposition leaders, but over time many of those networks of power have abandoned Rajoelina, and he has become increasingly isolated. Internationally, most donors, including the EU, the World Bank, the United States, and Norway—but with the notable exception of France—froze their non-humanitarian aid to Madagascar. This is significant, for as of 2008 approximately 70 percent of state revenue came from donor support. The Southern African Development Community (SADC) suspended Madagascar's membership,[7] and the African Union (AU) imposed sanctions against Rajoelina and 108 of his supporters.[8]

On August 9, 2009, Rajoelina signed a power-sharing agreement with Ravalomanana, Ratsiraka, and Zafy under international mediation. The deal was broken before the ink was dry, and Rajoelina unilaterally named a new cabinet. Significant international mediation efforts by the UN, SADC, the AU, and partnering countries have borne no fruit. On February 4, 2011, SADC mediators proposed a roadmap to elections that left Rajoelina in power with the caveat that he name a multilateral cabinet. The new transitional unity government named by Rajoelina in March 2011 did not receive backing from the three main opponents, former presidents Ravalomanana, Ratsiraka, and Zafy, and received tepid support from an international community. At the time of writing, the SADC Secretariat had significantly modified the roadmap written by its mediators and a "take it or leave it" deal was rejected by the HAT. Rajoelina indicated he wanted to move quickly towards elections but was

criticized for not meeting the terms of international mediators. SADC moved to block elections.

Since seizing power in 2009, Rajoelina has done little more than attempt to secure his position in power and those of others in his political and business network. He has governed through significantly reduced international aid resources, amidst quickly eroding popular support. Madagascar is facing the threat of state unravel in which the ability to govern across sectors is diminishing.

Nearly every president in the history of Madagascar, including Rajoelina, has changed the constitution to suit his needs. Rajoelina spearheaded a unilateral constitutional convention and national referendum on November 17, 2010. The polls were run in the tense atmosphere of another failed military coup attempt. The constitution officially passed with 74.19 percent support and a participation rate of 52.61 percent despite a call for boycott from the three opposition movement leaders. The civil society monitors, *Comité National d'Observation des Elections* (CNOE), criticized the polls as the worst they had observed in 20 years.[9] The Fourth Republic, which entered into force on December 11, 2010, reduces the minimum age for the president from 40 to 35, allowing 36-year-old Rajoelina to run in the next presidential election. In addition, Article 166 allows him to stay in power until the presidential election takes place, but it does not set a deadline for those elections. Constitutional scholars in Madagascar and abroad have criticized the constitution as a document that obfuscates key elements of the balance of powers while giving more power to an already near-imperial presidential office.

ACCOUNTABILITY AND PUBLIC VOICE 2.30

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	1.20
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	1.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	3.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	3.00

The constitution has provided for multiparty elections with universal suffrage since 1992. The 2001 presidential election was initially highly fraudulent, with a clear lack of independence both of the National Electoral Council and the High Constitutional Court. The recount conducted in April 2002 yielded results probably much closer to reality than those of the initial tallying, although it is not clear whether Ravalomanana won an absolute majority in the first round.[10]

The 2006 presidential election was relatively free from massive fraud, but some electoral violations were reported. The SADC Election Observer Mission considered the elections inconsistent with regionally established electoral norms. The international observer mission of the Electoral Institute for the Sustainability of Democracy in Africa (EISA) noted numerous concerns, including polling practices, opaque voters' rolls, a lack of campaign finance information, the perpetuation of a multi-ballot system, an unusually high

number of omissions from voter rolls, and errors in identification cards.[11] The CNOE expressed concerns that regional chiefs were withholding distribution of national identification cards in opposition areas to prevent opposition supporters from voting.

There were cases of electoral intimidation in both the 2006 presidential and 2007 legislative elections, including the closing down of opposition headquarters in Tamatave and the arrest of some opposition candidates. Ravalomanana's government prevented Pierrot Rajaonarivelo, Ravalomanana's main challenger in 2006, from returning to Madagascar to run in the election. While Rajaonarivelo claimed that he had committed no crimes, he risked arrest because of accusations by the Ravalomanana government of corruption. Ravalomanana defended the actions, citing possible security concerns if Rajaonarivelo returned.

The multi-ballot system was also highly problematic. Candidates were obliged to pay for and distribute their own ballots, with the possibility of reimbursement if they won at least 10 percent of the votes. This policy, designed to limit sham candidacies, effectively discriminated against candidates with limited financial means. Rajoelina's government changed the electoral code in March 2010 to introduce a single-ballot system. The new electoral code meets every concern expressed by international observers and members of the international community in the lead-up to the 2006 and 2007 elections, but its unilateral imposition and the lack of autonomy of the Independent National Electoral Commission (CENI) it establishes are a continuing area of concern.

The new CENI replaced the National Electoral Council, which was never able to counteract the power of the presidency. The imbalance of power was exacerbated by the High Constitutional Court (HCC), which validated the transfer of full power from Ravalomanana to a military directorate in March 2009, and from that directorate to Rajoelina, even though he was not elected and did not meet the constitutional minimum age for eligibility. The HCC further validated Rajoelina's dissolution of the National Assembly and the Senate, allowing him to rule by decree.

Campaign financing is not regulated, leading to large inequalities between candidates. The dearth of rules makes it unnecessary for candidates to hide the origins of campaign funds. While Ratsiraka belonged to the ruling elite, Ravalomanana largely relied on his own business to finance his political campaigns.

Not a single political party in Madagascar has ever been a democratic instrument able to recruit new leadership, aggregate interests from various segments of society, and translate them into coherent political programs. They have instead operated as tools for political elites to remain in power and secure sufficient legislative representation. Historically the strongest, Ratsiraka's AREMA party relied on his personal networks and control of state resources to place key allies in office, including many members of his own family, at the national, provincial, and local levels. In the 2001 presidential elections, Ravalomanana's

I Love Madagascar (TIM) party surprised the entire political class by securing, six months after its creation, the largest share of votes in five out of the six provinces. It hence proved that it was possible for a member of Ravalomanana's Merina ethnic group to win nationwide electoral support that cut across social divides. Ravalomanana, unwilling to share power, kept the TIM party under his strict control, silencing alternative voices within the party.

Madagascar is a highly centralized state. The 1998 constitution created six autonomous provinces, a strategy that favors regional allies at the expense of elites in Antananarivo. In 2004, Ravalomanana replaced the provinces with 22 regions controlled by the central government. By law regional chiefs were to be elected, but in practice Ravalomanana appointed them. The 2010 constitution establishes three layers of decentralization—communes, regions, and provinces—with executive and legislative elections at each level. These elections, however, have yet to be organized, and the autonomy of these decentralized authorities from the central government remains to be seen.[12]

Political power is centralized in the executive. From a legal perspective, the power of the presidency in the 1998–2007 constitution is higher than in Iceland, the European country with the most powerful president in a semi-presidential system, and even higher than in Russia.[13] The 2007 constitutional change increased presidential powers by allowing the president to rule by decree in case of emergency or catastrophe (Art. 100), among other changes. While such a provision existed in the previous constitution, the latter required prior consultation with the presidents of the National Assembly, the Senate, and the HCC (Art. 59). The November 2010 constitution is vague regarding the exact balance of power between the president, legislature, and judiciary. However, given the number of prerogatives attributed to the presidency and the dramatic increase in the presidency's budget while ministry budgets have shrunk, it is likely that presidential powers are even stronger. Article 61 reintroduced the necessity for the president to consult with the presidents of the National Assembly, the Senate, and the HCC before declaring a state of emergency and ruling by decree.[14] In practice, however, this reintroduction has little relevance as Rajoelina dissolved the two parliamentary chambers upon arrival to power, as discussed below.

Ravalomanana's TIM party held an overwhelming majority in the National Assembly after December 2002 which strongly limited the legislature's ability to counteract the power of the president.[15] In 2007 part of the TIM party began steps towards party consolidation and called for a national party conference. President Ravalomanana reacted by using his constitutional authority to dissolve the legislature and call for rapid elections. The 2007 legislative elections purged the TIM party of presidential opposition while increasing the number of seats held by the TIM to near universal control. Some scholarly studies point to a crisis of popular legitimacy of the 2007 elections. When Rajoelina came to power he immediately dissolved the National Assembly and the Senate. In October 2010 these two

bodies were replaced by the Transitional Congress and the Transitional Superior Council, respectively. Members of both chambers are unelected, with most chosen from among Rajoelina's supporters. Legislative elections initially planned for March 2011 have been postponed to be held together with presidential elections.

The Malagasy civil service is replete with competent technocrats and is generally stronger than in most African countries. However, political intrusions often prevent them from effectively performing their tasks. In the time following Rajoelina's rise to power, many high-level functionaries were pushed out of office in favor of political appointees, and there was an exodus of mid-level technicians who found their efforts to follow sector or industry standards blocked by political appointees seeking alternate ends. This pattern is particularly prevalent in social sectors such as education and health care, where Ravalomananaera reforms were cancelled without programmatic alternatives.

Although there are few legal or practical government impediments to civil society, not many domestic nongovernmental organizations (NGOs) have sufficient capacity and means to influence policymaking. Christian civil society has been relatively influential, but it is largely marginalized in the current crisis. The 1960 law on civil society provides a strong legal framework and allows civil society organizations to register at a reasonable cost. Yet hardly any are registered due to a lack of knowledge of the process and practical difficulty linked to the shifting decentralized state structure. There are few state impediments to civil society funding, but given the freeze on most international aid, this is currently difficult to assess.

Media freedom has a history of being relatively high in Madagascar, with many direct critiques of the government in the press, on the radio, and on TV. There is no distinction between the television station (TVM) and radio station (RNM) owned by Rajoelina and state TV and Radio. Numerous independent media exist but nearly all are affiliated with a political party or politician. Ravalomanana's media outlets dominated until 2009. Ownership of media outlets by political elites obviously limits the latter's impartiality, but the somewhat diverse ownership allows for the diffusion of different opinions and critiques on political and economic issues.[16]

Until recently, the government almost never censured, fined, physically repressed, or took legal action against the media. Exceptions include Ravalomanana's occasional confiscation of a print run, his closure of Rajoelina's private Viva TV station in December 2008, and Rajoelina's subsequent shut down of Ravalomanana's MBS radio and television group in 2009. Since summer 2010, Rajoelina has closed down at least 80 private audiovisual stations, most of them private radio stations belonging to members of the opposition that criticized his rule.

In 2008, 92 percent of the population reported never using the internet.[17] Political activism on the internet has grown in recent years with the advent of independent blogs. Censorship is also growing, however, especially under

Rajoelina, with many activists complaining that their email is hacked and various websites forced by the government to shut or cut content. Rajoelina plans to centralize the control of internet access under public administration, which would increase the possibility of state censorship. To sum up, with an unelected ruler, no legislative organ, and a *de facto* deficient High Constitutional Court, which gave legal backing to an unconstitutional transfer of power, Rajoelina's HAT clearly qualifies as a politically closed authoritarian regime, in Diamond's typology—although civil liberties are still much higher than in most such regimes.[18] The recent creation of an unelected and nonconsensual transition parliament, and the legality given to Rajoelina by the fraudulently adopted new constitution, do little more than to improve appearances, until legislative and presidential elections are held.

CIVIL LIBERTIES 4.48

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.13
GENDER EQUITY	4.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.00
FREEDOM OF CONSCIENCE AND BELIEF	6.33
FREEDOM OF ASSOCIATION AND ASSEMBLY	5.25

Madagascar offers few protections against arbitrary arrest or physical abuse committed by state agents. For instance, in November 2010, 21 opponents to the constitutional referendum were arrested for organizing an unauthorized demonstration the previous day.[19] When abuses do occur, they are rarely investigated, as the executive manipulates the judiciary and the police. State repression, however, remains limited compared to other countries with comparably few safeguards.

Prisons are overcrowded and largely inadequate. Torture rarely occurs, but families must feed their imprisoned relatives for them to avoid starvation. Prison health facilities are also inadequate and safeguards against detention without trial are largely absent.

Until recently, the government has been relatively effective in protecting its citizens against crime. However, budget cuts in all sectors, including the police force since 2009, coupled with the weakening of state authority, have strongly limited the will and the ability of the police to act. As a result, violence has increased significantly in urban and rural areas. Terrorism has never been a significant problem in Madagascar.

The Malagasy legal code is unwavering in its criminalization of slavery, and it does offer protections for children against forced labor. Madagascar does have a particular form of slavery, however. Poor families sometimes give a child to a wealthy family to serve as a domestic servant until he or she turns 18 so that the child may receive food, housing, and often access to education. For girls of

a certain age, this custom sometimes is linked to sexual abuse. Those involved in such practices argue that children who would otherwise have no future gain a chance to have a better life as adults. Human trafficking for sex tourism also occurs, mainly on the coast. Prostitution of underage girls is expanding as a consequence of the increased cost of living. Ravalomanana's administration made some significant efforts to fight human trafficking. It is unclear what Rajoelina's government has done in this domain, but given the government's limited means, it is likely that the situation has deteriorated.[20]

Tribunals are theoretically open to petitions against the state, but using such opportunities requires means and knowledge that most citizens do not have, especially the majority who live in rural areas. Human rights NGOs are mainly urban-based, and none has the means to effectively help citizens when state authorities have violated their rights.

Gender equity is relatively strong in Madagascar, with a history of women serving in important roles in political cabinets, civil society, and the private sector. The legal framework for equity is strong, and gender-sensitive language is common. In the 2008 Afrobarometer survey, less than 1 percent of respondents considered gender issues and women's rights among the three most urgent problems the government should address.[21] In rural areas, however, cultural expressions of gender-based discrimination continue. For instance, men often answer for women. While legislation against gender-based social and economic discrimination exists, it is hardly ever enforced.

The Afrobarometer survey found that 32 percent of respondents identify with the Merina ethnic group, to which both Ravalomanana and Rajoelina belong, 19 percent with the Betsileo, and 15 percent with the Betsimisaraka, to which Ratsiraka belongs. The remainder is split between 18 other ethnic groups, none of which represents more than 5 percent of the population. Outside of Imerina—the highlands in the Antananarivo region—identity tends to be fluid. In the late 1800s, the French governor Joseph Gallieni introduced constructed ethnic identities that persist today, yet clan and kinship relations often supersede ethnic identity, particularly in high migration regions in the south of the country.

Historically, Madagascar's political sphere has been divided between Merina and *côtier* (comprising the other ethnic groups), with Betsileo (in neighboring Imerina to the south on the Haut Plateau) commonly swinging between them. Ravalomanana's supporters originally cut across ethnic and regional groups, but his popularity outside of his core, ethnically based constituency clearly waned after 2006. Ratsiraka also ruled by forming alliances with elites from both the Merina and the Betsileo. However in 2002 he made significant efforts to foment ethnic conflict, including reportedly sponsoring attacks against his own Betsimisaraka, in order to blame Ravalomanana.[22] Today the conflict between Rajoelina and Ravalomanana is viewed by many as a war between two Merina houses. While less than 1 percent of the respondents in the Afrobarometer survey saw ethnic tensions as one of the three most urgent issues the government

should address,[23] the potential for a democratic Merina leader in the near future appears challenged.

Legally, protection of ethnic, religious, and sexual minorities is strong in Madagascar. Enforcement of these laws is largely absent, however, especially in rural areas, where three-fourths of the population lives. Protection for disabled people in particular is entirely insufficient. For instance, some provincial asylums for mentally disabled people lack the means and staff necessary to feed and humanely treat their patients.

Freedom of religion is strong in Madagascar. More than 80 percent of the population is Christian (though often religiously syncretic with ancestral beliefs). The four main Christian churches, Roman Catholic (38 percent), Calvinist–Church of Jesus Christ in Madagascar (FJKM, 23 percent), Lutheran–Fiangonana Loterana Malagasy (FLM, 14 percent), and Anglican (2 percent), are grouped under the umbrella organization Malagasy Council of Christian Churches (FFKM), which is unusually politically active. For instance, it took a very active role in the 2001 domestic electoral observation mission. The proportion of Muslims (around 3 percent) is increasing in Mahajanga, Tolagnaro, and elsewhere.[24] When conflict arises, mostly between Protestants and Catholics, it is due to lines of political power, not to religion itself. The state largely refrains from placing restrictions on religious practice. Ravalomanana was lay Vice-President of the Protestant FJKM church. In the 2007 revision of the constitution he suppressed from the first article the mention that Madagascar is a secular country. The preamble of the 2007 constitution, like that of the 1998 constitution, mentions the people's resolution to "promote and develop its heritage of a pluralist society respectful of its diversity, amongst others . . . believes in God Creator."[25] Ravalomanana introduced compulsory prayers for his staff at the beginning of the day. This was a clear case of state involvement in civil servants' religious practices, and hence a breach of their religious liberties. This was however limited to the civil service, and hence not a case of state involvement in religious institutions. The Protestant-Catholic divide is strong in Madagascar. In 2008, for example, Ravalomanana was refused communion for the first time by a Catholic Church in opposition to perceived political intolerance. Officially a Catholic, Rajoelina benefited from an allegedly biased mediator—Archbishop Razanakolona—in the 2009 crisis. Moreover, Rajoelina closed down and arrested journalists from Fahazavana Protestant Radio, accusing them of encouraging rebellion. Rajoelina has however not used religion in the way that Ravalomanana did, nor made religion part of his policy process. On the contrary, in the 2010 revision of the constitution, he reintroduced the mention in the first article that Madagascar is a secular state, and removed the reference to God Creator from the preamble.[26]

Freedom of association and assembly is high in Madagascar, and trade unions are free. They are, however, extremely limited in membership, politically divided, and weak, especially compared to the main business association. There are some cases of government action to prevent mobilization of political or

business organizations, but these have remained limited. The Malagasy population regularly demonstrates, sometimes in the hundreds of thousands. Most of the time these events are extremely peaceful, with little violence perpetrated by the state or demonstrators.

RULE OF LAW 2.45

INDEPENDENT JUDICIARY	1.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.60
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	1.75
PROTECTION OF PROPERTY RIGHTS	3.67

The judiciary is legally independent from the executive but, in practice, direct executive pressure on the judiciary can be significant at the tribunal level. Such pressure is less frequent at higher levels, but the High Constitutional Court has repeatedly ratified rather than adjudicated executive action, even when these actions were clearly unconstitutional. The examples discussed above of the HCC's initial validation of manipulated electoral results in favor of Ratsiraka in 2002 and its validation of Rajoelina's victory in 2009 are cases in point. The HCC and the Supreme Court are the only two judicial organs with legal authority over executive action. Given their de facto lack of independence from executive power, the latter's failure to comply with judicial rulings rarely poses a problem.

The composition of the HCC has not changed since the Supreme Court re-established its composition in 2002, correcting for Ratsiraka stacking of justices in his favor before the 2001 elections.[27] This lack of turnover, even when governments change, could indicate that judges are not unfairly dismissed, but it may also be a result of judges bending the law in favor of the people in power. Under both the 2007 and the 2010 constitutions, the president appoints three members of the HCC, while the National Assembly, the Senate, and the *Conseil Supérieur de la Magistrature* each elect two. The terms of appointment are somewhat vague.

Judges at the high court level are well trained and have played important roles, including in international judicial proceedings. Training in lower courts is inconsistent. A third of respondents to the 2008 Afrobarometer believed that most or all judges and magistrates were corrupt, which is more than for any other civil servant or elected official, except the police (34 percent).[28]

Primacy of the rule of law in civil and criminal matters, including presumption of innocence, is granted by law. In practice, however, many problems limit strict application of the law. The HCC usually hears cases in a timely manner and is rarely accused of direct corruption. Its rulings are however often seen as biased in favor of the presidency. Local tribunals are clearly underfunded and understaffed, leading to months of delay before a hearing takes place and, in

some cases, individuals detained in the interim. Tribunals require court fees, which directly benefit the magistrates. Although this practice is not locally viewed as corruption, there is a widespread accusation that the amount paid largely influences the decision of the court.

Community rulemaking courts, called *Dina*, which became active under Ratsiraka's rule as a substitute to the highly corrupt justice sector, still play an important role in rural areas. Dina are often established and upheld by village chiefs or community elders (*Raymendreny*). Respect of due process may hence vary widely as a function of community norms rather than the law. For example, a Dina excommunicated an individual and prohibited all members of the community from providing him with any sort of assistance, eventually leading to his death. Despite the illegality of this ruling, the tribunal legitimized it on the basis of local customary law.[29]

Lawyers enjoy a fair amount of independence in Madagascar and are rarely threatened or prosecuted. The main problem limiting access to counsel is its prohibitive cost for most of the population. By contrast, the independence of prosecutors is very limited. Prosecutors usually start cases on the executive's demand and are largely perceived as working for the administration. Such practices often pervade business, social, and other sectors.

Even after committing egregious acts, public officials face prosecution only if they belong to the opposition or if they fall out of favor with the president. For example, in 2007, CrTIM, a group within Ravalomanana's TIM party, attempted to reform the party's leadership. Among the group, Deputy Roger Zara and Senator Joseph Yoland faced criminal prosecution over charges of corruption, incitation to violence, and traffic of influence in July 2007. Zara was arrested and Yoland fled the country. Both were acquitted in March 2008 for lack of proof.[30]

Security forces do not operate unchecked, but they do sometimes switch allegiance in times of crisis. On March 8, 2009, a small faction mutinied and helped Rajoelina to overthrow Ravalomanana. Military support to Rajoelina, whose father is a military officer, was secured by sociopolitical networks, with some funding from the private sector and, allegedly, foreign powers. Only two weeks before the overthrow, the UN envoy and then the French ambassador gave safe harbor to Rajoelina, preventing his arrest. With the exception of a few failed military coups, the last military involvement in politics before 2009 occurred during the 2001–2002 crisis. At that time, with the exception of the small faction loyal to Ratsiraka, the army remained neutral until the end of the postelectoral crisis.[31] While the military played a decisive role in the overthrow of both Ratsiraka and Ravalomanana, neither established a military government. However, both crises, as well as numerous failed coup attempts by small factions of the army, unveiled profound divisions inside the army along political, generational, ethnic, and military corps lines. These divisions increase uncertainty in the event of political crises. For instance, the military leaders central to Ravalomanana's overthrow, General Andre Andriarijaon and General

Noël Rakotonandrasana, were not clearly supportive of Rajoelina even one month earlier. Moreover, Rakotonandrasana staged a new coup attempt against Rajoelina in November 2010 and was arrested. The police are also regularly involved in the political process and generally support the individual in power.

Abuse of power for personal gain is common among the police and the army. Police officers often expect to be paid money, for example in return for their assistance to the victim of a crime. There was some improvement under Ravalomanana following the creation in 2004 of BIANCO, the Anti-Corruption Independent Bureau. However, BIANCO mainly targeted functionaries at the lowest level and, because of a lack of funding, almost exclusively in Antananarivo. Accountability of higher officers is extremely low, and none has been pursued in court over corruption.

Accountability of the armed forces for human rights abuses is low. However, after the presidential guard opened fire on a crowd in February 2009, General Raoelina, Colonel Ralamboarison, and *Gendarme Principal* Lidy were condemned along with Ravalomanana to life imprisonment with hard labor. The three former individuals are currently imprisoned while Ravalomanana is in exile. Lower officers have for the most part been acquitted for following orders. The trial was criticized for being politically motivated and for failing to follow due process, although evidence of Ravalomanana's direct responsibility was relatively solid.[32]

The state does not place barriers on the rights of individuals or groups to own property and problems of confiscation on racial or ethnic grounds are rare. In practice, however, there has been a major challenge to the property rights system since the mid-1990s due to competition between indigenous property rights systems and the growing donor-supported state system of property rights. Although some efforts were made to accommodate the indigenous system, the state's property system has prevailed in most cases, resulting in a net loss for some individuals. The extension of the state property rights system under Ratsiraka, Ravalomanana, and Rajoelina has been fairly even between groups.

The government generally performs well in enforcing contracts. Land seizure is relatively rare. The main exception, particularly under Ravalomanana, was due to combined efforts by donors, international and domestic NGOs, and the government to protect the environment and extend national parks. In the regions concerned, the common good has largely prevailed over local land rights; however, a large seizure of agricultural land without compensation did take place.

ANTICORRUPTION AND TRANSPARENCY 2.13

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.20
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	2.00
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.50
GOVERNMENTAL TRANSPARENCY	1.83

Ravalomanana's government initially streamlined regulations to increase transparency and diminish opportunities for corruption, for instance in the customs administration. During his second term, opportunities for corruption increased again, however, to such a point that the EU, the IMF, and the World Bank temporarily delayed their payments to Madagascar, asking for clarification of the government's financial management.[33] These problems worsened dramatically after Rajoelina's takeover.

The state is not significantly involved in the economy directly. Under Ravalomanana, the size of the state further diminished as he attempted to privatize some of the few parastatals, such as the water and electricity company JIRAMA, with donor support. This contraction led to higher levels of transparency. Privatization of JIRAMA, however, failed due to the difficulty of making the company profitable.

Accounting systems are relatively reliable at the national and regional levels, but they vary widely at the commune level. A big challenge is coordination between accounting systems at each level in order to ensure that the funds coming in have not been tampered with. This problem grew in 2009-10, with new royalties coming to the regions from mining companies. The total amounts released by international mining companies were well recorded, but the World Bank raised concerns regarding communal management capacity and accountability. The World Bank moreover said that the very unequal distribution of mining royalties between communes, as provided by the Mining Law (Nr. 2005 021 of October 17, 2005), may raise unrest in mining areas. Although the mining law has been changed by decree to redirect redistribution, even that distribution appears to have been applied with questionable success.

Separation between the public and private interests of officeholders was a big challenge under Ravalomanana. As owner of the biggest Malagasy private enterprise, the Tiko Group, Ravalomanana used benefits and wealth from his private position to gain public office, for instance by financing his political campaign. Although not illegal, this gave him an important advantage in the campaign. His subsequent public position helped his firm grow, diversify, and gain market share at the expense of competing businesses. By 2008, Tiko Group subsidiaries controlled virtually every key sector in Madagascar, including the media and rice (the food staple) distribution. It is for this reason that part of the business sector came to support Rajoelina in 2007 and 2008. However, partly because of the weakness of Madagascar's regulation against conflict of interest, few of Ravalomanana's activities were legally questionable. Moreover, Ravalomanana managed to simultaneously act for the benefit of his firm and of the country by strengthening state institutions, including anticorruption organs, and fighting the entrenched interests of the old and highly corrupt politico-economic class.[34]

Rajoelina, who also came from the private sector, largely followed Ravalomanana's model in blending private and public interest, and further blurred the line between taxation and rent-seeking. For example, in January 2009, Ravalomanana released an executive order allowing the limited export of

rosewood from the rainforest in the northeast. As this forested area included two internationally recognized national parks, the decree violated both Malagasy and international law. Nonetheless, the illicit exploitation of timber increased dramatically under Rajoelina, with hundreds of millions of dollars worth of timber sold, primarily to China, generating both private gains for local leaders and significant cash inflow for the public treasury, partly compensating for the international aid cut.[35]

The 2004 anticorruption law makes it compulsory for high state officers and civil servants to declare their wealth and empowers BIANCO to oversee these declarations and to charge individuals with any illegal or undue gains. According to Decree 2004-983, these wealth declarations are not public, but are accessible to parliamentary or judicial organs.[36] BIANCO was relatively effective under Ravalomanana in Antananarivo and other urban areas in enforcing the law for lower-level civil servants. Due to lack of resources, however, it has been much less able to act in rural areas, and enforcement is highly ineffective when it comes to officials from the presidential party.

In 2005, the year after its creation, BIANCO transmitted a total of 89 investigated cases to the judiciary. This number increased to 367 in 2008, and dropped again to 139 in 2009.[37] Because of the international aid cut since the 2009 coup, BIANCO's budget has been reduced by half. As a result, the organization has limited its scope, working almost exclusively in Antananarivo, limiting the number of dossier openings and investigations, and targeting only low-level infractions by civil servants. For instance, BIANCO has received a significant number of complaints regarding mining and illicit timber but left these uninvestigated. Complaints against the Rajoelina administration have also been ignored. Public officials have complained that significant political influence hampered BIANCO's work, preventing the opening of particular dossiers. The few NGOs that were previously acting as anticorruption watchdogs have also seen donor support shrink since 2009, preventing them from fulfilling these tasks.

The media regularly report cases of corruption in detail, but such reporting reflects inherent bias in the media because of political ties. Legal protection for whistleblowers is inadequate.

Victims of corruption can theoretically seek redress though the courts, but as discussed above, the latter are subject to corruption and largely inaccessible to the poor. Corruption in education slightly improved under Ravalomanana. Payments to obtain good grades remained standard, but a minimum level of performance was nonetheless required. At the lower level, monitoring of teacher attendance also improved. The regulations passed under Ravalomanana are still in place, but the state's capacity to enforce them has strongly diminished.[38]

Government transparency is relatively high. Legislation is published in an official journal, and high court rulings, including confirmation of elections and referendum results, are available on the court's website. Executive orders and decrees are available on the government's website and in the official journal.[39] The day-to-day

operations of the government are opaque, however. Citizens' legal right to information is relatively strong, but the mechanisms to effectively obtain this information are inefficient.

In spite of the absence of legal mechanisms for requesting information, budget transparency increased dramatically under Ravalomanana until 2008. Under Rajoelina, this information is less regularly released, but the 2011 budget is available online.[40] Expenditure accounting was relatively clear under Ravalomanana, with the exception of some obscure dossiers, including the financing of a Boeing 737-300 specially outfitted for the presidency. Accounting became much more opaque under Rajoelina.[41]

Procurement was problematic under Ravalomanana, with increased transparency but little accountability. The president's company was awarded most contracts it bid for. This situation worsened under Rajoelina. The problem is explained both by the weakness of the legal procurement framework and by civil servants' entrenched culture of favoring the incumbent and his allies.

Rajoelina has implemented a dramatic array of austerity measures and alternative financing schemes, most notably an acceleration of taxed logging (including in protected forest areas), mining, oil permits, and new ventures with Chinese financiers.[42] While there is a long history of artisanal mining contributing a small fraction to the country's GDP, the first proceeds from industrial mining were reaped in late 2009. Within 10 years, natural resource extraction is expected to grow from less than 1 percent of GDP to over 30 percent. The nascent infrastructure for state oversight of the sector set up under Ravalomanana has eroded. Today the permit, royalty payment, and taxation processes are virtually free of transparency and accountability to the extent that the international mining watchdog, the Extractive Industries Transparency Initiative (EITI), placed Madagascar on warning for suspension. There are similar concerns with new permits for oil exploration offshore and a potentially enormous (over $18 billion) tar sands oil extraction points. The illicit logging of rosewood in the fragile rainforests of the northeast, on the other hand, demonstrates an unusual mix of technical capacity to ensure transparency (the Madagascar National Parks service maintains a database of every tree cut, its size and weight, who cut it, who bought each container, and how much was paid) and the diminished capacity of the Ministry of the Environment and Forests and security forces to do anything about it.

Ravalomanana's administration worked in concert with donors for the fair and legal administration of foreign aid. The Madagascar Action Plan, co-written by donors and the government, provided the legal framework for aid distribution between 2007 and 2012. The EU, the IMF, and the World Bank, however, began challenging the transparency of the Ravalomanana government during his second term. In December 2008 the EU and World Bank froze direct budgetary support due to concerns with transparency in financial management.[43] With Rajoelina's takeover, direct budgetary support never resumed and the remainder of the more than $1.2 bill in funding portfolio from the

World Bank and EU went into limbo. The distribution of international funds transfers to Madagascar from other sources since 2009 has been very opaque. For instance, in early 2008 the Ravalomanana government began setting up a joint venture with the Chinese company Wuhan Iron and Steel Corporation for the exploitation of the Soalala iron ore mine in northwest Madagascar. When the deal was signed under the Rajoelina government in May 2010, Wuhan paid a $100 million permit fee to the government.[44] The bulk of the funds skirted the existing mining fee collection infrastructure and went directly to the president's office where transparent accounting is impossible. If the exploration proves successful the die might be cast for the estimated $8 billion investment in mining infrastructure that follows.

RECOMMENDATIONS

- Hold general elections in May 2012, in accordance with the UN electoral advisor's assessment. The electoral code forbids the holding of elections between November 30 and April 30 on account of the rainy season. Holding elections before November 30 would not be feasible, as a mediation process and a technical review process, including voter rolls, must first take place.
- Allow unrestricted electoral monitoring and observation, both by domestic civil society and the international community.
- Ensure strict neutrality of the army in the electoral process. This would mean a role for the military limited entirely to security, independent monitors ensuring that limited role, and safeguards against foreign payments to military leaders.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

1 Solofo Randrianja, "Be not afraid, only believe': Madagascar 2002," *African Affairs* 102, no. 407 (April 2003): 311; Richard R. Marcus, "Madagascar: Legitimizing Autocracy," *Current History* 100, no. 646 (May 2001).

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MALI

CAPITAL: Bamako
POPULATION: 15.2 million
GNI PER CAPITA (PPP): $1,190

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	N/A	4.90
CIVIL LIBERTIES:	N/A	4.80
RULE OF LAW:	N/A	2.96
ANTICORRUPTION AND TRANSPARENCY:	N/A	3.44

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Jaimie Bleck

INTRODUCTION

Mali began its democratic transition in 1991, when thousands of demonstrators gathered in the streets to demand that President Moussa Traoré step down after more than two decades of military rule. On March 22 of that year, the Malian armed forces fired on demonstrators, killing hundreds. On March 26, then Lt. Colonel Amadou Toumani Touré launched a military coup d'état and arrested Traoré. With mounting popular pressure for democracy, Touré quickly established a transitional government composed of military and civilian leaders, which handed power to a democratically-elected government the following year.[1] The transitional government held an inclusive National Conference in the summer of 1991 to elicit ideas from diverse groups within civil society about the country's democratic transition. The National Conference and a subsequent constitutional referendum laid the foundation for a political tradition of dialogue and debate that continues today.[2]

In January 1992 Mali held municipal councils elections, followed by legislative and presidential elections in February and March. Alpha Konaré, a former educator and democracy activist, won the presidency with the support of the Alliance for Democracy in Mali African Party for Solidarity and Justice (ADEMA-PASJ). ADEMA-PASJ drew its strength from Konaré's base of teachers, medical professionals, and students across Mali.[3] It won the majority of seats in the legislative contest.

In the 1997 elections, Konaré faced only one challenger and won a second term with almost 85 percent of the vote. ADEMA picked up the majority of

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the seats in the National Assembly.[4] Many view this period as the beginning of the decline of a political opposition, which boycotted the second round of the legislative elections and the presidential race.[5]

The democratization process was plagued by the reemergence of the Tuareg rebellion in the north during the early 1990s.[6] The Tuareg, ethnically related to Berbers or *Imazighen*, are a nomadic people that live in the northern desert region of Mali. When Mali gained independence in 1960, the Tuaregs felt marginalized and feared that the government might seize their land, which prompted them to launch a rebellion in 1963. The Malian military countered with a harsh suppression, which killed many and forced thousands more to migrate to Algeria, Mauritania, and Libya. Almost 30 years later, resentment fueled by the harsh repression, continued dissatisfaction with government policies, and perceived exclusion from political power led various Tuareg and Arab groups to begin a second rebellion against the Malian government. The rebels demanded greater autonomy and access to economic opportunities; they accused the Malian government of squandering development aid intended for the north. Increasing insecurity and banditry plagued the northern region, as a secondary conflict emerged between Tuareg factions and a Songhai militia led by a former Malian Army captain.[7] The nascent government worked to accommodate northern grievances through the 1992 pact—which aimed to integrate northern soldiers into the Malian armed forces and promised greater economic integration/inclusion—but the initiative was unsuccessful.[8] An estimated 6,000 to 8,000 people were killed before a final agreement was signed by all factions in 1996.

Konaré also embarked on political decentralization as a strategy to appease Tuareg groups, but the program later became a catalyst for national decentralization as other regions of the country demanded ownership of local resources. The entire country was incorporated into a decentralization scheme, which brought elected leaders to 703 rural communes in Mali. The first communal elections were held in 1999 and then again in 2005. These elections slowly transferred administrative and fiscal authority to elected mayors and other municipal officials.[9]

In accordance with the constitution, Konaré stepped down from office after two terms in 2002. Former coup leader Amadou Toumani Touré (ATT) ran for president as an independent with support from his apolitical association, Citizens Movement (MC). This strategy enabled him to court and appoint members of various political parties as well as MC members, running as independents. This strategy of consensual government limited the development of an opposition.[10] He won in a second round run-off against ADEMA's Soumaila Cissé. ATT ran as an independent again in 2007. He was backed by a superalliance of 43 parties, including ADEMA, called the Alliance for Democracy and Progress (ADP), which included all but two political parties. ATT was reelected with the majority of votes in the first round against challenger Ibrahim

Boubacar Keita of Rally for Mali (RPM). Many have criticized ATT's nomination of MC members for appointed office and consensus government as weakening party institutions in Mali.

Mali was ranked the 10th poorest country in the world in the UN's 2010 Human Development Index, although it has improved by five places since 2009.[11] Over half of Malians live on a dollar a day or less,[12] and the UN estimates that over 70 percent of adults are illiterate in French, the official language.[13] Despite its democratic progress and recent gains in school enrollment, infrastructure, and technology, Mali lacks the fiscal capacity to pay for its own development; donors fund approximately 80 percent of development projects.[14] Because of Mali's dependence on aid, the public often accuses politicians of seeking the approval of donors and international financial institutions over the interest of the Malian people. Mali also receives considerable income from remittances from Malians abroad. The World Bank estimates that Mali received a little over $10 billion from migrant workers between 2000 and 2007.

ACCOUNTABILITY AND PUBLIC VOICE 4.90

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.20
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	6.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	5.71

Most Malian elections have been considered free and fair by international observers. However, instances of electoral and voter fraud are still reported, including problems with voter IDs, registries, and ballots.[15] Mali has one of the lowest voting rates on the continent due to outdated voter rolls, weak parties, the lack of ethnic/regional mobilization, and voter apathy. Only about 45 percent of registered voters participated in the 2009 municipal elections, which is slightly higher than national voting averages in the 2007 legislative and presidential elections at 33 percent and 36 percent turnout respectively. Voter turnout varies dramatically across regions; it is generally lowest in the capital and highest in the north of the country.[16] Turnover of elected officials is high; less than 20 percent of incumbent officeholders were reelected in the 2009 municipal elections.[17]

Malian elections are run by three separate agencies: the Independent National Election Commission (CENI), the General Delegation to Elections (DGE), and the Territorial Administration. CENI is comprised of members from majority and opposition parties as well as representatives from religious and human rights organizations. It is responsible for monitoring and supervising elections. The DGE regulates voting lists, prints ballots, and finances political parties, while the Territorial Administration is responsible for the material and technical organization of elections.[18] The 2008 Diawara report, which was

mandated by ATT to evaluate and improve democratic institutions, recommended removing the partisan leadership of CENI to create a single independent body capable of both electoral management and vote tallying. In April 2010, ATT announced plans to hold a constitutional referendum on these and other recommendations, which could result in 33 modifications to existing law and nine new laws.[19] The referendum, which was scheduled to be held by the end of 2010, has not taken place as of the spring of 2011.

Mali's current voter rolls are based on a census conducted prior to the 2002 presidential election; all adults over the age of 18 were automatically registered to vote. Voters who turned 18 after the census or who have moved were required to register in their area of residence. Registration can be cumbersome; many Malians reported difficulty in trying to obtain voter identification cards.[20] Mali embarked on a census in 2009, which will be used to update the voter rolls and to better align state development efforts with citizens' needs. Before the census, the Malian government initiated an extensive sensitization campaign so that Malians understood the census process and goals.

Parties in Mali are extremely weak. Currently, only 14 of 113 registered parties are represented in the National Assembly.[21] Unlike in many African countries, Malian parties are not organized along ethnic lines.[22] Party platforms are rarely programmatic and candidates regularly shift allegiance between parties. All parties have the legal ability to campaign, but they are practically constrained by their funding and level of organization. Although ADEMA has dominated most legislative and municipal races, it joined the alliance of parties backing ATT in 2007 rather than fielding its own presidential candidate. In addition, Malian political culture views political parties unfavorably. In the 2005 Afrobarometer survey, 40 percent of Malian respondents thought that parties were divisive, as compared to only 27 percent of respondents in Ghana.[23] ATT has capitalized on the culture of consensus to create a unity discourse around the political coalition of parties that stifles the formation of any real opposition. Debates between presidential and legislative candidates are televised, and all parties receive free broadcast time prior to elections.

ATT has declared that he will abide by constitutional term limits and step down at the end of his term in 2012. In 2010, CM formalized into a political party called the Party for Economic Development and Solidarity (PDES), borrowing its name from ATT's Project for Economic and Social Development. The nascent party, likely to be backed by ATT, is a favorite to challenge ADEMA in the 2012 presidential race. However, it is most likely that the strength of each presidential candidate, rather than his backing party, will carry the greatest weight at the polls.

The Malian Charter on Political Parties outlaws foreign funding of political parties and funding from commercial companies. All parties that participated in previous elections are eligible for public funding. Additional funding is awarded based on the number of assembly members and municipal officials and

the number of female candidates elected. The Malian government will distribute approximately $2,500,000 to 34 political parties as a result of their activity in 2010.[24] All parties must submit proof that they hold regular meetings and financial statements.

The executive exerts influence over members of the National Assembly. Parties in the president's ADP alliance won 90 of 147 assembly seats. Opposition parties RPM and PARENA won less than 13 percent of seats in the 2007 legislative race. However, the 2007 National Assembly was characterized by the reemergence of a formal, vocal opposition and improved accountability mechanisms.[25] In general, most legislation passes through the National Assembly with limited debate. The Diawara report recommended introducing proportional representation, which is currently used at the municipal level, and a senate to strengthen the legislative branch of government.

Mali benefits from a strong political history of decentralized rule through consensual democracy, in which citizens meet together to deliberate over group decisions. Some argue that Mali's system of *cousinage* helps to mitigate potential conflict by creating a cross-cutting cleavage of joking relationships between families from different ethnic groups.[26] Malians often reference the historical foundations of the culture of tolerance and conflict mediation as rooted in the legacy of Malian kingdoms dating back to the 13th century. However, the tradition of democratic consensus, in which all players must agree on an outcome, stigmatizes dissent and mistrust of partisan politics in the current democratic era.[27] Malians prefer consensus more than most African citizens: 70 percent of Malian respondents to the 2005 Afrobarometer survey favored consensus, compared to only 40 percent of respondents in Namibia, Uganda, Kenya, and Botswana.[28] In rural areas, traditional leaders have tremendous influence over how their village population votes and in some regions, especially in the south, electoral outcomes are coordinated before voting takes place. The reluctance of voters or politicians to act in a divisive manner impedes Mali's complete democratic development.[29]

There has been limited hiring of civil servants since structural adjustment in the 1980s, and current university graduates lament the lack of public sector jobs. In March 2009, the Malian government passed two ordinances to create a National Center for Public Administration and Personnel to assess human resource needs, organize recruitment, and test for job openings in public administration.[30] Recent Malian graduates perceive opportunities in government as very limited for young people. Some candidates have reported corruption and bribery linked to entry into the civil service.[31] Efforts to expand access to government services, including education, have lowered qualifications for government employees with comparable deductions in pay. For instance, while all teachers used to be "civil servants," now only a minority of teachers holds that title; most educators are "contractual" teachers without the same training, pay, or benefits.

Mali boasts a vibrant civil society; 8,542 associations were registered in 2008, and 1,125 nongovernmental organizations (NGOs) registered in December 2009.[32] However, many exist only on paper; an estimated 59 percent of all registered NGOs do not receive enough funding to function.[33] NGOs play an important role providing information, advocacy, and services to the Malian population. These organizations rely on international donors for 90 percent of their funding. Members of civil society, particularly religious leaders, play an important consultative role and bridge the gap between politicians and the electorate. They have been successful in promoting and blocking legislative projects including the abolition of the death penalty and the Family Code (see Civil Liberties). Donors operate freely in Mali; a 2008 report estimated that on average, 27.5 percent of the Malian state budget derives from foreign aid provided by approximately 40 donors.[34] Foreign infrastructure projects fuel popular support of these donors. The government provides NGOs and government institutions autonomy, which enables them to receive and distribute foreign assistance fairly.

Mali ranks very highly on press freedom due to a permissive media environment, which developed at the advent of multiparty elections in 1991. Reporters without Borders' 2010 Press Freedom Index ranked Mali in 26th place (tied with Ghana and Cape Verde) and the second highest in Africa, behind only Namibia. Mali has a vibrant network of more than 300 local radio stations, which operate across the country in more than 12 local languages and reach approximately 98 percent of the population.[35] While often small and underfunded, local stations do not require a license and operating fees are approximately $20 a year.[36] There are over 40 private newspapers, but circulation of print and online media is limited due to prohibitive costs, high illiteracy rates, and lack of availability in rural areas. Internet access has increased dramatically in the last 10 years but its usage, estimated at less than 2 percent of the population in 2009, is limited by cost, illiteracy, and unavailability in rural areas. Most Malians only have television access to ORTM (L'office de Radiodiffusion Télévision du Mali), the state media channel, which predominantly features reporting on government and donor activities. Private television stations are legal, but only available to wealthy Malians with the means to access cable or satellite. There is no restriction on foreign television.

Mali still has criminal laws against libel, but no journalist has been punished since 2007.[37] The last notable exception took place in June of that year, when five journalists who reported on a high school essay assignment about the infidelity of a fictitious president were charged with insulting the president and jailed along with the teacher who created the assignment. The media actively pressures the government to be more transparent; in 2009, journalists succeeded in forcing the government to release information about the privatization of telecommunications company SOTELMA.[38]

CIVIL LIBERTIES 4.80

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.75
GENDER EQUITY	3.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.50
FREEDOM OF CONSCIENCE AND BELIEF	7.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	6.75

There have been few reports of government authorities detaining or imprisoning political activists or of extrajudicial execution or torture by state authorities since 2001. Excessive detention for petty offenses and arbitrary arrest for extortion are common, but generally the police target less powerful actors rather than particular political figures or activists. The Malian constitution prohibits arbitrary arrest and detention and mandates that those arrested must be charged or released within 48 hours; however, this process generally takes longer due to lack of judicial personnel.

Prisons are overcrowded and provide poor healthcare and food. In January 2008, the central prison in Bamako housed 1,700 people despite being constructed for an occupancy limit of 400 to 500 people.[39] Due to insufficient staff and resources, prisoners can be held in prison for years awaiting their verdict. NGOs are allowed access to prisoners.

Mali has limited crime in urban areas, but the government's inability to police its own territory has created a lawless environment in the sparsely populated north. The smuggling of humans, drugs, and cigarettes, banditry, and kidnappings have drawn the attention of Western nations. The U.S. government has provided more than US$500 million in military support to the countries in the Sahel, including Mali, since 2003 to combat trafficking and terrorism. In the last few years, the terrorist and trafficking group Al Qaida of the Islamic Maghreb (AQIM) has developed out of the Algerian Salafist Group for Preaching and Combat (GSPC), which earned international media attention in 2003 after holding 32 Europeans hostage in southern Algeria. AQIM is largely based in Algeria, but operates in sparsely-populated neighboring countries, including Mali. Since 2008 AQIM has increasingly targeted foreigners for kidnapping, and the Malian government has played a central, often controversial, role in negotiating the release of hostages. In 2009 AQIM made its first strike against the Malian government, killing 28 in an attack on a military convoy.[40] Mokhtar Belmokhtar, who is affiliated with AQIM, has strengthened links between the group and local northern communities and existing smuggling routes by courting local leaders, including by marrying the daughter of prominent leaders of Arab and Tuareg communities.[41] This integration strategy has blurred the lines between AQIM activities, traditional smuggling networks,

local conflicts, and northern rebel groups despite the disparate goals and motivations of each.

Following severe droughts in 2005, Tuareg grievances rematerialized as conflict in 2006. Despite an initial peace accord in July 2006 and another in 2008, Tuareg rebel factions including the Tuareg Alliance of North Mali for Change (ATNMC) continued to launch attacks on military facilities and kidnap soldiers in the northern regions of Gao, Timbuktu, and Kidal in 2007 and 2008. The Malian authorities accused the Ganda Izo militia of targeting Tuareg civilians in response to the unrest.[42,43] Intercommunity disputes and banditry displaced thousands of families in the Gao and Kidal regions in 2008.

The Malian government was hesitant to launch large-scale military action and attempted to use dialogue to end the conflict, but ultimately the government began to launch strong attacks in early 2009, which forced hundreds of rebels to lay down their arms. In October 2009, Libyan president Muammar al-Qadhafi announced a complete end to the Tuareg rebellions in Niger and Mali in the presence of rebel leader Ibrahim Banga.[44] The accord promised development resources for the northern region and funding for an antiterrorism patrol made up of regional nomads.[45] By 2010, Banga's rebel group, ATNM, was working cooperatively with government troops to police drug smuggling networks with links to AQIM. In December 2010, the Malian government announced that a joint operation with Mauritanian forces dismantled the largest drug trafficking network in the Sahel.[46]

The Nigerian National Agency for the Prohibition of Traffic in Persons (NAPTIP) reported as many as 20,000 Nigerian women trafficked to work as prostitutes in the Malian cities of Bamako, Mopti, and Kayes during a mission in September 2010.[47] Some rural youth leave home with the promise of work and are then trafficked to work in mines or agriculture, or to beg on the streets. Many children in southern Mali are trafficked to work on cocoa farms in neighboring Cote d'Ivoire.

Malian women are at a disadvantage in most socioeconomic and political realms. Mali has one of the highest gender gaps in the world; it ranked 131 of 134 countries in the 2010 World Economic Forum Global Gender Gap Index.[48] Mali's 1962 Marriage and Guardianship Code includes many regulations discriminatory toward women: for example, the minimum age of marriage is 15 for women and 18 for men, Malian women must seek their husband's permission before opening a business, and the husband is considered head of the family, which gives him control of finances and the choice of residence.[49] Men are allowed up to four wives if both partners opt for polygamy at the time of marriage; couples who choose monogamy can change to a polygamous option if all parties give consent.

In August 2009, after years of deliberation, the National Assembly passed a new Family Code in a nearly unanimous vote, which was designed to improve women's legal position in Mali. However, the president later vetoed it in

response to large-scale protests organized by religious associations in Bamako and regional capitals across the country. Many Malians objected to some of the proposed amendments as conflicting with their culture, including provisions to increase the minimum age of marriage for girls to 18, removing women's obligation to obey their husbands, exclusive recognition of civil marriage, and greater inheritance rights for women. A revised version of the code was proposed to the National Assembly in October 2010, which included provisions that religious associations lobbied for such as the recognition of religious marriage. However, civil society groups complained that they were not afforded sufficient opportunities to provide input, which further stalled the process.[50] A new version of the code has not been passed to date.

In addition to formal regulations, there are societal limitations on women's ability to exercise their rights. Women are allowed to divorce, but this occurs rarely due to fear of stigma and legal costs. Female circumcision affects as much as 90 percent of the female population. To date the government has focused on sensitization campaigns against the practice rather than formal legislation and enforcement. Domestic violence is illegal but widespread and socially accepted, and therefore rarely prosecuted. Some regions of the country continue to practice levirate, in which a widow is married off to the younger brother of her spouse. Many families, especially in rural areas, pressure their daughters to marry in their early teens. An estimated 22 percent of all women are married before the age of 15.[51] Women are generally hesitant to approach political authorities without their husband, a male relative, or the support of an association.

Women's political representation, while still low, has increased over the last 10 years. The number of female members of the National Assembly rose from 3 in 2000 to 15 of 147 in 2009, while the number of female communal counselors increased from 6.53 percent of all elected in 2004 to 8.66 percent in 2009.[52] In 2007, the Malian government tried and failed to introduce a quota for women's representation in parliament. Only seven of Mali's 703 mayors are women. During the period from 2002 to 2005, women made up less than 9 percent of all administrative posts in the Malian government.[53] Women hold 22 percent of ministry posts, including the minister of education and the minister of fishing and livestock.[54] In April 2011, Madame Cissé Mariam Kaïdama Sidibé became Mali's first female prime minister. The government provides supplementary campaign financing for parties that elect female candidates.

Article 2 of the Malian Constitution outlaws discrimination based on "social origin, color, language, race, sex, religion, or political opinion." Article 12 grants asylum for those "persecuted because of their political or religious beliefs, or their ethnic membership." Tuareg rebel groups claim their grievances stem from lack of jobs and socioeconomic integration in their region. The Agency for the Development of Northern Mali says it has invested more than $3.6 million for infrastructure, water, and access to microcredit since its creation in 2006. It pledges to invest an additional $1.5 billion in the north.[55]

Handicap International reports a little over 1 million Malians living with disabilities. There are very few opportunities for schooling, health care, or employment for those Malians with physical or learning disabilities. In December 2010, the Malian government announced that it would adopt a law for the social protection of disabled people. The government actively recruits and hires those living with disabilities: in 2009, the civil service accepted 241 disabled university graduates.[56]

Homosexuality is legal, but not accepted within greater Malian society. In a 2007 Pew Survey, 98 percent of Malian respondents said homosexuality should be rejected, which was the highest negative response in any country.[57] Sexual minorities in Mali are often forced to hide their sexuality or face being ostracized by their families. In April 2009, religious leaders attempted to prevent a conference on AIDS and homosexuality that was held at a Bamako hotel.

Historical caste systems persist within certain groups in Malian society. The Malian labor code outlaws forced labor, but Mali has no laws outlawing slavery. The Malian NGO Temedt estimates that thousands of Malians in the north still participate in a traditional form of slavery,[58] in which a family of lower-caste Malians works for a richer master with limited pay and limited rights. The cohabitation between different ethnic groups has existed for generations, making it difficult to distinguish between forced enslavement and instances where servants choose to stay under the protection and control of their employers. The 2010 State Department Trafficking in Persons Report records six cases of traditional enslavement pending in Malian court.[59]

The Malian population is nearly 90 percent Muslim, but the government remains strongly secular. Article 4 of the constitution recognizes all Malians' right to "freedom of thought, conscience, religion, worship, opinion, expression, and creation in respect to the law." Mali has a high degree of religious tolerance and integration. Christians and Christian institutions, such as the Catholic Church, are respected. It is not uncommon for Muslims to celebrate holidays with their Christian friends. Five members of the National Assembly identify as Christian.[60] Animist practices still exist, particularly in the south and east of the country.

Religious organizations have flourished in the post-transition environment, aided by the dissolution of the ruling party's ban on non-state religious groups. Democracy has facilitated vibrant public debate about religion and the development of a multitude of religious associations in civil society.[61] Mali's government policies are consistent with the French legacy of *laïcité*; religious parties are banned by the constitution and religious actors tend to stay outside of formal electoral politics. The state provides religious institutions with autonomy and works in partnership with both Christian and Muslim organizations. The High Council of Islam, made up of leaders elected from the wider Islamic community, has officially advised the state on matters related to Islam since its creation in 2002. Historically, the state partnered with the Catholic Church to provide education, but since the democratic transition, the government has expanded

its partnership to include Islamic schools, where students receive accredited government diplomas.

The state grants citizens the right to join associations and freedom of assembly. Most members of Malian society are active in an association, or *ton*, organized around a common interest, occupation, or joint credit-savings program. Government development grants are awarded through associations, which further incentivizes group formation. Strikes, protests, and demonstrations are frequent and tolerated by the political authorities as part of the continued legacy of consensual governance. Strikes among educators and students often paralyze the public university system. Workers aged 16 and older have the right to form trade unions and to bargain except for members of the military or National Guard.

RULE OF LAW	**2.96**
INDEPENDENT JUDICIARY	3.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.60
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	4.25
PROTECTION OF PROPERTY RIGHTS	1.00

The judiciary has limited independence. The Minister of Justice, chosen by the president, appoints and supervises judges and law enforcement. The Supreme Court is appointed by the Council of Ministers and its president is selected by the Malian president. The president also appoints three members of the Constitutional Court; the National Assembly and the Superior Council of the Magistracy appoint the additional six. Judicial decisions rarely contradict the opinion of the government. The justice system does not publish decisions, and the absence of jurisprudence creates problems with equal application of the law and high rates of appeals.[62]

In rural areas, it is common for traditional or religious authorities to resolve disputes. Mali has an ombudsman, the mediator of the republic, named by the president. However, high illiteracy rates in French, poverty, costs of transport and lost labor, and fear of political authority inhibit Malians from approaching authorities to resolve problems. When Malians do contact government officials they often go in groups.[63] The 2004 Afrobarometer survey revealed that citizens were more likely to turn to a religious or traditional official than a government representative if they had a problem.[64] In a 2009 survey of 1,000 citizens, less than 10 percent of respondents said that they would contact a police officer in case of a crime or problem.[65] In a 2010 survey, 65 percent of all Malians were dissatisfied or highly dissatisfied with administration of the police and gendarmes, and 66 percent of all respondents were dissatisfied with the justice system.[66] The traditional justice system is characterized by Mali's culture of tolerance, which is often forgiving of perpetrators.

In 1999, the Malian government embarked on a 10-year judicial reform program called PRODEJ (Decennal Program for the Development of the Judiciary) aimed at improving judicial accessibility and efficiency, but many challenges remain. The judiciary is plagued by lack of resources, training, and personnel.[67] There is one judge for every 25,000 Malians, while the international standard is closer to one for every 8,000.[68] Courts are chronically underfunded. The 2009 Annual Report by the Auditor General revealed that an International Penal Tribunal in Bamako that processes approximately 3,500 cases a year received a trimester budget of less than $600.[69]

Most Malians view the judicial system as the most corrupt government institution. In the 2005 Afrobarometer survey, 56 percent of respondents thought that the majority or all lawyers and judges were corrupt.[70] In the constitution, all accused persons are innocent until proven guilty and have the right to a lawyer. However, access to the judicial system is difficult due to the lack of infrastructure, high costs, and lack of citizen information about the judicial process. Few citizens understand their legal rights or can understand courtroom proceedings without translation from French to a local language. Only two courts, in Segou and Commune II in Bamako, have offices for operational assistance. Public prosecutors are less independent than judges. They are appointed by the Ministry of Justice and can be transferred or removed without justification.[71]

There is a tendency to protect officials except in the gravest cases of corruption or abuse of power. In 1999, former president Moussa Traoré, his wife, and brother-in-law were sentenced to death for economic crimes, but the sentence was later reduced to life in prison.[72] Traoré and his affiliates were granted a presidential pardon by ATT in 2002, a move largely supported by the Malian public. Most often, officials voluntarily resign in the face of controversy. In 2008, former minister of energy Hamed Sow resigned in the wake of a scandal in which it was alleged that while serving as the director of the European Center for the Development of Enterprise he obtained a $4.8 million loan for a Malian textile company in which he had a 20 percent stake.[73] Sow was later cleared of all charges.

The government controls the police and armed services. Members of the military are not permitted to run for legislative office, but many military officials remain connected to the president, a former lieutenant colonel. Former military officers serve as minister of the interior and minister of security and defense.

Low-level corruption is pervasive throughout the police and gendarmes. For example, in 2008 Niame Keita, the newly-appointed director of national police, removed senior police official Boubacar Diouf from his post due to allegations that he had embezzled almost $1 million in pension funds.[74] Diouf was demoted but never prosecuted and died of a heart attack in 2009. Police and military have been accused of using excessive force, but are rarely prosecuted in face of these allegations. On February 23, 2010, the Malian press reported that police opened fire on a transport van, in Bamako, killing its driver.[75] Police claim that the shooting happened during an altercation with the driver, but the drivers' union claims that the police fired after the driver tried to avoid a

police inspection. Transport drivers in Bamako responded with a 48-hour public transport strike.

Land regulation and distribution in rural Mali relies on customary law. Traditionally women are ineligible to own land individually and often form associations in order to access rural land. Pastoralists' inability to access land through customary law has led to clashes with settled populations. Inheritance rules and shrinking availability of land often make it difficult for younger siblings, youth, and migrants to access land. Land reform in 2000 and 2002 devolved control of land ownership to decentralized municipalities, but the government has continued to govern with a mix of legal and customary law. Groups representing agricultural and rural interests have lobbied for greater clarity on rural land tenure, motivating a current initiative to develop an agricultural lands policy and law, the Agricultural Orientation Law, which will address issues related to agricultural land ownership including access to land for vulnerable populations.[76]

In urban areas, land distribution is governed primarily by the Land Registry Law. Transfers are extremely expensive. Mali has passed laws to reduce the cost of property registration, but it still has the fourth most expensive property registration in the world at 21.3 percent of the property's value.[77] Corruption creates additional transaction costs that favor powerful interests. Attempts to expedite ownership and find shortcuts within the maze of property registration have resulted in multiple titles issued for the same plot of land.[78]

According to the constitution, the Malian government has the right to claim land for the public good, and this justification can be loosely interpreted. In June 2009, the government signed a contract to lease 100,000 hectares of land to the MaliLibya Corporation for agricultural production and export to Libya. A USAID Land Tenure Assessment report cites "generous terms" for the contract, including unrestricted access to water, all surface sand, gravel, and ordinary stone, no land taxes or other payments, and no obligation to hire local employees or to sell produce locally.[79] Under the contract, the government of Mali is required to compensate those harmed by the activities. Several villages and communal properties have been expropriated. The USAID assessment found that in the village of Korotongo only 50 of 158 affected families had been compensated. In addition, other villages have been flooded or complained of dust pollution caused by construction.

ANTICORRUPTION AND TRANSPARENCY 3.44

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.60
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	4.00
CITIZEN PROTECTIONS AGAINST CORRUPTION	4.00
GOVERNMENTAL TRANSPARENCY	3.17

The constitution condemns corruption, but it is nevertheless widespread and systemic. Transparency International ranked Mali 116 of 178 countries in

2010, which was a slight improvement from 118th place in 2007. Corruption plagues the highest levels of government, and extensive petty corruption affects daily users' interactions with the police, utilities companies, and administrative offices, where users' illiteracy can be exploited and facilitation payments are common. The 2009 Auditor General's report recorded a $224.7-million loss in the 22 institutions it monitored. Of this, 17 percent was due to fraud (the majority was due to mismanagement).

In 2003, Mali created the Office of the Auditor General, which is charged with evaluating government programs and services, auditing the government's receipts and expenses, and offering recommendations to improve the efficiency and general operations of government structures. The office issues public annual reports and recommendations about government corruption and it details agency efforts to act on its recommendations. Prosecutions are to be carried out by a wing of the Supreme Court. Many recommendations go unaddressed, but government agencies have taken some steps to incorporate suggestions. While there have been minimal prosecutions in response to the reports, they have been successful in triggering public debate and greater transparency from ministries. The Diawara report recommended creating a judicial arm of the Auditor General to prosecute findings from its reports.[80]

The IMF reports reductions in corruption through computerization, modernization, and the implementation of anticorruption instruments.[81] Still, Mali suffers from a lack of coordination and replication of work among ministries and donors as individual government agencies and donors often engage in bilateral projects.

Despite economic liberalization in the 1990s, the state retains control over two of the economy's major exports, cotton and gold. In 2009, gold represented 70 percent of export revenue and 20 percent of government revenue.[82] Foreign companies, who work with the Malian government as a minority share partner, control mining. Critics of the current mining code question the Malian government's ability to play simultaneous roles of shareholder and regulator. Despite the tremendous revenue from mining, the sector employs few Malians.[83] In 2007, the government created a Supervision Committee, a Pilot Committee, and a Permanent Secretary in an effort to increase transparency in mineral extraction through the Extractive Industries Transparency Initiative (EITI). EITI ranked Mali as "close to compliant" in 2010.

Privatization in Mali has been slow and politically sensitive. Mali has tried to privatize the cotton parastatal for years, but debt and low cotton prices coupled with tremendous popular resistance slowed the process.[84] In early 2011, five groups were bidding on the cotton contract, which will award 61 percent of the company. Much of Malian public opinion remains against privatization; many of these transfers are perceived as lacking transparency and favoring powerful foreign actors over the welfare of Malians. Critics also stress that privatization has failed to improve the performance of other former parastatals. The 2003 privatization of the rail system resulted in restricted passenger service, which upset

Malian constituencies along the railroad. Privatization of EDM, the water and electric company, failed in 2005. In contrast, the second largest Malian bank, the International Bank of Mali, was privatized in 2008, and the national telecommunications company, SOTELMA, was sold to Maroc Telecom in July 2010. Privatization of the state-owned Housing Bank (BHM) is planned by 2012.

An estimated 90 percent of private sector activity takes place outside the formal economy, making it difficult for the government to levy taxes. Mali's 2008 tax revenue made up only 16.1 percent of GDP.[85] Mali concentrates its taxation in imports and exports, creating many nontariff barriers to trade. Importing and exporting merchandise from landlocked Mali is particularly difficult due to import licenses, bribes at check points, and the costs of shipping from regional ports. A study conducted between July and September 2010 found an average of 2.2 checkpoints, US$8.15 in bribes, and 12 minutes lost for each 100 kilometers traveled in Mali.[86] Customs officers' jobs are viewed by Malian society as the most lucrative opportunities for personal rent extraction.

The constitution requires the president and ministers to provide a public declaration of their assets to the Supreme Court shortly after assuming office. However, in practice the court rarely enforces this law.[87] No other elected officials are required to declare their assets. Some officials, such as Moussa Mara, an independent candidate for the mayor of Commune IV, have voluntarily declared their assets.[88]

Article 35 of the constitution includes provisions to prevent the president from buying or leasing anything that belongs to the state without authorization of the Supreme Court. However, some government officials solicit bribes to complete tasks, expect payoffs for the award of contracts, or use their positions to evade taxes or customs duties. In 2010, several Ministry of Health officials, including the director of the National Fight against Tuberculosis and the Ministry of Health's financial and administrative director, were among 15 individuals arrested and imprisoned for suspected embezzlement of more than $4 million from the Global Fund to Fight AIDS, Tuberculosis and Malaria.[89] The Minister of Health, Oumar Ibrahim Touré, resigned from his position as a result of the scandal, but he has not been charged with any crime.

Individual citizens and victims have little recourse against systemic corruption. The print and radio media frequently cover corruption and have publicized the findings of the Auditor General's reports. However, the Malian government is generally hesitant to punish perpetrators.

Public schools teachers accuse private schools of grade inflation to bolster passage rates on exams.[90] In a 2009 survey of university students in Bamako, 57 percent of 204 respondents felt that exam grades could be manipulated at schools (36 percent of students declined to respond); 54 percent of students believed that grades could be falsified (31 percent did not provide a response).[91]

The government has worked with the Carter Center to improve access to information though the creation of six pilot government organizations in the Strategy for Access to Information, which is part of Mali's larger Institutional

Development Program (CDI). The CDI maintains a website with current events information and reports. However, illiteracy in the French language and lack of internet access are serious obstacles to citizens' ability to access the information online.

The World Bank's International Development Association notes the government's progress in developing and executing budgets through the introduction of a midterm expenditure framework and decentralization of financial responsibilities.[92] There are still problems with the initial figures entered into budgets. Expenditure accounting remains weak due to multiple ledgers, weak management and accounting of expenditures, embezzlement, and lack of coordination between different levels of government.[93]

Government procurement remains one of the most problematic sectors for government corruption. The government requires all contracts to be inspected by the General Directorate of Public Procurement. However, the government frequently usurps bidding regulations and awards public contracts without competition. A 2009 survey reported that 66 percent of all companies surveyed expected to pay a bribe worth 5 percent of the total government contract.[94]

RECOMMENDATIONS

- In preparation for the constitutional referendum, the Malian government should conduct an awareness campaign to educate Malian voters on the implications of the proposed changes to their lives and to the quality of democracy in Mali.
- As recommended in the Diawara Commission, the Malian government should create a single, independent electoral body that can manage all aspects of preparation and execution of elections before 2012.
- Given high rates of illiteracy, the Malian government should conduct on an extensive campaign to educate citizens, particularly women, about their rights and duties as Malian citizens. Citizens should also be made aware of what they should expect and can demand from state institutions.
- The Malian government should strengthen its efforts to protect and promote women's rights. The government should make citizens aware of the legal recourse against domestic violence. The government should continue the conversation around the proposed Family Code, using it as a point of departure to encourage society-wide discussion about the role of women and women's rights in contemporary Malian society.
- The Malian government should increase funding to judicial staffing and the translation of legal information, including land reform laws, into local languages to overcome the population's distrust of the judicial branch. Malian courts, especially the Supreme Court, should publish all final decisions in order to establish jurisprudence.
- In accordance with the Diawara Commission's recommendations, the Malian government should create a special judicial body capable of

prosecuting corruption identified by the Auditor General. The government must be willing to overcome the widespread culture of impunity to reduce corruption.

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MAURITANIA

CAPITAL: Nouakchott
POPULATION: 3.4 million
GNI PER CAPITA (PPP): $1,940

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	3.57	3.32
CIVIL LIBERTIES:	2.98	3.01
RULE OF LAW:	2.35	2.15
ANTICORRUPTION AND TRANSPARENCY:	2.73	2.82

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Cédric Jourde

INTRODUCTION

Mauritania gained independence from France in 1960 but soon slipped into a series of authoritarian regimes, both civilian and military. Colonel Maayouya Ould Sidi Ahmed Taya seized power in a 1984 coup and eventually created a multiparty system in 1991. This system turned out to be multiparty in name only, however, as Taya used state resources, repression, and electoral manipulation to perpetuate his rule and that of his Republican, Democratic and Social Party (PRDS).

Taya's reign continued until 2005, when Colonel Ely Ould Mohamed Vall took power in another coup. With strong public support, Vall established a new independent electoral commission. Voters approved presidential term limits at two five-year terms in June 2006. At the end of that year, pro-military candidates secured majorities in legislative and municipal polls, a result that was repeated in early 2007 senate elections. In March 2007, Mauritania's first-ever generally free and fair elections saw the victory of the independent candidate Sidi Ould Cheikh Abdellahi.

Tension began to build early in Ould Cheikh Abdellahi's administration, particularly over the appropriate role of Taya. Ould Cheikh Abdellahi invited both groups into his cabinet. A governance crisis developed, however, amidst threats of no-confidence votes and parliamentarian resignations. On August 6,

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2008, the country returned to military rule when a general that Ould Cheikh Abdellahi had fired, Mohamed Ould Abdel Aziz, staged another coup. Ould Abdel Aziz installed himself at the helm of the High State Council (HSC), the 11-member junta that ran the country until elections could be held. In April 2009, Aziz resigned from the military to run for the presidency in the July elections, which he won in the first round with 52.6 percent. Despite opposition party allegations of electoral misconduct and doubts among the international community, the election results were ratified and Aziz confirmed as president.

None of the changes in leadership over the past few years has profoundly altered the formal and informal rules of politics in Mauritania. The 2008 ousting of the only civilian president ever elected in a multicandidate election brought the country back to its usual pattern of military-dominated autocratic rule, in which elections serve mainly to legitimize the latest strongman in power.

ACCOUNTABILITY AND PUBLIC VOICE	3.32
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	2.60
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.00

Mauritania's main challenge lies in the gap between rules and their implementation. Mauritania's 1991 constitution outlines a pluralist political system with elections at the presidential, legislative, and municipal levels. The Independent National Electoral Commission (INEC) was created in 2005. This new system was used in the 2006 local and legislative elections and the 2007 presidential elections. The commission has a significant shortage of human and material resources, but improvements were made, including the obligation for military personnel to vote in the district where they are registered, thereby preventing the trucking of hundreds of "soldier voters" to pro-opposition districts. In addition, INEC's presence meant that elections were no longer under the sole supervision of the Interior Ministry, which was highly biased in favor of the ruling party and the incumbent leader. Nevertheless, although most contenders agreed that the 2006–2007 elections were Mauritania's fairest, the fact that the military's chosen candidates (at the time called the "Independents") took over both the National Assembly and the presidency indicated that there was still room for improvement.

After the 2008 coup against Ould Cheikh Abdellahi, opposition parties refused to recognize the legitimacy of the new military strongman, and nearly a year passed before all parties agreed to hold a new presidential election. According to the Dakar Accord, the transitional government organized elections for July 2009. The duration of the transitional government was extremely short at barely 21 days, however, leading to concern that it did not have the time to organize free and fair elections and to counter the pro–Ould Abdel Aziz

bias in the civil service. Moreover, although military officers had promised not to run in the 2007 election, they reneged on this promise in 2009 and Ould Abdel Aziz became the leading candidate. This meant that Aziz, the military official who had just illegally seized power and who enjoyed the full support of the security apparatus and a majority of the legislative branch, was at the head of the interim government organizing the elections and also the clear frontrunner. Given his central role, it was virtually inconceivable that he would lose the election or that, in the highly unlikely event that he did, he could be prevented from illegally seizing power again. Furthermore, the contest was organized in only three weeks, a time frame so limited as to handicap the process from its inception. Credible international observers declined to observe the elections, citing insufficient conditions for a complete and effective observation mission.[1]

INEC supervised the July 18, 2009, presidential election with the Ministry of Interior. The formal rules were the same as in 2007, with one change, whose impact is as yet unclear: to become a candidate, it became necessary to have the support of 100 municipal councilors, located in at least half of the country's regions (called wilaya), as opposed to the 50 previously required. This new rule could be an obstacle for those who, unlike the head of state and a few party leaders, did not have support across the entire national territory.[2] Each presidential candidate could appoint two members to monitor each polling station. Media coverage was also relatively fair. Nevertheless, a former INEC member declared that INEC's mission was greatly impaired by a lack of material resources and by undue political influences.[3] The INEC chair resigned five days after the election, saying he had doubts about the validity of the results; he noted that the Constitutional Council officially recognized the results 48 hours after the election and before INEC finalized its election report, even though it was allowed up to eight days. Opposition members suggested that the chronically underfunded Constitutional Council was incapable of processing the electoral results in so short a period, implying that only significant fraud or vote count mismanagement could explain the dramatically short turnaround time.

Mauritania's parliamentary system has two chambers, the upper house, or Senate, and the lower house, or National Assembly. Every two years, a third of the Senate's 53 members is indirectly elected by a very small electoral college composed of mayors and municipal councilors, who are prone to vote buying.[4] Three seats are reserved for diaspora members, who are nominated by the elected senators. In the November 2009 Senate elections, candidates from General Ould Abdel Aziz's Union for the Republic Party (UPR) won 13 of the 17 seats, their allies won three seats, and the Islamist party Tawassoul won one seat. Opposition parties blamed corruption and assorted pressures for these results.[5] The presidential party and its allies now control 44 of the 56 seats.

The latest National Assembly elections were held in 2006. The president's party and his allies also control the National Assembly; the opposition occupied 35 of the 95 seats as of the December 2006 elections. That number is subject to change as legislators switch to the presidential coalition.

The constitution sanctions "the pre-eminence of the Head of State,"[6] under which the legislative and judicial branches are subordinate. The president appoints and dismisses the government and can dissolve the National Assembly and call for new elections. The assembly cannot remove him from office, except in cases of treason. The president appoints three of the six judges to the Constitutional Council (including its president), which, among other things, validates electoral results without outside oversight or approval. Executive power is strengthened through informal political channels that link the presidency to local rural leaders, powerful businessmen, and public servants. The politicization of public institutions is a method of rewarding political loyalty to the regime and punishing opposition.

There are no major obstacles to the formation of civic organizations, and donors do not face significant governmental impediments. However, these groups have had no serious effect on government policies. The only case of a civic organization facing governmental impediment is the Abolitionist Resurgence Initiative (IRA), which the interior ministry refuses to authorize. Its leader is an outspoken antislavery activist, denouncing slavery and formal and informal discrimination against the Haratin, the descendants of slaves of Arabic-speaking Moors. The government also refused to issue a new passport to the IRA's leader, preventing him from traveling abroad. Nongovernmental organizations (NGOs) increasingly have access to and use the internet, which allows them to publish reports on economic development and more political topics, including the rights of returning refugees, the marginalization of slaves and former slaves, women's conditions, etc. This increase in NGO activity does not translate to genuine influence, but NGO reports do publicize problems that were previously ignored.

The coup did not negatively affect press freedom. Newspapers are relatively free of governmental pressure, but some problems remain. For example, the January 2009 criminal defamation charges against a newspaper publisher after her paper covered allegations of mismanagement in a state-owned real estate company raised some concerns.[7]

To improve press freedom, the interim government created the High Authority for the Press and the Audiovisual (HAPA) in 2006, whose main tasks consist of ending censorship, streamlining bureaucratic publication requirements, and improving media access, including by enforcing equal political party media access during electoral periods. The president appoints three of HAPA's six members, including the chair. HAPA's role has been inconsistent since 2007. It demonstrated independence from the executive in October 2008, three months after the coup, when it criticized the state-owned media for one-sided coverage and reports focusing only on General Ould Abdel Aziz while ignoring the positions and actions of the opposition.[8] During the July 2009 presidential elections, HAPA's monitoring of the media was strict, ensuring that state media did not favor any party, and there were no major problems with candidate media access.[9] However, state-owned radio and television still

enjoyed a monopoly on coverage, and they exclusively advertise the words and deeds of the government. Liberalization of television and radio broadcasting would improve the situation considerably, as no private TV or radio station has been established to date. Foreign satellite channels are broadcast in the country but are available only for those who can afford it. The state owns the country's two daily newspapers and the printing press, although HAPA ensures that most papers have access to the latter. HAPA acknowledged that the absence of private radio and television was problematic during the last presidential campaign, arguing that "the liberalization of the radio and television sector is an essential condition for democracy and development."[10] A 2006 bill liberalizing the broadcast sector opened Mauritania's media landscape to private operators, but as of 2011, the only TV and radio channels in Mauritania's broadcast pool were public. Furthermore, a 2008 HAPA decision forced the state-owned media to provide some space for political pluralism, including coverage of opposition parties, during nonelectoral periods.[11] Self-censorship, particularly with regard to controversial issues such as the role of the military or of Islam, is widespread.[12]

Access to the internet is relatively free from government pressure, though due to the level of illiteracy and poverty, only a minority can access it. Hanevi Ould Deha, editor-in-chief of a popular website, taqadoumy.com, was arrested in June 2009 and jailed for a duration that exceeded the legal limit; the charges have changed over time and eventually he was sentenced based on comments readers left on his website. The incriminating users' comments pertained to women's sexuality and the court deemed them an insult to Islam and an encouragement to revolt. Hanevi Ould Deha was reprieved by the president in February 2010.

CIVIL LIBERTIES 3.01

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.88
GENDER EQUITY	3.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	2.25
FREEDOM OF CONSCIENCE AND BELIEF	2.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.25

Article 13 of the Mauritanian constitution protects citizens from torture and inhumane treatment in prisons. Under both Ould Cheikh Abdellahi and Ould Abdel Aziz, there was a net decrease in unjustified political imprisonment and torture, which occasionally do occur. Although in general NGO activists and opposition members have not been imprisoned, ousted president Abdellahi and his closest collaborators were illegally detained and placed under house arrest for almost five months, until December 21, 2008.

The case of the National Commission for Human Rights (CNDH) also raised concerns. This independent body was created in October 2007 under

Ould Cheikh Abdellahi. When Ould Abdel Aziz came to power, the CNDH's newly appointed chair (who had served under the Taya regime) dismissed one of its members, most probably on the basis that one of his organizations, the IRA, was too critical of state authorities. A large number of well-established NGOs, many of which partner with UN agencies in local development programs, denounced this dismissal.[13]

The treatment of Islamist activists is more complex. Al Qaida in the Islamic Maghreb (AQIM) and its predecessor, the Salafist Group for Preaching and Combat (GSPC), have launched a series of attacks in Mauritania since 2005, including attacks on remote military garrisons and ongoing kidnapping attempts and attacks on Western nationals. Mauritanian civilians have not been targeted so far. Under Taya, security forces arrested and tortured people of diverse political allegiances whose only commonality was that they referred to Islam as their main source of political thought. These included mainstream Islamist political actors (such as the members of the Tawassoul party) and young activists who allegedly travelled to AQIM camps in Mali. Security forces have developed a more focused strategy under the Abdellahi and Aziz regimes, but terrorist attacks remain a serious concern among the population.

The judiciary proved partly independent in March 2010, when it rejected a number of articles from the new Anti-Terrorist Law that the government attempted to pass in January 2010. This included articles on eavesdropping, detention without trial, and warrant search.[14] A new version was adopted in July 2010 that expands government power to pursue suspected terrorists and broadens the range of terrorism-related infractions, including money laundering and other activities. Under this new law, three prisoners accused of connections to AQIM were sentenced to death.[15] Meanwhile, the president freed 200 Islamist prisoners in 2010, a gesture that demonstrated the executive's willingness to differentiate among different kinds of Islamists.

A number of local NGOs have condemned prison conditions in Mauritania. The majority of prisoners have been in jail awaiting trial well beyond the legal limit for detention. Despite penal code procedures reformed in 2006 to provide a stricter and more transparent framework for preventive detention, 60 percent of prisoners in Nouakchott's main prison are in preventive detention.[16] Conditions in jail depend on each prisoner's private and family or tribal support; rich or well-connected prisoners have much better conditions than the vast majority of detainees.[17] Local human rights organizations condemned these issues after the death of dozens of prisoners in September and October 2010,[18] most probably due to poor sanitary conditions and severe overcrowding, though no official reasons were made public. The National Commission for Human Rights officially recognized that conditions in these jails were highly problematic.[19] Amnesty International has also condemned the violations of human rights in Mauritanian jails.[20] A mediator of the republic (similar to an ombudsman) was established in 1993 to investigate disputes between citizens and representatives of the public administration and to make recommendations

to settle these disputes, but there is no evidence of the mediator's activities; the previous two mediators were active members of the Ould Taya regime.[21]

The treatment of women in Mauritania varies according to ethnicity, status group (or caste), geographical setting, and class. In this Muslim country, Islamic legal tradition applies to personal and family matters and maintains certain forms of gender inequalities, which are inscribed in the 2001 personal status code.[22] This code has improved certain aspects of gender relations, such as the obligation to obtain a woman's consent for marriage, the fact that a husband cannot prevent his wife from going to school, and an older tradition of a woman's right to divorce without her husband's permission (khul).[23] However, a "tutor" (most commonly a male relative) can marry off a woman under 18 if he determines it is in her interest. The word "interest" is not defined and the silence of minor women is considered consent. In addition, the gap between official texts and practices is problematic; despite the aforementioned legal requirements, child marriage remains widespread.

Local NGOs have reported that violence against women and girls is still a major problem that the state has not addressed. For instance, women's rights groups reported that many young girls working as servants are subjected to domestic violence; most of them are poor and from marginalized communities (e.g., Haratin or vulnerable migrant groups), which makes their conditions even more difficult.[24] On several occasions, local police forces appear to have protected alleged perpetrators because of family and political connections.[25]

Political party lists must include at least 20 percent female candidates, and 20 percent of municipal councils seats are reserved for women. At the legislative level, a 20 percent quota is also imposed on party lists, the size of which depends on the number of seats for each electoral district.[26] In practice, women comprise 19 percent of the National Assembly (18 out of 95 deputies), 12.5 percent of the Senate (7 out of 56), and 30 percent in local municipal assemblies (1,120 out of 3,688 local elected officials).

The non-Arabic-speaking minorities (Haalpulaaren, Sooninko, and Wolof) and the Haratin are politically, economically, and socially marginalized. Since January 2008, groups of Mauritanian refugees in Senegal, mostly Haalpulaaren and Wolof who were forced into exile in 1989–1991, have returned to their homeland. The state has offered some help upon their return through the National Agency for the Support and Reintegration of Refugees (ANAIR). After three years, about 83 groups of returnees (including about 20,000 people, or about 5,000 families) had returned to Mauritania. The government pledged to provide pension funds to public servants who were forcefully driven out of Mauritania in 1989 and who have since returned. However, no concrete program had been established as of 2011, and policies of reinsertion (housing, land restitution, employment, financial compensation, etc.) have failed to materialize.[27] The Program for the Prevention of Conflicts and the Consolidation of Social Cohesion established in 2009 does not seem to have made major concrete achievements. In addition, the 1993 Law of Amnesty, which prohibits

any judicial investigation and prosecution of military personnel involved in the 1989–1991 massacres of black Africans, is still in effect.[28] The new government has pledged to promote the rights of Haratin with a policy of affirmative action,[29] as well as a program to provide material assistance to Haratin and returning refugees.

Slavery and practices associated with it were abolished in 1981, but only technically became criminal acts in 2007 with the Criminalization of Slavery Law.[30] Local NGOs have estimated that there continue to be approximately half a million enslaved people in the country.[31] NGOs have shed light on the bias among local judicial authorities, who never press charges against the perpetrators.[32] Despite the adoption of the 2007 law, not a single case has been brought to justice, even though several cases have been identified by the media or local NGOs.[33] Two groups of people were arrested in late 2010 and early 2011, accused of enslaving young girls, but they were both released without charges. In August 2010 the UN Special Rapporteur on Contemporary Forms of Slavery denounced the persistence of practices associated with slavery in Mauritania:[34] "The police and the courts have shown a reluctance to follow up allegations of slavery-like practices. . . . judges [were reluctant] to take appropriate action to provide for legal remedies to protect victims of slavery. . . . [and] magistrates sometimes did not apply the 2007 Slavery Act because they did not want to be seen as breaking ranks or ostracized by their kin."

As in previous years, a major issue concerning ethnic minorities and former slaves is their representation in the state apparatus, especially in the most important ministries and in the security forces. Though exact numbers are difficult to obtain (and for political reasons national censuses do not provide statistics on ethnicity), a glance at some of these state agencies reveals that the dominant ethnic group, the "white Moors" (Bidhân), are overrepresented. For instance, the list of the Ministry of Justice's judges and assistant judges includes almost no individual from the Haalpulaar, Wolof, Sooninko, or Bamana.[35] The same can be said about appointments within the national police, the top military ranks, the education ministry, and other areas.[36]

A few steps have been taken to address discrimination against disabled people. The government passed a law in 2006 to protect and promote the rights of the disabled, although it still lacks concrete legal application. The government eventually created a new state agency within the Ministry of Health and issued a national action plan in 2009 for disabled people. A concrete example of this was the creation of a cultural and sports center for disabled people in Nouakchott in 2009, although some concerns were raised when it was uncovered that the director of the local NGO running the center has close family ties to the minister of health.[37]

Nearly all Mauritanians are Muslim. Foreigners can generally practice their religion without interference, but distribution of materials from religions other than Islam is forbidden. Following other Muslim countries, the government has tried to control the practice of Islam and prevent the rise of what it considers

radical Islam through the creation of state or quasi-state institutions such as the High Islamic Council and the Mauritanian League of Ulamas, and by directly appointing imams. The 2003 Law on Mosques also defines mosques as public spaces under state scrutiny. The Ould Abdel Aziz government organized meetings in 2010 between state-sanctioned religious scholars and radical Islamists to persuade them to adopt a more liberal interpretation of Islam. It is not clear whether this strategy will work, as the state's own legitimacy problems and widespread corruption do not help to buttress the legitimacy of state-appointed religious scholars and preachers.

The state recognizes the right of citizens to assemble, to form independent trade unions, and to demonstrate peacefully, and it does not compel people to join specific organizations. There have been some improvements since the Ould Taya era, as no government since 2005 has prohibited or shut down a civic or political organization. Under the Taya regime, Islamists were under tight control of the government, but since 2007 they have been allowed to create their own political parties. While Mauritanian unions are relatively small, mostly covering workers in the modest industrial sector and civil servants, citizens are free to join them. The government is relatively quick to suppress demonstrations and protests, which are not common in Mauritania, when they do occur. For example, during the most recent demonstrations by Nouakchott youth in favor of the uprisings in Egypt and Tunisia in end of 2010 and early 2011, security forces quickly cracked down.

RULE OF LAW 2.15

INDEPENDENT JUDICIARY	3.20
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.40
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	1.00
PROTECTION OF PROPERTY RIGHTS	2.00

The Mauritanian judicial system combines French and Islamic (Malikite rite) legal traditions. The constitution guarantees the independence of the judiciary in theory (Article 89), and an organic law also protects judges from undue influence. The independence of the judiciary is weakened in practice, however, by other rules that endorse the formal domination of the executive over the judiciary. For example, the president presides over the High Council of Magistrates, whose tasks include the nomination of judges.[38] The constitution also enables the president to appoint three of the six members of the Constitutional Council, including its chair, who casts tie-breaking votes. In addition, the president appoints all five members of the High Islamic Council, which advises the president on matters of Islamic law.

The formal subordination of the judiciary to the executive has been aggravated by informal practices. First, the rapid turnover of Supreme Court chief

justices is highly problematic. Although the chief justice is supposed to serve for five years, the president appointed three different chief justices between 2007 and 2010 with no clear reasons given (as is the case for most appointments), thus impeding the judiciary's independence.[39] Similarly, connections and ethnic background seem to be important criteria in dismissal and appointments in the Ministry of Justice. In a September 2010 decision, the High Council of Magistrates appointed two judges who are relations of the chief justice of the Supreme Court (who is by law the deputy president of the High Council of Magistrates), and four other important positions were filled with people connected to the minister.[40] In September 2010, the president promised to undertake judicial reform, asking the Council of Magistrates not to proceed with new nominations until this takes place.[41] Three years after the previous reform, which has not produced significant changes, it remains to be seen to what extent this promise will actually translate into concrete decisions. In 2006, the chair of the Mauritanian Bar pleaded for more judicial independence.[42] Four years later the chair strongly criticized the state of Mauritania's judiciary, pointing to the high frequency of arbitrary detentions, the large number of prisoners in preventive detention long after the legal limit, the devastating and underdeveloped state of legal assistance (despite the existence of a National Council for Legal Assistance, with regional offices in each of the country's regions),[43] and the exaggerated domination of the executive over the judiciary.[44]

Mauritania's constitution guarantees the presumption of innocence, but delays and mismanagement compromise this right in practice. Judges and lawyers are trained at the University of Nouakchott. Judges are recruited by competitive exam and must undertake two years of training before assuming the bench. The judicial system suffers from a lack of judges, if not a lack of training.[45]

Despite formal guarantees, due process is lacking in Mauritania. Informal political pressure, a lack of resources, and occasional executive interference in political and terrorism-related cases hamper the right of detainees to a prompt and fair trial.

The Mauritanian military has been a dominant player since the 1975 war in Western Sahara. From 1978 onward, every head of state has come from the military, with the exception of the short reign of Ould Cheikh Abdellahi (2007–2008). Although the constitution provides for a civilian government, the military has always been a key pillar of the regime. To a large extent, government loyalty is secured through the distribution of significant political and economic advantages to top officers, and loyalty can be lost when such distribution fails. Security matters, which are very broadly defined, are the reserved domain of the military, as are the internal affairs of the army. The ousting of the civilian Ould Cheikh Abdellahi by his military chief of staff, and the latter's subsequent election, illustrates this process very well.

This does not mean that civilian political actors, parties, and movements cannot engage in political activities. They are important actors, but the executive office has been beyond their reach in practice. Security forces are not held

accountable; prosecution of military personnel is almost impossible and, when it does occur, is most likely the result of factional rivalry within the security forces. A few police and customs officers have been arrested for drug trafficking, but factionalism within their agencies is likely the underlying cause.

Article 15 of the constitution ensures the right to own property. The 1983 Law on Land Tenure guarantees private ownership of land. However, it includes a clause that the state can evict citizens, with compensation, when economic and social development needs apply. In rural areas, de facto extortion of land by powerful agents with connections to high-ranking civil servants is frequent. These were, in part, responsible for the growing tensions between state officials and ethnic communities of the Senegal River region, which eventually led to state-sponsored killings and eviction of thousands of black African citizens between 1989 and 1991. In urban centers, shantytowns have been the frequent targets of violent and sudden eviction by state officials. Interior ministry agents who control land transactions have been accused of abuses of power and corruption. Hence in Nouakchott, for instance, where the value of land has skyrocketed in recent years, in 2010 media reported cases where pieces of land were taken from poor families and sold to wealthy buyers, usually people with political connections.[46] The government had to dismiss two Nouakchott governors in 2010 after corruption scandals were made public.[47] Ould Abdel Aziz has undertaken to survey all squatted land in and around Nouakchott so as to make land transactions more transparent.

A 2002 Code of Investments facilitates foreign direct investment. To make the local legal environment for business transactions more secure, the transition government specifically created two tribunals of commerce in Nouakchott and Nouadhibou in 2006, although the latter lacked a full-time judge for two years. While it is difficult to judge whether, in practice, these tribunals have improved the economic environment, it is notable that the government now wants to put in place a new code of investments.

ANTICORRUPTION AND TRANSPARENCY 2.82

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.20
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.00
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.75
GOVERNMENTAL TRANSPARENCY	2.33

Throughout the 2000s, state economic policy became more clearly defined through the adoption of an investment code, simplification of the tax system, and elimination of many bureaucratic regulations. However, less formal state intervention did not mean better state intervention or less informal state intervention. As with most state policies, the gap between the rules and implementation remains the biggest problem. Political clientelism remains widespread

and encourages corruption, and the management of public resources is strongly influenced by political and private imperatives.

There are two major anticorruption bodies: the State General Inspectorate (IGE), which was created in 2005 and is led by an inspector general (nominated by the prime minister), and the Court of Accounts (CdC), which was created in 1993 with a chair appointed by the president. The IGE has had the freedom to investigate all public institutions. For example, IGE investigations led to the arrest of the chairs of the national anti-AIDS agency and of the National Human Rights Commission, both of whom were accused of corruption.[48] Important concerns about the IGE have been raised since the 2008 coup, however. The current inspector general is the chair of the ruling party's women's commission. Her predecessor was the executive secretary of the UPR,[49] and his predecessor was also a presidential ally.[50] The chairpersons of most state agencies are UPR members, which calls into question the extent of the IGE's capacity to undertake unbiased and thorough investigations of state institutions. The many institutions not inspected by the IGE, such as the state agencies chaired by military officers (usually at the rank of colonel), is indicative of this.

The CdC's monitoring and investigation capacities are also mixed. In March 2010, the CdC published its auditing report on the FY2006 budget.[51] The fact that the CdC was able to audit state agencies and the budget-making process is a sign of progress, given that the CdC had been almost entirely inactive in previous years. Moreover, the level of budgetary misappropriation and other forms of misuse of public resources reported by the CdC suggests that it is relatively autonomous. However, delays in publication of its reports are problematic—the FY2005 report was published in 2007, and no report has been published since the 2006 report—regardless of whether the delays are a result of lack of funds or of political will. Finally, the FY2006 report only investigated cases under the previous regime. The real independence and efficiency of the CdC will be proven if and when it audits budgets passed under the current government.

In June 2010, the Mauritanian government created a commission to reactivate and update the 2007 state employee census and to audit and computerize the payroll system. *After an initial investigation, which identified more than 5,000 fictitious (or ghost) state employees, the commission has stalled.*[52]

In April 2007, just when Ould Cheikh Abdellahi became president, the government adopted a *code of ethics for public officials.*[53] No concrete actions have been taken since then, however. Three years after it was adopted, the government was only at the stage of explaining the code to public servants through workshops.[54] In the same vein, the Ould Cheikh Abdellahi government created the Commission for Financial Transparency in Public Life in October 2007, which has the power to require state officials, including the president, to declare their personal assets. After initially refusing, the current president and some ministers and other high-ranking civil servants declared their assets in fall 2010. However, although these declarations may play a positive symbolic role, it is

well known that personal assets are often hidden under the names of relatives. Also, the commission has no power to verify these declarations, which are confidential. Finally, the executive appoints the commission's president, which raises concerns of autonomy.

The Mauritanian tax system, despite some reforms, is burdensome, pushing many small and medium enterprises to opt for tax evasion and the informal economy, which in turn shrinks the state's tax base.[55] The Mauritanian Tax Agency (DGI) recently undertook an unprecedented tax recovery operation. In June 2010, the DGI tried to recover taxes from most of the country's banks.[56] According to a DGI official: "these bank managers produced fake tax reports; they have always enjoyed undue favours that violate tax *regulations.*"[57] During the operation, the CEO of one of the banks was appointed to a leading position in the UPR.[58] A journalist investigating the issue was briefly detained. A few weeks later, the chair of the DGI was fired.[59] An IMF study advised the government to "conduct a new census of tax payers and complete the computerization of the tax revenue agencies."[60]

Large private economic actors (individuals and firms) enjoy great economic freedom and comprise an oligarchy,[61] parts of which have ties with the presidency. Post-coup events suggest that this oligarchy has not changed, although its internal hierarchy has shifted, with those closer to the new ruler gaining special access to state contracts and licenses. These actors control most sectors of the market economy, including transport, banking, telecommunications, food imports, and construction. As stated in a 2010 World Bank report, "The four-firm concentration ratio for the imports of wheat and sugar tops 90 percent. Moreover, two firms dominate the rice imports, exhibiting a combined market share of 80 percent."[62] Three of the richest businessmen were arrested in 2009 on accusations that the private banks they own had embezzled money from the central bank. They were, however, quickly released in early 2010 after an out-of-court deal whereby they promised to reimburse the central bank.[63]

Transparency is limited both by law and in practice. Public contracts are under the supervision of the Central Commission for Public Contracts. In September 2010, journalists were able to investigate the case of the National Center for Oncology, which awarded a government contract to a Moroccan firm in a noncompetitive process. However, the fact that the commission authorized the opaque deal, despite the media's investigation, demonstrates the public's powerlessness in such cases.[64]

Similarly, contract allocation to foreign mineral companies is very opaque.[65] Mauritania became an official candidate for the Extractive Industries Transparency Initiative (EITI) in 2007, but three years later it had still not completed its EITI validation. It was granted an extension until September 2010, which was renewed again until June 2011.[66]

Petty and official corruption are widespread. Paying bribes is common practice.[67] However, a number of public agencies and officials were dismissed in 2009, including the dismissal of the public import-export company (Sonimex),

officials of the national electricity company (Somelec), the chair of the public microcredit agency (Procapec), the director of the National Center for Oncology, and that of the National Commission for Public Contracts.[68] One problem in all of these dismissals is that there have been no official corruption charges. The lack of information surrounding the dismissals and the absence of legal action hinder the anticorruption process.

The education sector is hampered by corruption and clientelism. This seems to explain the appointment of dozens of unqualified individuals in numerous positions in the Ministry of Education, probably in return for political favors granted during the 2009 presidential election. The fact that some of these appointments were eventually cancelled by the education ministry signals that some limits to political assignments were established.[69]

An IMF study cited "poor financial intermediation (limited access to and cost of bank financing), red tape, cumbersome tax regulations" as significant shortcomings in the Mauritanian system.[70] Regarding the budget-making process, among the pieces of information now available is the report of the National Assembly's Finance Commission on the budget, which evaluates the executive's draft budget presented to the parliament.[71] The World Bank noted that the computerization of the budget "helped to enhance the capacity of sector ministries to carry out the major functions of budget execution, monitoring and reporting . . . accounting and treasury management systems. This has led to speedier execution of budgets, greater transparency in government expenditure and improved oversight." However, the report also noted that "progress has been slow because of the current political situation."[72]

There is no law to protect whistleblowers. Would-be whistleblowers tend to leak information to private newspapers instead. In theory, a safe legal environment for citizens who denounce cases of corruption is provided by the mediator of the republic, the penal code, and the constitutional right of expression. In practice, however, the judicial system's lack of independence constitutes an obstacle for the creation of such a safe legal environment. The safeguard role of the mediator of the republic is impaired by three problems: only elected representatives can lodge a complaint, but the majority of representatives belong to the ruling and presidential party (there is talk about changing the rules to allow citizens to lodge a complaint directly, but no decisions have yet been made); the mediator is appointed directly by the president, which may make citizens with complaints against presidential appointees in the administration reluctant to solicit the mediator; and the previous two mediators were well-established within the regime's top circle.[73]

RECOMMENDATIONS

- A multi-party parliamentary committee, not the executive, should appoint the head of the IGE.

- INEC should be allocated significantly more resources in order to play its role adequately and satisfactorily, including a full presence in all regions of the country during electoral periods.
- The government must compensate returning refugees in proportion with the loss inflicted upon them (for instance, adequate pension for returning civil servants, land for returning peasants and rural-dwellers, etc.), and the government must repeal the Law of Amnesty that prohibits investigation and prosecution of military personnel involved in the 1989–1991 atrocities.
- The government should implement the law criminalizing slavery. Civic organizations should be allowed to lodge complaints on specific slavery cases (alleged victims have a difficult time doing so alone), and alleged victims should be offered police protection (with the help of the human rights commissioner). Serious and extensive investigation of alleged slavery cases should be undertaken by authorities.
- No member of the military involved in any coup d'état should be eligible to run in a presidential election. To go further, any member of the military forces, active or retired, should be banned from candidacy in presidential elections.

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MOROCCO

CAPITAL: Rabat
POPULATION: 31.9 million
GNI PER CAPITA (PPP): $4,400

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	3.15	2.91
CIVIL LIBERTIES:	3.68	3.61
RULE OF LAW:	3.04	3.00
ANTICORRUPTION AND TRANSPARENCY:	2.14	2.28

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Guilain Denoeux

INTRODUCTION

Morocco gained independence in 1956 after more than 40 years as a French protectorate (though Spain had controlled the northern third of the country as well as the Western Sahara). King Mohamed V reigned until his death in 1961, at which point his son, Hassan II, began three decades of authoritarian rule, followed by a significant political liberalization during the 1990s. From the 1960s through the 1980s, King Hassan's reign featured large-scale human rights abuses, including unlawful incarceration of regime critics, torture, and the enforced disappearance of many political opponents. In essence, while King Hassan preferred to rely on divide-and-rule, cooptation and intimidation tactics, he did not hesitate to harshly repress those who refused to play by his rules and remain within the "red lines" he set.

In October 1975, Morocco annexed the Western Sahara, a territory south of the kingdom. During an initial war between Morocco and Sahrawi nationalists, led by the Polisario Front, many Sahrawis moved to refugee camps in Algeria. Those who remained behind in the annexed territory have been demanding independence ever since and several have been jailed for that reason.

Hassan II's son, Mohamed VI, inherited the throne upon his father's death in July 1999. Initially, he expanded the process of political liberalization he had inherited. He dismissed some of the stalwarts of his father's oppressive regime, allowed the return of exiled political dissidents, established an organization to investigate official human rights abuses from 1956 to 1999, and reached out to constituencies (such as former political prisoners) and regions

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(such as northern Morocco) that had suffered or been neglected during his father's reign. In the past decade, however, political development has been slow and Morocco today remains a monarchy in which power is still concentrated in the palace. From 2006 through 2010, the country's progress toward democratic governance was partial and uneven. Limited advances took place in some areas, including electoral professionalism and transparency, but significant setbacks (predominantly in the area of media freedom) and stagnation (particularly with regard to judicial independence and the fight against corruption) characterized others. The slow pace of political change stood in stark contrast to rapid social and economic transformations, remarkable improvements in the country's infrastructure, and advances in the fight against poverty and social exclusion.

Thus, for all the talk about Morocco being engaged in a "democratization process," few meaningful steps have taken place in recent years to support such claims. The king has prioritized socioeconomic development over political reform, likely on the basis of a series of considerations that include: the reluctance of the monarchy to divest itself of key prerogatives in core decision-making areas; the need to accommodate powerful constituencies opposed to genuine democratization; skepticism toward the capacity of political parties and representative institutions to manage greater levels of competition; fear that illiberal forces would benefit disproportionately from political opening; and a belief that the public will judge the monarchy primarily on its ability to spur growth, create jobs, and reduce poverty. Evidence from this report's period of coverage, January 2006 to December 2010, suggests that the monarchy remains ambivalent, at best, toward reform that would reduce its expansive powers.

Morocco's largely stalled reform process was thrust back into the spotlight, however, with the wave of prodemocracy protests that swept the Arab world after the overthrow of Tunisian President Ben Ali on January 14, 2011. On February 20, 2011, thousands of Moroccans across the country took part in antigovernment protests called by a youth group, the February 20th Movement for Change, that organized itself on Facebook. The demonstrations brought together a wide range of actors from liberal youth and independents to leftists and members of the banned Islamist Justice and Charity movement. Unlike their counterparts in Tunisia, Egypt, Yemen, Libya, and Syria, the Moroccan protesters did not target the king or demand a change of regime. Instead, they called for a genuine constitutional monarchy, the disbanding of parliament, as well as the dismissal of Prime Minister Abbas El-Fassi, his many relatives in senior government positions, and the entire cabinet. In response, on March 9 King Mohamed announced his decision to form a constitutional reform committee, the members of which he handpicked. Though the king promised that the new constitution would enhance the prerogatives of the prime minister and parliament, strengthen political parties, increase the independence of the judiciary, and devolve more power to the local level, the proposed changes were vague and fell far short of the protesters' demands. Critics charged that

the new constitution was not designed as part of a truly participatory process and that under it the essence of power remains firmly in the king's hands. Still, the text, put up for a vote on July 1, passed with nearly 98 percent approval, as activists continued to press for deeper, more substantive political reforms that would truly empower representative institutions and decisively move Morocco toward a constitutional monarchy in which the king reigns but does not rule.

ACCOUNTABILITY AND PUBLIC VOICE 2.91

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	2.60
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	2.71

Morocco's parliament, which consists of the directly elected 325-seat lower house, the Chamber of Representatives, and the indirectly elected 270-seat Chamber of Counselors, is subordinate to the executive's will. According to the constitution, the king can dissolve parliament, call for or postpone elections, and rule by decree. The popular credibility of parliament has declined markedly in recent years because of the widespread and accurate perception that that institution is ineffective in the face the monarchy's dominance of the policymaking process. The Chamber of Counselors, which enjoys very significant constitutional prerogatives, including the ability to dismiss the cabinet, is frequently criticized as an inefficient and ineffectual institution that perpetuates clientelism and blocks anticorruption efforts.

There are several key weaknesses in the electoral process, most of which relate to the overwhelming power of the executive. Decisions are made behind closed doors, among the monarchy's technocrats and advisers, not through representative institutions or political parties, which have little policy influence and are beholden to the country's dominant political and economic interests. The constitution designates the monarchy as the embodiment of the nation and this supremacy pervades the electoral system.

Elections to the Chamber of Representatives were held in September 2002 and again in September 2007. Morocco also conducted voting for local and regional councils in June 2009. Elections are generally administered professionally and international observers and foreign journalists have deemed them relatively free and fair.[1] While there have been recurrent complaints of vote buying and individuals voting multiple times, there is generally no official interference in the electoral process and few reports of intimidation at the polls or irregularities during the vote count. Vote buying is rampant in local and Chamber of Counselors elections.[2] The small size of the electoral colleges that elect members of the upper chamber compounds the problem, as candidates can secure a seat by buying the votes of relatively few college members.

The September 2007 lower house elections produced a highly fragmented chamber, with 26 parties winning seats. The right-of-center Istiqlal party secured 52 seats, slightly ahead of the Islamist Party of Justice and Development (PJD) with 46, the Berber-dominated Popular Movement (41 seats) and the liberal, right-of-center National Rally of Independents (39 seats). The Socialist Union of Popular Forces (USFP), which had been dominant in parliament since 1997, came in fifth with 38 seats.

The electoral system contributes to the balkanization of political life. For example, in a country of approximately 30 million people, 33 parties participated in the September 2007 Chamber of Representatives elections, and 26 won representation. This fragmentation helps the palace play segments of the body politic against one another.

There is widespread cynicism toward parties and parliamentary politics. Turnout for the lower house elections decreased from 52 percent in 2002 to a record low of 37 percent in September 2007. Even more significantly, 19 percent of voters in 2007 cast blank or spoiled ballots, seemingly a manifestation of the deep alienation from, and anger toward, a political system that is widely regarded as disconnected from the day-to-day preoccupations of most Moroccans.[3]

Parties often lack clear platforms, are deficient in internal democracy, and are unable to build substantive relationships with the public, particularly the youth. The public generally regards political parties as vehicles of personal ambition and wealth accumulation rather than policy change. Parties also are discredited by the tendency of individuals to switch parties after elections for opportunistic reasons.[4]

There has been no recent progress toward greater separation of power and until his March 2011 speech the king ignored mounting calls for constitutional reforms to empower representative institutions. In July 2007, he argued that Morocco's "model" of an active monarchy is inconsistent with the separation of executive, legislative, and judicial powers. The king is both head of state and de facto head of government and, according to the constitution, "Commander of the Faithful." He appoints and can dismiss the prime minister, other ministers, ambassadors, governors, and heads of public agencies. He presides over the Council of Ministers, which gathers when his schedule can accommodate such a meeting, and can also decide at will to reshuffle his cabinet, as he did in January 2010.[5]

The prime minister has no independent authority and his ability to shape policy is less than that of key royal advisers.[6] The two prime ministers since 2006, Driss Jettou and Abbas El-Fassi, repeatedly were simply informed of important government decisions reached without their knowledge by the royal cabinet. In important ministries, including the Ministry of Interior, royal advisers serving as deputy ministers exercise more influence than the ministers to whom they nominally report. Meanwhile, at the local and regional levels, governors, not local councils and mayors, make all key decisions.[7]

The 2005 political party law, promulgated by royal decree in February 2006, prohibits parties that do not accept Islam or the monarchical regime, or that do not recognize Morocco's territorial integrity. Thus, parties that embrace separation of religion and state, or that contest Moroccan sovereignty over Western Sahara, can be declared illegal. Article 50 of the law empowers the minister of interior and the president of the Administrative Tribunal of Rabat to suspend parties they think interfere with public order. Article 4 prohibits parties founded on religion or narrow linguistic, ethnic, or regional bases, and is generally understood as intended to prevent the legalization of Islamist groups such as the Justice and Charity movement or parties with a militant Berber agenda.

Civil society is vibrant and relatively free, particularly by comparison with other Arab countries. Advocacy groups are more assertive and effective than political parties in pressing for change and raising sensitive questions, though they operate within well-known restrictions and their policy influence is very limited. Engagement between the government and nongovernmental organizations (NGOs) has declined in the past several years. NGOs are highly dependent on funding from the state or palace-affiliated foundations, which makes them vulnerable to direct or indirect pressure. That is increasingly true since the 2005 launch of the National Initiative for Human Development (INDH), which disproportionately benefits NGOs close to the regime.

The discriminatory application of NGO regulations impedes civil society activity. According to the law on associations, modified in 2002, in order to be allowed to operate an association only needs a receipt proving it has submitted the necessary registration documents. In practice, however, the authorities may not issue that receipt, in which case the association is illegal and can be shut down at any time. Associations that do not adhere to well-known limits concerning the monarchy, Islam, or the controversial disputed territory in Western Sahara are denied the legal right to exist. Other impediments to free associational activity include the many documents needed to register an association and the ability of the authorities to grant or deny the coveted status of "public utility association," which confers many advantages in areas ranging from fundraising to tax exemptions and the right to receive donations. The authorities recently have become more liberal toward foreign funding—many sources of external assistance are available, and it is relatively easy to access to them without governmental interference.

Moroccan media now routinely address topics that were still considered taboo less than a decade ago. Media criticism of the government is frank, in sharp contrast with most other Arab states, and the state plays a decreasing role in shaping public opinion through its domination of broadcast news and ownership of approximately 30 percent of print media. There has been a sharp deterioration in Morocco's media environment over the last few years, however, and attacks on the online and traditional press have become increasingly common. In their efforts to restrict media freedom, the authorities have invoked restrictive press code clauses and used exorbitant fines, libel cases, and advertising

boycotts (especially by companies that fall under the ONA Group, in which the royal family holds a dominant share).

According to the press code, journalistic freedom is contingent upon it being exercised according to "the deontology of the profession," a clause subject to arbitrary interpretation. The codes provides for prison terms for the "malicious" dissemination of "false information" deemed "harmful to public order." Statements considered "offensive" to the royal family, the monarchy, Islam, or state security can result in heavy fines or prison terms. The law is intentionally vague, allowing courts significant flexibility to rule in favor of official interests.

Officials frequently suspend publications critical of the authorities, and self-censorship is rampant under the threat of government closure, excessive fines, and advertising boycotts. Libel complaints initiated by the government or private citizens increased steadily from 2006 onward, resulting in heavy fines that created enormous pressure on publishers to respect the government's limits.

A few examples illustrate the pattern of media suppression. Since its creation in the late 1990s, the weekly *Le Journal Hebdomadaire* had been relentless in its criticism of the monarchy, its exposure of corruption in the military, and its defiance of Morocco's political and economic establishment. In April 2006, however, the Rabat Court of Appeals upheld record damages against the magazine in a defamation suit initiated by the head of a Belgian think tank, whose recently-published report on the Western Sahara *Le Journal* had condemned as lacking independence from the Moroccan government. Many believed that the authorities were complicit in the suit, and that the scope of the approximately $380,000 fine (the largest ever for a press defamation suit) was politically motivated. In January 2007, Aboubakr Jamaï, the weekly's founder and managing editor, stepped down as publisher and later left the country to avoid governmental seizure of his assets and closure of *Le Journal.* When he returned in 2009, the suit was upheld and the magazine was forced to shut down due to bankruptcy.

In 2007, the leading Arabic-language weekly, *Nichane*, was suspended for three months (and its director and one of its journalists sentenced to three-year suspended jail terms) for reporting on Moroccans' sense of humor about religion, politics, and sex. That same year, for an article in which he had questioned the utility of free elections in a country in which the king is all-powerful, Ahmed Benchemsi, editor of *Nichane* and the weekly *Tel Quel*, was detained for two days. *Tel Quel* and *Nichane* were seized and a trial was initiated against Benchemsi for "failure to show due respect" to the king.[8] On August 1, 2009, the authorities seized and destroyed 100,000 copies of *Tel Quel* and *Nichane* after they published an opinion poll regarding the performance of King Mohamed VI. Although the results indicated approval ratings of 91 percent, government spokesman Khalid Naciri justified the ban by stating that "the monarchy cannot be the object of debate, even through a poll." Benchemsi again was charged with failing to demonstrate due respect to the king and was promptly interrogated by the security forces. In October 2010,

Nichane was forced to file for bankruptcy and shut down, largely as a result of a sustained ONA advertising boycott.

In May 2008, the Moroccan government suspended Al-Jazeera's broadcasting license, forcing it to suspend its nightly Maghreb news bulletin. The authorities cited technical and legal reasons but the closure came right after Al-Jazeera aired criticism of the late King Hassan II. In July 2008, a Rabat court fined Al-Jazeera's Morocco bureau chief Hassan Rachidi and suspended his press accreditation for "malicious dissemination of false news" after Rachidi reported that protesters had died during clashes with security forces in Sidi Ifni and that the police and security forces were responsible.

There is no official policy or legislation regulating the internet, but occasionally the government does block sites that it considers overly critical and it monitor blogs and personal web pages to minimize dissent. In February 2008, a Casablanca court sentenced Fouad Mourtada to three years in prison for creating an unauthorized Facebook profile of King Mohamed VI's brother.[9] On September 8, 2008, a court in Agadir fined and sentenced a blogger, Muhammad Erraji, to two years in jail for criticizing the king's habit of doling out gifts while visiting regions of Morocco, pointing out that such practices encourage dependency.[10] In September 2008, Yassine Bellasal received a suspended sentence of a year in jail and a fine for spraying spoof graffiti of the national motto ("God, the Nation, and the King"). His crime was replacing "the king" with his favorite soccer club, FC Barcelona, thus allegedly offending the monarch.[11]

CIVIL LIBERTIES 3.61

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.88
GENDER EQUITY	4.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.75
FREEDOM OF CONSCIENCE AND BELIEF	3.33
FREEDOM OF ASSOCIATION AND ASSEMBLY	3.75

There have been no reports in recent years of extrajudicial killings by the government or its agents, but there were a few reports of politically-motivated temporary disappearances, the overwhelming majority of which affected radical Islamists and Sahrawis. There are frequent reports of abuse and torture by members of the security agencies, with Sahrawi human rights and independence activists and radical Islamists comprising the vast majority of victims.[12] Interviews the author conducted with Moroccan human-rights activists, media coverage between 2006 and 2010, and international human rights organizations' reports suggest that the security forces and police do not always respect the rights of those in custody, particularly during pretrial detention,[13] though some evidence points to a decrease in the number and severity of such abuse.[14]

Pretrial detention is a widespread practice that affects up to 40 percent of all those in jail.[15] It is common for individuals to spend months, and sometimes up to three years, in pretrial detention. This is particularly problematic for youths under the age of 20, who represent up to half of pretrial detainees.

Prison conditions in Morocco are very poor. Facilities are overcrowded and in a state of disrepair. Malnutrition, lack of access to basic health services, sexual assault, and violence in them are common.[16] In 2009, the government-subsidized NGO Moroccan Observatory for Prisons (OMP) reported that prison capacity was sufficient for only about half the incarcerated population, with average occupancy standing at 133 percent and reaching nearly 200 percent in some cases. Programs to reintegrate former inmates into society are inadequate, though the government has increased attention and devoted more resources to this problem in recent years.

The ability to obtain redress when state institutions violate citizens' rights is undermined by the lack of both appropriate mechanisms and judicial independence. Sahrawi human rights and pro-independence activists are particularly vulnerable.[17] Law enforcement officials guilty of excessive use of force commonly enjoy impunity.

Nonetheless, the state has continued to try to make amends for human rights violations that occurred before the ascent of King Mohamed VI to the throne in 1999. The Equity and Reconciliation Commission (IER), which King Mohamed VI established in 2004, reviewed cases of enforced disappearances, arbitrary detention, and torture during the 1970s and 1980.[18] It shed light on state responsibility in these abuses and recommended important legal and institutional reforms to prevent the recurrence of similar violations in the future, but did not identify or prosecute offenders. After the IER's mandate ended in November 2005, King Mohamed VI tasked the official Consultative Council on Human Rights (CCDH) to follow up on the commission's recommendations, particularly with regard to paying reparations to thousands of victims.

In January 2010, Amnesty International assessed the work of the IER and follow-up efforts by the CCDH.[19] By the end of 2009, the CCDH had reportedly compensated 17,000 victims or their living relatives. A smaller number of victims were provided medical and employment services. Amnesty International nonetheless expressed concern at the slow implementation of the IER's recommendations and voiced disappointment that perpetrators of human rights violations were not identified publicly or held accountable. The vast majority of recommendations had not been implemented and many victims had not received adequate compensation. Amnesty also criticized the absence of appeals mechanisms for victims, delays in assistance, and the lack of transparency in the entire process. It noted that the IER had paid insufficient attention to the violations against Sahrawis, who by and large were excluded from the reparations program.

The state is generally effective in protecting citizens from crime and terrorism. Terrorism has been an issue since the May 2003 Casablanca bombings, and

the threat of future attacks created a security environment conducive to abuse of civil liberties and political rights. An antiterror law (Law No. 03-03) passed two weeks after the bombings created room for excesses, including through its broad definition of terrorism and its increase of the period of pretrial detention in terrorism cases. Under that law, plainclothes officers are able to conduct arrests without identifying themselves, and there have been reports that detainees have been taken to secret jails, harshly interrogated, and forced to sign false confessions.[20]

Recent editions of the U.S. Department of State's *Trafficking in Persons* report identify Morocco as a "source, destination, and transit country for men, women, and children who are subjected to trafficking in persons, specifically forced labor and forced prostitution."[21] In the past few years, the government has increased efforts to prevent and prosecute human trafficking, including with awareness-raising campaigns among magistrates and police. However, the legislative framework to deter trafficking and punish offenders is lacking, particularly with regard to children who are sexually exploited or forced to work as maids or laborers.[22]

Morocco has been hailed as one of the most progressive Middle Eastern states in the area of women's rights and recent legal reforms indeed have enhanced women's status in the country. A new family code passed in February 2004 raised the minimum age for marriage from 15 to 18, granted women the right to initiate divorce, made husbands and wives fully equal under the law, increased custodial rights for women following divorce, and enabled women to pass citizenship to their children regardless of the father's nationality. However, implementation of these far-reaching changes has been slow and inconsistent. The law provides broad interpretative latitude to judges, many of whom consider the reforms inconsistent with Islam and tradition. Family court facilities have yet to be upgraded and the number of judges assigned to family court cases is grossly insufficient. Women's access to justice is limited, particularly in rural and suburban areas with high poverty and illiteracy, where women lack full awareness of the code and the rights it establishes. Domestic violence and abuse of women tend to be worst in those areas, and authorities often ignore women's complaints or even punish victims for reporting violence. It was not until 2008 that the government amended the penal code to criminalize violence against women and developed an action plan to set up new shelters for battered women.

The overwhelming majority of Morocco's population is Arab, Berber, or (most often) mixed Arab-Berber. There is a small Jewish community of between 3,000 and 5,000 people, and about 100,000 foreign nationals (mostly French and Spanish) reside in the kingdom. The country's official language is Arabic, but many Moroccans speak Berber. The Berbers' North African presence reaches back four millennia. Many Berbers were Arabized linguistically and culturally in the seventh century, and the community mixed with the Arabs through intermarriage. Of the entire Maghreb region, Morocco has the largest number of people (estimates vary between 55 percent and 65 percent of the

population) of Berber descent and who speak one of three main Berber dialects. Smaller groups, found mainly in the deep south, include the Haratin, the Zenaga, and the Tuareg.

After independence, the government promoted the country's Arab identity to the exclusion of its Berber component. However, in the past three decades, under pressure from Berber militants and international human rights organizations, authorities have been more willing to acknowledge the country's multidimensional cultural identity. They have recognized Berber as a national language and allowed Berber-language radio and TV broadcasts, teaching of Berber in schools, and the promotion of Berber culture. Berber cultural associations and political parties (especially the People's Movement and the National Popular Movement) regularly and peacefully represent the Berber community's demands and grievances, though the 2005 political party law was invoked in 2007, when the government declared illegal the Amazigh Democratic Party. Although some Berbers think the law constrains their ability to advance their own cultural, economic, and political agendas, Berber parties play a significant role in parliament and coalition building and the palace cannot easily disregard the broad constituencies they represent.

An estimated 97 percent of the population is Sunni Muslim of the Maliki rite, and Islam is the state religion. The king, who holds the title of Commander of the Faithful, claims ultimate authority in matters related to religious interpretation.[23] The state has a long tradition of tolerance toward Morocco's well-established Jewish and Christian minorities, which historically have not faced restrictions on their freedom of religion as long as it is conducted within traditional channels and in accordance with local norms and expectations. However, converting Muslims is illegal, and both the person who seeks to convert and the Muslim who renounces Islam may face arrest and harassment. The state does not look kindly on overt proselytizing by foreign missionaries, who are likely to be deported for such endeavors, as occurred in early 2010. The Ministry of Religious Endowments and Islamic Affairs controls the appointment of imams in the country's mosques and monitors sermon content. Since 2004, it has redoubled its efforts to counter the spread of violent extremist ideas, and unregulated mosques have been closed down.

The law regulating public assembly was expanded in 2002 but remains ambiguous. It states that public gatherings do not need prior authorization, but it also requires that local authorities are notified and issue a receipt. At least 24 hours must elapse between receipt issuance and the gathering. Thus, authorities can prevent public gatherings they disapprove of by withholding or delaying receipts. Public demonstrations are subject to a similar process, with the added caveat that only political parties, unions, professional syndicates, and other legally-registered associations can demonstrate. Authorities generally respect citizens' right to peaceful protest, and protests are common. Occasionally, however, security forces forcibly disperse demonstrators, even when they are nonviolent and nonthreatening. Excessive use of force by the

security forces is particularly common in Western Sahara. Sahrawi human rights and pro-independence activists have been imprisoned merely for participating in demonstrations calling for self-determination.[24]

Less than 6 percent of the labor force is unionized.[25] The constitution and the 2003 Labor Code grant workers and civil servants the right to join (or withdraw from) trade unions and the right to bargain collectively,[26] but in practice the right of workers to organize and negotiate with employers is often restricted. Forming a trade union remains difficult and workers tend to refrain from doing so, fearing job loss. Provisions in the labor code prohibit public servants, members of the judiciary, and domestic and agricultural workers from forming trade unions. Workers generally are able to advocate for improved working conditions or policy changes, but the government grants the right to strike only to certain unions, and employers can seek criminal prosecution of strikers who hold a sit-in or damage property. Trade unions complain that the government has used Article 288 (which enables criminal punishment for those who resort to fraud or violence to set off a strike) in order to suppress strikes and prosecute workers who engage in them.[27]

RULE OF LAW	**3.00**
INDEPENDENT JUDICIARY	2.40
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.00
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.25
PROTECTION OF PROPERTY RIGHTS	4.33

In August 2009, King Mohammed VI announced plans for a series of reforms to strengthen the judiciary and improve the public's confidence in the legal system. The proposed reforms included enhancing the independence and efficiency of the judiciary, modernizing the legal system's regulatory framework, and establishing anticorruption mechanisms. Despite these promises, there has been no significant headway toward improving the judiciary and public confidence in the institution remains very low.

The constitution does not recognize the judiciary as an independent branch of government. Article 82 of the constitution refers to it as an "authority" (*autorité*), not as a "power" (*pouvoir*). Underscoring the king's authority over the judiciary, Article 83 states that "sentences shall be passed and executed in the king's name." General jurisdiction courts include district-level courts, first instance courts, appeals courts and, at the top of the judicial pyramid (but below the king), the Supreme Court. Specialized jurisdiction courts include administrative courts and commercial courts.

The king heads the Supreme Judicial Council (CSM), which shares administrative authority over the judiciary with the Ministry of Justice (MOJ). All magistrates are appointed by royal decree, upon recommendations by the CSM.

Under Article 84 of the constitution, the CSM is responsible for the appointment, discipline, promotion, and transfer of judges. However, excessive MOJ influence over the CSM's composition and proceedings facilitates executive branch interference in judicial matters. Moreover, Article 10 of Law No. 1-74-338, adopted in 1974, nominally regulates the organization of the judiciary, which is inconsistent with the powers that Article 84 of the constitution vests in the CSM and with the actual influence of the MOJ over judicial affairs.

The judiciary is subject to political pressure from the monarchy, the military, and political and economic elites, and is deeply penetrated by individuals engaged in illicit practices. Laws are often implemented selectively, in ways that reflect the relative clout of the parties involved or the size of the bribes they can afford to pay.[28] Meanwhile, judicial capacity is undermined by inadequate facilities and a lack of proper training for judges, who sometimes base their rulings on laws that are no longer in place.[29]

Despite disjointed and ad hoc efforts by senior MOJ officials to discipline judicial fraud, and the dozens of cases of demotion, reassignment, and forced early retirement since 2006, judicial corruption remains pervasive.[30] The problem is fueled, in part, by low salaries for clerks, lawyers, and judges, all of whom are known to trade preferential treatment for bribes. Telephone justice, in which politically-connected individuals can call judges for favors or to affect verdicts, is another common citizen complaint. Judicial corruption is particularly severe in northern Morocco, where drug lords smuggling cannabis to Europe rely on the complicity of prosecutors and members of the judiciary. Two scandals illustrated this problem. The "Rkiya affair," in early 2007, involved judges acknowledging on tape receiving money in exchange for rendering certain verdicts. Six months earlier, during the August 2006 "Tetouan scandal," seven lawyers had sent to a weekly paper a "Letter to History" denouncing the corruption that prevails in Tetouan's judicial circles. They had identified numerous instances of wrongdoing by city magistrates during judicial cases involving drug lords, and had highlighted evidence of systematic complicity between those accused and those supposed to prosecute them. Most importantly, the Tetouan scandal demonstrated that, instead of being protected, judges or lawyers who come forward to denounce corruption in their ranks are likely to be targeted for retaliation. Barely a week after the Letter to History was published, magistrates in Tetouan went on the offensive and initiated judicial proceedings against its authors, conveniently placing themselves in the position of being both judge and litigant. Ultimately, all seven lawyers were dismissed and disbarred following a process marred by serious irregularities.

Defendants generally enjoy the presumption of innocence in law and practice, and have the right to counsel, but violations of those rights continue to occur, particularly with regard to pro-independence Sahrawi activists, supporters of self-determination for the Western Sahara, and those suspected of extremist activity. Amnesty International and other human rights groups allege that

defendants in cases related to security issues or the Western Sahara question frequently do not receive fair trials.[31]

Civilian authorities control the security forces and the military, intelligence, and internal security services do not intervene in any meaningful way in the political process. Nonetheless, senior members of the armed forces can invoke provisions in the law to deter charges of corruption against them or to force punitive damages on those who make such accusations. Security forces are not held sufficiently accountable for human rights abuses, particularly with regard to cases involving the Western Sahara and Islamic extremists.

The military is rife with corruption, and allegations of illegal practices in its ranks are systematically suppressed. The military budget is opaque and not subject to parliamentary debate or approval. Senior military officers have taken advantage of their positions to amass huge fortunes.[32]

Citizens have the right to own property. Laws related to property ownership are specific enough, but enforcement relies in large part on the judiciary, which is not independent and generally rules in favor of those close to the palace. The legal framework for intellectual property is inadequate, and relevant laws are not enforced. There are some state protections from land seizure, though expropriation is possible. The previously discussed lack of independence, integrity, and capacity of the judicial system significantly constrains the extent to which property rights are enforced consistently and in a timely manner.[33]

ANTICORRUPTION AND TRANSPARENCY 2.28

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	1.80
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	2.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.50
GOVERNMENTAL TRANSPARENCY	2.50

For all the government's rhetorical emphasis on fighting corruption, and despite the flurry of legal and institutional reforms that have been initiated in this area in the past several years, corruption remains endemic, systemic, and institutionalized. It is ubiquitous in all its manifestations: petty and grand; in business transactions and political life; in the private sector and government; and at the national and local levels. Moroccan entrepreneurs and foreign investors describe corruption as the primary deterrent to investment in the kingdom. Corruption's toll on economic growth and job creation cannot be overstated, nor can the extent to which it has eroded public confidence in state institutions, the political elite, and the political system in general.

Morocco's economy is driven primarily by clientelism and patronage. Most state-owned enterprises were privatized in the 1990s, but palace-connected economic actors have tended to benefit disproportionately from that process. The monarchy's increased involvement in the country's private sector, and the

deepened influence of prominent businessmen close to the palace, have exacerbated longstanding transparency problems over the past few years. Moroccan society is a web of patronage networks in which, at each level, a patron seeks to maintain his position of influence through the distribution of favors to clients below him; the latter, in return, support their patron, who for his part endeavors to retain the backing of a patron above him. Atop this system sits the king, who acts as Morocco's "patron-in-chief."[34] Prosecution for corrupt practices is relatively uncommon, particularly for those close to the palace, and information on prosecutions, convictions, and sentences is difficult to obtain.

According to Transparency International's Corruption Perception Index, the extent of corruption in the kingdom has not changed significantly since 2007. In 2010, despite marginal improvements in its overall score due to the passing of promising legislation that has yet to be enforced, Morocco ranked 85 out of 178 countries, which is far below where it was in 2000.[35]

Senior members of the armed forces and security agencies and prominent entrepreneurs close to the monarchy frequently benefit from unfair advantage in business transactions and from official tolerance for illicit enrichment. Many use political connections to deny others the opportunity to compete with them on a level playing field, and they are rarely held accountable for engaging in corruption which, as noted above, is particularly prevalent in the military.

Regulations for transparent and competitive procurement processes are in place, and there has been some progress in this area in the past decade. However, there remains considerable room for improvement. Military contracts are not subject to standard procurement procedures in practice, a major problem in light of the size of these contracts and the opportunities they present for corruption.[36] Another concern is "delegated management," the delivery of a specific public service (e.g., the provision of water or electricity, or garbage collection) by a private firm, contracted by a public entity. The contracts involved usually represent very lucrative markets and, consequently, longstanding sources of corruption. Proper bidding procedures are frequently disregarded, as happens, for instance, when the governor or president of the municipal council decides to award a concession without granting all interested economic operators an opportunity to bid.[37]

Economic transactions involving the palace are not subject to the same scrutiny as others, and people are hesitant to expose irregularities or questionable dealings that involve the monarchy or individuals closely tied to it. Opportunities for appeal in the case of unlawful practices are dramatically reduced if the monarchy is involved and royal interests will likely prevail, particularly if the stakes are high. The mere involvement of the palace in a given contract or market may be sufficient to keep would-be competitors at bay because of the hesitation to appear to be challenging the king, in addition to the knowledge that those who have dared to do so in the past have sometimes paid a heavy price for their audacity.[38]

Morocco's sizable informal economy is another source of corruption. The production and export of cannabis in the north is estimated to generate revenue well above $10 billion, a significant portion of which is laundered.[39] Drug-trafficking and drug-smuggling networks often bribe or intimidate judges, police, customs officers, and public prosecutors to obtain a favorable outcome or evade prosecution.

Morocco upgraded its legal and regulatory framework over the past few years to a point that the latter is now sufficient to fight corruption. For instance, most corruption-related offenses are covered satisfactorily by Morocco's penal code, which sanctions embezzlement of public funds, the collusion between private and public interests, conflicts of interest, the solicitation and acceptance of bribes, the use of public office for private gain, and influence peddling. In May 2007, the country ratified the United Nations Convention against Corruption (UNCAC).

In March 2007, the kingdom passed comprehensive anti-money laundering legislation that specified penalties including jail sentences, and required Moroccan banks to upgrade their internal control systems. Moroccan authorities increased efforts to sensitize financial institutions to money-laundering issues, though these entities have a long way to go before they fully comply with the new legislation.

In the summer of 2007, the Moroccan parliament adopted legislation requiring decision makers, including judges, senior civil servants, MPs, and local officials, to disclose their assets and net worth, along with those of their spouses and minor children, at the beginning of their tenure, at regular intervals thereafter, and upon leaving office. Reports indicate that most officials have yet to comply with these new requirements, but they represent a step forward in the struggle to deter illegal official behavior.

In January 2007, the cabinet, presided over by the king, adopted a decree to create a Central Agency for the Prevention of Corruption (ICPC). The ICPC was formally established in May 2007, though the king did not appoint its members until December 2008. The organization was charged with developing a corruption-prevention policy, monitoring government practices, increasing awareness of corruption, and receiving complaints. Civil society had long advocated for—and the newly-ratified UNCAC required—a specialized anticorruption organization, but the ICPC is handicapped by a number of core weaknesses. The prime minister must approve its activities, including the publication of its annual report, it has no investigative and prosecutorial powers, and it is underfunded. In early 2011, the ICPC was still developing an action plan and an anticorruption strategy, but had not achieved substantive progress.

The Court of Accounts (COA), Morocco's primary audit body, supervises the implementation of the budget. It reviews the expenditures of all ministries, public or semi-public agencies, and any other institution that uses public funds

in order to ensure that these expenditures are consistent with budget authorizations. The constitution grants the COA sufficient autonomy and authority to carry out that mandate: the court operates independently of all three branches of government and sets its own annual program, and its members enjoy the same protections as magistrates. Public entity administrators are required to provide the COA with all the information it requests in the course of investigating their financial operations. However, while the constitution states that the COA "shall take action, when necessary, against violations of the rules governing . . . the agencies placed under its control," in practice the COA cannot perform that function. Nine regional audit courts were created in 2003 but are not yet operational. The constitution tasks them with monitoring local governments, but they lack the resources, authority, and experience to conduct that work.

The COA'S 2006 and 2008 reports detailed the COA's audits and included evidence of illicit practices across various branches of government.[40] The Ministry of Health, the National Investment and Development Fund, and several mayors were singled out for particular criticism. The reports also highlighted flawed procurement processes and evidence of irregularities and mismanagement at the public agency that manages Morocco's airports. Many commentators celebrated the 2008 report as a significant step toward greater transparency, as previous COA reports had not been publicly accessible, but the judicial authorities did not follow up on the report's findings.

Significant gaps remain in Morocco's anticorruption framework. Whistleblowers lack adequate protection from reprisals, there is no freedom of information law, and the framework for preventing conflict of interests is inadequate. Still, as noted earlier, the main problem confronting Morocco's main anticorruption problem is not an ineffective legal framework, but the absence of enforcement mechanisms and insufficient political will among senior powerholders. Evidence of malfeasance and irregularities reported to the ICPC or unearthed by the COA are rarely followed up on by institutions, including the judiciary, charged with doing so.

The greatest source of hope in the anticorruption struggle is the readiness of civil society and the press to expose graft, step up pressure on the authorities to address the problem, and participate in the design and implementation of measures to combat it. Transparency Maroc (Transparency International's local chapter) has a solid track record in all those areas and the independent press has made substantive contributions through its analyses and commentary. The press has paid a heavy price for its coverage of corruption, but its members have not been subdued and have become better able to unravel complex financial scams, especially in such sectors as banking, real estate, tourism, and housing. Despite Morocco's crackdown on press freedoms, the outcry against corruption has never been greater.

RECOMMENDATIONS

- Implement the recommendations that the IER made in its final January 2006 report with regard to enhancing judicial independence and strengthening judicial capacity. As called for by the IER, the CSM should be made more independent from the MOJ; its exclusive authority over the appointment of judges should be consolidated; penalties for outside interference in judicial affairs should be made harsher; court infrastructure should be improved; judges, other justice sector professionals, and security sector officials should be properly trained.
- Address the constitutional and legal restrictions regarding freedom of expression. Provisions in the press code that punish statements deemed harmful to the monarchy, Islam, or territorial integrity should be eliminated or reduced in their scope. Provisions intended to punish declarations deemed to have been an "offense" to Moroccan or foreign officials should be removed.
- Adopt a proactive policy to prevent mistreatment of detainees, particularly in the Western Sahara. Priority steps include more effective oversight mechanisms, the systematic investigation of reports of abuses, the prosecution of offenders, and relevant training for law enforcement officials.
- Amend anti-terrorism legislation to strengthen safeguards for human rights and civil liberties in the application of the law.
- Amend the penal code to criminalize the use of funds generated by corruption and adopt whistleblower protection legislation.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

1 See for instance National Democratic Institute (NDI), *Final Report on the Moroccan Legislative Elections, September 7, 2007* (Washington, DC: NDI, May 15, 2008).

2 See for instance the coverage of those elections in the independent newsweekly *Tel Quel* (Casablanca).

3 See for instance Michael McFaul and Tamara Cofman Wittes, "The Limits of Limited Reforms," *Journal of Democracy*, Vol. 19, No. 1 (January 2008).

4 Moroccans refer to this practice as "electoral nomadism" or "political transhumance."

5 As a result, the cabinet did not meet a single time during the first half of 2008.

6 Revealingly, when shortly after his nomination in September 2007 the then Prime Minister-designate Abbas El-Fassi was asked about his program of government, he simply replied that he intended to implement "the king's program." In October 2007, when negotiations over the allocation of cabinet portfolios reached an impasse, the late royal adviser Abdelaziz Meziane Belfqih took over the negotiations and determined the final make-up of the cabinet.

7 Article 102 of the Moroccan constitution underscores the preeminence of governors: "In the provinces, prefectures and regions, governors shall represent the State and see to it that the law is enforced. They shall be responsible for the implementation of Government

decisions and, to this end, for the management of [the] local departments [field offices] of Government agencies."

8 Benchemsi's case was part of a series of trials initiated under Article 41 of the press law, which criminalizes "disrespect" for the king and other members of the royal family.

9 The king pardoned Mourtada on March 18 after an international outcry over the earlier decision.

10 An appeals court overturned the verdict.

11 An appeals court overturned the conviction on September 18.

12 See Amnesty International, *Rights Trampled: Protests, Violence and Repression in Western Sahara* (London: Amnesty International Publications, 2010).

13 Amnesty International, *Rights Trampled*; Amnesty International, *Broken Promises: The Equity and Reconciliation Commission and Its Follow Up* (London: Amnesty International Publications, 2010); Human Rights Watch, *World Report 2011* (Human Rights Watch, 2011), http://www.hrw.org/en/world-report-2011, accessed July 7, 2011.

14 See for instance "Rapport Annuel de l'Association Marocaine des Droits Humains [AMDH] sur les Violations des Droits Humains au Maroc en 2009," AMDH.

15 Observatoire Marocain des Prisons, *Rapport Annuel: 2007–2008* (Rabat: 2009).

16 Ibid.

17 Amnesty International, *Rights Trampled*; Human Rights Watch, *World Report 2011*.

18 For a listing of useful sources on the IER and its conclusions, see "Truth Commission: Morocco," United States Institute of Peace, http://www.usip.org/publications/truth-commission-morocco, accessed June 16, 2011.

19 Amnesty International, *Broken Promises*.

20 See for instance "Morocco/Western Sahara: Dissidents in Prison, Unfair Trials," Human Rights Watch, January 24, 2011, http://www.hrw.org/en/news/2011/01/24/morocco western-sahara-dissidents-prison-unfair-trials.

21 U.S. Department of State, *Trafficking in Persons Report 2010* (U.S. Department of State, 2010), p. 241, http://www.state.gov/g/tip/rls/tiprpt/2010/.

22 Ibid., 241.

23 For daring to challenge King Hassan II's authority as the country's religious leader, Sheikh Abdesslam Yassine, the leader of the Justice and Charity Movement, spent eleven years under house arrest between 1989 and 2000.

24 Amnesty International, *Rights Trampled*.

25 "Morocco," La Poste Export Solutions, http://www.laposte-export-solutions.co.uk/uk/markets/country-profiles/morocco/labour-market, accessed June 17, 2011.

26 "Morocco: Labor Rights Report," U.S. Department of Labor, Bureau of International Labor Affairs, July 2004, http://docs.google.com/viewer?a=v&q=cache:N6xGzNDecCwJ:www.dol.gov/ilab/media/reports/usfta/mlrr.pdf+US+Department+of+Labor,+Bureau+of+International+Labor+Affairs,+Morocco+Labor+Rights+Report+July+2004&hl=en&gl=us&pid=bl&srcid=ADGEESiDJSUl8JmCyj5rnmlPEclgcUt1vN6hu7UhRzSPtJTQmq87seGmAnNdFumPIoWGuZkRTjW9m449TB5oPM8nBww-zxZXFk4qmTVItiVsfxAaZmh9XMqSfiA91vO92DF-1B45UWWw&sig=AHIEtbQ8gOiPnlVnXC8xAncCk-TganZxkA&pli=1.

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28 "Morocco Rule of Law Assessment," Moroccan American Community Center, September 16, 2010, http://www.moroccoboard.com/news/34/1202; Transparency International, *Etude du Systeme National D'Integrite: Maroc 2009* (Transparency International, 2009).

[29] "2010 Human Rights Practices: Morocco," U.S. Department of State, April 8, 2011, http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm.

[30] United States Agency for International Development (USAID), *Morocco Rule of Law Assessment* (USAID, September 2010), http://pdf.usaid.gov/pdf_docs/PNADT305.pdf.

[31] See for instance the press releases by Amnesty International regarding the Western Sahara in 2008 and 2009.

[32] The military is charged with policing Morocco's territorial waters. Senior officers have used that mandate to acquire controlling interests in companies involved in the export of fish to Spain.

[33] See for instance Morocco's ratings on the Heritage Foundation's *Index of Economic Freedom*: "Morocco," 2011 Index of Economic Freedom, http://www.heritage.org/Index/country/Morocco, accessed June 17, 2011.

[34] Ever since independence, the monarchy has been the country's main entrepreneur and its largest landowner. The royal family is the primary shareholder in Morocco's largest private conglomerate, ONA-SNI, which controls the distribution of a broad array of goods and equipment in the kingdom, and dominates agribusiness, financial services, and mining. Through ONA-SNI, its networks of subsidiaries, and other interconnected companies and financial holdings, the monarchy is heavily implicated in all key sectors of the economy.

[35] "Corruption Perceptions Index 2010 Results," Transparency International, http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results, accessed July 7, 2011.

[36] Dr. Ahmed El Midaoui, "Public-Private Partnerships and the new challenges for SAIs" (PowerPoint presentation given by Kingdom of Morocco, Cour des Comptes, at XIV PWG Meeting, October 16–19, 2007); Mr. Abdelaziz Talbi, "Corporate Governance of State-Owned Enterprises (SOEs) in Morocco" (PowerPoint presentation given by Morocco's Ministry of Economy and Finance to OECD in Paris, March 2–3, 2010), http://www.oecd.org/dataoecd/31/27/44771161.pdf.

[37] Dr. Ahmed El Midaoui, "Public-Private Partnerships and the new challenges for SAIs"; Mr. Abdelaziz Talbi, "Corporate Governance of State-Owned Enterprises (SOEs) in Morocco"; OECD, *Enhancing Integrity in Public Procurement* (OECD, July 2009), http://www.oecd.org/dataoecd/28/23/44288257.pdf.

[38] "MOROCCO: Challenge to the King," *Time*, January 26, 1959, http://www.time.com/time/magazine/article/0,9171,892086,00.html.

[39] "2008 International Narcotics Control Strategy Report for Morocco," U.S. Diplomatic Mission to Morocco, February 27, 2009, http://morocco.usembassy.gov/policy/key-reports/2008-international-narcotics-control-strategy-report-for-morocco.html.

[40] See Royaume du Maroc, *Rapport Annuel de la Cour des Comptes* (Cour des Comptes, 2006 and 2008).

MOZAMBIQUE

CAPITAL: Maputo
POPULATION: 23.4 million
GNI PER CAPITA (PPP): $880

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	4.20	3.88
CIVIL LIBERTIES:	4.48	4.38
RULE OF LAW:	3.71	3.60
ANTICORRUPTION AND TRANSPARENCY:	3.43	3.30

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Dr. Robert Lloyd

INTRODUCTION

Mozambique has now enjoyed nearly two decades of peace following a bloody 16-year civil war between the ruling party, the Front for the Liberation of Mozambique (FRELIMO), and the Mozambique Resistance Movement (RENAMO). The government jettisoned its Marxist political system and transitioned in the 1990s to capitalism. Over two decades, the country introduced a democratic constitution, permitted competitive elections with its erstwhile enemies, rebuilt from the war, reintegrated Mozambicans displaced by the war, sought closer ties in Africa and the West, and instituted far-reaching economic reforms. These policies set Mozambique on a trajectory of rapid economic growth, averaging about 7 percent per year—although that growth has done little to improve the country's overall level of development.

Within this context, the presidential, legislative, and provincial elections on October 28, 2009, represented less change and more continuity in Mozambique's political life. President Armando Guebuza, a wealthy businessman with a hardline Marxist past, was reelected overwhelmingly to a second term, defeating RENAMO candidate and leader Afonso Dhlakama. A guerilla fighter for Mozambique's independence from Portugal, Guebuza was the government's chief negotiator with the RENAMO rebel movement, and oversaw the negotiations that eventually led to the 1992 peace accord that ended the civil war.

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Guebuza's reelection cemented FRELIMO's overwhelming control of the country. Mozambique has become a single party state as the influence of RENAMO, which transformed after the war from a rebel group into an opposition political party, has waned in each of the four national elections since 1994, especially as a new opposition group has splintered RENAMO into two groups, with many progressives joining the new party. Throughout his time in office, President Guebuza has emphasized an anticorruption platform, harkening back to FRELIMO's early days in power when it was viewed as not corrupt. Economic growth, strong state involvement in the private sector, inadequate administrative and judicial oversight, and FRELIMO's control of the government since independence have created ample opportunity for private gain at public expense. Despite the anticorruption rhetoric and high-profile corruption convictions of government officials, foreign donors have expressed increasing concern at persistent graft. This led in 2010 to a temporary suspension of aid by a number of international donors and a subsequent freeze on increases in official development aid.

Mozambique remains a country in transition. A poor country deeply damaged by its colonial heritage, authoritarian excesses after independence, and decades of civil strife, its great achievement has been stability amidst deeply disruptive political and economic liberalization. Mozambique's political and economic transformation must continue to be supported by checks on the power of the executive branch, strengthening of the judiciary, professionalization of the police forces, and reductions in opportunities for corruption.

ACCOUNTABILITY AND PUBLIC VOICE 3.88

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	2.80
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	3.71

Mozambique's 1990 constitution introduced a multiparty system with universal suffrage, but the country's democratic process has been marred by flawed elections and enduring single-party rule. The constitution formed the basis for the historic 1994 national and provincial elections that marked the first multiparty democratic vote in Mozambique's history. The country subsequently held presidential and legislative elections in 1994, 1999, 2004, and 2009, as prescribed by law. In 2009, elections were also held for newly created and directly elected provincial assemblies developed as part of a general decentralization reform plan.

Elections are supervised by the National Election Commission (CNE), which is intended to be independent. Both foreign and domestic election observers regularly monitor the elections without government interference, but they have stated that the CNE is disorganized in its handling of elections.

The CNE did not permit the upstart Democratic Movement of Mozambique (MDM) to contest the 2009 legislative elections in 9 of the 13 provinces based on allegedly improper filing procedures. The party's attempt to contest that decision was unsuccessful, but its presidential candidate, Daviz Simango, was permitted to run. While international election observers criticized the CNE with respect to the exclusion of the MDM from contesting elections in most provinces as well as weaknesses during the vote tabulation process, they stated that the elections overall reflected the will of the Mozambican people.[1] Nevertheless, there were isolated reports of intimidation by supporters of both RENAMO and FRELIMO, and opposition candidates were more frequently affected. In addition, the European Union Observation Mission noted deficiencies in the election process related to a legal framework that is unclear and contradictory, does not provide adequately for complaints and appeals, and under which institutions such as the CNE are subject to undue political influence. The mission also expressed concern over voter registration, particularly with respect to lack of public review of the voter registry and failure to eliminate ineligible voters from the list.[2]

RENAMO's representation in the 250-seat legislature (Assembly of the Republic) fell from 90 to 51 seats in the most recent election, while FRELIMO increased its share from 160 to 191 seats. This electoral success permits FRELIMO to change the constitution since the party now meets the two-thirds threshold required to do so. Starting in October 2010 and proceeding into 2011, FRELIMO parliamentarians took steps to establish an ad hoc committee to draw up constitutional amendments. FRELIMO's vagueness about the intended content of the amendments led to fears among the opposition that the ruling party's intention was to allow President Guebuza to run for a third term.[3]

The poor performance of all the opposition parties, and FRELIMO's control of the levers of power, means that it is unlikely to lose power for some time. Opposition political parties in Mozambique often reflect personalities rather than platforms. For example, Afonso Dhlakama, who has received a diminishing share of the presidential vote since 1999, dominates RENAMO. Daviz Simango, a former member of RENAMO, leads the MDM; while observers hope the MDM will prove more vibrant, it remains an upstart. These parties are poorly funded, lack national reach, and in the case of the MDM face government obstacles in contesting provincial elections.

Equal campaigning opportunities exist for all parties seeking local, provincial, and national office, although the EU reported that opposition candidates were sometimes barred from campaign stops. The law permits private and public funding of campaigns, and recognized parties received campaign funds from the government.[4] The process of disbursing funds, however, hindered smaller parties' ability to campaign, as funds were released very late in the electoral process.[5] In practice, FRELIMO as the incumbent enjoys a decided advantage in campaigning across the large country, as well as in the state-dominated media. Laws requiring political parties to publish where they get their funds and how

they use them are not enforced, making it impossible to determine the scope of economically influential interests on campaigns.[6]

Opportunities theoretically exist for rotation of power among competing political parties, but FRELIMO has in practice continued to dominate the electoral system since independence. In the 2009 legislative and presidential elections, for example, 19 parties competed, but FRELIMO, RENAMO, and the MDM were the only three parties to garner more than 5 percent of the total vote. In the 2009 presidential elections, RENAMO's Afonso Dhlakama received 16.4 percent of the vote, compared with 37.7 percent in 2004. President Armando Guebuza, the FRELIMO candidate, received 75 percent of the vote, up from 63.7 percent in 2004. MDM presidential candidate Daviz Simango received 8.6 percent of the vote.

The 1990 constitution provides for the separation of the executive, legislative, and judicial branches, but the system of institutional checks and balances is weak. FRELIMO rarely differentiates between the various branches of government, or even between party and state. Meanwhile, the constitution establishes a strong presidency, and FRELIMO increasingly dominates the legislative branch. Although the executive and the parliament can initiate bills, in practice the executive almost always initiates legislation. A two-thirds legislative majority can override a presidential veto of legislation, which in practice has not been necessary to use.

The constitution requires that political parties are national in scope and uphold national interests; parties based on religion or ethnicity and those that advocate the use of violence are prohibited.[7] In practice, however, political parties have tended to reflect regional and ethnic interests. Foreign interests, largely those of European and American nongovernmental organizations (NGOs) influence the political process through grants and technical assistance to parties.

The civil service is supposed to be selected on the basis of open competition and merit. In practice, however, relatively low pay, inadequate resources, and a lack of trained personnel undermine its efficiency and professionalism. Opposition groups claim that membership in FRELIMO is a requirement for obtaining a government job; FRELIMO denies the charge, but has argued that it is natural that individuals committed to the party that won the election would comprise the top leadership of the civil service.[8]

Civic groups, both domestic and foreign, are able to discuss pending policy with government officials. This consultation is formalized through the Council of State, a presidential advisory body that also includes representatives of civil society. There are no reports of foreign or domestic NGOs being denied registration, although registration may be time consuming. While civil society groups are engaged in the political process, civil society overall is perceived as fairly weak and generally lacking the ability to effect real policy pressure on the government.

Mozambique is heavily dependent on foreign aid, largely from European and North American sources. Foreign aid donors can directly affect domestic

policy through aid to the government. China's increasing foreign direct investment in Mozambique, however, is seen as a counterweight to Western aid that comes with strings attached.

Article 105 of the constitution guarantees "freedom of the press, and the independence of the media." There is little direct censorship of the media, and journalists report a generally open environment for press freedom—except when the topic relates to corruption of government officials. Reports of party and government officials threatening and detaining journalists occasionally surface.[9] Further, the state does use economic censorship in the form of an advertising requirement for state businesses that effectively limits the financial viability of independent media, and journalists report that they practice self-censorship. There are no shield laws, which makes the environment still less conducive to press freedom.

Defamation of the president is illegal and libel remains criminalized, though this law is infrequently applied. In June 2010 the Nampula City Court found journalist José Da Gama guilty of libel against Lucia Afate, a RENAMO member of parliament. Afate subsequently sued for damages from Da Gama. Because Da Gama refused to reveal his sources for the article, the judge charged him with "lack of collaboration with the court." However, Article 74.3 of the constitution states "Freedom of the press shall include . . . protection of professional independence and confidentiality. . . ." Da Gama, who appealed the decision, received a hefty fine from the court in lieu of prison time.[10]

There have been incidents of harassment, unlawful detention, and violence against members of the press, mostly occurring in rural areas at the community level.[11] The Mozambique chapter of the Media Institute of Southern Africa charged in September 2009 that some politicians hindered the work of journalists, noting that journalists with community radio stations had experienced "physical or psychological violence."[12] In May 2010, Reporters without Borders stated that the editor of the weekly Magazine Independente had received death threats following articles about RENAMO leader Afonso Dhlakama.[13] Amnesty International reported that in September 2009 three newspaper reporters in Zambezia province were convicted of defamation and undermining state security after raising questions about the nationality of the Prime Minister. They were sentenced to six months in prison, a sentence that was later converted to a small fine.[14] In March 2007, Maputo police detained reporter Celso Manguana for three days after he criticized police as "incompetent" in responding to his inquiries regarding the arrests of Mozambicans demonstrating against a senior government official after explosions at a military arsenal that killed over a hundred people.[15] Furthermore, the assassination of investigative journalist Carlos Cardoza still figures prominently in the lives of journalists and is frequently cited by journalists as continuing to have a chilling effect on the press.

The government refrains from direct censorship of the media but engages in indirect censorship through economic and advertising manipulation; moreover, a degree of self-censorship occurs because of libel laws and concerns over

personal safety. The government owns and operates much of the print, radio, and television media, and roughly a third of Portuguese-speaking Mozambicans receive news from the state-owned Radio Moçambique via its country-wide network, Antena Nacional. State-owned Televisão de Moçambique similarly operates the only national network, and Notícias, the major newspaper in the capital, is effectively state owned. The Agência de Informação de Moçambique (AIM) is an important source of news and may be accessed via the internet. Mozambique also has private media, and a number of privately owned newspapers are available. Private and foreign television stations are also available in urban areas, and private radio stations, including religious ones, operate freely.

Although state-run media do at times offer critical coverage of the government, progovernment bias is sometimes evident. The EU did an extensive study of media coverage of the 2009 elections and found that, overall, coverage of the larger political parties was balanced and neutral, although FRELIMO candidates received more airtime. In particular, both private and state-run media airtime favored the FRELIMO presidential candidate over the RENAMO candidate.[16] While the state-owned media are the major sources of information, the Committee to Protect Journalists has stated that they do have editorial freedom. RENAMO, however, argues that some media coverage is biased in favor of the ruling party.

Mozambique does not hinder access to the internet in any manner.[17] However, although Mozambique has been linked internationally via the internet through two new undersea cables since 2009, internet users as of June 2010 comprise just 2.8 percent of the population, or approximately one-third of the African average.[18] In response to deadly riots in Maputo in September 2010 (see below), the government announced that all pre-paid cell phones would need to be registered with the government, ending any user anonymity. The government stated it was for protection of citizens against criminals, but some media noted that texting had been used to coordinate the demonstrations, and that scams involving extortion and blackmail via text message were of real concern.[19]

CIVIL LIBERTIES 4.38

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.63
GENDER EQUITY	4.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.00
FREEDOM OF CONSCIENCE AND BELIEF	6.33
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.25

Article 70 of the constitution prohibits torture and cruel or inhumane treatment, and the death penalty is illegal. However, in each of its recent annual reports on Mozambique, Amnesty International cites cases of extrajudicial killings by police. Few cases have been investigated and most police officers are not

prosecuted for such illegal actions.[20] In its 2008 report, Amnesty International reported an increase in the number of extrajudicial killings over the prior year. In one April 2007 case, police in Maputo transported three individuals from a police station to a nearby sports field, where the three were shot and killed. Police claimed that the prisoners had attempted to escape.

In August 2008, police killed Abrantes Afonso Penicela north of Maputo. Before he died, Penicela stated that police had beaten, shot, and burned him.[21] Arnaldo Chefu, a police spokesman from Maputo, acknowledged some cases of severe police misconduct, including involvement in torture and unlawful killing. Police convicted of such crimes face prison terms of up to 24 years.[22] The police officers responsible for killing the three men in the sports field, for example, were later convicted and sentenced to 21 years in prison. In 2008, a presidential guard official received an 18-year prison term for killing a man in Maputo two years earlier.[23] In 2007, 10 police officers were sentenced to three to five years in prison for unlawful killing.[24] However, Amnesty International reports that, in general, killers are rarely brought to justice, a claim the police dispute.[25]

Prison conditions remain a concern. Reports continue to highlight delays in bringing criminal cases to trial, severe overcrowding, poor physical infrastructure, and a lack of sanitary conditions and healthcare access. The government acknowledged prison overcrowding in 2010. Deputy Justice Minister Alberto Nkutumula stated that prisons were under renovation but additional prisons needed to be built to alleviate overcrowding and separate women from men and adults from children. In one prison in the capital, for example, a facility constructed to hold 800 inmates actually held 2,311 as of June 2010.[26] Also in 2010, the Justice Ministry announced it had uncovered evidence of torture by seven prison guards against two prisoners in Nampula province. Justice Minister Benvinda Levi has publicly spoken out against torture in Mozambican prisons.[27] In the first half of 2008, 22 prisoners died at the Chimoio Agricultural Penitentiary because of diseases and lack of treatment. The Mozambican Human Rights League has argued, however, that prison conditions are improving.[28]

There are no effective protections against arbitrary arrest, and the majority of such incidents are not investigated. Article 101 of the constitution limits detention, and details of the length and condition of such detention are set by law: the Criminal Procedure Code allows a suspect to be held for up to six months without being formally charged. Detainees also have the right to judicial review of their detention, but understaffing has led to many accused being held in prison without such review. There have been a number of reports where those charged are detained indefinitely while evidence is gathered to prove their alleged guilt. Human rights groups argue that police and judicial unfamiliarity with the penal code governing detentions has led to the abridgement of citizens' constitutional rights. In addition, many of those detained may lack the funds necessary to post bond. Eduardo Mussanhane, director of Mozambique's National Prison Service, stated in 2010 that there were approximately 15,000

Mozambicans incarcerated. There were some indications, however, that the number of individuals in jail awaiting trial had dropped in recent years from half the prison population to slightly more than a third.[29] There are no reports of terrorism in the country. However, police forces remain poorly paid and inadequately trained, and in-force readiness is reduced due to AIDS-related deaths.[30] The weakness of the police force and its failure to respond to crime, which is a serious and ever-present problem in daily life, has led at times to vigilantism, including lynching. In the provinces of Manica, Maputo, and Sofala, for example, between February and April 2008, 14 suspected criminals were lynched. In one of these cases, three individuals were convicted and sentenced to six months in prison for the lynching.[31]

The constitution prohibits forced labor, and prostitution is illegal. In addition, Mozambique is a signatory to the International Labor Organization Convention on the Abolition of Forced Labor and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. Despite these legal safeguards, the country is a source and transit area for human trafficking, with destinations both within the country and internationally. In late 2010, Mozambican police interdicted in the northern coastal province of Cabo Delgado a boat crewed by Tanzanians that was transporting 96 illegal Somali immigrants. The province reportedly is used as a transit port for illegal immigrants coming from conflict-ridden areas in the Horn of Africa and the Great Lakes region.[32] In the run-up to the 2010 World Cup in neighboring South Africa, Mozambique initiated "Open Your Eyes," a drive to combat human trafficking of children to South Africa for sex and labor.[33]

Article 97 of the constitution permits citizens to seek redress for damages caused by illegal state acts. Article 82 allows citizens the right of recourse for any act that violates constitutional guarantees. The slow judicial process, however, means delays for individuals seeking justice. Article 256 of the 2004 constitution establishes an ombudsman, but at present neither this office nor the National Human Rights Commission established by law in May 2009 is operational.

The constitution guarantees equal civil and political rights for men and women, and Article 67 states that "Men and women shall be equal before the law in all spheres of political, economic, social, and cultural affairs." These provisions are not always upheld, although government officials such as President Guebuza publicly stress their importance.[34] Discrimination based on sex is prohibited, and in recent years the government has undertaken major revisions of legislation to lessen discrimination against women, such as the Domestic Violence Act passed in September 2009. Mozambique has also ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

The state makes reasonable efforts to protect against gender discrimination in employment and occupation. Women represent between one-quarter and one-third of membership in various elected government bodies. In late 2010,

President Guebuza publicly launched a campaign against discrimination against women, especially with respect to domestic violence.[35] In 2009, Mozambique was awarded the African Gender Award by the Femmes Africa Solidarité for the efforts the country made to advance the status of women.[36] In addition, the World Economic Forum ranked Mozambique first among low-income countries in its Gender Gap Index, which is designed to measure the gap between men and women. Overall, Mozambique ranked 22 out of 134 countries.[37]

There are 43 languages spoken in Mozambique among a total population of approximately 22 million people,[38] and ethnolinguistic diversity has been one source of tension in the country. Addressing this issue, the constitution guarantees equal rights before the law, regardless of ethnic origin or religion, and outlaws discrimination based on these criteria. While Portuguese is the official language, the government actively promotes the development of Mozambique's other languages. Ethnic tension is lower in Mozambique relative to other countries in Africa, but there nonetheless remains a regional divide between ethnolinguistic groups residing in the southern and the central and northern regions. These regions also correspond roughly to areas of support for FRELIMO and RENAMO, and party affiliation tends to cause more tension than ethnicity. With the introduction of the 1990 constitution, the government made major efforts to abolish laws and practices that discriminate against ethnic and religious groups. However, while laws protect against discrimination based on ethnicity, as in other parts of Africa, tribal affiliation acts as a powerful factor in employment decisions.

In 2010, President Guebuza publicly received the chairperson of the Association in Defense of Our Rights, an organization designed to support the rights of albinos, who face strong discrimination in Africa. The chairperson noted that a recent agreement between the government and the organization had facilitated greater access for albinos to doctors who specialize in the condition.[39] However, although the constitution guarantees the right to assistance in the case of disability, in practice, given the number of disabled individuals—many as a result of the civil war—combined with the poverty in the country, addressing this issue has not been a high priority for the government.

The constitution guarantees the freedom of religion and does not place restrictions on religious observance and education. The majority of the population adheres to some form of Christian belief, but Mozambique's complex religious landscape also includes a Muslim community comprising nearly 20 percent of the population. There has been relatively little political tension between Christians and Muslims, who reside in the north, largely along the coast. Meanwhile, many Mozambicans, including those who call themselves Muslims and Christians, follow traditional African religious beliefs and practices to varying degrees.[40] The state restricts religious groups from organizing political parties, and the state does not observe any religious holidays as national holidays. The government permits Christian and Muslim schools, has sought good relations with religious groups, and refrains from interference in appointments

within religious organizations, although religious institutions are required to register with the government.

The constitution guarantees freedom of association and the state allows civic groups to organize, mobilize, and advocate for peaceful purposes. Although the government permits public demonstrations and public protests, these rights are not always upheld in practice. For example, there have been many reports of the police using excessive and lethal force against public demonstrations. In February 2008, Mozambican riot police in Maputo used excessive force against citizens peacefully pressing the government to rescind price increases on fuel, which had raised the cost of transport fares.[41] The government fired rubber bullets and live ammunition at the demonstrators, killing three. Police also used live ammunition in Gaza province against demonstrators similarly protesting the fare increases.[42] In September 2010, the government also responded forcefully with teargas and rubber bullets when violent protests in the Maputo area and in Chimoio erupted in opposition to increases in food prices on items such as bread, causing hundreds of injuries and a reported 13 deaths.[43] There is no evidence that investigations were made of the shootings.

The government's Marxist past has heavily influenced government policy with respect to labor. The constitution guarantees work, just payment, safe working conditions, the right to form unions and strike, and paid holidays. The constitution specifically provides for the right to form and join a trade or labor union, although some problems have been reported with the formation of unions and their ability to engage in collective bargaining.[44] In 2010 Mozambique's largest trade federation (Organização dos Trabalhadores de Moçambique, OTM), spoke against legislation that would amend the 2007 Labor Law on the grounds that it would further erode workers' rights.[45]

RULE OF LAW	**3.60**
INDEPENDENT JUDICIARY	3.60
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	4.25
PROTECTION OF PROPERTY RIGHTS	3.33

The constitution states that judges should be dutiful to the law, impartial, and disinterested. The judiciary is charged with guaranteeing and strengthening the rule of law and promoting the rights and freedoms of citizens. The courts, whose decisions take precedence over decisions of other branches of government, may not act contrary to the constitution and are independent of any religious bodies. In practice, however, FRELIMO dominates all the branches of government, including the judiciary, as discussed below. There is also a strong perception that the judiciary is corrupt and partial toward the ruling elite and wealthy individuals.[46]

Mozambique has a Constitutional Council that assesses whether or not legislation is consistent with the constitution, resolves conflicts between branches of governments, and oversees elections. There is a lack of institutional clarity between this body, which is chosen by the president and assembly, and the Supreme Court (the highest judicial body). Since 1990, the Supreme Court has been responsible for some of the former duties of the council due to legal disputes over constitutional provisions governing the council.

It is not clear whether the government would comply if the court or the council ruled against the executive on any major legislative or executive decision, as this has not occurred to date. If one party controls both the assembly and the presidency, as has been the case, that party can exercise substantial political influence over the Supreme Court. In terms of judicial appointments, the president, who is currently from FRELIMO, chooses professional judges to the court, who must be confirmed by the Assembly. The Assembly elects elected judges to the court. Since FRELIMO has a majority of seats in the parliament, in practice these judges are generally sympathetic to FRELIMO policies as well. RENAMO argues that the government chooses incompetent and biased judges. Judges and other court personnel do not always have adequate or even required training, and judges also may lack legal reference materials, causing the accused to be deprived of legal rights. A shortage of trained personnel is often cited as one reason for the backlog of court cases.

Key international donors have argued that the FRELIMO government has not ensured in practice the complete independence and impartiality of the judiciary so as to avoid close judicial scrutiny of government corruption. In a well-publicized February 2010 court case, however, a judge in Maputo sentenced the former transport and communication minister, the former head of Airports of Mozambique, and several others to lengthy prison terms for embezzlement of public money related to the state airport company. The case was broadcast live on Mozambican television and radio, which was unusual both for the publicity and the fact that it involved a high-level official.[47]

A United Nations Special Rapporteur, who is an experienced Brazilian judge, visited Mozambique twice in 2010 at the invitation of the Mozambican government. After freely investigating the judicial system, she was encouraged by reforms in the prisons and by some anticorruption efforts, but noted in a September 2010 report that Mozambique was still challenged to achieve a truly independent judiciary without political influence.[48] Furthermore, allegations that political officials influence prosecutors reflect broader issues with judicial independence and checks and balances. The UN Special Rapporteur, for example, noted "undue interference" in the judicial process.[49]

Everyone charged with a crime is presumed innocent until proven guilty. Citizens have the right to independent counsel, and the constitution also guarantees legal counsel for those who lack financial resources for defense. However, although the government has increased its legal assistance through the Institute for Legal Aid, the UN Special Rapporteur report suggested that these rights are

not guaranteed in practice.[50] Delays in accessing the judicial system undermine judicial due process. Military, security, and police forces fall under the jurisdiction of the president, and police, military, and internal security services refrain from interference and involvement in the political process. The assembly has the ability to review domestic and foreign policies, as well as budgetary considerations. Military and internal security services are free from the influence and direction of nonstate actors, but the control of the government over all aspects of the police is less certain, as seen in its acknowledgement of police involvement in crime rings.[51] In particular, fears have grown regarding security force involvement in Mozambique's expanding drug trafficking industry.[52] As noted previously, security services have been involved in human rights violations, including indiscriminate firing with live ammunition on demonstrators, unlawful killings of suspects and detainees, and torture.

The constitution guarantees the right to property ownership, but property rights are "weakly protected" in Mozambique overall and in comparison to the world average.[53] Reflecting its Marxist history, the state owns (with a few exceptions) the land and natural resources in or under the land and extending out into territorial waters. In lieu of actual ownership, Mozambique employs a system of land tenure/usage rights, which means that land cannot be used as collateral for loans, hindering development of the agricultural economy. Traditional law often views land as communal. The resettlement of internally displaced persons and the natural growth of the population will likely lead to future disputes over land titles. Under the current constitution the state may expropriate property only in accordance with law, for public interests, and with just compensation. Although Mozambique law states that mineral resources belong to the state, foreign companies have in recent years invested heavily and successfully in the mineral resource sector in the country.

The state promotes the private sector, encourages foreign investment, and guarantees the right of inheritance. In the past few years, foreign investment has increased substantially, indicating a generally favorable business climate. However, contract enforcement through courts is uncertain due to a lack of judicial capacity, so most commercial disputes are addressed privately.[54] There is also weak government enforcement of contracts in financial services.[55]

ANTICORRUPTION AND TRANSPARENCY 3.30

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.20
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.50
GOVERNMENTAL TRANSPARENCY	4.17

Mozambique is a poor country that relies on external financial assistance for approximately half of its government budget, allowing foreign donor agencies to exert considerable influence on government administration and distribution of

foreign assistance. While the government has pursued macroeconomic policies to create an environment conducive to economic growth and foreign assistance,[56] corruption and bureaucratic inefficiency are key impediments to foreign investment in Mozambique. The regulatory environment further hampers starting and operating a business,[57] and relatively high personal income, corporate, and VAT taxes often result in noncompliance. The government conducts internal audits but lacks the capacity to effectively audit government agencies. To help address some of these deficiencies, the government has introduced a number of reforms to ensure greater accountability of customs and tax collection in recent years, including the merger of previously separate revenue collection bodies.[58]

There are a number of state-owned firms, but the state has been pursuing a policy of privatization. Foreign direct investment has increased substantially, mainly in capital-intensive megaprojects such as the Mozal aluminum smelter. In 2007, the state gained majority ownership of the massive Cahora Bassa dam, which the government purchased from Portugal. While these projects have helped boost Mozambique's economic growth rate, the benefits have not trickled down to the broader population. Furthermore, the close relationship of the government with for-profit activities increases the opportunities for rent-seeking behavior by government officials.

Asset declarations of public officials are required but are not open to public and media scrutiny and verification. Meanwhile, while Mozambican law requires political parties to disclose their accounts regularly, no political party has ever done so. Petty corruption frequently experienced by citizens further undermines political legitimacy and economic growth.[59]

Mozambique has in the past few years created both enabling legislation and institutional mechanisms to combat corruption, including the anticorruption law (2004) and the establishment of the Central Office for Combating Corruption (GCCC, 2005) and an ombudsman (2005). Mozambique has also ratified the United Nations Convention against Corruption. After the 2005 election of President Guebuza, the new government approved an anticorruption strategy, which included the establishment of a new financial system.

Donor dissatisfaction with various elements of governance, including the government's performance in implementing its anticorruption strategy, led 19 key foreign aid donors—collectively called Program Aid Partners—who provide financial support for the government budget, to freeze their pledges of financial assistance in a so-called "donor strike" in early 2010. The Mozambican government took strong exception to the G19 over conflict of interest, government corruption, and exclusion of opposition parties.[60] While the G19 later renewed financial aid, it subsequently froze aid for 2011 at 2010 levels. In response, Government Planning and Cooperation Minister Aiuba Cuereneia vowed new legislation regarding corruption, but little appears to have subsequently occurred.[61]

Corruption remains a major issue of debate in the country. Transparency International's 2010 Corruption Perceptions Index, ranked Mozambique 116

out of 178 countries surveyed. The CPI score of 2.7 (where 10 is a clean score), was broadly unchanged from the previous four years despite previous government pledges to address corruption.[62] Effective legislative and administrative safeguards to prevent, detect, and punish corruption of public officials are weak. A presidential decree that established a government anticorruption initiative was declared unconstitutional by a court.[63]

The General Inspectorate of Finance audits state administrative units. Mozambique's Administrative Tribunal, an independent auditing body that is administratively and financially independent from the executive, examines and certifies the government budget and its management, and is also responsible for examining the legality of state expenditures. One uncertainty is the effective auditing of the new provincial legislatures, which create added challenges to proper auditing and accountability.

The attorney general is tasked with investigating allegations of wrongdoing, including for cases referred to it by the GCCC, but it is not clear how free these bodies are from political influence. There is also legislative oversight, and parliamentarians do inquire as to the status of investigations. A number of cases in which allegations of corruption of officials at the local and national level have been prosecuted have received widespread media coverage.[64]

Although Mozambique has whistleblower protection, whistleblowers have not been guaranteed significant protections in practice.[65] The Media Institute of Southern Africa, a regional press freedom organization, stated that the Mozambican government's Central Office for the Fight against Corruption did not have a website at the time when they conducted their research for a 2010 report titled "Government Secrecy in a Media Age." They argued that this made anonymous reporting of instances of corruption by whistleblowers more difficult.[66]

The state provides mechanisms by which victims of corruption may pursue their rights, but these are not always effective. In the case of police corruption, proving a case may be difficult.

Public sector information is published regularly. For example, the annual Government General Accounts Report is published after the assembly approves it, and the budget—which the legislature must approve annually—and budgetary legislation are available on the internet. The Bulletin of the Republic also publishes government information, and the ministry of planning and finance makes available additional reports that relate to budgetary matters. However, the Open Budget Index gives Mozambique a weak score of 28 out of 100, signifying that the government provides minimal budget information to the public.[67]

Citizens have a legal right to government information, but in practice this right has been undermined by a lack of bureaucratic capacity, the cost of disseminating this information to the broader public, and media accusations of government stonewalling. In late 2010 a media-proposed draft Freedom of

Information bill that would foster greater transparency through publication of government documents gained political momentum. As of April 2011, however, the proposal had been languishing for five years because of a lack of parliamentary support, despite vows to debate the measure.[68]

In recent years the country has enjoyed economic growth through so-called megaprojects in extractive industries. Given the importance of this sector to the country—and the great potential for corruption—in 2006 the government committed itself to following the Extractive Industries Transparency Initiative (EITI). After some delays, the EITI secretariat was created in March 2010.[69] Mozambique currently holds candidate status, which provides two years to meet the validation requirements and become EITI compliant.[70]

The state attempts to ensure transparency, open bidding, and effective competition in the awarding of contracts. This includes procurement and bidding rules for the purchases of goods and services, with those above a certain threshold requiring bids. The government also implemented a new software auditing system, which is gradually being extended to more districts and institutions, for more transparent and effective budget execution for the procurement of goods and services.[71] In previous years the IMF had encouraged procurement reforms to improve governance, and the 2010 G19 suspension of aid was in part due to concerns related to procurement. As part of the March 2010 agreement with donors, the government pledged to further improve procurement policies.[72]

RECOMMENDATIONS

- Approve the proposed Freedom of Information law.
- Approve legislation defining libel and slander in terms of "actual malice and knowledge that the information was false" to help protect journalists from libel lawsuits arising from reporting on public officials and to ensure any penalties are civil, not criminal.
- Require all political parties and their leaders to publicly disclose their assets and sources of funds.
- To meet the critical need for qualified judges, increase salaries and judicial training programs and provide office-related materials.
- Require a mandatory and independent investigation of the police in all cases of demonstrations where rubber or live ammunition is used and results in the injury or death of citizens.

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PAKISTAN

CAPITAL: Islamabad
POPULATION: 184.8 million
GNI PER CAPITA (PPP): $2,680

SCORES	2006	2011
ACCOUNTABILITY AND PUBLIC VOICE:	2.26	3.71
CIVIL LIBERTIES:	1.69	2.17
RULE OF LAW:	1.68	2.46
ANTICORRUPTION AND TRANSPARENCY:	2.20	2.29

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Matthew J. Nelson

INTRODUCTION

For the past five years Pakistan has struggled to navigate an uneven transition from military to civilian rule while confronting a wide range of religious and regional insurgents. Since 2008 the elected civilian government led by President Asif Ali Zardari and Prime Minister Yousaf Raza Gilani has been confronted with several challenges: the army's efforts to maintain exclusive control over Pakistan's foreign, defense, and security policies, Islamist militant groups' violent opposition to Pakistani military cooperation with the United States, restive ethnic factions' demands for a larger share of the revenues derived from natural resources, and pressure from a diverse array of mainstream political opponents—above all, from the Pakistan Muslim League–Nawaz (PML-N) and its leader, former prime minister Nawaz Sharif, as well as the Pakistan Tehreek-i-Insaf (PTI; Pakistan Movement for Justice) led by Imran Khan.

Political wrangling in the capital has largely focused on the legal changes introduced by military ruler Pervez Musharraf during his period in power (1999–2008). These changes included a 2002 Legal Framework Order (LFO) that allowed Musharraf to serve simultaneously as chief of the army staff and president as well as various measures associated with his March 2007 decision to

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dismiss Pakistan Supreme Court Chief Justice Iftikhar Muhammad Chaudhry. Both were designed to entrench Musharraf's own power and limit judicial independence. Following Chaudhry's dismissal, however, the political environment became increasingly tumultuous. Civil society activists, thousands of lawyers, and an increasingly energetic press demanded the chief justice's reinstatement, and as the October 2007 presidential election approached, Musharraf was unable to quell massive protests.

Meanwhile, the exiled leaders of Pakistan's most prominent political parties—former prime minister Benazir Bhutto of the Pakistan People's Party (PPP) and Nawaz Sharif of the PML-N—negotiated a joint political platform known as the Charter of Democracy (COD) advocating a return to civilian rule. Bhutto also worked with Musharraf to negotiate a separate arrangement, known as the National Reconciliation Ordinance (NRO), allowing Bhutto and her husband, Asif Ali Zardari, to return to Pakistan. She agreed to support Musharraf if he agreed to serve as a civilian president and eliminate several corruption cases pending against her family and other members of the PPP.

Under these terms, Bhutto returned to Pakistan in the fall of 2007, as did Sharif, despite his lack of any formal legal arrangement with the regime. Musharraf was reelected as president in October and, in keeping with the terms of the NRO, he retired from the military. Shortly after her return but before parliamentary elections scheduled for early 2008 could be held, Bhutto was assassinated. Her son, Bilawal Bhutto, became the new leader of the PPP in conjunction with his father, Zardari, and in February 2008 the PPP went on to win the parliamentary elections at the head of a multiparty coalition that included the PML-N. Musharraf, threatened with impeachment, resigned in August and was replaced by Zardari.[1]

Zardari shared Musharraf's concerns about the chief justice's record of challenging executive power, reportedly fearing that if he were reinstated, Chaudhry might nullify the amnesty from corruption charges granted in the NRO. However, Sharif remained determined to secure Chaudhry's restoration—a goal that formed part of the Charter of Democracy he signed with the PPP. He was keen to use the Supreme Court and a sympathetic chief justice to challenge his key rivals, the army and the PPP. Given Zardari's resistance, however, Sharif withdrew from the coalition government in Islamabad and worked with the lawyers' movement to press for Chaudhry's reinstatement, culminating in March 2009 with threats of an indefinite sit-in in the capital. This prompted broad international concerns about the possibility of urban unrest in a nuclear-armed state faced with an opportunistic Islamist insurgency, and General Ashfaq Pervez Kayani, Musharraf's successor as chief of the army staff, intervened to restore order and ensure that Chaudhry was reinstated.

By 2010 the PPP-led government coalition was greatly weakened. It faced criticism on the constitutionality of the NRO amnesty, accusations of incompetence in its response to that year's devastating floods, intensified religious and

sectarian violence from Islamist militant groups like the Taliban, and an ongoing insurgency in Balochistan. In the fractious political climate that prevailed after Musharraf's 2008 departure, the primary institutions of the state—the government, the opposition, the judiciary, and the military—battled each other for supremacy. This zero-sum pattern of competition greatly hindered the state's ability to coordinate its approach to several dramatic challenges, from natural disasters and economic crises to violent domestic insurgencies and the security threats associated with neighboring Afghanistan.

ACCOUNTABILITY AND PUBLIC VOICE 3.71

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	3.60
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	3.57

Prior to the February 2008 parliamentary elections, the Election Commission of Pakistan (ECP), whose chief was appointed by Musharraf, was accused of failing to investigate numerous complaints detailing the arrest of opposition candidates and the biased allocation of state resources. There were also concerns about impartiality in the election-monitoring role of the judiciary owing to the fact that Musharraf had required all sitting judges to swear an oath of allegiance to the presiding head of state.[2]

Despite significant institutional shortcomings, independent international and domestic election observers concluded that the February 2008 elections largely reflected the popular will, though many insisted, as in earlier elections, that the ECP should be made more transparent.[3] Of the 272 seats in the National Assembly, the lower house of Parliament, that were filled through direct elections, the PPP secured 97, the PML-N secured 71, and the Awami National Party (ANP), a secular Pashtun nationalist party, took 10. These three parties formed the core of a new coalition government. The Quaid-e-Azam faction of the Pakistan Muslim League (PML-Q), commonly associated with the Musharraf regime, secured 42 seats. The Muttahida Qaumi Movement (MQM) won 19 seats, and the Fazlur Rahman faction of the Jamiat-e-Ulema-e-Islam (JUI-F) came away with six. Smaller parties and independents took the remainder. 60 seats were reserved for women, and 10 for non-Muslim minorities.

After the elections, several winners were accused of lacking the required credentials and exceeding campaign finance limits.[4] A rule imposed by Musharraf to exclude the old guard in many constituencies stated that all members of Parliament must hold a university-level degree. Many older politicians produced fraudulent degrees to meet the criteria. Some were later forced to resign due to their false credentials, but the by-elections to fill the resulting vacancies were also plagued by problems. The ECP was accused of failing to investigate

accusations that Prime Minister Gilani used state resources to support his allies.[5] As additional evidence of fraudulent voting emerged throughout the year, there was little or no response from the ECP.[6]

Equal campaigning opportunities were not available to all parties. Some parts of the country, for example, were entirely cut off from party-based campaigning owing to the fact that,the 1962 Political Parties Act was not applied in Pakistan's Federally Administered Tribal Areas (FATA).[7]

The February 2008 elections enabled a transfer from military to civilian rule, but the result amounted to a change within the prevailing patronage networks more than a shift from one political ideology to another. Moreover, the policy-making autonomy of the PPP-dominated legislature remained rather severely circumscribed by the military and judiciary. In April 2010, however, both houses of Parliament passed the Constitution Act (18th Amendment) to strengthen the premiership and the legislature while curtailing presidential authority.[8] It rescinded the president's powers to impose provincial states of emergency, unilaterally dissolve the national and provincial legislatures, and appoint the heads of the army and the election commission.

At the provincial level, representatives from Sindh, Balochistan, and the North West Frontier Province (recently renamed Khyber-Pakhtunkhwa) continue to complain that they are marginalized by Pakistan's most powerful and populous province, Punjab, which is home to more than 50 percent of the population. At the local level, ordinary citizens routinely complain that their elected leaders prioritize the interests of politically and bureaucratically well-connected elites over the interests of the public at large. Despite the progress represented by the 2008 elections, the will of the people is often set aside in favor of choices made by a small group of local, provincial, national, and international power brokers.

Under Musharraf, as under previous dictators, local bureaucrats were subject to extensive military oversight. In many cases, military officers were directly appointed to key bureaucratic positions. Since Musharraf's resignation civil servants have been recruited via open, impartial, and competitive examinations, but they remain subject to enormous political pressures. At the district level, for instance, it is not uncommon to encounter reports of politically motivated bureaucratic postings, transfers, promotions, punishments, and dismissals.

In recent years civil society activity has begun to reemerge, attracting a great deal of attention. The number of local, provincial, national, and international nongovernmental organizations (NGOs) has grown substantially, reflecting a wide range of perspectives, from internationally networked feminist organizations to globally linked religious organizations with a more conservative orientation. The Musharraf administration actively sought the assistance of feminist NGOs like the Aurat Foundation and Shirkat Gah to develop more progressive laws, including the 2006 Protection of Women Act, which protected victims of rape from the possibility of a conviction for adultery. Under President Zardari, local religious groups have also intervened to prevent any change in

the country's blasphemy laws amid complaints that these laws are often used to persecute religious minorities or exploited in the context of petty personal disputes.[9]

Local and international NGOs still face many constraints imposed by the government. Under Musharraf, public authorities cracked down on civil society and introduced new methods of official oversight.[10] Under Zardari, NGOs continued to press for changes, arguing, for example, that they should not be subject to complex registration procedures; that, once registered, NGOs should be tax-exempt; and, finally, that foreign donors should be allowed to fund their work without burdensome government oversight.[11]

The press has been especially active in recent years. The media sector is growing, with new private radio and television stations appearing every year. The state, however, continues to own several media outlets, including Pakistan Television (PTV), Radio Pakistan, and the wire service that carries government and international news to local media outlets. The state also maintains a special Office of Inter-Services Public Relations to monitor all military news. As one critic noted, "Pakistan's press enjoys a wide measure of freedom, though unofficial norms backed up by informal pressure [continue to] restrict criticism of the Pakistan Army."[12] The military continues to circumscribe the media's freedoms, shutting down TV broadcasts of news during key events,[13] and, in many cases, leveraging the state's position as the largest single advertiser to reward cooperative outlets.[14]

Beyond traditional media, however, state censorship has also increased on the internet. There have been many efforts to block or take down material on the video-sharing site YouTube that is considered incendiary, destabilizing, or blasphemous. In 2007 the state closed down the website of a mosque accused of disseminating incitements to violence. In 2010, censors banned a page on the social-networking site Facebook that urged people to draw pictures of the prophet Muhammad.[15] Websites are periodically blocked, and some shut down entirely, particularly those with separatist or other sensitive political content. The e-mail accounts of some journalists are reported to be monitored by state authorities.

The state has also been criticized for censoring too little. In particular, the government was admonished for its failure to shut down the Swat-based private radio station of a Taliban-affiliated cleric named Sufi Mohammad, and for declining to respond when various newspaper editorialists endorsed a $5,500 reward for the murder of a Christian woman at the center of a highly publicized blasphemy case.[16] State censorship targeting religious extremism, in other words, has been quite inconsistent.

Violence remains a major threat to the media. In 2006, the Committee to Protect Journalists (CPJ) drew attention to the case of Hayatullah Khan, a journalist said to have been executed by intelligence agents in North Waziristan in late 2005 after contradicting government accounts in his reporting on anti-terrorism efforts.[17] In 2011, a journalist named Saleem Shahzad was allegedly

killed by intelligence agents for investigating links between the military and a range of militant groups. CPJ has consistently ranked Pakistan as one of the most dangerous places in the world for journalists to work.

This pattern of intimidation intensified during the 42-day state of emergency imposed by Musharraf in late 2007 to protect his disputed October reelection. With support from the Pakistan Electronic Media Regulatory Agency (PEMRA) the government pulled several media outlets off the air until they agreed to sign a code of conduct prohibiting "anything which defames or brings into ridicule the Head of Srate" or armed forces as well as "any material . . . prejudicial to the ideology of Pakistan, [its] sovereignty, integrity, or security."[18] In addition, Musharraf briefly withdrew all public funding from two of Pakistan's largest newspapers, *Jang* and *The News*, to punish their parent company for the behavior of one of its television channels, GEO News, which hesitated to sign the new code.

Media advocacy organizations like Intermedia highlighted a brutal toll of violence in 2007, counting 357 journalists arrested, 123 assaulted, and 14 killed.[19] These attacks are often not fully investigated and there is perceived record of impunity for those who perpetrate violence against journalists.

After the PPP took power, it introduced legislation to remove Musharraf's media restrictions. However, the environment for journalists is still dangerous.[20] Conditions vary by province, but some parts of the country, like the FATA, remain unsafe, and journalists there are subject to intimidation from the military, intelligence services, and Islamist militants. While many of the legal protections for media were restored by 2010, journalists were still attacked for their role in exposing the dubious degrees held by individual members of Parliament. Indeed, despite such reprisals , private media since 2008 have continued to criticize the government very strongly—so much so that many have begun to argue that unprofessional and unethical journalism could destabilize the country's fragile civilian regime.[21]

CIVIL LIBERTIES 2.17

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	1.50
GENDER EQUITY	2.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	1.00
FREEDOM OF CONSCIENCE AND BELIEF	2.33
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.00

Efforts to protect civil liberties made some progress following the transition from military to civilian rule. Given persistent efforts by various entities to monopolize the political discourse, however, this progress has been limited. In recent years the level of violence perpetrated by state and nonstate actors has increased, particularly along the border with Afghanistan. Concerns have

also been raised about extrajudicial executions perpetrated by the military in Khyber-Pakhtunkhwa and Balochistan, as well as attacks carried out by the Taliban. Separately, U.S. forces have reportedly made extensive use of drone aircraft to kill suspected militants in Khyber-Pakhtunkhwa, Balochistan, and FATA, and the procedures whereby Pakistani officials have authorized these attacks remain unclear. These strikes have prompted numerous questions about the use of extrajudicial killings in areas not officially identified as war zones.[22]

The role played by state security personnel in the assassination of public officials has also raised concerns. For example, a police bodyguard admitted to murdering Punjab governor Salman Taseer in early 2011, and an international investigation found, in April 2010, that the Pakistani authorities had obstructed a proper inquiry into the 2007 assassination of former prime minister Benazir Bhutto. Many arrests were made following attempted assassinations of Prime Minister Gilani in September 2008 and Religious Affairs Minister Hamid Saeed Kazmi in September 2009, but there have been no convictions to date. In most cases law enforcement agencies have failed to respond effectively to high-profile attacks on public officials.

Throughout the country there have been problems involving politically motivated violence. In Karachi, the state has failed to prevent hundreds of murders perpetrated by rival political parties. In Balochistan, the state has been implicated in the killing of senior political leaders like Nawab Akbar Khan Bugti, who was slain in a 2006 confrontation with the military.[23] Similarly, in parts of the Punjab, brutal cases of vigilante justice, often with alleged police complicity or indifference, have attracted special attention. During protests led by thousands of lawyers opposed to the dismissal of Chief Justice Chaudhry in 2007, and again in 2009, the demonstrators were harassed rather than provided with police protection.

Political opposition is both widespread and risky. Dissidents, including those who advocate greater regional autonomy, are subject to enforced disappearance, among other hazards. The state has also resisted full compliance with Chief Justice Chaudhry's orders to disclose the location of several hundred citizens alleged to have disappeared in Balochistan.[24]

In 2010, more than 50 percent of the prison population was said to be held in pretrial detention, often for periods longer than any sentence they might have received if convicted.[25] Additional reports describe cases of preventive detention for up to six months—or longer for those with alleged links to terrorist organizations—notwithstanding laws setting a limit of 90 days, or 180 days with court approval.

Prison conditions are appalling. Many prisons have been associated with gross human rights violations and feature chronic malnutrition, extremely tight shackles leading to gangrene and amputation, endemic physical abuse (including rape), and the routine use of torture.[26] In 2006, Pakistan's Parliamentary Commission for Human Rights (PCHR) visited Rawalpindi's Central Jail and found that "most prisoners showed signs of physical abuse," adding that

"torture victims were rarely given medical treatment" and, apart from the cells allocated to very wealthy prisoners, overcrowding was a major problem.[27] There are a number of NGOs dedicated to supporting victims of human rights abuses by the state, the most prominent being the Human Rights Commission of Pakistan (HRCP). The courts remain less effective.

In addition to this pattern of abuse perpetrated by the state, there are concerns about the state's ongoing failure to protect citizens from violence perpetrated by nonstate actors, including human traffickers, criminal gangs, and militant groups. The 2002 Prevention and Control of Human Trafficking Ordinance, which aims to prohibit all forms of human trafficking, has focused on international sex trafficking and the trafficking of young boys to work as camel jockeys in the United Arab Emirates and Qatar. The state also uses its 1979 Emigration Ordinance to address the problem of internal trafficking, and Pakistan's Federal Investigation Agency (FIA) maintains a special antitrafficking unit. But, in 2006, several FIA officials were punished for facilitating trafficking.[28] The most prominent form of violence in recent years has involved a rapidly expanding series of attacks by various terrorist organizations, from sectarian Islamists to affiliates of the Pakistani Taliban. The number of Taliban-related attacks increased dramatically under Musharraf, with one report citing more than 1,400 incidents that left more than 3,000 people dead in 2007 alone.[29] Since then, the number of attacks has continued to mount, with several deadly strikes every month. The targets have included Sufi Muslim shrines, international organizations, police stations, markets, and military facilities.

Several laws in Pakistan permit explicit forms of gender discrimination. The notorious Hudood Ordinances prescribe Qur'anic punishments for certain crimes, and Islamic laws concerning marriage, divorce, and inheritance are also recognized. The World Economic Forum ranked Pakistan 126 out of 128 in 2008, and 133 out of 134 in both 2009 and 2010, in its Global Gender Gap assessment of female economic participation.[30] Women continue to face enormous economic barriers, despite constitutional protection against gender discrimination in public-sector employment. The average wage for men is roughly 3.5 times higher than the average wage for women.[31] In 2009, the National Assembly and the Senate took steps to address this situation, introducing a 10 percent quota for women's employment in all public-sector entities and passing a law to prevent gender-based harassment in the workplace, including private homes employing domestic servants.[32]

In recent years the state has consistently failed to take proactive measures to combat endemic forms of gender-based discrimination. Exceptions include an effort to amend existing laws concerning rape to ensure that victims are not charged with adultery or fornication, as well as parliamentary declarations aimed at reducing the prevalence of forced marriage.[33] Such rules, however, have not been strongly enforced—a problem that has also thwarted attempts to reduce the incidence of honor killings. Every year human rights organizations

document hundreds of cases of women being killed by family members for perceived moral or sexual transgressions.[34]

The state has taken incremental steps to address the needs of ethnic minorities. In April 2010 the North West Frontier Province was renamed Khyber-Pakhtunkhwa in an effort to recognize the heritage of the province's 75 percent Pakhtun majority. However, following the change, violent clashes erupted between Pakhtuns and the province's Hazara minority. Similarly patterns have emerged in Sindh and Balochistan.[35] The National Finance Commission (NFC) sought to redress ethnic grievances at the provincial level by ensuring that the distribution of federal resources would not be defined by population figures alone, but also by different degrees of economic development.

In recent years small efforts have also been made to recognize the rights of sexual minorities. For example, a 2009 Supreme Court decision recognized the basic human rights of transgender citizens known as *hijras*. In a more general sense, however, sexual minorities suffer from serious and often violent forms of discrimination, not only informally, but also formally through colonial-era laws that criminalize consensual adult homosexual activity. The disabled, like women, have a number of very poorly enforced privileges, including a 2 percent quota in federal and provincial government employment.[36]

Pakistan is an Islamic state, but by law citizens of many different faiths are free to worship as they please. The population is made up of Sunni Muslims (70–80 percent), Shiite Muslims (15–25 percent), Hindus (1–2 percent), and Christians (1–2 percent). Historically, the country's various religious communities have coexisted in relative peace, but there are important exceptions to this trend. The first exception is related to a heterodox Muslim sect known as the Ahmadis, who are forbidden under a special 1974 constitutional amendment from identifying as Muslims. The second concerns the legal status of those who convert from Islam to another system of belief. Under existing laws, "apostates" are threatened with death.

As an Islamic state, the government is deeply involved in religious affairs, including the appointment of those who preside over public religious institutions. In recent years, however, the government has also faced considerable pressure—particularly but not exclusively from the United States—to regulate its private religious institutions more aggressively. Under Musharraf some steps were taken to regulate the work of private religious schools (madrasas). For the most part, however, these efforts were ineffective. The state has largely opted to keep its distance from private religious organizations, using hands-off incentives to advance its domestic and foreign policy objectives. With the exception of the Ahmadis, the state has not sought to restrict any specific form of religious practice, but it has failed to protect religious minorities when they are threatened or abused by nonstate actors.[37]

The constitution guarantees a general right of assembly. However, the Ahmadis continue to face restrictions on their right to gather for religious

purposes. Freedom of assembly has also been infringed for non-Ahmadi citizens in extraordinary circumstances. The state banned public assemblies in an effort to prevent mass protests, for instance, during the state of emergency imposed by Musharraf in November 2007,[38] after the assassination of Benazir Bhutto in December 2007,[39] and when lawyers pressed for the restoration of Chief Justice Chaudhry in March 2009,[40] Since March 2009, however, freedom of assembly has not been systematically restricted—not for political parties, nor for those protesting Pakistan's relationship with the United States, nor for civic and business associations.[41]

In principle, the constitution guarantees a basic right to unionize. In practice, this right has been restricted for various groups, including agricultural workers—who account for nearly 50 percent of the workforce—and those employed in the informal industrial sector.[42] Union organization has also been hampered by legal requirements stipulating that 25 percent of those employed within a given establishment must agree to unionize before the group can be registered. Even the union rights granted under the law have not been protected in practice.[43]

RULE OF LAW	**2.46**
INDEPENDENT JUDICIARY	3.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	1.80
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	1.25
PROTECTION OF PROPERTY RIGHTS	3.00

The rule of law was crippled by the Musharraf regime, and while it has begun to recover, it remains very weak. Under Musharraf, and especially during the last two years of his rule, the judiciary was severely constrained. Initially, the courts were called upon to endorse the terms of military rule under a familiar legal justification known as "the doctrine of necessity"; for example, in 2002, a Provisional Constitutional Order (PCO) required Supreme Court judges and provincial High Court judges to swear an oath of allegiance to Musharraf as the presiding head of state. The dismissal of Chief Justice Chaudhry in March 2007, however, set in motion a series of events that led to the collapse of Musharraf's regime along with a series of efforts to restore the rule of law.

Chief Justice Chaudhry was removed after he indicated his willingness to hear a set of cases that challenged the constitutionality of the 2002 LFO and the military's conduct more generally; these cases included a series of investigations into the role of Pakistan's intelligence agencies in the enforced disappearance of several hundred activists as well as the army's role in approving a U.S. campaign of drone aircraft strikes in Khyber-Pakhtunkhwa and FATA.[44] The lawyers' movement that emerged to demand Chaudhry's reinstatement reflected how far the judiciary had moved in the direction of independence, and again the

courts sought to assert their autonomy after the military regime was replaced: within just a few months of Chaudhry's 2009 reinstatement the Supreme Court declared that the October 2007 NRO was legally null and void, challenging the legal protections enjoyed by Zardari.

Legislative and judicial elites in Pakistan continue to debate the most appropriate degree of judicial independence. Chaudhry's tenure, for example, fed concerns that the Supreme Court was increasingly acting without regard for the primacy of the National Assembly in Pakistan's constitutional system. In fact questions about who should be responsible for appointing and dismissing judges were at the center of a particularly enduring contest between the chief justice and the National Assembly. Those who, like Zardari, found themselves threatened by the restoration of corruption cases following the nullification of the NRO tended to favor the legislature. Under a constitutional compromise reached in 2010, however, a judicial commission chaired by the chief justice was charged with identifying nominees for judicial positions. These selections must pass through a new parliamentary committee, meeting in camera, before being endorsed and formally appointed by the prime minister. If a nominee is rejected, the reasons behind the decision are subject to review by the courts.

The ability of each court to enforce its decisions, however, remained weak even as the judiciary began to carve out a greater degree of independence at the highest levels of the state. In 2007, for instance, Chief Justice Chaudhry struggled to compel the national security establishment to disclose the location of citizens who had disappeared, and in 2009 he was unable to enforce an order requiring the government to notify authorities in Switzerland that the amnesty initially granted to Zardari had been annulled. Arguing that incumbent presidents were constitutionally immune from prosecution, the PPP-led government failed to contact the Swiss, leading many to argue that the PPP was acting in contempt of court.[45]

Judicial and law enforcement agencies are often beholden to political, bureaucratic, and military elites. Local judges and police officers routinely complain that they are powerless to resist the influence of local notables with close ties to more senior figures. In many cases, they feel compelled to take bribes, as their basic remuneration package is not sufficient to provide adequate housing for their families. The weakness of most judges also allows the legal system to be exploited for extralegal purposes.[46] Many prisoners are held on trumped-up charges as a form of economic or political leverage until a compromise can be reached outside of the courts. Citizens reportedly bribe police officers to detain others in the context of personal disputes, and some officers arrest individuals on false charges to extort bribes for their release.[47]

One of the clearest challenges to the rule of law in Pakistan is reflected in the increasing number of blasphemy cases. Any action that may upset religious feelings, in particular any offense to the prophet Muhammad or his family, can be characterized as blasphemy. In many cases, however, judges involved in such cases fear for their safety in the face of credible threats issued by local notables

and religious leaders. They often find it impossible to resist convictions based on flimsy evidence and the imposition of extremely harsh sentences including the death penalty. It is not uncommon for those convicted of blasphemy in the lower courts to spend several years on death row, after which they are almost invariably released by the higher courts on appeal.[48] No one has yet been executed for blasphemy, although some of those accused or convicted have been killed by vigilantes in local jails, courts, and communities. The practices surrounding blasphemy laws amount to a clear crisis for the Pakistani legal system, in which the interconnectedness of local courts, elites, and religious organizations comes at the expense of fair and impartial justice.

By law, prisoners are considered innocent until proven guilty, but this basic principle has not been guaranteed in practice. The most familiar exceptions have involved those tried by the National Accountability Bureau (NAB), where a presumption of guilt prevails,[49] as well as female victims of rape, who, until the promulgation of the Protection of Women Act in 2006, were often considered guilty of adultery or fornication on the basis of medical evidence indicating sex outside of marriage. Human rights organizations noted that some 80 percent of all female prisoners at the time of the law's passage were awaiting trial for adultery-related offenses.[50]

State officials and others have also raised concerns about due process. Officials have complained of unexplained disappearances and the transfer of detainees via extraordinary rendition to places like the U.S. military base in Guantanamo Bay, Cuba. In addition, the practice of false "encounter" killings, in which accused criminals are killed extrajudicially in staged gun battles, remains all too common.[51] Informal justice mechanisms, including private jails, are also maintained outside of the judicial system. For example, in the summer of 2008, two senators defended the work of an informal dispute-resolution forum in Balochistan after it sentenced five women to death without any resort to the formal legal system whatsoever.[52]

By and large, litigants have access to independent legal counsel, though there is some regional variation. In FATA, for instance, tribal councils (*jirgas*) must be convened by government-appointed political agents without the presence of lawyers, and of course those detained in secret facilities are denied access to legal counsel. Even open courts with defendants represented by the most powerful lawyers in the country often struggle to ensure the procedures they encounter are fair.

Members of the parliamentary opposition have argued that ongoing public-accountability campaigns are but a vehicle for politically motivated witch hunts. This accusation received some support when the list of those prosecuted by the National Accountability Bureau (NAB) under Musharraf was made available in 2006, showing that opposition politicians were more likely to be prosecuted.[53] Former NAB chief Shahid Aziz, a retired general, explained in an interview with *Dawn* that he was often pressured to close cases against pro-Musharraf politicians and businessmen. He was also instructed to abandon cases against

top opposition figures like Benazir Bhutto because influential diplomats from the United States and the United Kingdom were working on a political reconciliation between Bhutto and Musharraf.[54] This pattern of politically motivated legal proceedings also extended to prosecutions for tax evasion, which is reportedly rampant among the country's elite.[55]

Before 2008, there was no effective civilian control over the military. Even after Musharraf's resignation most state policies pertaining to defense and security were still tightly controlled by the army. When Prime Minister Gilani ordered the head of Pakistan's Directorate for Inter-Services Intelligence (ISI) to meet with his Indian counterparts after the terrorist attack on Mumbai in November 2008, his order was ignored. Similarly, when Gilani expressed his support for a generous aid package from the United States that called for greater civilian control over the military, the military launched a massive public relations campaign to suggest that the civilian government sought to compromise the country's sovereignty.[56] The offending clauses in the bilateral aid agreement were later diluted with the help of an explanatory memorandum.

The Pakistan Army still functions almost as a parallel regime, following a parallel system of rules.[57] Musharraf has not been tried for any of the crimes he may have committed during his time in power. Instead he has simply gone into exile. Efforts to prosecute him are seen as a threat to the military as a whole, and given the enduring role of senior officers in the political life of Pakistan, any threat to the military has so far been deemed politically inadvisable. During his tenure, Musharraf sought to shift local control over district-level police officers from unelected bureaucrats toward elected representatives, particularly in the context of a large-scale administrative restructuring program known as the Local Government Plan (LGP). This push for electoral oversight, however, was blamed for exacerbating the politicization of the police. After the return to civilian rule in February 2008, the LGP was scrapped.[58]

The state is broadly committed to the enforcement of civil contracts and the protection of property rights; however, at the local level, enduring patterns of debt servitude and bonded labor leave some citizens unable to secure their property at all. In addition, many property documents are fraudulent: for example, landowners routinely conspire with bureaucrats to misrepresent the size of their landholdings.[59]

Land-seizure mafias known as *qabza* groups also operate on the margins of the federal and provincial bureaucracy to deprive private citizens of their land. These organizations bribe officials responsible for maintaining land records to create new documents that can withstand a common sequence of litigation in the courts, with some of the associated financial gains passing to locally elected representatives who agree to relax their oversight of the bureaucracy. In due course, the courts simply issue a judgment based on the documentary record before them to provide a measure of formal legal cover for the fraud.[60]

In recent years, some effort has been made to strengthen the judiciary through training focused on reducing delays, judicial administration, and

gender issues, in particular through a legal reform program funded by the Asian Development Bank from 2001 to 2009. Even despite such efforts, however, the rule of law remains deeply contested from many different angles.

ANTICORRUPTION AND TRANSPARENCY 2.29

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.40
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	1.67
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.25
GOVERNMENTAL TRANSPARENCY	2.83

Anticorruption efforts in Pakistan have been highly politicized. State agencies tasked with investigating corruption have been consistently pressured into complying with regime directives or staffed with partisan officials. Under Musharraf the ostensibly autonomous NAB was widely criticized for its blatant partisanship.[61] Since the shift to civilian rule, elected officials within the PPP have hesitated to reinforce existing anticorruption efforts because they could face charges themselves, particularly after the elimination of the amnesty included in the NRO.

Public concerns about lack of accountability extend to all levels of the government, from suspicions of large-scale graft among top leaders to petty corruption by police and local bureaucrats. Local political elites also enjoy privileged access to specific forms of impunity, and lawbreakers in general are often able to bribe authorities to avoid punishment.

Aside from the military the state itself is not deeply involved in proactively managing the economy. Since a reversal of efforts to nationalize industrial production in the 1970s, the number of state-owned enterprises has remained small—by most accounts fewer than 10.[62] However, the 2006 sale of the state-owned Pakistan Steel Mills drew attention to corruption within the privatization process. Almost immediately after the move to privatize the mills, allegations of corruption began to swirl around Musharraf and his prime minister, Shaukat Aziz, who were accused of drastically undervaluing the assets for sale and granting tremendous tax breaks to the buyer.[63] The Supreme Court later struck down the sale.

The growing relationship between public-sector agencies and local organized criminal groups is a serious problem. In addition to collaboration with land-seizure groups, public agencies are often enlisted in the illegal trade of natural resources. A number of officials in North West Frontier Province were arrested in 2007 for colluding with criminals engaged in harvesting timber from protected forests.[64]

The most prevalent form of corruption, however, centers on tax evasion. This problem has increased since 2008, primarily due to the lack of up-to-date land revenue surveys and the fact that so-called agricultural income is scarcely taxed at all. The agricultural law has led many urban residents, including

industrialists, bankers, and bureaucrats, to secure small plots of land and report their business income as agricultural income.[65] In 1997 the World Bank compelled the Punjab provincial government to introduce a modest agricultural income tax as a condition for a major loan. But, according to one report, very few landowners actually paid.[66] The situation has only worsened, and by 2010 even U.S. Secretary of State Hillary Clinton contended that "Pakistan cannot have a tax rate of 9 percent of [gross domestic product] when landowners and all of the other elites do not pay anything or pay so little it's laughable."[67]

In addition to this international focus, internal agencies have also reported on the prevalence of tax fraud. In 2010, the auditor general assigned blame to the Federal Board of Revenue (FBR) and its perceived inability to generate accurate data. The auditor's office found that the FBR aided tax evasion by underestimating tax liabilities and accepting false claims of losses. In Karachi alone 28 individuals were reported to have evaded more than $199 million in taxes this way—a loss to the treasury that exceeded the country's total education budget for the year.[68] In 2008, the *Nation* reported that "tax evasion has been estimated at [$8.1 billion], which was almost half the total collected and roughly equivalent to the country's annual deficit."[69] By 2010, this total had risen to nearly $9.5 billion, or $1.2 billion more than the projected deficit.[70] Tax evasion continues to plague Pakistan and stands as a glaring example of the government's inability to enforce the law consistently.

In an effort to stem corruption by elected officials members of Parliament are legally required declare their assets to the ECP each year. This process is relatively transparent, but in many cases official declarations lack credibility. In 2010, several politicians were taken to task for the content of their declarations. They included former prime minister Sharif, who reported that he paid no income tax at all for the three years prior to 2007, and Prime Minister Gilani, who noted that he paid just $1,000 in the 2008–09 fiscal year. Neither case was subjected to further scrutiny.[71]

In 2010 the Pakistan Institute for Legislative Development and Transparency (PILDAT), an NGO, prepared a report entitled *How Rich Are Our MNAs?* It revealed that the average net worth of a Pakistani lawmaker was roughly $900,000, leading others to report that this figure had "nearly doubled from [that] . . . of the previous parliament."[72] Several politicians complained that the reporting was biased, demanding to know why PILDAT did not publish similar details regarding the military, the judiciary, and the bureaucracy. The institute simply noted that the data regarding these other groups were not yet subject to legally mandatory forms of disclosure.[73] PILDAT's reports, however, show a shift toward a more open dialogue on anticorruption and transparency efforts.

In general, the state has done a poor job of enforcing a clear separation between public and private interests. Incumbent officials, for instance, have often used their influence to stifle investigations of corruption. The most egregious cases emerged in the wake of two major natural disasters: a devastating earthquake in 2005 and record-breaking floods in 2010. In both cases,

important questions were raised about the extent to which public-sector relief funds were diverted to serve the private interests of lawmakers living in the affected areas. Several allegations of corruption involving the Earthquake Reconstruction and Rehabilitation Authority (ERRA) were referred to a special standing committee within the National Assembly for review.[74] During the 2010 floods, after noting that many corruption-wary citizens had decided to bypass the prime minister's flood relief fund in favor of local religious organizations, even the U.S. Agency for International Development (USAID) commissioned Transparency International (TI) to follow and report on the fate of its bilateral flood aid.[75]

Pakistan's ranking in TI's annual Corruption Perceptions Index has not improved since 2007. In 2008, just one year the country ratified the UN Convention against Corruption (UNCAC), Pakistan was ranked 134 out of 180. It fell to 139 out of 180 in 2009, and 143 out of 178 in the 2010 index.[76]

The primary institution responsible for addressing corruption, the National Accountability Bureau, remains heavily politicized, but Pakistan's auditor general has recently moved to fill the gap. In 2010 the auditor unearthed more than $3.8 billion in financial irregularities among federal ministries and departments, particularly in the FBR.[77] Unfortunately, the auditor's annual report is often buried in the Public Accounts Committee of the National Assembly and forgotten, ensuring that actual prosecutions and convictions, even at the lowest levels, are rare.

Private media outlets, however, are increasingly emerging as effective government watchdogs—particularly at the district and subdistrict levels. However, journalists and activists who attempt to expose high-level cases of corruption do so at great risk. In 2010 the leader of TI-Pakistan, Syed Adil Gilani, received numerous death threats for his efforts to uncover cases of malfeasance, including $2 billion worth of bidding irregularities at local power plants and a scandal that disgraced the chairman of a steel mill.[78] Officials also blamed TI for "undermining the country's sovereignty" by giving Pakistan a low score in the Corruption Perceptions Index. Lawmakers in Sindh went so far as to pass a resolution calling TI's index "a conspiracy against the country."[79] While media outlets are making some progress in combating corruption, in other words, they are limited by a hostile state bureaucracy.

There are few official avenues through which citizens can complain of graft. Since 1983 there has been a federal ombudsman tasked with investigating complaints of corruption in education, employment, and health services, and today, complaints can be lodged online or via a toll-free telephone hotline.[80] Claims focused on other parts of the state, however, are less welcome, and those relating to defense remain completely off limits. Official means of redress remain highly underdeveloped, although they have been used successfully in a few cases. Most complaints do receive a response within a year, but again, the office of the ombudsman has limited enforcement power. If the ombudsman concludes that a department has failed to implement his orders, he can only refer the matter

to the president, at which point political considerations often trump anticorruption goals.[81]

In 2002 Pakistan became the first country in South Asia to supplement existing constitutional provisions on freedom of information—for example, Article 19A within the 18th Amendment—with an explicit Freedom of Information (FOI) Ordinance. The ordinance was introduced at the behest of the Asian Development Bank as a condition for a loan package, but it remains largely perfunctory. In particular, it excludes provincial records as well as anything related to defense. In fact the ordinance is rarely used by citizens to obtain access to state-based information.[82]

The federal budget-making process is largely transparent, allowing for extensive scrutiny by the legislature. However, the discretionary portion of the budget is very small, with basic debt servicing and classified allocations for the military accounting for nearly 50 percent of the budget. Civil society organizations like PILDAT have led recent efforts to render the budget-making process more accessible, in many cases by sponsoring tailored briefings for lawmakers from each major party.[83]

Unlike discretionary budget allocations, however, records of actual public-sector expenditures remain hidden. The bidding processes for government contracts are also a matter of great public concern, particularly in the wake of reports detailing bidding irregularities at Pakistani power plants and devastating media interviews that exposed enormous improprieties, such as a 2008 interview conducted by GEO News with former Pakistan Steel Mills chairman Abdul Qayyum, a retired general.[84] The most prominent case of irregular government contracting, however, grew out of a series of arms deals with France during the 1990s. After these deals—along with their commissions and alleged kickbacks—were cancelled, eleven French engineers were killed in an attack on their hotel in Karachi. The case is still under investigation in France.

The challenges that Pakistan faces are characteristic of highly centralized states suffering from extremely low levels of public legitimacy. State power is both socially shallow and closely tied to the use of violence. The state is ubiquitous, but its writ is constantly defied by elites. The past five years have featured high levels of political instability, as competing military and civilian factions have struggled to capture the state. Future years should be used to establish a wider distribution of political power coupled with a general commitment to freedom and the principles of civilian rule.

RECOMMENDATIONS

- Complete an up-to-date voter registration list and strengthen both the independence and transparency of the ECP.
- Remove exclusionary requirements for elected representatives (for example, the rule stipulating that members of Parliament must hold a university-level degree).

- Extend the application of the Political Parties Act to FATA.
- Simplify the registration process for NGOs and allow registered NGOs to enjoy tax-exempt status in exchange for rigorous auditing procedures.
- Vigorously prosecute cases involving the physical abuse of journalists.
- Take steps to address enforced disappearances and cases of arbitrary detention.
- Radically improve existing prison conditions.
- Eliminate bonded labor.
- Deploy every available economic and political resource to reduce the violence perpetrated by militant groups affiliated with the Taliban.
- Remove the legal restrictions that are used to target religious and sexual minorities.
- Promote civilian control over foreign policy.
- Create a balanced committee of military and civilian representatives to oversee existing intelligence services.
- Tie generous salary increases for district-level judges to rigorous performance incentives established by the Supreme Court.
- Revise existing blasphemy laws to make the registration of new cases more difficult and punish those who lodge allegations that are fraudulent.
- Computerize existing land records after negotiating redeployment or severance contracts with local recordkeepers.
- Strengthen the revenue base of the country by restoring the accuracy of existing land-revenue records and taxing agricultural income.
- Enhance public scrutiny of the FBR.
- Extend asset-declaration requirements to military officers, senior bureaucrats, and superior court judges.
- Reinforce the strength of the auditor general's office.
- Improve access to information through a strengthening of the Freedom of Information Act and publish federal and provincial government expenditures online.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

[1] In Pakistan, presidents are elected indirectly by an electoral college composed of members of the Senate, the National Assembly, and the provincial assemblies.

[2] Human Rights Watch (HRW) reported "extensive government transfers and postings of judges" in violation of "legal provisions banning postings and transfers after the announcement of the election schedule." The Election Commission, however, insisted that it was powerless to act if local judges failed to pass along complaints. See HRW, "Pakistan: Election Commission Not Impartial," news release, February 12, 2008, http://www.hrw.org/news/2008/02/10/pakistan-election-commission-not-impartial; European Union Election Observation Mission (Pakistan), *Preliminary Statement: Pakistan Holds Competitive Elections Despite Significant Problems with Election Framework and Environment* (Islamabad: European Union, February 20, 2008), 5, http://www.eueompakistan.org/PDF/preliminary/Preliminary%20Statement%20Pakistan%2020%20February2.pdf.

[3] See Democracy International, *U.S. Election Observation Mission to Pakistan: General Elections 2008* (Bethesda, MD: Democracy International, May 2008), 2, http://www.democracyinternational.com/sites/default/files/U.S.%20Election%20Observation%20Mission%20to%20Pakistan%20General%20Elections%202008%20Final%20Report.pdf; European Union Election Observation Mission (Pakistan), *Preliminary Statement*, 5; HRW, "Pakistan: Election Commission Not Impartial."

[4] European Union Election Observation Mission (Pakistan), *Preliminary Statement*, 7; Democracy International, *U.S. Election Observation Mission to Pakistan*, 5.

[5] Pakistan Institute of Legislative Development and Transparency (PILDAT), "Prime Minister's Continuing Election Rallies and Election Commission's Inaction Are Severely Damaging the Credibility of Democratic Process," news release, August 24, 2010, http://www.pildat. org/eventsdel.asp?detid=397.

[6] "Sporadic Violence, Heavy Police Presence, Incidents of Fraudulent Voting Mark Vehari By-Election," Free and Fair Election Network (FAFEN), May 15, 2010, http://www.fafen.org/site/v4/content.php?id=575; Amir Wasim, "Observers Denied Entry into Polling Stations," *Dawn*, August 27, 2010; "FAFEN Sees Irregularities in NA-184 By-Polls," *Dawn*, September 6, 2010; "Low Turnout, Heavy Police Presence Mark NA-178 By-Polls," *Pakistan Observer*, November 14, 2010.

[7] In practice, religious parties like the Jama'at-e-Islami and the Jamiat-e-Ulema-e-Islam are able to mobilize voters in the FATA without significant restrictions. See Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2008 Country Reports on Human Rights Practices* (Washington, DC: U.S. Department of State, February 2009), http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119139.htm. Representatives elected from the FATA—ostensibly on a nonpartisan basis—sit in the National Assembly, but decisions regarding governance of the tribal areas are made by the president rather than the National Assembly.

[8] "*Reforming Pakistan's Electoral System*" Crisis Group Asia Report, March 30, 2011. No. 203, 13.

[9] See Prud'homme, Jo-Anne, "Pakistan" in *Policing Belief: The Impact of Blasphemy Laws on Human Rights* (Lanham, MD: Freedom House 2010).

[10] Ibid.

[11] Many nongovernmental organizations (NGOs) complain that there are conflicting registration requirements under different laws, such as the Societies Registration Act of 1860, the Social Welfare Agencies Registration and Control Ordinance of 1961, the Cooperative Societies Act of 1925, the Charitable Endowments Act of 1890, the Companies Ordinance of 1984, and the Trust Act of 1882. Some effort has been made to replace these laws with a common set of rules under the Social Welfare Agencies Control and Regulation Ordinance of 1994, the Social Welfare Agencies Registration and Regulation Act of 1996, and the Foreign Assistance Control Act of 1998.

[12] Hijab Shah, "The Inside Pages: An Analysis of the Pakistani Press," *South Asia Monitor* (Washington, DC: Center for Strategic and International Studies, December 9, 2010), 1, 3, http://csis.org/publication/inside-pages-analysis-pakistani-press.

[13] See "Pakistan" in *Freedom of the Press 2010* (Lanham, MD: Freedom House 2010).

[14] Interview with journalist via e-mail, January 8, 2011.

[15] Some websites run by Baloch nationalists, such as Walochwama, were also banned. See Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2010 Country Reports on Human Rights Practices.*

[16] Shah, "The Inside Pages," 2.

[17] Bob Dietz, "The Last Story: Hayatullah Khan," Committee to Protect Journalists, September 20, 2006, http://cpj.org/reports/2006/09/khan.php.

18 Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2007 Country Reports on Human Rights Practices* (Washington, DC: U.S. Department of State, March 2008), http://www.state.gov/g/drl/rls/hrrpt/2007/100619.htm; Adnan Rehmat, *Murder and Mayhem: The Worst Year Ever for Pakistani Media* (Islamabad: Internews, May 2008), 4–5, http://www.internews.org/pubs/pakistan/StateofMediainPakistan-AnnualReport2007-08.pdf.

19 Rehmat, *Murder and Mayhem*, 10.

20 Democracy International, *U.S. Election Observation Mission to Pakistan*, 37; Salman Masood, "Pakistan Government Proposes Lifting Media Restrictions," *New York Times*, April 12, 2008; Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2010 Country Reports on Human Rights Practices*.

21 Shah, "The Inside Pages," 2; Rehmat, *Murder and Mayhem*, 9–10. Between 2005 and 2009, the Human Rights Commission of Pakistan (HRCP) documented 107 cases in which journalists were imprisoned for libel without any trial (reported to author via e-mail, January 20, 2011).

22 According to one report, the military killed 1,150 civilians in the FATA and North West Frontier Province during 2009. Militant attacks killed another 825. Bureau of Democracy, Human Rights, and Labor, "Pakistan," *2009 Country Reports on Human Rights Practices* (Washington, DC: U.S. Department of State, March 2010), http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136092.htm.

23 Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2006 Country Reports on Human Rights Practices* (Washington, DC: U.S. Department of State, March 2007), http://www.state.gov/g/drl/rls/hrrpt/2006/78874.htm.

24 In December 2009 the Home Department in Balochistan presented a list of more than 990 "missing persons." See Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2009 Country Reports on Human Rights Practices*.

25 Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2010 Country Reports on Human Rights Practices*. Pakistan's National Accountability Bureau (NAB) may hold suspects indefinitely so long as judicial concurrence is granted every 15 days. Many of the children held in prison are pretrial detainees. Most are acquitted after one to three years owing to a lack of evidence. Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2006 Country Reports on Human Rights Practices*.

26 Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2006 Country Reports on Human Rights Practices*. In 2009 an NGO cited 2,300 cases of police torture, most of them in Punjab. Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2009 Country Reports on Human Rights Practices*.

27 "Torture Becoming Routine at Adiala Jail," *Daily Times*, May 7, 2006; "Senate Committee on Women for Improving Jail Conditions," *Nation*, July 3, 2008. Rawalpindi's Central Jail was built to house roughly 2,000 prisoners, but in 2008 it held nearly 6,000.

28 In 2009, authorities registered more than 4,500 cases of human smuggling. Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2009 Country Reports on Human Rights Practices*.

29 Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2007 Country Reports on Human Rights Practices*.

30 "Pakistan Lags Behind in Skilled Women Labour Force," *Nation*, May 1, 2009; Adam B. Ellick, "Necessity Pushes Pakistani Women into Jobs and Peril," *New York Times*, December 25, 2010.

31 "Pakistan Lags Behind in Skilled Women Labour Force," *Nation*.

[32] "NA Passes Bill to Protect Women at Workplace," *Nation*, November 5, 2009; "Government Set to Empower Women," *Nation*, March 9, 2010; Ellick, "Necessity Pushes Pakistani Women into Jobs and Peril."

[33] Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2006 Country Reports on Human Rights Practices.*

[34] Human Rights Commission of Pakistan, "Violence against women rose 13pc in 2009." February 2, 2010, http://www.hrcp-web.org/shownews.asp?id=41.

[35] Farhan Hanif Siddiqi, *The State and Politics of Ethnicity in Post-1971 Pakistan: An Analysis of the Baloch, Sindhi, and Mohajir Ethnic Movements* (unpublished doctoral thesis, University of Karachi).

[36] In lieu of this public-sector quota for the disabled, private employers can make a donation to the treasury, but this provision also remains poorly enforced. Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2006 Country Reports on Human Rights Practices*; I. A. Rehman, "Rights of the Disabled," *Dawn*, May 20, 2010; "Disabled People Demand Increase in Job Quota," *Nation*, January 28, 2009; "Plight of the Disabled," *Dawn*, July 9, 2009.

[37] Between 2005 and 2009, the HRCP reported that 729 Shiites, 33 Ahmadis, and 9 Christians had been killed (communicated to author via e-mail, January 20, 2011). The number of religious minority members killed increased dramatically in 2010, with more than 100 Ahmadis and 8 Christians killed in the Punjab village of Gojra alone.

[38] Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2007 Country Reports on Human Rights Practices.* Some reports cited as many as 6,000 detentions.

[39] Ibid.

[40] Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2009 Country Reports on Human Rights Practices.*

[41] NGOs were required to register under the Cooperative Societies Act of 1960, but in recent years no prominent NGOs have encountered problems with this requirement. In fact, some apparently failed to register and faced no legal repercussions. Exceptions include several organizations banned for "religious extremism," including Lashkar-e-Taiba (renamed Jama'at-ud-Dawa) and Jaish-e-Mohammad (renamed Tehreek-ul-Furqan, or Al-Rehmat Trust). See Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2010 Country Reports on Human Rights Practices.* See also note 11 above.

[42] "A Trade Union Leader and His Brother Are Murdered During Strike Negotiations," Asian Human Rights Commission, July 8, 2010, http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-099-2010; Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2010 Country Reports on Human Rights Practices.*

[43] "APTUF Protests for Labour Rights," *Daily Times*, January 7, 2010; Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2010 Country Reports on Human Rights Practices.* In 2010, the existing provisions of the 2008 Industrial Relations Act expired, leading to the promulgation of several different provincial laws. Unfortunately, this patchwork of provincial laws has made it nearly impossible to register the all-Pakistan unions previously recognized by the now defunct National Industrial Relations Commission. See Aziz Malik, "Trade Unions in Limbo after Expiry of IRA," *Dawn*, July 25, 2010.

[44] These cases concerned the extent to which such attacks amounted to violations of Pakistani sovereignty, or, given the possibility that they were authorized by the government, the extent to which they violated existing laws prohibiting extrajudicial assassinations in territories not officially defined as war zones.

45 Associated Press, "Pakistan Court Orders Government to Probe Graft," Fox News, September 27, 2010, http:// www.foxnews.com/world/2010/09/27/pakistans-president-supreme-court-demands-action-graft-charge/.

46 Matthew J. Nelson, *In the Shadow of Shari'ah: Islam, Islamic Law, and Democracy in Pakistan* (New York: Columbia University Press, 2011).

47 Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2009 Country Reports on Human Rights Practices.*

48 Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2010 Country Reports on Human Rights Practices*; Karin Brulliard and Shafiq Hussain, "Blasphemy Trials in Pakistan Reveal Broken System," *Washington Post*, December 11, 2010; Alex Rodriguez, "Pakistan's Blasphemy Law Seen as Tool of Oppression," *Los Angeles Times*, December 27, 2010; Salman Masood, "Pakistanis Rally in Support of Blasphemy Law," *New York Times*, December 31, 2010.

49 Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2010 Country Reports on Human Rights Practices.*

50 Ibid.; Bureau of Democracy, Human Rights, and Labor, "Pakistan," in *2006 Country Reports on Human Rights Practices.*

51 Asad Jamal, ed., *Revisiting Police Laws* (Lahore: HRCP, 2011), 2.

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PARAGUAY

CAPITAL: Asunción
POPULATION: 6.5 million
GNI PER CAPITA (PPP): $4,430

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	4.29	4.67
CIVIL LIBERTIES:	4.09	4.34
RULE OF LAW:	3.43	3.50
ANTICORRUPTION AND TRANSPARENCY:	3.38	3.41

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Peter Lambert

INTRODUCTION

The election of Fernando Lugo in April 2008 marked a watershed in Paraguay's previously stagnating transition to democracy for multiple reasons. First, the victory of Lugo, the candidate for the Patriotic Alliance for Change (APC) coalition,[1] ended 61 years of uninterrupted rule by the Colorado Party. Second, it represented the first democratic change of government and peaceful handover of power in Paraguay's entire history. And third, Lugo, an ex-bishop and advocate of liberation theology, campaigned on an electoral platform of deepening democracy by implementing long-overdue social reforms to address Paraguay's indefensible levels of poverty, inequality, and social exclusion. With a popularity rating of over 90 percent when he took power, he spoke optimistically of a "new dawn" of democratic change in Paraguay.

Even after the fall of General Alfredo Stroessner's long (1954–89) dictatorship, Paraguayan politics had been dominated by the same Colorado Party that had been a pillar of the authoritarian regime. The post-transition period had also been characterized by economic mismanagement and corruption, political factionalism and infighting—including attempted military coups in 1996 and 1999—and weak progress on improving social conditions. Indeed, by the mid-2000s Paraguay's unconsolidated democracy appeared less under threat from military intervention than from disillusionment and desperation. This trend was clearly reflected in Latinobarómetro polls; the 2005 survey found that 69 percent of respondents would support authoritarianism under certain circumstances,[2] while in 2007 only 33 percent of Paraguayans supported democracy as

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a system, and only 9 percent were satisfied with its performance. Many of the country's scores on attitudes towards democracy were among the lowest in Latin America,[3] providing a context propitious to both increased social conflict and the rise of authoritarian populism, reflected in the support for the controversial ex-general Lino Oviedo, who was allegedly involved in both attempted coups.[4]

Despite the optimism surrounding Lugo's victory, the new president faced a series of challenges when he took office in August 2008. First, Paraguay's transition had failed to overcome or even address many of the legacies of the Stroessner dictatorship, including rampant corruption, a highly politicized state and judicial sector, a distrust of politicians and political parties, widespread clientelism, ineffective governance, a weak civil society, and a hegemonic Colorado Party. Second, the scale of social exclusion reflected in high levels of poverty, inequality, and discrimination in terms of ethnicity, gender, and language continue to undermine democratic citizenship and participation.[5] According to government figures, 38 percent of Paraguayans live in poverty—rising to 49 percent in rural areas—while 19 percent live in extreme poverty, figures which have changed little since the mid-1990s.[6] Paraguay is also one of the most unequal countries in Latin America, which is strikingly reflected in land ownership: 86 percent of agricultural land is consolidated in just 2.5 percent of all properties, while 30 percent of the rural population is landless.[7]

Third, the results of the congressional elections left Lugo without a working majority in Congress, allowing parties and individuals opposed to his policies to slow his ambitious socioeconomic reform program. The Colorado Party remained the largest party in both chambers, while Lino Oviedo's National Union of Ethical Citizens (UNACE), which came third, also opposed most government policies. Furthermore, the APC coalition was dominated by the center-right Authentic Radical Liberal Party (PLRA),[8] which itself was deeply divided in its support for Lugo.

After nearly three years of frustrated initiatives, personal crises, and sustained opposition from powerful groups, Paraguay's progress in key areas of social, political, and judicial reform has been slow. However, Lugo retains his vision of reducing the democratic deficit and there has been notable progress on a range of issues in the fields of social welfare, governmental transparency, and civil liberties.

ACCOUNTABILITY AND PUBLIC VOICE 4.67

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.60
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.00
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.43

The electoral framework set up under the 1992 constitution calls for elections with universal suffrage, open to multiple parties and conducted by secret ballot.

One of the most important post-transition achievements has been the regular holding of elections since 1989, including five presidential and congressional elections (in 1989, 1993, 1998, 2003, and 2008), one vice-presidential election (in 2000), and five municipal elections (in 1991, 1996, 2001, 2006 and 2010). Balloting has been generally free from violence or widespread fraud, and all contests have been judged as free, if not completely fair, by foreign observers and increasingly active domestic NGOs.[9]

Despite some evidence of electoral malpractice in voter registration and patronage, the results of the 2008 elections were widely seen as fair, in part due to the work of domestic and international electoral monitors.[10] With turnout of 65.5 percent (voting is compulsory but not enforced), Fernando Lugo won with 40.9 percent of the vote, while Colorado candidate Blanca Ovelar secured 30.6 percent. In a surprising turnaround reflecting widespread disillusionment, the authoritarian populist Oviedo gained 21.9 percent, while votes for Pedro Fadul of the modernizing, pro-business Beloved Homeland Party (PPQ)[11] fell to just 2.4 percent from 21.3 percent in 2003.

Despite losing the presidency, the Colorado Party remained the largest group in Congress, holding 30 of the 80 seats in the Chamber of Deputies and 15 of the 45 seats in the Senate. It also holds over 70 percent of municipal government, 10 of 17 departmental governorships, and has the largest party membership. Following success in the 2010 municipal elections, the Colorado Party is widely seen as likely to win the 2013 presidential elections.

Furthermore, Oviedo's UNACE, often referred to as the "spare wheel of Coloradism" due to its historical links with the party, won 15 seats in the Chamber of Deputies and 9 seats in the Senate. The PLRA, the main backers of the APC, won 27 and 14 seats, respectively; the party formally left the coalition in July 2009, however, although the majority of its senators and members of congress remained loyal to the government. The president's position was further undermined by the weakness of the presidency under the 1992 constitution, which grants extensive powers to congress at the expense of the executive as a reaction to Paraguay's long history of authoritarianism.

Despite Lugo's victory and the implicit suggestion of democratic maturity, the electoral system faces a number of serious underlying problems. The three-person Superior Court for Electoral Justice (TSJE), the body responsible (together with lower electoral courts) for the administration and legal decisions regarding all national, local, and internal party elections, is highly politicized, with appointments made according to a party quota system (one Colorado, one Liberal, and one from a third party), rather than independent, merit-based evaluation (see Rule of Law). This politicization was particularly evident during the 2003–2008 administration of Nicanor Duarte, when the TSJE (along with the Supreme Court) issued two controversial decisions involving the president: in 2006 it allowed Duarte to run for presidency of the Colorado Party, and in 2008, it permitted his candidacy as an elected senator rather than nonvoting life-senator—both in clear violation of the constitution. In addition, the TSJE's

independent member resigned in November 2008, leaving the body in a state of crisis and inertia for over two years. Only in December 2010 was the stalemate resolved with the appointment of an UNACE member.

In addition, although each party receives state funding according to its number of seats in congress, there is little regulation in terms of origin and use of private donations to party funds; private funding remains highly opaque and is widely viewed as a source of corruption. This is particularly the case for internal party elections, for which candidates rely on often-untraceable private donations, which may be used to engage in clientelism and vote buying. Furthermore, since the Stroessner era, the Colorado Party has been accused of using state resources, including money, personnel, and vehicles, to support its campaigns and strengthen its clientelistic networks. Finally, the lack of regulation to prevent undue influence in campaign funding has resulted in credible allegations of economically privileged sectors, including those involved in illegal activities, buying seats (and influence).[12] Despite strong evidence of such corruption, the TSJE has not launched any investigations.

Moreover, checks and balances are limited. Colorado Party dominance of the executive until 2008 has ensured party control of the state bureaucracy and most importantly, the judiciary. When the executive has clashed with other branches of government it has been due to internal party factionalism and power struggles, with the judiciary used as a political tool of one faction or another. Conflicts under the current administration are attributable to the strength of the Colorado Party in congress, the judiciary and the bureaucracy, and its ability to resist an array of government initiatives. In an extraordinary example of such politicization, in August 2010, the Supreme Court voted to overrule a congressional decision in 2008 that barred former president Duarte from taking his Senate seat, in clear violation of Article 189 of the constitution.[13]

Such conflicts have prevented the president from getting key policies through congress. This was exemplified by congressional decisions in 2009 and again in 2010 to postpone the long-awaited introduction of a personal income tax, which would have provided an essential first step towards an integrated tax system. Strikingly, many Colorados who had voted for the measure under the Duarte administration spoke passionately against it under Lugo, while many Liberals changed their support in the opposite direction. Such a dramatic shift in party voting patterns fed into the widespread perception of a political culture in which the overriding objective of the major political parties remains political game playing, self interest, and party maneuvering rather than commitment to the needs and the demands of the electorate, or to the public good.

In a further example of this culture, the opposition has attempted not only to block all government initiatives, but to undermine the government's legitimacy. For example, by the end of 2009, Lugo faced highly-publicized calls for impeachment from the opposition on four separate (and unproven) grounds: alleged corruption in the management of lands slated for redistribution; alleged promotion of the class struggle; alleged links with guerrilla movements; and

alleged failure to protect citizen security. This further undermined the standing of a president whose popularity was also adversely affected by paternity revelations (one of which Lugo recognized) and whose strength has been sapped by treatment for lymphatic cancer.

At the heart of this culture lies the struggle for access to the state, which under Colorado hegemony operated as a clientelistic mechanism to guarantee electoral support and extract funds for the benefit of the party and powerful individuals. The public sector remains highly politicized, characterized by nepotism, favoritism, and patronage. The combination of corruption, clientelism, and lack of transparency has led to inefficiency, incapacity, and weak legitimacy.[14] Initiatives since 2008 by the Public Service Secretariat (*SFP*) to implement merit-based selection and promotion have made some headway, but are undermined by concerted political resistance, and a lack of political leverage over other ministries. An overwhelming majority of civil servants are Colorado Party members, originally appointed purely on grounds of political allegiance, and who, as career civil servants, now enjoy a high degree of protection. Crucially, the proposed Civil Service Law, which promotes merit-based appointments and aims to end the system's pathologies, remains tied up in legal and constitutional disputes.

Civil society has undergone significant growth during the transition. Nongovernmental organizations (NGOs) are free to register and operate without undue government interference, as well as maintain relations with international funders. They have played an active role in promoting policy reform on a broad range of human rights and good governance issues.[15] The growth of organized civil society is also reflected in increased levels of participation in small-scale neighborhood committees that have proliferated in most municipalities, the growth of peasant federations, and the emergence of broad, multisector citizens' coalitions that have sought to defend and deepen democratic practice. Civil society's influence on policymaking has increased under President Lugo, and civil society organizations represent a strong constituency of support for the beleaguered president, albeit with limited influence in congress.

Freedom of the press and media is guaranteed by the constitution, and independent media are allowed to freely operate, broadcast, and publish. State interference is minimal in terms of direct or indirect censorship, and the government does not fund the media for purposes of propaganda or limit opposition groups' access. Recent regulations have opened up the internet sector in Paraguay, allowing for growth of infrastructure and the broadening of access to information.[16] Furthermore, despite risks to individual journalists, the media's investigative capacity regarding corruption, impunity, and crime has grown. As a result, surveys demonstrate high levels of trust in all forms of media.[17]

However, the media's effectiveness is limited by three issues. First, highly concentrated media ownership means that most outlets are intertwined with business and political groups whose interests exert a strong influence over individual journalists, news coverage, and editorial content, with an ability to

influence and even set the political agenda. This is exacerbated by a general lack of objectivity in reporting, low ethical standards, and a lack of professionalism. This is particularly apparent in the campaign by Paraguay's best-selling newspaper, *ABC Color*, to discredit the president, his colleagues, and his policies, and foster an atmosphere of insecurity and distrust.[18] This criticism also extends to major radio outlets, most of which are owned by politicians associated with the Colorado Party, although the proliferation of community radio (about a third of which operate illegally) has gone some way in countering the commercial outlets' bias.

Second, public officials may criminally prosecute or sue private individuals and the press for damages under Paraguay's defamation laws, which discourages investigative journalism and encourages self-censorship. Third, journalists in Paraguay continue to suffer from threats of violence and harassment, especially those involved in investigative journalism into contraband and drug trafficking.[19] In January 2009, Martín Ocampos Páez, the director of a community radio station in Concepción, was assassinated while investigating police involvement in drug trafficking. As of spring 2011, the crime remains unsolved.[20]

CIVIL LIBERTIES 4.34

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.13
GENDER EQUITY	4.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.75
FREEDOM OF CONSCIENCE AND BELIEF	6.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.50

Since 2008, the Lugo administration has made significant efforts to protect and guarantee civil liberties. However, its efforts are set against a backdrop of over half a century of one-party rule, widespread discrimination based on race, gender, and class, and a political culture that tolerates impunity and corruption.

The law prohibits arbitrary arrest, unjustified imprisonment, and torture, and these strictures are generally respected. However, there is evidence of the use of torture by the police, especially against the most vulnerable sectors, and there are few mechanisms for monitoring, reporting, or seeking redress, giving a widespread impression of impunity.[21] The political opposition is not subject to harassment or attacks by the state, and there were no reports of politically-motivated killings by the state. However, peasant activists regularly denounce harassment and violence by the security forces. In a not-uncommon event in 2009, dozens of peasants were injured and over 50 arrested in Caaguazú when police raided a peasant encampment looking for those responsible for an assault on commercial premises. Overall, nine peasant activists were killed unlawfully in 2009; the cases were not fully investigated and the culprits were not found.[22]

The definition of torture under the penal code still does not conform to international human rights treaties, despite pressure and initiatives from NGOs and some politicians. A widely-acclaimed bill by Senator Carlos Filizzola to establish a National Mechanism for Prevention of Torture to integrate local legislation with international controls and agreements remained before congress as of early 2011. In 2007, a report by the United Nations Special Rapporteur on Torture concluded that torture was "still widely practiced" in police custody to obtain confessions,[23] an assessment still seen as broadly accurate in 2011 despite government initiatives to eradicate such practices.

Despite some "partial, insufficient and limited" reparations for victims of the Stroessner dictatorship,[24] redress for torture and abuses of human rights has been inadequate. While on the whole, the military and other personnel alleged to have engaged in abuses during the dictatorship have enjoyed a high degree of impunity during the transition to democracy, some progress has been made. In 2009 the minister of defense authorized access to files from the dictatorship, giving human rights investigators access to such information for the first time. Following modifications to legislation made by the Lugo administration in 2008, 13,700 applications for reparations were made to the office of the ombudsman.[25] A victory against impunity occurred in May 2009 when Sabino Montanaro, the interior minister between 1968 and 1989, was arrested upon his return to Paraguay from exile for his central role in the abuse of human rights during the dictatorship. However, in terms of broader avenues for redress, ombudsman Manuel Páez Monges has been widely criticized as inefficient and politicized, characteristics reflected in a 2008 Senate Report that strongly criticized the ombudsman's inefficiency and "deplorable performance."[26] Efforts to replace Páez since his mandate expired in 2008 have been blocked due to disagreements between political parties over his successor's political affiliation.

Conditions in Paraguay's 13 prisons neither meet international standards nor comply with the constitution. Problems include overcrowding, insufficient medical care, inadequate sanitary facilities, poorly-constructed buildings, inadequate staffing, endemic corruption, and routine violence due to a lack of security. All prisons contain more prisoners awaiting trial than convicted, and none provide provision for separation of these groups. As an example, Tacumbú, Asunción's main high-security prison, has a capacity of 900, but as of 2009 held 3,171 prisoners, of whom 2,638 are still awaiting trial.[27] The Lugo government pledged to address these issues, organizing a census of conditions, changing the directorships in all 13 institutions, and establishing a Directorate of Health for Penitentiaries, Education Centers, and Housing Shelters in March 2009. The Ministry of Interior established a new training regime in 2009, a modern prison was opened in Amambay in 2009, and conditions and security were improved at the Neuropsychiatric Hospital in Asunción in compliance with a July 2008 ruling of the Inter-American Commission of Human Rights (IACHR).[28]

Over the past decade, the Paraguayan People's Army (EPP), a small guerrilla organization, has carried out a number of sporadic kidnappings and attacks on police.[29] Although not a threat to national security, media accusations that the government was incapable of protecting citizen security led to a troop surge in San Pedro in January 2009 and a 30-day state of emergency declared in five departments in April 2010. Neither of these produced any positive counter-insurgency results, and both were condemned by Amnesty for alleged abuse, violence, and arbitrary arrest perpetrated by the security forces.[30] The nature of the EPP remains disputed. While the right has accused peasant organizations and even President Lugo of links with its leadership, many observers believe it is more likely to be linked to illegal narcotics operations in the area.[31]

Human trafficking is prohibited by law, but there is strong evidence of both domestic and international trafficking involving several thousand women annually, most of whom are destined for prostitution and domestic service in Argentina. A law that came into effect in June 2009 aligns national law with International Labor Organization anti-trafficking conventions and strengthens prevention, repression, and punishment, although it does not address internal trafficking. Progress has been made in terms of establishing entities to combat trafficking and support victims, but there is evidence that widespread corruption within state bodies combined with a lack of resources has resulted in the continuation and even expansion of illegal activities.[32]

The 1992 constitution guarantees gender equality in terms of civil, political, social, economic, and cultural rights, and assigns responsibility for protecting these rights to the state. The creation of the Women's Secretariat of the Office of the Presidency (SMPR) in 1993 marked perhaps the most notable gain in efforts to ensure women's constitutional rights. However, gender-related discrimination is widespread, and women still suffer disproportionately from domestic violence and economic deprivation. In rural areas especially, women are informally excluded due to lower education rates and higher illiteracy, as well as cultural norms that afford little power or participation to women, reflected in less access to land, lower wages (especially in domestic service), higher unemployment, and higher levels of extreme poverty.[33] Despite several high-level positions, including a female mayor of Asunción from 2006 to 2010, a female Colorado presidential candidate in 2008, six senators, and 10 congresswomen, and a 20 percent quota for female party list candidates, women's presence in politics is still low. The new government has expanded the role and presence of the SMPR, which since 2008 has promoted a wide range of programs intended to counter violence, abuse, and discrimination, and promote equal access to employment, housing, land ownership, education, and health.[34]

Paraguay's indigenous people, numbering 108,000 (just under 2 percent of the population),[35] have the lowest social development indicators of any group in Paraguayan society and suffer from extreme poverty and exclusion. Favorable legal and constitutional protection masks continued neglect by the state and a lack of judicial and police protection. Indeed, the state appears incapable of

protecting the environment, living conditions, rights or security of indigenous people. A United Nations mission to Paraguay in 2009 found widespread use of forced labor, child labor, and poor working conditions, especially in the Chaco region. While its report commended the new government's efforts, it highlighted deep-rooted problems of discrimination, poverty, and a lack of access to basic services or state protection that had led to the deterioration of the already "critical situation" of indigenous people.[36]

Electoral promises by Lugo to protect indigenous rights have generally failed to materialize. The appointment of Margarita Mbywangy, the first indigenous leader to be appointed to a senior government position, as director of the National Institute for Indigenous Development in August 2008, was heralded as a landmark but her resignation that December led to a period of further decline in the already embattled Institute. The establishment of the National Program for Attention to Indigenous Peoples in 2009 has made some impact in terms of providing basic social welfare, healthcare, food, and education, but the government has been incapable of halting (illegal) displacement of communities and environmental destruction or resolving land conflicts.

Decisions issued by the Inter-American Court of Human Rights regarding the Yakye Axa (2005) and Sawhoyamaxa (2006) indigenous communities mandated that the government provide the communities with basic services and return their lands. However, these rulings have not been implemented; indeed, a government proposal to expropriate land for the Yakye Axa was blocked by the Senate in October 2009.[37] This led Amnesty International to express concern in 2010 over the failure of the "frail institutional framework" to protect indigenous rights.[38]

Although Article 46 of the constitution guarantees equality before the law, there is a lack of mechanisms to ensure compliance. As a result, discrimination on the grounds of gender, ethnicity, language, disability, and sexuality continues in practice. A bill against all forms of discrimination was presented to congress in 2006, but has not progressed. However, following the appointment of Lilian Soto, a campaigner for equal opportunities, as director of the SFP, the agency has spearheaded public sector antidiscrimination reforms and training. For example, in December 2009, the SFP adopted regulations to implement the Convention on Rights of People with Disabilities, ratified by Paraguay in 2008. This marked an important step, as disabled people face widespread discrimination; although the law requires that people with disabilities should fill 5 percent of all public sector jobs, in reality they fill only 0.1 percent.[39]

Freedom of religion is also respected both in the constitution and in practice, with no undue state interference or restrictions. There is no religious persecution suffered by any of the many denominations and religions operating in Paraguay. The Catholic Church occasionally passes comment on socioeconomic issues but is not a political force in the country.

The freedoms of assembly, organization, and association are protected by law and generally respected. There are restrictions on the constitutional right to

demonstrate in terms of time, venue, and the nature of the protest (for example, the blocking of roads and bridges is prohibited), and demonstrations require prior notification of the police. Use of excessive force is frequent in dealing with demonstrations by social movements and peasant organizations. For example, in November 2008, a march by the Social and Popular Front resulted in 60 injuries, while evictions of peasants from illegal land occupations have led to numerous accusations against the police—and increasingly, private security forces—of violence and unjustified arrest.

The law protects the right to form and join trade unions in both the public and private sectors, with the exception of the armed forces and the police. Despite constitutional protection and the existence of several hundred unions grouped into six labor federations, union activity remains inadequately protected by the state, and violations of international labor standards, such as retaliatory harassment and firing of union organizers and violations of collective agreements and contracts, are common in the private sector.[40]

RULE OF LAW	**3.50**
INDEPENDENT JUDICIARY	3.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.60
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	3.75
PROTECTION OF PROPERTY RIGHTS	3.67

Despite a constitutional and legal framework that guarantees fundamental rights, access to justice, and equality before the law, structural weaknesses in the rule of law remain at the center of the democratic deficit in Paraguay. Furthermore, the legacies of the dictatorship and Colorado Party dominance remain strong, most evidently in the weak and highly politicized structure of the judiciary, the presence of pervasive and institutionalized corruption, unequal access to justice, and the thin presence of the state in some areas of the country.

Although a standardized public system for promotion and appointment exists, the process of selection, designation, and promotion of judges, district attorneys, and prosecutors remains weak and ineffectual, subject to high levels of party political interference. At root is a political quota system for appointments to the main judicial bodies agreed to by the major parties under the Governability Pact of 1994. Most notably, the Council of Magistrates, the critical actor in terms of judicial appointments, continues to operate a quota system that politicizes and distorts the selection of judges, prosecutors, and public defenders. The system's design overwhelmingly favors the two largest parties, the Colorado and PLRA. As a result, the composition of the entire judicial system, from the Supreme Court of Justice and TSJE to individual lower court judges, is subject to politicized bargaining and agreements, with appointments

made on the basis of political service, allegiance, and loyalty rather than merit and expertise, experience, or qualifications.

The high level of political influence, combined with insufficient training, inadequate checks and balances, and undue pressures on judges and prosecutors from local economic and political elites, undermine the independence, efficiency, and professionalism of the judicial system. Consequently, the justice system is widely seen as inefficient, corrupt, unable to combat corruption and impunity, and unable to protect citizens' (especially poor citizens') rights. It is among the least trusted institutions in Paraguay, reflecting widespread dissatisfaction with the quality of and access to justice: according to a 2008 United Nations Development Program poll, only 11 percent of Paraguayans have confidence in the application of equality before the law, and less than a third have confidence in the judicial authorities.[41]

Access to justice is guaranteed by the constitution, although in practice it is highly conditioned by factors related to gender, socioeconomic resources, geographic location, language, political connections, and personal contacts, with greater obstacles prevalent in rural areas. Furthermore, although the law grants access to independent counsel, in practice, the Ministry of Public Defense is comparatively underresourced in terms of staff and finance and unable to provide defense lawyers for the vast majority of defendants, especially in rural areas. As a result, adequate representation in court is limited to those who have the necessary assets to pay private lawyers for defense or pursuit of a civil claim. As of the end of 2010, an Organic Law of Public Defense designed to regulate and adequately finance public defense remained before congress.

In his electoral program Lugo promised a thorough reform of the judicial system, with reform of the Supreme Court, a body widely seen as extremely corrupt, highly politicized, and an obstacle to judicial reform as the first crucial step.[42] However, despite widespread popular support, he was unable to purge its (predominantly Colorado) membership due to the recourse of judges to the alleged right to "immobility" until the age of 75, as well as congressional opposition to his efforts. Moreover, due to the Court's cumbersome appointment process, which involves the approval of the Council of Magistrates, the Senate, and a majority in the Supreme Court, Lugo was unable even to fill the chamber's two vacant posts during his administration's first two years. Finally in December 2010 did he abandon his principled commitment to appointments on the basis of merit and experience and strike a deal with UNACE and the PLRA in line with the party quota system he had previously criticized so strongly. As a result, Gladys Bareiro de Módica (PLRA) and Luis María Benítez Riera (Colorado) filled the vacant positions on the Supreme Court, while Modesto Monges (UNACE) filled the long-vacant post in the TSJE.

Paraguay's weak rule of law is especially evident in poorer and more remote rural areas, which lack not only adequate basic social services, but also state presence and authority. For example, Alto Paraguay, a 31,000 square-mile

department and a region renowned for drug trafficking, had just 90 police officers, six patrol cars, no river patrol boats, and no capacity to monitor aircraft flights in 2010.[43]

These resource-related deficiencies are complicated by, and contribute to, the rapid growth of organized crime in such areas, especially illicit activity related to drug production and distribution. Paraguay is now the largest producer of marijuana in South America and is a major conduit for both cocaine and weapons.[44] There is a widely held perception, and some evidence, that this growth involves a powerful network of influences, including members of the police, the armed forces, local and national politicians, and judges. Drug traffickers thus wield significant political economic influence and operate with a high degree of impunity, especially in poorer areas where state presence is weaker. Liberal senator Robert Acevedo, an outspoken critic of the growth of the drug trade, stated in May 2010 that the department of Amambay was dominated by narcotics interests exercising significant control of local politicians, judges, police and members of the armed forces.[45]

Further testimony to the influence of drug traffickers is reflected in the fact that between September 2010 and March 2011, 13 high profile traffickers were freed by local judges despite overwhelming evidence against them. Among those freed was the son of Jarvis Pavão, one of the most important traffickers in Paraguay, who had been accused of possession of 112 kilograms of cocaine.[46] President Lugo has launched initiatives to combat such activities by attempting to strengthen customs and tax authorities, drug eradication efforts, and increased military presence in some border areas with Brazil, but with little noticeable effect.

The national police are widely perceived as ineffective and institutionally corrupt, and there is evidence of high levels of infiltration by criminal mafias related to the distribution of arms, drugs, and vehicles. The police underwent little reform during the transition before 2008, an issue exacerbated by inadequate resources (including personnel, equipment, infrastructure, and salaries), weak transparency and accountability, and poor training in the maintenance of public order, respect for human rights, community engagement, and investigative procedure.[47] Recognition of the need for reform has led to efforts by Minister of Interior Rafael Filizzola since 2008 to restructure the force (including through new leadership), boost investment, reform organization and management, improve human rights training, establish internal anticorruption mechanisms, and increase public engagement through a Citizens' Information Office that channels public feedback. One result of this has been a widespread perception of a decline in street crime, especially in Asunción.

However, the national police's overall weakness has led to the proliferation of private security firms, in both urban and rural areas, often illegally and without state control or registration.[48] In rural areas, armed paramilitary Neighborhood Committees for Citizen Security were set up under legislation passed during the Duarte administration, often with state funding and training,

despite allegations of torture and extrajudicial killings. In December 2008, the Ministry of Interior withdrew the legal status of such groups, although in practice some continue to operate with impunity.

The military no longer plays an overt role in politics and appears to have been depoliticized and placed firmly under civilian control. However, rumors of an imminent military coup were widespread in Asunción for much of 2008 and 2009, and served to slow the reform impetus and agenda of the government. Fear of military intervention may well have influenced the president's decision to replace 43 generals, as well as the heads of the army, navy, and air force no less than three times in his first 15 months in office, despite the fact that the professional conduct of those officials was not in question. Such extraordinary actions indicated that the executive took the threat of military intervention in support of the political opposition extremely seriously.

Property rights are generally respected in Paraguay and contracts are enforced—although legal channels are often cumbersome—and the government generally complies with judicial orders regarding seizure or restitution of private property and compensation for any expropriation. The government has also continued to evict peasants involved in land disputes and illegal occupations. In eastern Paraguay, indigenous communities frequently complain of nonrecognition of land titles and illegal, often violent, appropriation of traditional lands by private individuals, groups, and companies, with disregard to their property rights.

Despite Lugo's electoral promise of land reform to address the vast inequality in land ownership and distribution, there has been little progress made, and no redistribution has taken place. This is in part due to resistance by powerful economic interests but also to a lack of concerted efforts by the government, including even the initial step of organizing a registry of land ownership. The government has also failed in its promise to investigate, identify, expropriate, and redistribute *tierras malhabidas*, lands distributed by the government to its political allies during the dictatorship.

ANTICORRUPTION AND TRANSPARENCY 3.41

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.40
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.00
CITIZEN PROTECTIONS AGAINST CORRUPTION	3.75
GOVERNMENTAL TRANSPARENCY	3.50

Two of the legacies of the Stroessner dictatorship were an economy characterized by the prevalence of illicit and informal activities, and a state characterized by corruption and a lack of institutionalization.[49] Rather than leading to greater transparency or a reduction in corruption, Stroessner's fall is widely seen to have increased levels of graft. By the 1990s, Paraguay had become a major regional conduit for arms and narcotics and a center for money laundering and

contraband, as the "democratization of corruption" and the collapse of informal systems allowed greater access to illicit activities. Indeed, by 2002, some sources estimated that up to $4 billion was being laundered through Paraguay to the United States,[50] while in 2007 estimates put unofficial exports (i.e., contraband) at $3.5 billion—the same level as official exports.[51]

Corruption pervades all levels of society: while members of the Supreme Court have been accused of money laundering and other forms of corruption, low-level bribery of state officials, including police, judges, ministers, and civil servants, is routine, with little possibility of redress or compensation for victims. This is linked to high levels of informality in the economy, reflected in a range of indicators such as a low rate of formal registration of companies and employees, low levels of access to state social security and the minimum wage, and the prevalence of contraband—as well as the absence of any effective system to verify declarations of assets and income.

Systemic corruption permeates government institutions and corrupts the execution of their functions. Despite recent efforts, especially by the Ministry of Finance, there is a lack of transparency in government affairs, resulting in low levels of horizontal accountability. The public sector is seen as a particular source of corruption, especially in terms of lack of oversight and accountability in government procurement and contracting and a lack of separation between officials' actions and personal financial interests. Some areas of public enterprise, such as the administration of Itaipú Binacional, the joint Paraguayan-Brazilian entity managing the massive Itaipú dam, have long been seen as a way to obtain access to lucrative revenue sources for both individuals and their political parties. State industries are widely seen as highly corrupt, with Petropar, the oil entity, attracting particular attention in 2009 and 2010. However, efforts to privatize state corporations under previous governments were halted indefinitely under the Duarte administration due to popular outrage over a lack of transparency and alleged corruption in the privatization process.[52] Privatization has since remained off the political agenda.

Although the constitution provides for freedom of information, there is limited public access to government documents and statistics. This is exacerbated by poor infrastructure, a lack of political will, and efforts to conceal sensitive information. Indeed, civil society organizations, reformers in government, and smaller parties have consistently focused on enactment of a freedom of information act to gain better access to information. In the absence of this legislation, the press has been at the forefront of anticorruption activity, performing a vital role as whistleblower and campaigner, even though cases are rarely pursued through the courts.

Anticorruption measures undertaken under President Duarte between 2003 and 2005 (especially in the Ministry of Finance under Dionisio Borda) were significant in improving practices in terms of transparency and accountability in tax collection, auditing, and public procurement.[53] Proper legislative review of the budgetary process, which receives wide media coverage, is also now in

place, although in both 2009 and 2010 the process was characterized by opposition efforts to push through large expenditure increases in order to derail the government's fiscal policy and hence undermine the administration's credibility. Local government transparency was also encouraged, producing some pockets of good practice, including public dissemination of local officials' income, expenditure and salaries.

President Lugo made anticorruption a central part of his electoral platform, promising to consolidate and develop the progress made in the first years of the Duarte regime and strengthen the role of institutions such as the interagency Council for the Promotion of the National Integrity System (CISNI),[54] civil society organizations, and internationally-funded projects like the Millennium Challenge Account's threshold program. Once in power he appointed a number of ministers who are widely seen as champions of transparency, most notably Minister of Finance Borda.[55] A number of initiatives followed: the Public Administration Modernization Unit established by Borda coordinates policies to strengthen processes and systems across different ministries; the Ministry of Health has launched a comprehensive system to build more transparent procurement systems; the SFP is implementing new merit-based and transparent appointments processes; and easily accessible web-based information (including public accounts) is being offered by a number of ministries. The comptroller general's office has, with foreign technical support, also made progress professionalizing audit procedures and systems, although it remains institutionally weak and lacks clear administrative authority to exercise its external control mandate over other public sector institutions.

Overall, however, the lack of institutional capacity presents a major barrier to the fight against corruption. Institutional checks and balances to address problems of corruption within the state sector, such as the General Audit Office of the executive and the comptroller general's office, suffer from inadequate resources (despite increases under the Lugo administration), a lack of technical capacity, and weak credibility, resulting in a failure to make any significant impact on corruption. Indeed, there is little evidence of political will to improve the performance of these bodies. Likewise, the Public Ministry and the office of the ombudsman are both headed by Colorado appointees and are widely seen as politicized, institutionally corrupt, and highly inefficient.[56] The position of the Public Ministry's Economic Crimes and Anti-Corruption Unit (ECAU) is symptomatic of the structural problems facing anticorruption efforts. Although a number of anticorruption prosecutors (such as Arnaldo Giuzzio and Carlos Arregui) have brought cases against high-level officials, the cases failed to produce convictions and the prosecutors were subject to threats of demotion and professional sanction, reflecting the difficulties and dangers in challenging vested interests. At the root of this lies the lack of judicial reform: politicized and perceived as corrupt and ineffective, the judiciary is seen as providing impunity in the courts for those with financial resources or party political contacts. In effect, until progress is made

in terms of judicial reform, progress on transparency and anticorruption will remained limited.

Hence, despite government efforts, there is little evidence that corruption has decreased—in fact, according to Transparency International's 2010 Corruption Perceptions Index, corruption has increased over the past three years, with Paraguay tied with Haiti as the second most corrupt country in Latin America.[57] The failure of the reformist Lugo administration to reap gains from his administration's multiple anticorruption initiatives will carry a political cost, adding to the likely return of the Colorado Party to power in 2013.

RECOMMENDATIONS

- The government should pursue the adoption of a national anticorruption strategy through a coalition of interested parties including NGOs, political parties, the media, and social movements with the aims of strengthening existing institutions and enforcement mechanisms, promoting civil education, and setting a clear legislative agenda.
- The strategy of targeted social welfare programs to improve access to health, education, and employment should be continued and developed in order to address the high levels of inequality and exclusion that reflect and produce discrimination, foster clientelism and corruption, and undermine democratic citizenship and the quality of democracy.
- A judicial reform program should be undertaken to address the highly partisan, inefficient, and corrupt nature of the judiciary. The quota system for appointments should be replaced by a transparent system of appointments and promotions based on merit, especially in the Supreme Court, TSJE, and Council of Magistrates.
- In alliance with partners from civil society and the media, freedom of information legislation should be pursued to promote greater transparency and accountability through access to governmental records.
- Working with NGOs and civil society organizations, the electoral process should be strengthened through promotion of electoral participation, electoral observation by qualified domestic groups, training of TSJE employees, and transparency of all party political funding.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

[1] The APC (Alianza Patriótica para el Cambio) arose from the idea of a united opposition to Colorado rule. However, when in July 2008 the PLRA agreed to support Lugo's candidacy in return for the vice-presidency, the other two major opposition parties, UNACE and the Partido Patria Querida, both pulled out. By the 2008 elections, the APC consisted of the PLRA along with a myriad of small left-wing parties and movements.

2 Corporación Latinobarómetro, *Informe Latinobarómetro 2005* (Santiago: Corporación Latinobarómetro, 2005), 47, http://www.latinobarometro.org/latino/LATContenidos.jsp.

3 Corporación Latinobarómetro, *Informe Latinobarómetro 2007* (Santiago: Corporación Latinobarómetro, November 2007), 81, http://www.latinobarometro.org/latino/LATContenidos.jsp.

4 Ex-general Lino Oviedo, who leads UNACE, has long been considered a threat to democratic consolidation in Paraguay because of his authoritarian populism, his alleged links to illegal economic activities, and his alleged roles in attempted coups in both 1996 and 1999, for which he was imprisoned.

5 United Nations Development Programme (UNDP), *Equidad para el Desarrollo: Paraguay 2008* (Asunción: UNDP, 2008), http://www.undp.org.py/odh/fotos/publicaciones/id27_pub1.pdf.

6 "Principales Resultados de la Encuesta Permanente de Hogares: Empleo y Pobreza," Dirección General de Estadística, Encuestas y Censos [DGEEC], 2008, http://www.dgeec.gov.py/, accessed May 26, 2011.

7 "Agricultural Census 2008," Ministry of Agriculture and Livestock, http://www.mag.gov.py/.

8 The *Partido Liberal Radical Auténtico* (Authentic Radical Liberal Party) or Liberal Party has traditionally been the main opposition party to the Colorados in Paraguay's patronage-based system.

9 Both the 1989 and 1993 elections were judged to have been free but not fair.

10 Andrew Nickson, "The general election in Paraguay." *Journal of Electoral Studies* 28, no. 1 (2008): 145–49.

11 Partido Patria Querida (Beloved Homeland Party) is a modernizing centrist party and is often seen as having the most coherent democratic programme of the major parties. However, its support base is mainly urban and it lacks the clientelist networks of its competitors.

12 USAID, *Paraguay Democracy and Governance Assessment* (Burlington: USAID, October 2009), p. v, http://paraguay.usaid.gov/sites/default/files/documents/paraguay-dg-assessment-report-final-11-09.pdf.

13 This article states that former presidents are entitled to the post of "lifelong senator" (*senador vitalicio*), with the right to speak in session but without the right to vote. By implication ex-presidents may not be elected to the Senate.

14 Andrew Nickson, "Reformando el Estado en Paraguay," in *Estado, Economía y Sociedad: Una Mirada Internacional a la Democracia Paraguaya*, ed. Diego Abente and Fernando Masi (Asunción: Centro de Analisis y Difusion de Economia Paraguaya [CADEP], 2005), 41–72.

15 For an in-depth analysis of civic action, see Clyde Soto, Line Bareiro, Quintín Riquelme, and Roberto Villalba, "Sociedad Civil y Construcción Democrática en Paraguay," in Maria do Como A. Albuquerque, *La Construcción Democrática desde abajo en el Cono Sur* (Sao Paolo: Instituto Polis, 2004), 135–193.

16 Arturo Bregaglio, "Paraguay," Global Information Society, 2009, http://www.giswatch.org/country-report/20/paraguay, accessed July 22, 2011.

17 Corporación Latinobarómetro, *Informe 2008* (Santiago: Corporación Latinobarómetro, November 2008), 82, http://www.latinobarometro.org/latino/LATContenidos.jsp.

18 Aristedes Ortiz, "Cómo inflar globos mediáticos para debilitar un gobierno," E'a–Periodico de Analisis, October 21, 2009, http://ea.com.py/como-inflar-%e2%80%9cglobos%e2%80%9d-mediaticos-para-debilitar-un-gobierno/.

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[25] "Paraguay–Amnesty International Report 2010," Amnesty International, http://www.amnesty.org/en/region/paraguay/report-2010, accessed May 16, 2011.

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[38] "Paraguay: Submission to the UN Universal Periodic Review," Amnesty International, pp. 4–5, http://www.amnesty.org/en/library/info/AMR45/003/2010/en.

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[52] Andrew Nickson, "Reformando el Estado en Paraguay."

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PERU

CAPITAL: Lima
POPULATION: 29.5 million
GNI PER CAPITA (PPP): $8,120

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	4.33	4.54
CIVIL LIBERTIES:	4.38	4.30
RULE OF LAW:	4.13	3.89
ANTICORRUPTION AND TRANSPARENCY:	3.57	3.48

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Jo-Marie Burt

INTRODUCTION

Since the end of a two decade-long internal conflict and the fall of authoritarian ruler Alberto Fujimori in 2000, Peruvian leaders have faced the challenge of restoring democratic institutions, strengthening the Peruvian state, and improving living standards. Under President Alejandro Toledo (2001–2006), Peru experienced economic growth rates of over 5 percent, but the democratic reform process floundered, Toledo had long since lost the ability to set the political agenda, and poverty rates had fallen only slightly. Toledo's successor, Alan García (2006–2011), was able to achieve even higher growth rates (with the exception of 2010, due to the fallout from the global economic crisis), but a significant drop in the official poverty rate masked slower progress in the quest for general improvement of living standards for the vast majority of Peruvians.

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Structural, historical, and political factors make governing Peru difficult and unpredictable. Social tension is ever-present, institutions are underdeveloped, and corruption is endemic. Despite economic gains, some notable reforms, and the maintenance of democracy, the foundations of Peruvian stability remain unsteady.[1]

Considering that García's first term (1985–90) was marked by corruption, economic collapse, civil war, and human rights abuses, his return had initially seemed unlikely. However, he remained a masterful politician, and in 2006 was fortunate to face Ollanta Humala, a former military officer turned antisystem candidate who emerged as the voice of discontented Peruvians. Humala was tagged as a puppet of Venezuelan President Hugo Chávez, allowing García to assume the mantle of "responsible change," and surge to victory.

However, despite the high economic growth rates of the subsequent five years, Peruvians remained largely dissatisfied with García himself and Peruvian democracy in general.[2] The Peruvian state is characterized by ongoing weakness in performing fundamental tasks of governance, from carrying out justice to tackling entrenched poverty. Citizens often voice frustration with problems of day-to-day life, including crime, joblessness, and corruption; discontent over other concerns also run deep, especially the issue of exclusion, which in the Peruvian context essentially describes the lack of integration between historically excluded sectors (both socioeconomic and ethnic) and the increasingly modern, largely urban portion of Peruvian society.

Despite one important win for the rule of law—the April 2009 conviction of former president Fujimori for grave human rights violations—significant corruption scandals involving illegal wiretapping and bribes tainted the García administration and resulted in a presidential approval rating of around 25 percent up until the very close of García's presidency. Further reducing García's popularity was his ineffectiveness at resolving social conflict and balancing the competing objectives of protecting indigenous groups, preserving the environment, and ensuring continued economic growth, which in Peru is largely dependent on the extractive industries. The administration's ineffectiveness as mediator with respect to these matters was best illustrated by the violent clashes that left 23 police officers and at least 10 protesters dead in Bagua, in the department of Amazonas, in June 2009.

Though Peru has seen substantial overall improvements since the end of the civil war and the fall of Fujimori, democratic institutions remain feeble, and corruption continues to be a major problem. Sustained economic growth has not resulted in many new jobs and is largely based on high commodities prices. Yet nearly a decade of significant expansion has filled state coffers, thus providing for the novel possibility of strategic planning. Thus Peru in 2011 finds itself in a position of real opportunity to tangibly improve the lives of Peruvian citizens.

ACCOUNTABILITY AND PUBLIC VOICE 4.54

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	5.40
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.00
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.43

Both the first and second rounds of the 2006 Peruvian elections for congress and the presidency generally fulfilled international standards regarding free and fair elections. Suffrage is universal and obligatory, and turnout in each of the two rounds was close to 90 percent. Elections are conducted by a tripartite system of electoral entities. The National Registry (RENIEC) is responsible for voter registration, the National Office of Electoral Processes (ONPE) administers the electoral process, and the National Electoral Board (JNE) resolves election-related legal questions and challenges.

Many analysts support the separate organs as more specialized and effective, but others have called for a merger to avoid duplication of functions. JNE and ONPE relations were fractious during the 2006 elections, but appeared to be smoother in the following years. Congressional elections are held concurrently with the first round of the presidential election; voting is carried out through open-list proportional representation, with the number of representatives for each department determined by population. The 2006 election represented the first in which parties were required to reach an electoral hurdle of 4 percent of the national vote. If no candidate wins a first round majority in the presidential contest, a second round is held between the top two finishers.

The 2010 municipal and regional elections offered more mixed results. The Organization of American States (OAS) observed that Peru's electoral process provided citizens with the opportunity to effectively cast their lot with their candidates of choice, with justified confidence that their vote would be counted.[3] Nonetheless, in a number of regions and municipalities voting was marred by violence due to the continued presence of "golondrinos," voters who switch districts to cast their vote, and accusations of fraud. Fortunately, no deaths or major injuries were reported as public property appeared to be the target of choice for displeased electors.

The electoral controversy that captured Peru's attention during the 2010 elections was the JNE's 23-day delay in announcing the victory of center-left candidate Susana Villarán as mayor of Lima. During the delay, President García was accused of manipulating the submitted election returns in order to impede Villarán from taking control of the powerful office.[4] Since Villarán was favored by both pre-election and exit polls, the delay stirred distrust among the electorate. In the end, the JNE's tally was similar to the polls and crisis was averted, but the system's vulnerability was exposed.

[Editor's Note: The 2011 general elections were highly contested. In the first round, three center-right candidates (Toledo, Lima mayor Luis Castañeda, and former prime minister Pedro-Pablo Kuczynski, split the large centrist vote, allowing the most right-wing candidate, Keiko Fujimori (Alberto's daughter), and the most left-wing candidate, Humala, to advance to the second round. The second round was bitterly fought, with the government and many media outlets appearing to actively favor Fujimori. The race was too close to call right up until election day, when Humala was able to mobilize a sufficient number of discontented Peruvians—as well as those scared of a return to Fujimorismo—to secure a narrow but decisive win, with 51.5 percent of the vote. In congressional balloting, which was held concurrently with the first round, Humala's Gana Peru won a plurality, 47 of 130 seats, followed by Fujimori's Force 2011 party with 36, and Toledo's Peru Possible with 21. Following deep internal splits, APRA collapsed, garnering a mere 4 seats.]

Campaigning opportunities are unhindered for Peruvian political parties. Limitations on campaigning in Peru are more likely to be self-imposed, as few parties have the geographic reach, organizational structure, and ideological coherence to appeal broadly throughout the country. However, the rise and fall of parties generally occurs organically, and a rotation of parties in power is the rule. Peruvian ruling parties have been largely personalist vehicles for many decades; once a given party leader is no longer president, that party's strength dwindles. Toledo's Peru Possible party is a good example: in 2001 it captured 47 seats; in 2006, just 2. Fujimori's series of "instant" parties and the failure of APRA to compete seriously for the presidency without Alan García on the ticket further illustrate the problem. Generally, the weakness of Peruvian parties is regarded as a major reason for Peru's political instability and difficulties in building momentum toward institutional consolidation.

Under strengthened campaign finance laws, candidates and parties are now required to list all donations. However, the 2010 municipal elections featured a number of cases of alleged financing improprieties. According to analysts, laws limiting campaign contributions from individuals and corporations and requiring parties to report on fundraising are inadequately enforced. The penalty for noncompliance is denial of public financing, but such funds have not been afforded to any party since the program's supposed implementation in 2003.[5] Furthermore, parties associated with the administration in power have allegedly been audited leniently or not at all.[6] The need for a campaign-finance system overhaul is particularly pressing given a perceived influx of money associated with drug trafficking. OAS election observers have strongly advocated a more robust public financing system to level the electoral playing field.[7]

Although Peru is a strongly presidential system, the executive does not exercise absolute control over the legislative and judicial branches. Presidents have historically been granted broad decree powers by Congress, and although García did wield these powers on occasion, during Toledo's and García's terms

the percentage of legislation passed by decree declined. The weakness of political parties, however, often limits their effectiveness as a check on the executive. Furthermore, congressional oversight of the executive corresponds to a large extent with political point-scoring potential rather than a consistent vision of the limits and standards of the executive's role. The judiciary is constitutionally autonomous (though troubled; see Rule of Law), and the Constitutional Tribunal, in particular, has shown a willingness to rule against other branches of government as well as the military. The 2006–11 legislature was held in particularly low esteem, as numerous corruption scandals and a general perception of inefficacy contributed to the Congress being the country's most poorly-rated institution.[8]

Peruvian ruling parties have often filled administrative positions with party activists of dubious competence upon coming to power; during the García administration, the involvement of these officials in corruption scandals created further institutional distrust. However, a new Civil Service Law promulgated in 2008 is designed to unify all public sector employment under one system, and end the current, disjointed system of hiring and compensation.[9] Unions rejected the law as potentially weakening their negotiating position, but the García administration passed a number of legislative decrees to implement it and claimed that it would promote legitimacy and meritocracy within the Civil Service.[10] Initial steps have included the simplification of pay structures and the elimination of salary limits, but full implementation is not expected to occur for several years. Meanwhile, García has been criticized for not prioritizing the reform, and the low salaries for police and other essential civil servants are expected to remain so for the foreseeable future.[11]

Peruvian civil society is highly active. The García administration viewed many nongovernmental organizations (NGOs) as ideologically opposed to the president's political and economic agenda, and his allies in Congress have attempted to increase oversight of internationally funded NGOs by the Peruvian Agency for International Cooperation (APCI), most notably through a controversial 2006 law.[12] Such groups fell under APCI's legitimate supervision due to their legal classification as civil associations that engage in "international technical cooperation,"[13] but many NGOs argued that increased regulatory scrutiny would foster self-censorship. In the end, the law was changed to ease restrictions on foreign aid that is not channeled to NGOs through the state. Furthermore, in September 2007 the Peruvian Constitutional Tribunal ruled that NGOs may opt out of registration and the associated reporting obligations if they do not accept state benefits or use any state resources in their activities, though this may be difficult in practice. Several NGOs have complained that APCI's interference is ideologically and politically motivated. For example, the Institute of Legal Defense (IDL), an NGO that has criticized the García administration, was audited by APCI three times within a few years.

Freedom of the press is constitutionally protected in Peru, and the media is vibrant and active, especially at the national level. Bribe-induced media support was one of the pillars of the Fujimori regime. Although the press recovered under Toledo, the media has not fully regained Peruvians' trust, and controversies related to Fujimori's media control continue to resurface occasionally. A 2010 World of Justice survey in the three major Peruvian cities of Lima, Arequipa, and Trujillo asked individuals whether the media was free to express opinions against government policies and actions. Only 27 percent responded affirmatively, while 73 percent responded that the media was not able to express opinions that contradict government positions.[14]

The Peruvian government refrains from direct and indirect censorship of the media, and most outlets are privately owned. Both print and broadcast media remain reliant, however, on advertising dollars from limited sources such as government (at the local level) and a few large companies (especially retailers) at the national level. Media concentration has also increased at the national level; for example, the El Comercio group now owns four of Lima's most prominent newspapers. Internet access is unhindered and is widespread in the cities, although it remains rare in rural and jungle areas. Freedom of cultural expression is generally unrestricted.

Libel and defamation remain classified as criminal offenses in Peru, and journalists continue to be prosecuted, receiving large fines and jail sentences, although the jail terms are generally suspended. However, a spike occurred in 2010, with five judicial sentences handed down against members of the press, including a three-year suspended sentence for defamation against former minister Jorge Mufarech issued to journalist and blogger José Alejandro Godoy; according to the Institute of the Press and Society (IPYS), the conviction was "based on no real evidence to speak of."[15] While abuses occur, not all accusations of defamation can be regarded as attempts to intimidate the press: journalistic ethics in Peru remain a work in progress. Many journalists, especially low-paid provincial ones but also those based in Lima, are willing to accept bribes in return for favorable coverage.

Especially at the local and regional levels, journalism is a dangerous profession in which reporting on local scandals can lead to intimidation, harassment, and serious attacks. In many of these cases investigations have not been carried out. Nonetheless, IPYS reports that the number of attacks against members of the press have decreased, from 121 in 2007 to 106, 87, and 69 in the following three years. In 2010, 36 of the cases were physical assaults, 9 were intimidation, and 7 involved obstacles to reporting. Assailants varied: 15 were unknown, 14 involved municipal authorities, 6 involved the private sector, and 4 were perpetrated by state security forces. A symbol of the impunity for such acts is the ongoing struggle to convict Luis Valdez, the former mayor of an Amazonian city, for the 2004 murder of journalist Antonio Rivera, despite strong evidence of his involvement.[16]

Another development that has drawn the concern of legal watchdogs is a series of government shutdowns of radio and television stations in 2008 and 2009. In 2008, six radio and two television stations were closed down; officials justified the moves by arguing that the stations lacked proper registration and documentation. IPYS contended, however, that they were targeted because they informed the public about ongoing social conflicts and the misuse of resources resulting from mining activities.[17] Indeed, closures generally occurred in places that had experienced protest violence, which the stations were accused of inciting. Notably, the informality and lack of uniformity in the process of station registration facilitated the subsequent closures by increasing the likelihood that official registration rules had in fact been violated. In one of the most emblematic cases, Radio Voz de Bagua, which had been shut down in the aftermath of the Bagua massacre in June 2009, recovered its operating license in August 2010.

The prominence of illegally recorded telephone conversations in corruption scandals (see Anticorruption and Transparency) has affected the press. Contradictory Constitutional Tribunal decisions regarding the legality of press dissemination of recorded conversations[18]—even on matters of evident national interest—without prior approval of those recorded led IDL's judicial sector watchdog unit to request clarification of the law. Another controversy occurred in November 2010, when a wealthy municipality in Lima forced a group of photographers to remove artwork, photographs, and videos of Peru's internal armed conflict that were being exhibited in a municipal building, despite prior approval. The act was perceived to stem from pressure from conservative economic and political groups. The exhibit was reopened in February 2011 at the invitation of newly elected Lima mayor Susana Villarán, in the city's municipal palace.[19]

CIVIL LIBERTIES 4.30

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.50
GENDER EQUITY	4.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.50
FREEDOM OF CONSCIENCE AND BELIEF	6.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.50

Torture and ill-treatment of criminal suspects continue to be problems in Peru. The Ombudsman's Office (Defensoría del Pueblo) registered 480 cases of torture between 2005 and 2009.[20] Fully 67 percent of the cases involved the national police, with additional violations by members of the municipal police, prison authorities, and the army. As noted by Human Rights Watch, "a poor record of prosecuting state agents for abuses hinders eradication of these practices."[21] In some cases, defendants initially charged with torture have seen

their alleged crimes downgraded—a practice condoned as appropriate by the Supreme Court—on the basis of the manner in which torture was incorporated into the criminal code in 1998.[22]

Extrajudicial executions have also been reported in some regions of Peru. Though police officials deny the claim, local prosecutors in Trujillo affirm the existence of a "death squad" allegedly led by high police officials. Reports indicate that at least 46 suspected criminals were kidnapped and subsequently executed; police officials claim that the deaths occurred in armed confrontations.[23] As of early 2011, no police officials in Trujillo had been held accountable for their alleged actions.

Scores of deaths have also occurred in the context of police action against Peruvians engaged in social protest. Aside from the case of Bagua, discussed below, 47 Peruvians lost their lives at the hands of state security forces in the context of social protests in 2009 and 2010.[24] Legal changes in recent years have encouraged internal military actions. Law 28222, promulgated in 2004, authorized the intervention of the armed forces to establish internal order; a decree passed in 2007 authorized the president to order army intervention in social conflict with the assent of the ministers of interior and defense, though it required authorization by the Council of Ministers. In 2010, Decree Law 1095 extended the ambit of direct military intervention in internal policing even further, and authorized the lethal use of force even in non-life threatening situations.[25]

Arbitrary detention remains a concern as well. Human rights organizations reported several arbitrary detentions of individuals engaged in social protest. According to the Association for Human Rights (APRODEH), in 2009, 832 people were facing legal processes for engaging in acts of social protest.[26] Long-term pretrial detention is another ongoing issue in Peru. Indeed, a significant number of Peruvian detainees never serve time under formal sentence, as the maximum pretrial detention period of 24 months (36 for serious crimes) is reached with no formal verdict and prisoners are released.

While specific targeting of political activists by the government is far less frequent than during the Fujimori era, a number of serious instances of intimidation of activists have occurred in Peru in recent years. In May 2008, the Inter-American Commission on Human Rights extended precautionary measures to human rights activist Fransisco Soberón, executive director of APRODEH, who received numerous threats after authoring a letter to the European Parliament reporting that the Tupac Amaru Revolutionary Movement (MRTA) was a defunct organization. Soberón, and APRODEH, played a central role in the extradition, trial, and conviction of former president Alberto Fujimori (see Rule of Law). President Garcia referred to Soberón as a 'traitor to the country' in public declarations, and government authorities called for APRODEH's dissolution. Another troubling episode occurred in 2009, when the former president of the Truth and Reconciliation Commission (CVR), Salomón Lerner, was subjected to repeated death threats, along with the invasion of his property

and the poisoning of his dogs.[27] Human rights lawyers who represent victims in cases of human rights violations allegedly committed by state security forces in the context of Peru's internal armed conflict often receive death threats and harassing phone calls.

Crime has steadily increased in Peru, although it is still below the level found in many Latin American countries. Indeed, according to analysts, the perception of lack of safety is growing much faster than crime itself. A general sense of discontent, along with institutional fragility, the legacy of political violence, and the rising visibility of street gangs all contribute to this perception. Despite sensationalistic media coverage of murders, burglary and muggings are far more common. The response of the police in recent years has been sorely deficient. In addition, drug trafficking is perceived to have increased, and there have been several public killings of Mexicans, Colombians, and other foreign nationals presumably engaged in drug trafficking activities in Lima and other cities in recent years. Several dozen state security force members have died during counterinsurgency operations against the vestiges of Shining Path, which coerces and protects coca production in the south-central jungle region. The persistence of Shining Path has resulted in repeated extensions of the states of emergency in these areas.[28]

For the limited number of criminals that are arrested, prison overcrowding continues to be the most pressing issue as the inmate population of 45,000 is nearly double the capacity of 25,000, and the prison population is growing by 9 percent each year.[29] A number of high-profile escapes and releases of drug offenders carrying false habeas corpus documents are emblematic of the endemic corruption in the prisons.[30] Gradual improvements financed by international organizations have been made, however, including providing inmates with access to healthcare and improved training for prison officials. Additionally, significant improvements appear to have been made in the accounting for government expenses on the prison system.[31]

Peruvians whose rights have been violated have an important tool of redress in the institution of the ombudsman. Constitutionally autonomous, with a highly regarded staff, the ombudsman accepts complaints about alleged rights violations ranging from torture to no-show teachers. Although findings are not binding, the office's reports carry an important moral weight.

Much progress has been made in Peru with respect to gender equity, but much remains to be accomplished. Educational inequality, measured in terms of public school enrollments, has almost disappeared: Secondary school enrollment rates for males and females were 87.7 percent and 81.7 percent, respectively, in 2000; by 2008 the had reached 89.5 percent and 88.6 percent.[32]

An important step toward gender equity was taken by Congress in 2007 with the passage of the Equal Opportunity Law, which requires the Peruvian state to promote equal opportunities for women and men in the workplace.[33] The legislation guarantees equal pay for work of equal value and the right to productive work without discrimination for men and women in access to

employment, training, and work conditions. Nonetheless, according to the Ministry of Labor and Employment Promotion, women earn 16 percent less than men performing the same task.[34] In addition, few women are promoted to top management positions, where salaries increase dramatically.[35]

In 2001, the required portion of women candidates was raised to 30 percent, leading to an increase in the number of female representatives in the Peruvian Congress from 11 percent in 2000 to 29 percent in 2008. And in the regional elections of 2010, less than 4 percent of the 324 parties registered to participate failed to comply with the 30 percent requirement.[36]

Other indicators reveal deep inequalities for women on a societal level. Peru has one of the highest maternal mortality rates in the Americas, with victims being primarily rural, poor and indigenous women who lack access to emergency care, information on maternal health, and to health staff who can speak indigenous languages.[37] Peru's highly restrictive abortion laws and policies also contribute to high maternal mortality rates.[38] Despite Peru's poor international standing on this measure, there has been a significant decline in the maternal mortality rate over the past decade.[39] Violence against women is another serious problem. A 2011 report from the Ministry of Women and Social Development reveals that partners or ex-partners were responsible for 117 of 160 murders of women during 2010.[40] Experts note, however, that most occurrences of violence against women are not reported.

Afro-Peruvians represent approximately 8–10 percent of Peru's population and have historically been politically and economically marginalized. In a significant gesture to the Afro-Peruvian population, in December 2009 President García offered an institutional public apology for the slavery to which black Peruvians were subjected until abolition in 1854 and for the subsequent discrimination and marginalization they have endured.[41] One specific complaint among Afro-Peruvian activists is that antidiscrimination legislation focuses primarily on "native" or indigenous peoples, and fails to address discrimination against black Peruvians. Afro-Peruvians are often depicted in racist terms in the print and television media and in private conversation among Peruvians. The NGO Afro-Peruvian Observatory cited more than 350 instances of racist representation in 2010 in six of the leading publications in Peru.

Indigenous peoples account for approximately 40 percent of Peru's population of 29 million. Lack of birth certificates and other official documentation, which leads to exclusion from formal education, formal employment, and full political participation, is prevalent among members of indigenous groups.[42] One of the most significant issues affecting the government's relationship with indigenous groups relates to the principle of prior consultation before the government can take an action that affects the interests of indigenous groups. A 2010 study estimated that 44 percent of the (then) 231 active violent conflicts in Peru were related to the government's failure to conduct effective prior consultation with indigenous groups.[43] Indeed, lack of such consultation was the primary motivation behind the indigenous protests that led to the violent

exchange between police and indigenous protestors in Bagua in June 2009 that resulted in the deaths of 23 police officers and 10 civilians.

This issue has become particularly contentious with regard to foreign investment—and mining activities in particular—in and around rural indigenous communities. For government critics, the government has failed to engage in prior consultation that is participatory and consensus-seeking, rather than simply informative. As a signatory to International Labour Organization Convention 169, ratified by Peru in 1994, the state is already subject to legal obligations regarding prior consultation, but disagreement over the convention's scope and dissatisfaction with court rulings have led most indigenous members and activists to favor clear legislation on the issue.[44] Those who oppose the right to prior consensual consultation of indigenous peoples, including Alan García, not only disagree with the effective veto of government decisions that the practice allegedly enshrines, but also oppose the ambiguous definition of "indigenous" that characterized previous attempts at legislation.[45] In June 2010 García vetoed the Law on Consultation passed by Congress, arguing that a broad definition of "indigenous" would afford this right to Peruvians who are not "truly" indigenous and expand rights involving indigenous interests in ways that would hinder essential policymaking.[46] Notably, the right to consultation would arguably be less important to indigenous groups if the government was more effective at enforcing already existing environmental laws in the extractive industries; currently, lack of enforcement leaves communities facing the costs of environmental disasters they had no hand in approving.[47]

In general, indigenous groups have focused less on combating racism per se, and more on gaining land rights, securing better prices for their products, and implementing or stopping development projects. Some argue that indigenous movements' limited emphasis on racism and discrimination has allowed the government to avoid ameliorating discriminatory practices in schools and courtrooms. Nonetheless, since 2008, over 50 municipalities and regional governments have established and diligently publicized local ordinances that severely sanction establishments that discriminate based on race. The central government has also taken steps to eradicate discrimination by altering its advertising practices to include black and indigenous faces in its messaging campaigns and by fining establishments that refuse entrance to black and indigenous Peruvians.[48] Still, racial stereotyping and discriminatory practices remain rampant in Peruvian culture and society.

Discrimination against the disabled has been largely ignored until recently, though legal protections for people with disabilities exist in the context of both employment and education. Furthermore, the law provides for preferential terms of credit or financing and access to government contracts for small and microenterprises that employ individuals with disabilities.[49] Despite these norms, only in 2010 did a disabled person register the first judicial victory on discrimination grounds. The victim of the discrimination was a disabled

student and intern, and the four faculty members responsible for the discrimination were suspended from their profession and ordered to pay $3,500 in damages.[50]

In December 2010 Alan García signed the Law of Religious Liberty, which expands already strong religious freedom in Peru. The legislation prohibits discrimination based on religious belief, allows students to excuse themselves from Peru's obligatory Catholic religious instruction in public schools, allows individuals to receive religious assistance in prisons, hospitals, or police stations, and allows for conscientious objection when societal requirements contradict religious beliefs.[51] Nevertheless, the law maintains the Catholic Church's privileged position in state-church relations, as sanctioned by the Concordat between Peru and the Holy See signed in 1980. By explicitly allowing the government to enter into cooperation agreements with religious institutions that have significant "roots" in the community, the government can maintain the $750,000 provided annually to finance various Church activities.[52]

Despite the advances, Peru's principal Evangelical leaders oppose the law and plan to initiate a legal process to establish its unconstitutionality.[53] Among their grievances are that the law does not declare Peru to be a secular state, that continuation of the Concordat reinforces the privileges of the Catholic Church, and that, most importantly, it merely permits students to opt out of religious instruction in schools rather than eliminating religious education or allowing in alternative faiths.

Peruvian labor rights are fairly strong under the law, but far less effective in practice. Employers frequently circumvent the greater protections granted to permanent workers through the indefinite perpetuation of short-term contracts with "temporary" workers who perform the tasks of permanent workers but who are effectively denied their status and organizational rights.[54] Such conduct generally goes unpunished even when detected. In 2007, for example, Universal Textil was deemed to have been employing 1,257 permanent workers on temporary contracts, but as the end of 2009 had neither complied with an order to make the contracts permanent nor been punished.[55] Lack of enforcement is also the norm when firms respond to strikes by firing unionized permanent workers or their union leaders and hiring temporary workers, as allegedly occurred at Nestlé and ENI in 2008.[56] Peruvian labor law facilitates this practice by allowing firms to fire workers for any reason subject to payment of severance. Furthermore, strikes can only be initiated with the authorization of the Ministry of Labor, which can revoke its authorization at any time if the protest is deemed serious or large enough to significantly affect production or inflict some other societal harm.[57]

Recent legislation has further weakened Peruvians' right to strike and protest. This is significant because Peru is a very high-protest society due to the country's ineffective institutional dispute resolution channels. In September 2010, President García issued a set of controversial legislative decrees that reduce the military and police's accountability to Peruvian citizens and provide

incentives for more frequent use of force in policing strikes and protests. The decrees exempt military and police personnel from criminal and civil liability for the use of force when these are required to deal with ambiguously-termed "hostile groups." Because of this ambiguity, the exemption could dangerously extend to legal marches, protests and labor strikes. The decrees also allow military and police forces to be judged in military rather than civilian courts when accused of crimes associated with the use of force in these situations.[58] The constitutionality of some of the measures is currently under judicial review. The stakes are clear: in total, the ombudsman registered the deaths of 191 Peruvians—153 civilians and 38 security force members—in the context of social conflict during García's five-year term, with only rare accountability for the violence.[59]

RULE OF LAW 3.89

INDEPENDENT JUDICIARY	3.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	4.00
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	3.75
PROTECTION OF PROPERTY RIGHTS	4.00

The institutions responsible for administering and upholding the rule of law in Peru suffer from extremely low credibility in the eyes of the public. In an October 2009 poll of Lima residents, 81 percent of respondents declared that they had little or no trust in the judiciary.[60] In Peru, justice is often seen as a privilege for the rich and well-connected alone. The profound systemic and cultural changes that are necessary for the judiciary to regain citizens' confidence will take significant time, resources, vigilance, and political will.

Partially as a result of a history of government interference in the judiciary—which hit a zenith under Fujimori—the PJ zealously guards its autonomy, which has sometimes served as an excuse to prevent reform efforts and protect powerful vested interests. The regular judiciary is headed by the Supreme Court, whose president doubles as the chief administrator of the judiciary. The National Council of Magistrates (CNM) is constitutionally charged with the appointment, promotion, and dismissal of judges and prosecutors—including the Supreme Court—while training is the domain of the Judicial Academy (AMAG). Separately, a seven-member Constitutional Tribunal, whose members are appointed by Congress, serves as the final arbiter of the constitutionality of Peru's laws. A 2008 Judicial Career Law improved appointment and evaluation mechanisms, but in 2010 the CNM was rocked by scandals involving bribery requests in exchange for promotions as well as accusations of politically motivated unfair treatment of prosecutors.[61]

More broadly, corruption in the judiciary remains rampant. A recent report carried out by the judiciary's Ethics Department revealed that 60 percent of

Peruvian judges that have served in the last 10 years have been sanctioned for ethics violations; of those sanctioned, 54 percent were removed from their position due to the violation.[62] These investigations and removals are the result of an active and effective Office of Judicial Control (OCMA) but also reflect the sheer magnitude of the corruption problem within the judiciary.

Compliance with judicial decisions usually occurs but can be inconsistent and slow at times. The abuse of well-intentioned tools such as the amparo, a form of legal injunction, has harmed the judiciary's ability to have its decisions enforced. The amparo is easily abused by corrupt judges, although such abuse has been somewhat less visible in recent years.

The Peruvian Constitutional Tribunal (TC), created by the 1993 Constitution, has gained some credibility since the fall of Fujimori by exercising its constitutional adjudication powers in a more independent manner.[63] The enhanced independence of the TC in the last decade is due in large part to the increased diffusion of democratic and constitutional values among political actors and the desire to avoid a return to autocracy. The TC's consolidation of independence has been abetted by political factors, like the existence of a fragmented Congress and a competitive electoral process, and structural ones, such as an institutional design that prevents Congress and the executive from forcing the TC to reach specific legal conclusions. Yet despite improvements, the TC remains highly politicized and inconsistent, as was particularly evident in its treatment of human rights issues that came before it in the second half of the García administration.

Serious structural, economic, and cultural problems hinder the independent and impartial administration of justice. The system is generally underfunded, and the caseload far outstrips judicial capacity. Instability also diminishes the judicial system's effectiveness and credibility. In November 2010, judicial branch employees throughout the country, including judges, began a month-long strike that exacerbated a docket that already featured a two million case backlog.[64] Similar strikes, which each involved compensation issues, were carried out in 2009, 2007, and 2004.[65]

All Peruvians charged with a crime are considered innocent until proven guilty and have the right to independent counsel. The difficulty, especially for poor or rural citizens, lies in navigating the justice system. Poor Peruvians deeply mistrust the legal system and often lack access to justice; occasional lynchings and the frequent outbreaks of social conflict are only the most dramatic examples of the lack of judicial intermediation in many parts of Peru. In recent years the state has attempted to increase the numbers of community-selected justices of the peace, as well as hire additional translators and exempt the poor from legal fees, but resources for such projects remain scarce. The government hopes to reap efficiency and equity gains from an overhaul of the criminal procedure code that is gradually being implemented throughout the country. The new process concentrates the investigative process in the public prosecutor's office,

which then transfers specific cases to the judiciary for trial and sentencing. The process adopts an oral, accusatory format, which streamlines the process. Early evidence seemed indicate, however, that increased efficiency and judgment will require more time.

The most notable recent development for the rule of law in Peru was the creation of specialized human rights system, as recommended by the CVR, to investigate and prosecute specific cases of human rights violations associated with the internal armed conflict. The most celebrated of these was the Fujimori trial, which marked the first time a former head of state was extradited to his native country to stand trial for human rights abuses, and the first time a democratically elected president was found guilty of such crimes.[66] The proceedings were widely viewed as fair and impartial, and after his April 2009 conviction on several counts, Fujimori was sentenced to 25 years in prison. Though his lawyers have continued their efforts to overturn the ruling, most constitutional experts agree that they have little chance of success. Rampant speculation that Alan García would grant Fujimori a presidential pardon proved unfounded. Fujimori was also convicted on a number of separate criminal charges, including abuse of authority and corruption.

Despite the outcome of the Fujimori trial, there is increasing concern about the fate of other human rights cases, with verdicts to date exonerating a clear majority of defendants.[67] The CVR recommended the prosecution of 48 specific cases for which it found strong evidence of gross human rights violations. Most of these cases focused on state agents, as the bulk of surviving Shining Path suspects had already been prosecuted. While the special human rights system produced solid rulings in its first years of operation, it has more recently encountered numerous difficulties.

First, the human rights system's mandate was expanded to include drug trafficking, money laundering, kidnapping, and other cases, diluting its focus and greatly increasing its workload. As a result, investigations in the Public Ministry advance at a snail's pace, and judges at the National Criminal Court can dedicate only a few hours a week to human rights cases. Second, in recent years the National Criminal Court has been sharply criticized for issuing decisions that appear to ignore international law as well as the jurisprudence of previous trials. For example, in a binding December 2009 directive, the court found that state agents who are no longer public employees cannot be accused of the crime of enforced disappearance, resulting in acquittals in several high-profile cases.[68] Human rights activists have also been critical of a government policy, begun under the García administration, by which the state pays for the legal defense of state agents, even though many victims lacked legal representation.

The political climate for accountability efforts has also been extremely hostile. Lack of cooperation by the military has consistently hampered investigations, and both military and García government officials have accused human rights organizations and the judiciary of "persecuting" the armed forces, undermining military morale, and promoting a "terrorist" agenda. García is not a

disinterested observer, as several cases involving abuses committed during his 1985–1990 presidential term are currently being adjudicated. One of the controversial decrees issued in September 2010 would have retroactively imposed a statute of limitations for war crimes and crimes against humanity, effectively providing amnesty to state agents accused of committing torture and large numbers of murders and disappearances during the 1980s and 1990s. After a domestic and international outcry, the most problematic decree (DL 1097) was rescinded. It remains to be seen whether the Peruvian judiciary will maintain the independence and impartiality it demonstrated in the Fujimori trial as the other cases move forward. In a sign of possible political pressure, human rights prosecutor Cristina Olazábal was accused of breach of duty in early 2010 after submitting a case that held García responsible for a 1985 massacre by the military, which she deemed genocide. The charges against her were dropped a few months later, but the incident could affect prosecutors' behavior in other cases.

Civilian control over the military has improved greatly in Peru; for the most part, security forces do not unduly interfere in the political process. García made the physical and moral restoration of Peru's military a priority for his administration, investing hundreds of millions of dollars in a program to establish a "modern dissuasive" military capacity and calling for the professionalization of the military, including higher substantial salary increases.[69] Garcia's first minister of defense, Allan Wagner, was seen as having a modernizing vision, centered on the idea of fortifying the defense minister's office. Civilian appointees have over time reduced the military's prerogatives over military training and budgets,[70] and García removed corrupt and verbally belligerent military leaders from leadership positions. Nonetheless, progress has stagnated under Wagner's successors. Corruption in the military and intelligence communities remains rampant, and military intransigence in the face of investigations for human rights abuses continues. The presence of Luis Giampietri as García's vice president served to ensure that military unease about exposure to prosecution would not be ignored. Giampietri, who is accused of directing a violent response to a Shining Path prison revolt at El Frontón prison in 1986, is considered one of the military's fiercest defenders and one of Peru's human rights community's primary opponents.

Property rights are semi-predictable in Peru. The country was an early innovator in land titling, and efforts continue to regularize new urban settlements as well as agricultural lands. Contract enforcement in Peru remains problematic due to the erratic functioning of the legal system. The Commercial Court system, however, which began operation in 2005, has significantly increased the speed and predictability of contract dispute resolution. Most citizens are protected from unjust deprivation of property. Laws safeguarding indigenous territories are considered fairly strong, but these lands can be bought and sold, and loopholes in the regulations have contributed to the social conflicts noted above. Peru ranked 110 of 183 countries for enforcing contracts in the World Bank's Doing Business 2011 report, largely due to the high cost of bringing a

claim.[71] Nonetheless, Peru was among the ten countries globally that showed the most improvement in the climate for doing business, largely due to the creation of an online one-stop shop for business registration and the introduction of fast-track procedures for registering property.

Despite longstanding land titling efforts, only 5 percent of the approximately 5,000 communities in the Peruvian Amazon have a property title that allows them to control their territory and manage their communal resources, according to the Institute of Liberty and Democracy.[72] Few of these titles specify boundaries precise enough to allow the properties to be identified with certainty within a standardized system. Additionally, the slowness and cost of the registry system render it inaccessible to most such communities.[73] However, many observers retain faith that additional reforms in titling mechanisms would help resolve the hundreds of disputes among indigenous communities with respect to territorial boundaries.[74] While more progress has been made on urban property rights, evictions and expropriations remain common and often lead to conflict and even violence.

ANTICORRUPTION AND TRANSPARENCY	3.48
ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.60
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.00
CITIZEN PROTECTIONS AGAINST CORRUPTION	3.50
GOVERNMENTAL TRANSPARENCY	3.83

Corruption continues to be a grave societal problem and a principal obstacle to increased stability and prosperity in Peru. In 2010, Peru scored 3.5 out of 10 and ranked 78 out of 180 countries on Transparency International's Corruption Perceptions Index; the small score decline, indicating a heightened sense of corruption among Peruvian respondents, came after several years of annual improvements. Direct public opinion polling indicated some differentiation, however. While in 2010, over 70 percent of survey respondents in Lima considered each of the three main branches of government either "corrupt" or "very corrupt," private firms, Peruvian society, and the media were all considered less graft-prone. Nonetheless, 40 percent of respondents considered these entities to also be either "corrupt" or "very corrupt."[75]

Public opinion in Lima suggested that Peruvians were generally very optimistic shortly after García's entry into office: in 2007, 52 percent of respondents viewed his government as less corrupt than prior governments. By 2010, however, only 26 percent maintained that opinion, while 50 percent viewed the administration as equally corrupt and 20 percent perceived more corruption—a striking result, given the generally more favorable views of García in Lima.[76]

The shift in public opinion appears to have begun in early 2008, and was aggravated by the highly publicized "Petroaudios" scandal that became public in October 2008.[77] Initial recordings of telephone conversations played on

radio and television revealed that Alberto Quimper Herrera—a member of the board of directors of the state-owned corporation Petroperú and a former García tax advisor—had negotiated a large kickback from the Norwegian firm Discover Petroleum for an oil exploration contract (Discover continues to deny having paid any bribes for its concessions). García removed Quimper from his board membership, the president of Petroperú resigned, and all contracts with Discover were suspended. However, additional recordings implicated Prime Minister Jorge del Castillo, provoking the resignation of García's entire 13-member cabinet in order to avert a pending censure resolution in Congress. The investigation has dragged on ever since amid reports of irregularities, including the mysterious disappearance of key evidence from Public Ministry computers. Despite ongoing prosecutions of Quimper and several other figures, the perception among most Peruvians is that those primarily responsible in the case have not been held accountable.

An offshoot from the Petroaudios case is the Business Track scandal,[78] whose name stems from the private firm—staffed by former Fujimori naval officers—that surreptitiously and without consent recorded the private telephone conversations central to the petroaudios affair. Five Business Track employees directly involved in the illegal recordings were arrested and incarcerated. The revelation of the widespread incidence of chuponeo (eavesdropping) in Peruvian politics was particularly concerning to many Peruvians because of the reminders it offered of the darkest days of the Fujimori era. Additionally, many believe that the publicly released recordings only scratch the surface in terms of the scope of the wiretapping, a theory boosted by the significant pressure placed on prosecutors to avoid further revelations.

The effort to formulate and enforce an effective process to detect, investigate, and prosecute public officials for corruption is a major issue in Peru, given the nature of the legacy of the Fujimori regime. The process is politicized and, to a substantial degree, media driven. Efforts to investigate and prosecute ministers, members of the congress, and members of the judiciary are harmed by these officials' attempts to hide behind immunity rules for public functionaries. Victims of corruption generally assume that they have few mechanisms to pursue their rights, and few Peruvians report the frequent solicitations of petty bribes by police and bureaucrats.

The effectiveness of the investigation and prosecution system at combating corruption is questionable. Impunity, however, is not universal; hundreds of lower-level officials are fired or prosecuted for corruption each year. Many of their misdeeds are uncovered by Peru's primary independent auditor, the comptroller general, who is appointed by the president for a seven-year term and must be approved by Congress. The comptroller's office (CGR) is legally, although not constitutionally, autonomous and is responsible for scrutinizing everything from state purchases to asset-declaration forms. The CGR lacks sanctioning power, however, relying instead on the agencies concerned to take action when improprieties are found. SUNAT, the national tax agency, is generally viewed

as having increased in efficiency and transparency, and tax collection has both improved and achieved a broader base in recent years.

The current anticorruption legal subsystem was set up during the transitional Paniagua government, but became moribund during the García administration. Shortly after the Petroaudios scandal, García appeared to accelerate his plans to transform Peru's anticorruption framework and enforcement mechanisms, when, in December 2008, his administration published and disseminated a National Plan to Fight Corruption.[79] The plan was widely praised by international organizations and NGOs, and was modeled after Justicia Viva's recommended anticorruption plan published in 2006.[80] Unfortunately, it drifted quickly into irrelevance, as had the National Anticorruption Office, a fanfare-laden 2007 initiative.

Another pressing concern is that current disclosure requirements include assets and income but not other types of potential conflicts of interest. In addition, in many cases public officials have previously worked for, sponsored, or lobbied on behalf of the corporate interests they are subsequently charged with supervising and regulating; in the absence of clear and well-enforced "revolving door" rules, this creates potential or manifest conflicts of interest.

In May 2010, Congress passed a notable, though limited, package of anticorruption legislation. Among the most noteworthy acts was the Whistleblower Protection Law, which provides protection from dismissal or reprimands for whistleblowers, confidentiality in reporting acts of corruption, and compensation for the whistleblower upon verification of the proffered evidence.[81] In early 2011, the new criminal procedure code was put into effect for corruption cases in 16 judicial districts, including central and east Lima.[82]

Peru has still not sufficiently addressed the linkages between collusion and corruption in government contracting. Public procurement in Peru accounts for approximately 11 percent of the Peruvian gross domestic product, and corruption swallows up to 30 percent of the total amount spent on public procurement.[83] On average, the number of bidders in procurement processes in Peru is very small, which facilitates collusion and other forms of corruption. In addition, bid floors and ceilings with small bands of possible bids reduce competition and make collusion more likely, resulting in a worse outcome for the state and the taxpayer. A new State Procurement Law signed in November 2008 appears to be have shortened the public procurement process, while a new software program installed in 2009 allows government agencies to identify price differentials reported by different firms in the procurement process.[84]

The 2010 Open Budget Index gave Peru a score of 65 out of 100 on transparency in the budgeting process, a relatively favorable result in comparison to both its neighbors and developing countries more broadly. However, the score declined slightly from previous years, and remained negatively affected by Congress's inability to change the executive's budget proposal and its unwillingness to hold public. The index also faulted the government's independent auditing process as insufficiently funded, non-citizen friendly, and deficient in following up on the implementation of past recommendations.[85]

Central to general transparency is the right of access to information. Peru features such a right in both the constitution and in the Law on Transparency and Access to Public Information, but it is not well known and remains underused as a tool to advocate for greater government openness. The executive branch normally does not generally make legislative proposals public, and historical documents and information are also difficult to access.[86] Peruvians have the right to contest a government decision to withhold information through an administrative dispute settlement process, or through the constitutional process of habeas data.[87] Despite the existence of these mechanisms, in practice substantial economic resources are often required to navigate these processes, a prohibitive hurdle for many Peruvians. Individual agencies and especially subnational governments, however, have made notable progress in posting key documents online and otherwise providing access, although the spirit of transparency varies widely among different agencies and localities.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

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PHILIPPINES

CAPITAL: Manila
POPULATION: 94 million
GNI PER CAPITA (PPP): $3,540

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	4.10	4.29
CIVIL LIBERTIES:	3.91	4.06
RULE OF LAW:	3.28	3.13
ANTICORRUPTION AND TRANSPARENCY:	3.44	3.78

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Nathan Gilbert Quimpo

INTRODUCTION

Running on an anticorruption and antipoverty platform, presidential candidate Benigno Aquino III, the son of former president Corazon Aquino and the assassinated former senator Benigno Aquino Jr., scored a decisive victory in the Philippines' May 2010 general elections. To many Filipinos, Aquino's election provided a tremendous relief. The administration of his predecessor, Gloria Macapagal Arroyo, had been marred by a host of corruption and fraud scandals, increased political violence, and high rates of poverty and inequality. His main rivals for the presidency were former president Joseph Estrada, who had been convicted of "plunder" in 2007, and Senator Manuel Villar Jr., who had been implicated in suspicious real-estate deals. In his inaugural address, Aquino vowed to put a stop to "senseless spending," broken campaign promises, influence peddling, patronage politics, graft, and "*wang wang*," a colloquial reference to officials' arrogant overuse of siren-blaring police escorts to cut through traffic.

Philippine politics are dominated by representatives of the country's socioeconomic elite, who have long been steeped in the ways of political patronage. Spain and the United States, which ruled the Philippines for over three centuries and over four decades, respectively, nurtured these prominent families, allowing them to assume positions in the colonial government through elections that excluded the masses. In the 1960s, political patronage took on less

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A long-time political activist in the Philippines and a political refugee in the Netherlands, **Nathan Gilbert Quimpo** made a midlife shift to an academic career. He is now an associate professor in political science and international relations at the University of Tsukuba, Japan. His research interests include democracy and democratic governance, conflict and conflict resolution, and political corruption.

personalistic forms, and elections were marred much more by violence, fraud, campaign overspending, and bribery, often summarized as "guns, goons, and gold." Amid worsening intraelite rivalry and growing social tensions, President Ferdinand Marcos declared martial law in 1972 to extend his rule and plunder the country's resources without constraints. In 1983, Benigno Aquino Jr., Marcos's main political rival, was shot dead upon his return from exile in the United States. Three years later, after a fraudulent presidential election, a "people power" uprising put an end to Marcos's authoritarian and kleptocratic rule,[1] installing the opposition candidate—the senator's widow, Corazon Aquino—as president.

The early years of the Philippines' newly restored democracy featured a return to elite-dominated patronage politics. By the 1990s, the country's political clans were resorting to "rent seeking" and political violence to entrench themselves in power. The privatization of public resources debilitated the already weak state and its bureaucratic apparatus. In many rural areas, where the national government's hold was tenuous, semiautonomous politicians who had reinforced their positions with private armies emerged or grew bolder.[2] Corruption reached the highest levels of the government. Accused of involvement in a *jueteng* (illegal gambling) racket, President Estrada was forced to resign in the face of massive protests in 2001, marking the second time in 15 years that Filipinos ousted a corrupt president through a popular uprising.[3]

At her inauguration, President Arroyo, who had been Estrada's vice president, promised to usher in "a new politics," "improve moral standards," and provide "leadership by example." Her nine-year presidency, however, was riddled with scandals. The most infamous were the "Hello Garci" scandal, triggered by the exposure of a taped telephone conversation between her and an election commissioner on the rigging of the 2004 presidential election, and a US$329 million deal with a Chinese government corporation, ZTE, to build a national broadband network, with US$130 million reportedly earmarked for kickbacks to a group of officials and private individuals that included the president's husband. In a Pulse Asia survey conducted in late 2007, Filipinos rated Arroyo as the "most corrupt" president in Philippine history, surpassing even Marcos and Estrada. A sociologist has referred to the damage wrought by Arroyo as a "bonfire of institutions."[4] Despite all the scandals, Arroyo survived several impeachment and coup attempts.

The increased political violence under Arroyo included extrajudicial executions of hundreds of left-wing activists, the killings of dozens of journalists, a sharp rise in election-related violence, and the proliferation of private armies and death squads. The single most horrific incident was the Maguindanao massacre of November 2009, in which at least 57 people—relatives and supporters of a gubernatorial candidate, plus journalists observing their journey to register him—were brutally murdered, apparently by the private army of the incumbent governor, Andal Ampatuan Sr., a staunch Arroyo ally.

The massive outpouring of grief for Corazon Aquino, a symbol of moral stature, following her death in August 2009 galvanized a reform constituency that quickly gravitated toward her son, a senator who was untainted by corruption.[5] A week before he was installed as president, Benigno Aquino III enjoyed a record-high 88 percent trust rating among the Filipino populace. However, given the pillaged state coffers, corrupted political institutions, and pervasive culture of impunity bequeathed by the previous administration, Aquino faced daunting challenges in pursuing his agenda. Meanwhile, Arroyo remained a formidable political force; she, her two sons, a brother-in-law, and other close allies won seats in the lower house of Congress during the general elections. The durability of both the Aquinos and the Arroyos illustrates just how central the family element remains in Philippine politics.

ACCOUNTABILITY AND PUBLIC VOICE 4.29

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	3.20
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	6.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.29

The Philippines' May 2010 nationwide elections were the first to be conducted using an automated system. In past elections, the cumbersome manual system of counting votes often took weeks to finish. It also provided ample opportunities for cheating at various stages. Both the 2004 general and 2007 midterm elections are widely believed to have been tainted by large-scale fraud. Days before the 2010 elections, many Filipinos remained skeptical about electoral automation. The Commission on Elections (COMELEC),[6] which oversaw the new system, had a credibility problem not only because of the "Hello Garci" affair, but also due to the ZTE scandal, which had implicated and forced the resignation of the COMELEC chairman. Two previous electoral modernization projects had failed after becoming mired in overpricing scandals.[7] Nevertheless, the Philippines' first "e-election" was a major success. Voter turnout was a creditable 75 percent. The results or clear-cut trends of most electoral contests were known by late evening on election day, or the next morning. Although there were still some cases of fraud, including the busing of "flying voters" across district lines, these problems were far less common than in previous elections. Automation, however, did not halt vote buying, which was even more widespread and flagrant than before.

Garnering 42.08 percent of the vote, Aquino convincingly defeated Estrada (26.25 percent) and Villar (15.42 percent) in the presidential contest. Aquino's Liberal Party (LP) won only 45 seats in the 285-member House of Representatives, the lower house of the bicameral Congress, while Arroyo's Lakas-Kampi party took 106. But self-interested party-switching by lawmakers

is very common in the Philippines, and in the months after the elections, the LP expanded to 80 seats in the House as Lakas-Kampi shrank to 48. The Aquino-aligned majority coalition in the House reached 251 members (including 21 Lakas-Kampi members), leaving the minority with just 34. The LP won only three of the 12 Senate seats contested in 2010,[8] but it joined a 19-member majority bloc that is friendly to the Aquino administration. Only four senators are in the opposition, and one seat is vacant.

Since the government does not provide financial support to parties or candidates, usually only members of the country's elite can afford to mount adequately funded campaigns. Although there are laws regulating campaign finance, enforcement by COMELEC has been very lax. Many politicians understate their campaign contributions and expenditures in required declarations, and despite legal prohibitions, those in power often use state resources for campaigning.[9] Little has been done to stem the flow of "grey" money from *jueteng* and drug lords to electoral campaigns.

Philippine elections are among the most violent in the world. A total of 112 people were killed in 150 election-related incidents during the 2010 general elections period, slightly fewer than the 121 deaths in 2007. However, the nongovernmental organization (NGO) Vote Peace reported 94 election-related fatalities in the 12 months before the official election period, including the victims of the November 2009 Maguindanao massacre. Thus, election-related deaths from January 2009 to June 2010 totaled 211.[10] Public outrage over the Maguindanao massacre and peace initiatives undertaken by various civil society groups probably helped prevent the outbreak of more violent incidents during the election period.[11] Not even barangay (village) elections are spared from violence: a reported 39 people were killed in the October 2010 village balloting.[12]

One of the country's weakest institutions is its political party system. Dominated by leading political families, parties typically revolve around personalities rather than programs or platforms, and serve mostly as vehicles of patronage. Politicians switch parties, and parties switch alliances, whenever it is convenient. The party-list portion of the electoral system, which reserves 20 percent of the seats in the lower house for representatives of marginalized sectors and groups, has been penetrated by members of the elite and is essentially dysfunctional.[13] Some members of the LP, together with certain party-list groups and civil society organizations, are working for the passage of a political party reform bill, but their drive has not gathered momentum to date.

Taking advantage of the Philippines' presidential system, Arroyo effectively used the powers of a strong executive for political patronage during her nine years in office, particularly by making appointments and controlling the disbursement of public funds. This had dire consequences for the integrity and competence of the civil service. A 2008 Civil Service Commission (CSC) study revealed that Arroyo appointed 81 undersecretaries and assistant secretaries, 53 presidential advisers and presidential assistants, and an unknown number of consultants. Furthermore, 56 percent of government managers did not have

civil service eligibility. According to a former CSC chairperson, Arroyo made ample use of letters indicating that it is was the "desire" of the president that a certain person be given a certain position. Her unqualified appointees bloated, politicized, and deprofessionalized the bureaucracy, and demoralized rank-and-file government workers.[14]

Congress theoretically has primary control over government finances through the general appropriations bill, but in practice, the president has more clout, since disbursements of government funds to legislators' projects require his or her signature. This explains why after every presidential election, many opposition politicians switch to the president's party.[15] Under Arroyo, fund releases to opposition congressmen dwindled. Senate minority leader Aquilino Pimentel Jr. remarked in 2006 that the attempt to impeach Arroyo in 2005 failed "not because it was weak or baseless but because Malacañang [the presidential palace] dangled money, pork barrel projects, government positions and other juicy incentives which proved irresistible to the unscrupulous congressmen."[16]

Since the restoration of democracy in 1986, NGOs, "people's organizations" (POs), and civic groups have been actively involved in national and local policymaking processes. The 1987 constitution explicitly recognizes the positive role of NGOs and POs in advancing the people's welfare and interests, and the Local Government Code of 1991 mandates the participation of NGOs and POs in various local government bodies. Civil society organizations are free from legal impediments and onerous requirements for registration, and their funders and donors are likewise free of state pressures. Under Arroyo, however, the participation of NGOs and POs in policymaking processes was to some extent impaired, especially at the local level, by the unbridled extrajudicial killings of leftist activists and other human rights violations (see Civil Liberties).

After the fall of Marcos, the Philippine media corps regained its reputation as one of the freest in Asia. Privately owned outlets once again came to dominate both the print and broadcast media, which were free from state censorship and interference. Ownership of the main media networks, however, remained in the hands of powerful political families.

Media freedom suffered terrible blows under Arroyo. According to the National Union of Journalists of the Philippines (NUJP), a total of 103 journalists were killed during her tenure, far above the totals for previous administrations, including that of Marcos. Some of those killed had been exposing crime and corruption, others were murdered for taking sides in local disputes, and still others were targeted after using their media platforms to engage in bribery and extortion.[17] Of the 57 victims of the 2009 Maguindanao massacre, 29 were journalists.[18] The crime brought the issue of impunity to the fore once again. According to a veteran reporter, only four of the 74 murders of journalists prior to the massacre had been resolved.[19] Killings of journalists did not stop after Aquino took office. In his first 10 months as president, six journalists were murdered.

During the Arroyo administration, journalists also experienced various forms of harassment and intimidation. The president's husband, reacting to media reports linking him to various scandals, sued 46 journalists for libel, seeking P10 million (US$231,500) in damages and P1 million (US$23,150) in legal expenses in each of the cases. Although he eventually dropped the suits, they had a chilling effect on press freedom, according to the journalists involved.[20] In 2008, Ninez Cacho-Olivarez, publisher and editor of the *Daily Tribune*, was sentenced to a prison term of six months to nearly three years and ordered to pay over P5 million (US$115,750) in moral and actual damages for writing an article on alleged corruption in an airport terminal construction project. She had accused a law firm whose lawyers were "well-placed in Malacañang, with more already entrenched in the judiciary," of influence peddling and unlawfully manipulating government institutions.[21] Also that year, the Supreme Court imposed a P20,000 (US$463) fine on another newspaper publisher, Amado Macasaet, for indirect contempt of court after he wrote about a gift-wrapped box containing P10 million ($231,500) in cash that was given to one of the court's justices and was inadvertently opened by her secretary. In 2010, investigative journalist Marites Dañguilan Vitug received death threats shortly after the publication of her book on the politicization of the Supreme Court. Earlier, she had been sued for libel by Supreme Court justice Presbitero Velasco Jr. after exposing the latter's alleged involvement in partisan politics, namely his campaigning for his son, a gubernatorial candidate.[22]

The Supreme Court's apparent tendency to restrict freedom of expression has not been limited to journalists. In 2010, when 37 professors at the University of the Philippines called for the resignation of Supreme Court justice Mariano del Castillo, whom they accused of plagiarism, the court cleared the justice and directed the professors to explain why they should not be punished. Various organizations, including lawyers' groups and the country's largest association of Catholic schools, roundly criticized the court's actions in the case.

The internet has become an important source of information, as well as a valuable venue for debate. Soon after the "Hello Garci" scandal broke, the respected Philippine Center for Investigative Journalism (PCIJ) posted digital versions of the audiotapes on its blog, circumventing legal impediments to their airing on mainstream broadcast media and allowing hundreds of thousands of Filipinos to listen for themselves. Internet exchanges enlivened the debate on the legitimacy and future of the Arroyo government, and bloggers writing on the scandal drew record numbers of user visits and reactions, including from Filipinos overseas.[23]

The Philippines' lively media, which sometimes sensationalize news, were widely criticized in the aftermath of a hostage crisis in August 2010, in which a dismissed policeman killed eight Hong Kong tourists following an 11-hour standoff. The media's live, unrestrained coverage of the drama interfered with police operations and allowed the perpetrator to monitor their movements. Live footage of his brother's arrest apparently prompted him to begin shooting hostages.[24]

CIVIL LIBERTIES 4.06

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.38
GENDER EQUITY	4.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.50
FREEDOM OF CONSCIENCE AND BELIEF	5.33
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.75

Never since the restoration of democracy in 1986 have civil liberties been so severely abused in the Philippines as during the Arroyo presidency. Hundreds of leftist activists, government officials, journalists, lawyers, religious leaders, and farmers have disappeared or been summarily killed since 2001.[25] Most of those accused of carrying out the killings were soldiers or police officers. The rise in extrajudicial killings is widely believed to be linked to the government's counterinsurgency campaigns against Communist rebels and armed Muslim separatist movements, its counterterrorist drives against extremist groups such as Abu Sayyaf, and the sometimes violent rivalries among political clans. The killings mounted despite the existence of internal mechanisms in the military and national police for investigating and punishing human rights violations. In addition, the independent Commission on Human Rights (CHR) is constitutionally mandated to investigate all violations of civil and political rights. Although the CHR has performed creditably over the last few years, it has no prosecutorial powers.[26] Meanwhile, impunity for extrajudicial killings remains the norm. Of 305 incidents in 2001–10 covered by one study, only four cases, or 1.05 percent, led to convictions.[27] Current president Benigno Aquino III, whose father was a victim of extrajudicial execution, has vowed not to countenance such killings. However, a local human rights group reported that as of March 2011, there had already been 45 extrajudicial killings and five enforced disappearances under the Aquino administration.[28]

The Maguindanao massacre highlighted the phenomenon of private armies, whose proliferation Human Rights Watch has blamed on the government.[29] An independent commission formed after the massacre found that private armies work for influential politicians and consist of a variety of armed men—soldiers, policemen, "civilian volunteers," security guards, jail guards, rebels and former rebels, cult members, and street thugs.[30] Under Arroyo, the national government effectively lost control of areas where these so-called warlords reigned with their private armies. Clans like the Ampatuans, who delivered votes to the president and her allies in the fraud-marred 2004 and 2007 elections, were sheltered from scrutiny by national law enforcement bodies.[31] According to the Philippine National Police (PNP), there are a total of 107 private armies—a conservative figure, to some observers—across the country. The Autonomous Region in Muslim Mindanao (ARMM), of which Maguindanao is a part, is regarded as one of the main centers of electoral violence committed by

private armies.[32] In May 2011, Local Government Secretary Jesse M. Robredo announced that 41 of the 80 private armies in the ARMM had been disbanded since he assumed office.[33]

The proliferation of firearms, together with corruption and gross inefficiency in government, has made it difficult for the state to protect citizens from criminal syndicates, insurgents, and terrorist groups. According to a risk consultancy firm, there were 138 kidnapping incidents in 2009, the largest number since the company's monitoring began in 1995.[34] For well over a decade, Abu Sayyaf, a bandit-terrorist group that uses crude Islamist rhetoric, has engaged in bombings, kidnappings, extortion, and killings of Filipinos and foreigners alike, mostly in the southern Philippines. With assistance from the United States, the Armed Forces of the Philippines (AFP) have managed to kill or capture many Abu Sayyaf leaders,[35] but the group continues to perpetrate terrorist acts from time to time. The New People's Army, the guerrilla arm of the Communist Party of the Philippines, extorts "revolutionary taxes" from local politicians and mining, logging, and mobile-telephone companies that operate in its areas of influence, attacking the properties of those that do not pay.

The UN Committee on Torture has deplored "the numerous, ongoing, credible and consistent allegations, corroborated by a number of Filipino and international sources, of routine and widespread use of torture and ill-treatment of suspects in police custody." It has also expressed deep concern over the very limited number of investigations, prosecutions, and convictions in torture cases, and criticized the extensive use of arrests without warrants and lengthy pretrial detentions.[36] According to various human rights groups, "cruel, inhuman, and degrading conditions" persist in Philippine jails and detention centers, with problems including overcrowding; poor food, sanitation, and health care; high rates of sexual violence; and the detention of children with adults.[37] The International Prison Chaplains' Association has rated the Philippines' jail system as one of the world's worst.[38]

In keeping with the spirit of the country's two "people power" revolts in 1986 and 2001, the state recognizes the freedoms of association and assembly. It respects the right to form or join free and independent organizations, including trade unions, civic associations, and business groups. The state also permits public rallies, strikes, and other forms of protest, and refrains from using excessive force against them. However, the extrajudicial killings and other human rights violations under the Arroyo administration effectively curtailed free association and assembly in many areas.

The Philippines remains a major source, transit, and destination country for human trafficking. According to the National Bureau of Investigation (NBI), it is one of the world's top five sources of trafficking victims.[39] Hundreds of thousands of Filipinos have been trafficked for purposes including prostitution, exploitative labor, and the illegal organ trade. Many dedicated government officials and NGOs have worked to fight human trafficking, but they have been

no match for corrupt officials in league with trafficking syndicates, who have rendered the country's 2003 antitrafficking law largely ineffective.[40]

The growing politicization of the judiciary (see Rule of Law) has left citizens whose rights have been violated by the state with inadequate means for redress. In the last few years, however, the CHR has enjoyed high public trust for investigating and reporting publicly on extrajudicial killings and enforced disappearances. Its former chairperson, now Aquino's secretary of justice, won praise for her impartiality and independence, and for being able to stand up to the administration, military, police, and local potentates.[41]

Since 2006, the Philippines has consistently been listed as one of the top 10 performers on the World Economic Forum's annual Global Gender Gap Index. The country has been particularly successful in closing the gender gap in education and health. After nine years of lobbying by women's groups, the Philippines' Magna Carta of Women, a comprehensive package of legislation on gender equality, was signed into law in August 2009. The legislation, guided by the framework of the international Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), lays out the state's responsibilities in recognizing, protecting, and promoting the rights of women.

However, much remains to be done with respect to implementation. The labor force participation rate of women (49.3 percent in 2009) lags behind that of men (78.8 percent). Even in the comparatively "modern" technology and communications sectors, female employees experience sexual harassment, difficulty obtaining maternity leave, and gender bias in promotions. Women are heavily represented in the bureaucracy, but they tend to occupy technical or second-level positions, while men dominate the managerial and executive posts. Although the Philippines has had two female presidents, politics remains a largely male domain. Females constitute only 23 percent of the House of Representatives, 13 percent of the Senate, and 27 percent of the cabinet. According to the PNP, the number of cases of violence against women declined annually from 2001 to 2006, but has been rising since then. The NBI has found that 80 percent of the country's human trafficking victims are girls younger than 18. Tackling persistent but often underreported problems such as gender-based violence, trafficking in women, and terrible conditions for domestic workers has proven difficult.[42] Over the past few years, various groups have campaigned for a bill that would institute universal access to reproductive health information, services, and supplies, but the country's powerful Roman Catholic bishops have steadfastly opposed it, objecting especially to its provisions on modern contraceptive methods.

In a major victory for lesbians and gays, the Supreme Court allowed the party Ang Ladlad to run in the May 2010 party-list vote. The court overturned a COMELEC decision barring participation by the gay rights group due to its alleged promotion of "immorality." The Magna Carta for Disabled Persons was enacted in 1991 to eliminate all forms of discrimination against those with

disabilities. Such Filipinos have since obtained various forms of assistance in employment, education, health, and other areas. In 2007, the law was amended to extend more privileges, incentives, and protections, and it was renamed the Magna Carta for Persons with Disabilities.[43] Filipinos with disabilities, now estimated to number 9.7 million, still have very limited access to public buildings, employment, and social services in practice.

The 1987 constitution guarantees the "free exercise and enjoyment of religious profession and worship, without discrimination or preference." The state does not impose any restrictions on religious observance or ceremony. Parents are free to send their children to secular or religious schools. The separation of church and state is recognized, and the government does not interfere in the internal affairs of religious organizations. However, there are connections between religious and political affairs. Since some religious groups with large memberships openly or tacitly support certain candidates during elections, many politicians actively seek their backing, often in nontransparent ways. Church leaders were among those in the forefront of the protests that toppled Marcos and Estrada, but they opted not to endorse an ouster of Arroyo. During a dinner for Catholic bishops organized by Arroyo's office at the height of the impeachment proceedings against her, envelopes with cash purportedly for the poor were distributed to the prelates.[44]

Muslims, who make up 5 percent of the country's population and live mostly on the southern island of Mindanao or the adjacent Sulu archipelago, have long felt that they have been discriminated against, or even oppressed, by the country's Christian majority. Many Muslims deeply resent the loss of ancestral lands to waves of Christian settlers from the northern and central Philippines, and especially to the land-grabbing activities of Christian warlords. Muslims have also bristled at being treated as second-class citizens and past government efforts to "integrate" them in ways that were insensitive to their religious, cultural, and historical identity.[45] After Marcos's imposition of martial law in 1972, a full-blown war erupted between the government and the secessionist Moro National Liberation Front (MNLF). Pressured by Muslim countries, Marcos signed a peace agreement with the MNLF in 1976, but it quickly fell through. After a split in the MNLF, a more Islamist group, the Moro Islamic Liberation Front (MILF), emerged in 1984. President Fidel Ramos forged a "final peace agreement" with the MNLF in 1996 and opened peace talks with the MILF the following year. The 1996 pact, which paved the way for the MNLF chairman to head a "special zone on peace and development" and the ARMM, was badly implemented, bringing neither peace nor development. By the mid-1990s, the MILF had become the largest Muslim secessionist group. In 2000, following an impasse in peace negotiations, Estrada launched an "all-out war" against the MILF. Arroyo revived the talks shortly after coming to power. In 2008, the Supreme Court, acting on a petition from powerful Christian politicians in Mindanao, stopped government representatives from signing a "Memorandum

of Agreement on Ancestral Domain" (MOA-AD) with the MILF, and later declared the agreement unconstitutional.

The Aquino administration has created a new government panel to pursue peace talks with the MILF. More than 120,000 people have been killed and two million displaced in the course of four decades of fighting between government forces and the Muslim secessionist groups.[46] Fighting in the wake of the MOA-AD collapse in 2008 killed 400 people and displaced 700,000 others. Up to 60,000 remain displaced.[47]

Indigenous peoples in the Philippines,[48] accounting for 14 percent of the population, have been subjected to historical discrimination, economic and political marginalization, and the destruction of their traditional ways of life. In 1997, in keeping with the constitutional mandate to recognize and promote the rights of "indigenous cultural communities," Ramos signed the Indigenous Peoples Rights Act (IPRA). The law spelled out in detail the rights of indigenous peoples to their ancestral lands, self-governance and empowerment, social justice, and the preservation and protection of their culture, traditions, and institutions. Despite these legal protections, indigenous peoples have continued to be victimized or threatened by various industrial and "development" schemes. A number of mining companies, for instance, have excavated the ancestral lands of indigenous peoples without their "free prior and informed consent" as required by IPRA, disrupting their livelihoods and often causing major environmental damage. Resistance by indigenous peoples to "development aggression" has frequently resulted in the militarization of their areas. Meanwhile, textbooks in history and social science, as well as the mass media, in many cases still depict indigenous peoples as being racially inferior to other Filipinos.

RULE OF LAW 3.13

INDEPENDENT JUDICIARY	3.60
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.00
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.25
PROTECTION OF PROPERTY RIGHTS	3.67

The scandals and abuse that plague the Philippines give the impression that impunity is more prevalent than the rule of law. Closer examination of the country's judicial system reveals the myriad problems it confronts, with positive developments countered by disturbing trends.

The Philippine judiciary consists of the Supreme Court, which is the final appellate body; lower collegiate courts (Court of Appeals, Court of Tax Appeals, and the antigraft court Sandiganbayan); regular courts (regional, metropolitan, and municipal trial courts); and Muslim courts (Sharia district and circuit

courts). The Philippines ranked second in de jure judicial independence in a 2003 study covering 71 countries, but only 22nd in de facto judicial independence,[49] and conditions have worsened considerably since the study was conducted. The impunity exhibited in the many corruption scandals and cases of crime and violence in recent years indicates that the judiciary has little power over corrupt and abusive officials or political and economic elites.

Politicized and patronage-based appointments made by President Arroyo in the latter half of her tenure, especially to the Supreme Court, have brought the issue of judicial independence into sharp relief. Although she had to choose from a list of nominees drawn up by the Judicial and Bar Council, she had considerable clout in the nomination process. As president, she had appointed four of the JBC's eight members and a fifth member was her justice secretary. By the end of her tenure, all 15 Supreme Court members were her appointees.[50] Although the constitution expressly prohibits appointments within the two months before elections, Arroyo chose a new Supreme Court chief justice, Renato Corona, in May 2010, rather than leaving the choice to her successor.

The Supreme Court took several decisions favorable to Arroyo during her presidency, including rulings that upheld the right of a cabinet official to invoke "executive privilege" and refuse to testify further in the Senate investigation of the ZTE scandal in 2008, confirmed the legality of Corona's appointment as chief justice, and temporarily blocked an attempt to impeach the ombudsman (see Anticorruption and Transparency). The court also struck down the first executive order issued by Aquino, aimed at establishing a "truth commission" headed by former chief justice Hilario G. Davide Jr. (1998–2005) that would have probed alleged irregularities during the Arroyo administration. The court ruled that the order, by singling out the previous administration, violated the equal protection clause of the constitution.

While the true extent of corruption in the judiciary is difficult to assess, the U.S. Agency for International Development (USAID) has found that the "widespread perception of corruption in the judiciary, especially the lower courts, [is] eroding public confidence in the justice system."[51] The chairman of the ethics committee of the Philippine Judicial Academy (PJA) says that corruption often begins with lawyers and not with judges, and that it is "habit forming," starting "with little things" and then greatly expanding in scale.[52] In recent years, there has been a growing perception that the upper courts are also very much affected by corruption. In 2008, amid investigations into the alleged bribery of several Court of Appeals justices, two senators declared that corruption at the court was "like cancer" and "widespread."[53] The improprieties exposed by journalists seem to indicate that even the Supreme Court is not immune to corruption (see Accountability and Public Voice). According to Transparency International, factors that contribute to judicial corruption include political interference, inadequate budgets and salaries, the dependence of reform efforts on international donors, inconsistent application of procedural rules, the lack

of a monitoring framework, the lack of emphasis on moral values in the educational system, and a large backlog that leads to delays in resolving cases.[54]

In 2006, former Supreme Court chief Justice Artemio Panganiban summed up the major problems affecting delivery of justice in the Philippines with the acronym ACID, meaning (limited) access to justice by the poor, corruption, incompetence, and delay in rendering high-quality judgments.[55] Two years later, he reordered the four problems, perhaps to show that corruption had outstripped the others, resulting in the acronym CIDA.[56]

The Supreme Court under Panganiban's successor, Chief Justice Reynato Puno (December 2006 to May 2010), disciplined scores of court personnel who had been investigated and found guilty of corruption or incompetence. The punishments included the dismissal of two Court of Appeals justices and 18 trial court judges, the suspension of a Court of Appeals justice and 22 other judges, and the disbarment of a former Supreme Court justice. In compliance with the 2004 code of judicial conduct, Puno put a stop to the common court practice of employing judges' relatives. Meanwhile, investigative journalists have started questioning the judiciary's apparent lack of transparency. In the courts' zeal to protect confidentiality, one journalist writes, they have developed an "instinct to conceal" and bred "a culture of secrecy."[57] Another journalist has criticized the judiciary's practice of denying or delaying requests for access to information, and judges' refusal to disclose assets and liabilities as required by law, purportedly to protect themselves from harassment by hostile parties.[58]

The constitution guarantees the right of access to the courts and to due process of law. In criminal cases, the accused is presumed innocent until proven guilty and has the right to a speedy, impartial, and public trial. Furthermore, he is entitled "to have competent and independent counsel preferably of his own choice," and to be provided with a lawyer if he is unable to pay for one himself.

With a workforce of 2,300 judges and 25,500 other court personnel across the country, the judiciary received just 0.87 percent of the national budget in 2010, down from 0.94 percent in 2009. The resulting low salaries have contributed to an acute shortage of judges, with about 23 percent of magistrates' positions remaining vacant. A given judge now serves about 50,000 people, a much higher ratio than the ideal of one judge for every 10,000 people. According to a Supreme Court spokesman, justices and judges work under intense pressure, and many of them "use their own personal computers and printers, repair their own courtrooms, work on weekends to declog their dockets."[59] A shortage of prosecutors and public attorneys, who fall under the Department of Justice and outside of the direct control of the judiciary, compounds the inefficiencies.[60] Policemen have been authorized under certain conditions to act as prosecutors, especially in remote areas.[61] Transparency International reported in 2007 that it took five to six years on average to resolve an ordinary case in a trial court, and perhaps another six years to resolve any appeals.[62]

Many defendants languish in jail as cases drag on. Of the Philippines' total incarcerated population, 67.3 percent are in pretrial detention, one of the highest proportions in Asia.[63]

Despite the judiciary's questionable autonomy and persistent shortcomings, some important reforms have been enacted. Under the leadership of then chief justice Davide, the Supreme Court undertook the Action Program for Judicial Reform (APJR), which has been held up as a model for judicial reform in developing countries. Launched in 2001, the program has been credited, at least in part, with promoting transparency in the judicial appointment process, helping citizens to bring legal challenges, facilitating an increase in judicial salaries and a subsequent increase in judicial applications, the adoption of new codes of conduct for judges and other court personnel, thorough investigations of complaints against judges and other court personnel, and the introduction of more efficient, automated systems to help reduce the case backlog. The Supreme Court and APJR were also instrumental in the formalization and curriculum development of the PJA, the country's only training school for justices, judges, court personnel, lawyers, and aspirants to juridical posts. Under Davide, judicial decisions gained general respect, and Supreme Court rulings came to be accepted as final.[64] To promote easier access to justice for the poor and disadvantaged, the Supreme Court launched the Justice on Wheels (JOW) project, modeled on mobile courts in Guatemala, which resolved cases speedily through mediation and helped to reduce overcrowding in jails.[65]

Several reform programs started under Puno have also yielded progress. The innovative Small Claims Courts project has expedited the resolution of civil cases involving monetary claims not exceeding P100,000 (US$2,300). To encourage the use of arbitration and mediation, the Supreme Court has promulgated special court procedures for these dispute-resolution mechanisms. An Enhanced JOW, or EJOW, apart from settling cases quickly, has extended free legal, medical, and dental aid to detainees. These three projects have contributed immensely to reducing the judiciary's case backlog and increasing access to justice for the poor.

In 2007, responding to the sharp rise in extrajudicial killings in 2005–06, the Supreme Court promulgated a new legal mechanism called the writ of *amparo*, which provides "remedies to any person whose right to life, liberty and security is violated and threatened" by compelling, for instance, the military and the police to look for persons reported missing. The court soon followed this reform with the writ of *habeas data*, which obliges state forces to give families of the disappeared access to official documents and files, on the basis of the "right to truth." These new legal tools have contributed to the location and release of some missing persons, but they have not put a stop to extrajudicial executions. The Asian Human Rights Commission has found the writ of *amparo* to be an insufficient solution, calling on the Philippine Congress to "enact laws against torture and enforced disappearances and laws to afford adequate legal remedies to victims."

Although the constitution mandates civilian control over the military, serious weaknesses in this control have emerged in practice. In addition to the problem of police and military impunity for extrajudicial killings, many soldiers and police have allegedly engaged in various criminal enterprises, including extortion, election rigging, *jueteng*, and trafficking in drugs, weapons, or persons. The military has acknowledged that unscrupulous personnel sell stolen military supplies to rebel and terrorist groups, and to politicians with private armies. Among the arms seized from Ampatuan residences following the Maguindanao massacre were pieces of ammunition with military and police markings.[66]

Military mutineers staged three coup attempts against the Arroyo government. The last attempt, in November 2007, was mounted by 30 soldiers, a senator and former navy officer, and a brigadier general, all of whom had previously been detained for the two earlier attempts. They walked out of their trial, marched to a nearby luxury hotel and occupied its second floor. Accusing the government and military commanders of corruption, the soldiers demanded Arroyo's resignation and called on the military to turn against her. After security forces stormed the hotel, however, the men surrendered.

The military owes its politicization to Marcos, who expanded its purview to nonmilitary matters and cultivated politically loyal officers. Military involvement in politics was reinforced by the major role the military played in the protest-driven power transfers of 1986 and 2001. Since then, politicians have frequently attempted to use the military in their political maneuverings, and civilian officials have failed to provide effective services in insurgency-affected areas, leading the military to assume a growing number of governance functions at the local level.[67]

A widening corruption scandal has engulfed the AFP, validating the accusations voiced by mutinous soldiers. Retired colonel George Rabusa, a former AFP budget officer, was asked to testify before Congress in January 2011 on an apparently anomalous plea-bargaining agreement between the Office of the Ombudsman and a former AFP comptroller, Major General Carlos Garcia, who had faced "plunder" charges but was out on bail. However, Rabusa went much further in his testimony, exposing the corrupt diversion of enormous sums from state coffers by top military officers. Among those he named were four former AFP chiefs of staff, who had received tens of millions of pesos in "welcome" and "farewell" gifts and unaudited allowances. Former Commission on Audit (COA) auditor Heidi Mendoza, who had done the auditing in the Garcia case, revealed other irregularities in military funds. In a dramatic turn, former AFP chief Angelo Reyes committed suicide after being implicated by Rabusa. A spokesman for the Department of National Defense later confirmed that corrupt generals had embezzled "staggering" amounts of government funds.[68] In the wake of the congressional hearings, Filipinos now consider the AFP to be the most corrupt government agency, followed by the PNP.[69] Rabusa has filed a formal plunder complaint against three former AFP chiefs and 19 others, and the Department of Justice has issued summons to the accused.

Filipinos have the right to own property, whether alone or in association with others. In the 2010 Index of Economic Freedom, however, the Philippines scored low on property rights: 30 on a scale of 0 to 100. The index cited corruption and politicization in the judicial system as well as a serious organized crime problem.[70]

The property rights of the poor are particularly weak. Over the past two decades, there have been significant legislative gains on this front, including laws on comprehensive agrarian reform, indigenous peoples' rights, and urban development and housing. But implementation of these laws has been hampered by cooptation of government agencies by private interests, overlapping property claims, conflicting legislation, and opposition from major landowners, corporate interests, and armed groups.[71] As a result, the growing trend of foreign corporations leasing huge swathes of farmland for the production and export of biofuels and food crops constitutes a major threat to the property rights of poor farmers and indigenous peoples.[72] The commitment of the Aquino administration to agrarian reform is being tested by the case of the Hacienda Luisita, a plantation estate covered by agrarian reform that is owned by the Cojuangco clan, to which Aquino belongs. Instead of distributing land to farm workers, the Cojuangcos have been pushing for a stock distribution option.

ANTICORRUPTION AND TRANSPARENCY 3.78

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.20
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.67
CITIZEN PROTECTIONS AGAINST CORRUPTION	3.75
GOVERNMENTAL TRANSPARENCY	4.50

In Transparency International's 2010 Corruption Perceptions Index, the Philippines was ranked 134th out of 178 countries. Corruption was listed as the most problematic factor for doing business in the Philippines in the 2010 Global Competitiveness Report.[73] According to the UN Development Programme, almost 20 percent of the country's annual budget is lost to corruption. Two economics professors at the University of the Philippines trace the widespread corruption to structural factors such as the patronage system, lack of publicly available information, manipulation by powerful interests, and a patrimonial political culture.[74]

State activity in the economy is supposed to be regulated and monitored in a manner that minimizes opportunities for corruption. In recent years, however, the powers of some regulating bodies have been greatly weakened. The Senate investigations into the ZTE scandal revealed that the country's top economic planning agency, the National Economic and Development Authority (NEDA), had meekly acquiesced to a bribery-tainted project, and that the normal procedures for evaluating the economic and social impact of projects had been circumvented. In the view of several senators and six former NEDA

directors general, the agency had been reduced to "a rubber-stamp institution."[75] The COA found that certain state-owned corporations had misused funds, and that their officials were receiving inflated salaries, yet the Arroyo government did nothing to curb these excesses.[76]

Of over 100 countries ranked by Fitch Ratings, the Philippines is the fourth worst at tax collection,[77] the country's main and perennial fiscal problem. The state loses at least P250 billion (US$5.8 billion) a year to pervasive tax evasion or avoidance. While the Bureau of Internal Revenue has often harassed poor market vendors and owners of small shops who do not issue receipts, it has not aggressively pursued much more substantial tax evasion by the rich and powerful.[78] About 80 percent of major taxpayers, for instance, claim 70 to 90 percent of reported gross income as allowable deductions. Tax evasion has been made possible by rampant corruption in the revenue-generating agencies.[79] The Aquino administration, through the Bureau of Internal Revenue and the Bureau of Customs, has filed cases against high-profile tax evaders, including government officials from the previous administration.

The Philippines has a fairly well-developed legislative and administrative framework for fighting corruption. An antigraft and corrupt practices law dating to 1960 obliges all public officials to file detailed sworn statements of assets and liabilities every year. A law enacted in 1989 defines the code of conduct and ethical standards for public officials and employees. Among other effects, it expanded the disclosure requirement to include the assets, liabilities, and financial and business interests of the spouses and children of government officials. The 1989 code specifically upholds the public's "right to know" the contents of these statements. Gaining access to them, however, is sometimes difficult. In the experience of journalists and anticorruption NGOs, the most inaccessible declarations have been those of military officials and judges.[80] The Philippines ratified the UN Convention against Corruption in 2006, and the Arroyo administration included an anticorruption package as a major feature of its medium-term development plan for 2004–10.[81] Given the subsequent spate of scandals, this commitment proved to be mainly rhetorical.

The Philippines has a network of 18 special anticorruption agencies. The Office of the Ombudsman, constitutionally designated as a protector of the people, has the broadest powers. It can, for instance, move to stop or prevent acts of impropriety, investigate corruption cases, and impose administrative sanctions on erring officials. Three other constitutional anticorruption bodies are the Sandiganbayan (special antigraft court), the Civil Service Commission, and the COA. Arroyo established a Presidential Anti-Graft Commission (PAGC) to assist her in coordinating and supervising the government's anticorruption efforts, and to investigate cases involving civil servants in the executive branch. The country's profusion of anticorruption bodies has drawn criticism, as there is considerable overlap in their respective duties and little clarity on which agency should take the lead in a given situation. After taking office, Aquino dissolved the PAGC, which he viewed as redundant.

The Philippines' anticorruption laws and agencies have not yielded much success in practice.[82] In a 2009 Transparency International survey, 77 percent of Filipinos rated their government's actions in the fight against corruption as ineffective. And in a 2008 bribe-payers study, senior business executives operating in the Philippines gave the government's anticorruption efforts even poorer ratings: 32 percent said they were ineffective, and another 60 percent found them very ineffective.

In 2007, the Philippines enacted an anti–red tape law to improve efficiency in the delivery of government services and prevent graft. Nevertheless, in the World Bank's annual survey on the "ease of doing business," the Philippines dropped from 133rd out of 178 countries in 2008 to 144th out of 183 in 2010.[83] According to a survey of expatriate business executives, the Philippines has the third most inefficient economy among 12 Asian countries studied. Businesses and individuals often cope with bureaucratic obstacles by engaging illegal "fixers," who collude with corrupt government employees to "facilitate" transactions.[84]

In Senate investigations into illegal gambling, an Anti–Money Laundering Council spokesman stated that the council was powerless to crack down on major gambling operations. He cited a Supreme Court decision requiring the council to give suspects prior notice before it could investigate their accounts.[85]

The anticorruption efforts of the new Aquino government suffered a serious blow when the Supreme Court declared that the "truth commission" formed by the president was unconstitutional. The commission had already drawn up a list of 23 possible large-scale corruption cases that it could investigate, including the ZTE and "Hello Garci" scandals. The administration said it had decided to establish a truth commission because the leaders of existing institutions, specifically the Office of the Ombudsman, were too close to the Arroyos.[86]

In March 2011, Aquino's allies in the lower house of Congress succeeded in impeaching Ombudsman Merceditas Gutierrez by a huge margin. The lawmakers found sufficient evidence for a trial in the Senate, on the grounds that her office's very low conviction rate and inaction on major corruption cases amounted to "betrayal of public trust." Earlier, one of the country's top newspapers had asserted that Gutierrez, who once served as Arroyo's chief legal counsel, "shielded the former president, her family, close associates and officials from charges of corruption, enrichment in office and abuse of authority."[87] Ten days before the start of her Senate trial, Gutierrez resigned.

Aquino has also moved to overhaul the COA leadership, selecting a new chairperson and appointing Heidi Mendoza, the former auditor who testified in the case of General Garcia, as a commissioner.

Victims of corruption are able to register complaints, but they rarely win compensation and often face harassment or intimidation. Given the many extrajudicial killings over the past decade, anticorruption activists, investigative journalists, and lawyers do not feel secure when exposing or reporting on bribery and corruption. Nevertheless, thanks to the persistent efforts of courageous

journalists, allegations of corruption continue to receive widespread and unbiased coverage in the national as well as many local news media.

Whistleblowers sometimes face deadly violence. A school district supervisor who witnessed massive cheating in the 2007 elections in Maguindanao and filed a complaint with COMELEC was shot dead shortly thereafter. A whistleblower who testified during Senate hearings in 2005 that Miguel Arroyo and several government officials had received money from *jueteng* operations was shot dead in February 2010. And a former technical consultant to NEDA who had decided to testify on the ZTE scandal was abducted from an airport by men who appeared to be military personnel; he may have escaped death only because the media promptly reported on his disappearance. Although the Arroyo government's Medium-Term Philippine Development Plan for 2004–10 advocated a law to protect whistleblowers, no such measure was passed.

The Department of Education has been notorious for setting a bad example on corruption.[88] Because of anomalous deals between department officials and a cartel of publishing houses, many textbooks used in public schools have been riddled with errors and technically defective.[89] According to the World Bank, 40 percent of the funds intended for the poor in the Food for School program did not reach the intended beneficiaries due to "design weaknesses, mis-targeting, and significant leakage to the non-poor."[90] In 2009, the Department of Education canceled the program after discovering that the supplier of its "fortified instant noodles with fresh eggs" had overpriced the product and made false nutritional claims. Early in 2011, six department employees were suspended for six months for their involvement in the "noodle scam."[91]

The public's right to information is expressly guaranteed in the Philippine constitution. However, due to the absence of an enabling law, information users have encountered various difficulties in compelling government agencies to release documents. The legal gaps include the absence of a uniform, simple, and speedy procedure for access; the lack of delineation of what information may be excluded from disclosure; the dearth of administrative or legal sanctions for noncompliance; and the inaccessibility of the courts as a forum for resolving disputed requests.[92] Congress almost passed a freedom of information bill in early 2010. A broad coalition of civil society organizations is now vigorously campaigning to secure its enactment.

In the 2010 Open Budget Index (OBI) published by the International Budget Partnership, the Philippines was rated 55 out of 100, indicating that it provided the public with only some information on its budget and financial activities during the year. This was an improvement from its OBI score of 48 in 2008. The gain was mainly due to more comprehensive information in the Philippines' executive budget proposal, which nonetheless still had gaps on certain fiscal activities and on the impact of different macroeconomic assumptions. The country's year-end report was viewed as far from comprehensive, as it did not include explanations for the difference between the original performance indicators and the actual outcome. The audit report produced by the COA was

likewise deemed insufficiently comprehensive, as it did not include audits of all expenditures and extrabudgetary funds. Moreover, its publication was not timely.[93]

According to Social Watch Philippines (SWP), an NGO working for budget reforms involving greater civil society participation, large sums of money are lost through corruption and mismanagement because the country's budget process lacks transparency and oversight. Although Congress is supposed to have the power of the purse under the constitution, Arroyo determined budget allocations in practice, and her allies received preferential treatment. Since a majority of lawmakers were in the ruling coalition, Arroyo faced a generally compliant Congress, and only a few legislators thoroughly examined the budget.[94] A former national treasurer and SWP leader remarked that "many budget items have no special provisions and are subject to the manipulation of only one person."[95] Another avenue for corrupt allocations has been the practice of "congressional insertions," which occurs during bicameral committee negotiations that are not open to the public. Aquino's ruling coalition has ended the practice altogether. His budget secretary has expressed hope that the budget process can be made more transparent and open to civil society involvement.[96] Under Aquino's "reform budget," implementing agencies are required to publish on their websites the status of projects and fund utilization.

PO/NGO participation in local development councils under the 1991 Local Government Code has led to a much more open budget process in many villages and municipalities. However, in areas where conservative traditional politicians hold sway, the budget process remains as closed and top-down as ever.

The World Bank has noted that since the 1970s, many of the Philippines' most notorious corruption scandals have involved failures in government procurement. In 2003, the confusing mix of laws and regulations on procurement were consolidated into an omnibus law, the Government Procurement Reform Act (GPRA), which sought to promote transparency, competitiveness, efficiency, accountability, and public monitoring in both the procurement process and the implementation of procurement contracts. According to a joint assessment by the Philippine government, the Asian Development Bank, and the World Bank, public procurement has become more efficient, the introduction of online "e-procurement" systems has vastly improved transparency and efficiency in implementation, and many loopholes for corruption opportunities have been closed since the enactment of the GPRA.[97] However, this assessment may be excessively positive. The GPRA does not appear to have significantly deterred procurement anomalies, including such high-profile scandals as the ZTE deal.As a longtime recipient of foreign assistance, the Philippines has established formal procedures for the fair and legal distribution of both official and private donor funds. Nevertheless, lack of transparency, mismanagement, and corruption have not infrequently attended the government's handling of foreign assistance. The Arroyo administration adopted policies that tended to weaken established safeguards.

Through government-to-government contracts or executive agreements, projects funded through official development assistance were exempted from compulsory bidding procedures. Moreover, Arroyo issued executive directives giving implementing agencies the power to approve major state projects without having to undergo evaluation by NEDA and its Investment Coordinating Committee.[98] Following a surge in assistance from China over the past decade, controversy and scandal have hounded Chinese-assisted programs, such as the ZTE agreement and the North and South Rail projects, that were approved outside of the normal procedures.[99]

RECOMMENDATIONS

- The government should prosecute and punish corrupt civilian and military officials, putting priority on those involved in major corruption cases to shatter the culture of impunity and make corruption a high-risk, low-reward activity.
- Thoroughly investigate the killings of activists and journalists over the past decade; prosecute and punish those responsible. The president should order the top officials of the AFP and the PNP to investigate military and police personnel implicated in extrajudicial killings, and to report publicly on these investigations. Ratify without delay the International Convention for the Protection of All Persons from Enforced Disappearance.
- The Philippine Congress should enact a law on strengthening the political party system that would require parties to put forward their platforms and governing programs, promote party loyalty and discipline, penalize party switching, and provide state funds for party—not personal or dynastic—development. COMELEC should institute tighter controls on campaign contributions.
- Develop a comprehensive political settlement with the MILF and the MNLF, in coordination with non-Muslim indigenous peoples, that would ensure the rights of Muslims and indigenous peoples to their ancestral domains and protect them from discriminatory practices.
- Deepen reforms aimed at strengthening judicial integrity (particularly those designed to increase transparency) and promoting judicial efficiency (particularly those designed to speed up trials and reduce backlogs).
- Deepen electoral reforms by modernizing voter registration and devising mechanisms to prevent or significantly reduce major electoral problems such as election-related violence and vote buying.
- The president should take a direct and proactive role in the dismantling of all private armies and "death squads" and the investigation of military and police involvement.
- Restore and strengthen the merit system in civil service appointments, and establish mechanisms to insulate the bureaucracy from politics, such as limiting the appointment powers of the president.

- The Philippine Congress should enact a right to information law that lays down a standard procedure for the handling of citizens' requests for information and the mechanics for the public disclosure of important government transactions.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

1 In 2004, Transparency International (TI) listed Marcos among the world's most corrupt leaders of the past 20 years. During his two decades in power, Marcos allegedly embezzled US$5 billion to US$10 billion. See TI, *Global Corruption Report 2004* (Sterling, VA: Pluto Press, 2004), 13, http://www.transparency.org/publications/gcr/gcr_2004.

2 Alfred W. McCoy, ed., *An Anarchy of Families: State and Family in the Philippines* (Madison: University of Wisconsin Center for Southeast Asian Studies, 1993).

3 The Philippines was the only country with two leaders in TI's 2004 list: Marcos and Estrada. TI estimated that Estrada had amassed US$78–80 million during his less than three years in power.

4 Randy David, "Bonfire of Institutions," *Philippine Daily Inquirer*, February 23, 2008, http://opinion.inquirer.net/inquireropinion/columns/view/20080223-120664/Bonfire-of-institutions.

5 Joel Rocamora, "Partisanship and Reform: The Making of a Presidential Campaign," in *The Politics of Change in the Philippines*, ed. Yuko Kasuya and Nathan Gilbert Quimpo (Manila: Anvil Publishing, 2010), 73–89.

6 COMELEC's chairperson and six commissioners are appointed by the president with the consent of the Commission on Appointments.

7 Nathan Gilbert Quimpo, *Contested Democracy and the Left in the Philippines after Marcos* (New Haven: Yale University Southeast Asia Studies, 2008), 217.

8 Members of the House of Representatives are elected for three-year terms. Senators serve six-year terms, with half of the Senate's 24 seats contested every three years.

9 Joel Rocamora, "Campaign Finance and the Future of Philippine Political Parties" (paper presented at a conference on "Political Finance and Democracy in East Asia," Seoul, South Korea, June 28–30, 2001, organized and cosponsored by the Sejong Institute and the National Endowment for Democracy).

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RWANDA

CAPITAL: Kigali
POPULATION: 10.4 million
GNI PER CAPITA (PPP): $1,130

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	1.37	1.07
CIVIL LIBERTIES:	1.86	1.93
RULE OF LAW:	1.16	1.10
ANTICORRUPTION AND TRANSPARENCY:	2.51	2.59

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Timothy Longman

INTRODUCTION

Seventeen years after the 1994 war and genocide that killed an estimated 800,000 people, Rwanda has made significant progress on stability and economic development but remains highly authoritarian, a country where dissent is not tolerated and regime critics are harassed, arrested, and sometimes killed. Even as the regime has gained international praise for good governance and competent economic management, the Rwandan Patriotic Front (RPF) and President Paul Kagame have tightened their control of Rwanda's social and political life. The executive branch dominates the government, with neither parliament nor the judiciary providing any real check on presidential power. By preventing serious opposition, Kagame and the RPF used the 2008 parliamentary and 2010 presidential elections to consolidate their power, winning overwhelming majorities.

The 1994 genocide remains a central point of departure for public policy, and the government regularly invokes the need to prevent future ethnic violence as justification for restrictions on civil liberties. A 2001 law against "divisionism" and a 2008 law against "genocide ideology" have been used to stifle free speech by equating criticism of the regime with support for ethnic hatred. Government domination of civil society remains intense, and few vestiges of the independent press remain following several years of intense suppression.

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Even average citizens must censor their conversations, since open discussion of ethnicity is regarded as divisionism and can lead to imprisonment.

Overwhelmingly focused on prosecuting genocide crimes since 1995, the justice system has begun to shift its concentration to ordinary criminal matters. The majority of *gacaca* courts, the massive grassroots judicial initiative used to prosecute most genocide crimes, completed their work in 2009, with only a few still operating in late 2010. While the gacaca process did allow the release of thousands of incarcerated individuals, it also led to thousands of additional arrests, while the most serious genocide crimes continue to be prosecuted in the national courts. The gacaca trials suffered from problems with due process and politicization, and neither gacaca nor the national courts have dealt in any serious fashion with crimes committed by the RPF, creating one-sided accountability that reinforces ethnic tensions. A 2004 legal reform improved the professionalism and efficiency of the regular courts, but these courts also suffer from politicization.

The one area of significant improvement for Rwanda in recent years has been in fighting corruption. The government has undertaken a series of regulatory reforms that have improved the business climate. Institutions such as the Ombudsman's Office have worked to root out graft, and the courts have prosecuted a number of cases at all levels of government. The Rwandan civil service has earned a reputation for honesty and competency. Nevertheless, transparency remains a problem in a state that tightly controls information.

ACCOUNTABILITY AND PUBLIC VOICE 1.07

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	0.60
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	1.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	1.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	1.00

Rwanda holds regular elections for all levels of government, yet the ruling RPF's tight control of the electoral process prevents meaningful competition. Beginning with local elections in 1999 and 2001, Rwanda launched an official transition to democracy that culminated in the adoption of a new constitution and parliamentary and presidential elections in 2003. Elections have since been held for local officials in 2006, parliament in 2008, and president in 2010. The lowest level local elections are conducted by queuing, but all other elections have secret ballots. Voting has been largely free from violence and obvious voter intimidation, yet the government has controlled election outcomes by strictly limiting who can run for office. Campaign violence has been extensive, with regular harassment and arrest of would-be candidates from outside the RPF coalition.

The constitution provides for multi-party democracy, but in practice Rwanda is a de facto one-party state with no prospect for a rotation of power.

The constitution charges the National Electoral Commission with organizing elections. While officially independent, in practice the electoral commission is led by loyal RPF members and helps organize support for the ruling party rather than maintaining neutrality. In 2008 parliamentary elections, official results gave the RPF's coalition 78.8 percent of the vote, up from 73.8 percent in 2003. However, the European Union Electoral Observation Mission conducted sampling in a large number of locations in the country and found that the actual RPF coalition vote was 98.4 percent; the numbers for the ostensibly independent Social Democratic Party and Liberal Party were apparently inflated to present a greater illusion of democracy.[1] The government allows only closely allied political parties to exist, banning independent parties for promoting divisionism or genocide ideology. The constitution gave legal backing to limitations on opposition politics with provisions such as one stating that parties "should not destabilize national unity, territorial integrity and security of the nation."[2] In addition, a constitutionally created Forum of Political Parties monitors members of parliament and forces all into conformity with the RPF agenda.

The 2010 presidential campaign involved extensive violence and harassment directed against the opposition. The government prevented the United Democratic Forces-Inkingi (FDU-Inkingi) and the Democratic Green Party of Rwanda (DGPR) from fielding candidates by refusing to register them as parties. The FDU-Inkingi's presidential candidate, Victoire Ingabire, and the party's general secretary and treasurer were arrested. The Social Party-Imberakuri was allowed to register in 2009, but it could not field a candidate after its president and general secretary were arrested. In July 2010, DGPR Vice-President Andre Kagwa Rwisereka was assassinated.[3] Without any serious challengers and with voters afraid of voting against him, President Paul Kagame won re-election with 93.8 percent of the vote.[4]

According to the constitution, the executive, legislative, and judicial branches are independent and provide checks and balances. In reality, power has becoming increasingly centralized in the hands of the president, who uses the RPF to manage and control political life. The 2008 elections made Rwanda's parliament the first in the world to have a female majority, yet the parliament has little capacity for oversight. The executive branch initiates nearly all legislation and parliament generally rubber stamps executive policy initiatives. The judiciary similarly lacks independence.

The Rwandan bureaucracy is highly effective, with well-educated and competent civil servants. Merit is a primary factor for civil service selection and promotion, although group identity also remains important.

Rwanda boasts numerous active civil society organizations, but the government allows only those civic groups that share its political views to operate freely. In the decade after taking power in 1994, the RPF gradually extended its control over civil society by pressuring non-governmental organizations (NGOs) to place RPF supporters in leadership positions and to align their agendas with that of the government. Since at least 1995, NGOs have been required to

register with the Ministry of Local Government (MINALOC), which has used the registration process as a means of shutting down organizations. A 2000 Law on Non-Profit Making Organizations expanded MINALOC's legal capacity to interfere in the internal affairs of NGOs and gave similar powers over international NGOs to the Immigration and Emigration Department of the Ministry of Internal Affairs.[5] The RPF has also used extra-legal means to force compliance from NGOs, including assassinations and intimidation, which have driven numerous activists into exile.

In June 2004, a parliamentary commission on genocide ideology accused several of the most prominent local and international NGOs of sowing division and promoting ethnic hatred. These accusations drove a number of civil society activists to flee the country and led to the closure of most of the named organizations, including Rwanda's last remaining independent human rights group. Since this time, NGOs have not dared to challenge the regime. Most NGOs are now focused on service delivery and implementation of government initiatives rather than on serving as a voice for public interests.[6]

The legal environment for the media and freedom of expression in Rwanda has become increasingly dire. A 2001 Law on Prevention, Suppression, and Punishment of the Crimes of Discrimination and Sectarianism has been used to authorize arrest on charges of divisionism of both politicians and journalists who criticize the government.[7] In 2008, parliament passed the Law Relating to the Punishment of the Crime of Genocide Ideology, which gives the government expanded authority to suppress legitimate dissent. The organization Article 19 condemned the law as a violation of the freedom of expression provisions of the International Covenant for Civil and Political Rights, "because the central concept of 'genocide ideology' is extraordinarily broad and would catch a whole range of forms of expressions concerning genocide."[8] A 2009 media law requires that both journalists and publications be licensed by the government and established strict standards that could be enforced selectively to disqualify publications and journalists critical of the regime. The law also gives wide latitude for prosecution of journalists of charges of libel or causing insecurity, forbidding the publication of material showing "contempt to the head of state" or that "endangers public decency," and requires that journalists reveal their sources.[9]

Drawing on this legal framework, the government has aggressively suppressed the printed press, harassing journalists, impounding publications, and banning journals. In 2007, the government closed the French-language *Afrique Liberation* and the English-language *Weekly Post*, and arrested journalists from three other publications. Agnès Nkusi-Uwimana, editor of *Umurabyo*, was convicted of divisionism and minimizing the genocide and sentenced to a year in prison for comparing RPF killings of civilians to the genocide.[10] In 2008, *Umuco* was forced to close when its editor fled the country after an editor criticized President Kagame. The deputy managing editor of *Umuseso*, the

country's most important independent newspaper, was deported.[11] In 2009, the editor of *Umuvugizi* was tried for defamation in what the Committee to Protect Journalists asserted was a politically motivated move.[12] *Umuseso* was suspended for three months in 2009 after publishing an article comparing Kagame to Habyarimana.[13]

In addition to legal action against journalists, government officials create an atmosphere of insecurity by accusing journalists of fomenting hatred and ethnic division, associating the current media with the hate media that helped drive the 1994 genocide. Such accusations create real threats of physical violence against journalists. In 2007, the editor of *Umuvugizi* was beaten unconscious after he published allegations of corruption and mismanagement by several top government and military officials, and he was subsequently taken in for police interrogation.[14]

The situation for press freedom became particularly bad in the months before the 2010 presidential election. According to Amnesty International, "In the run-up to the 2010 elections, legitimate political dissent was conflated with 'genocide ideology,' compromising the freedom of expression and association of opposition politicians, human rights defenders, and journalists critical of the government."[15] In April 2010, the government suspended *Umuseso* and *Umuvugizi* for six months.[16] In June, the deputy editor of *Umuvugizi*, Jean-Léonard Rugambage, was murdered outside his home after he reported in the newspaper's online edition about the attempted assassination in South Africa of former Kagame ally General Kayumba Nyamwasa.[17] In July, the government again arrested Nkusi and another journalist from *Umurabyo* on charges of insulting the president and denying the 1994 genocide. A week before the presidential election, the High Council of the Media suspended nearly 30 publications and radio stations ostensibly for failing to meet registration requirements.[18] The situation has not improved noticeably since the elections. In February 2011, the two *Umurabyo* journalists were convicted and sentenced to seven and 17 years in prison.[19]

The situation for broadcast media is no better. Although the government began allowing the establishment of private radio stations in 2004, it simultaneously placed clear restrictions on broadcasters, with the minister of information asserting that private stations should focus "on music and entertainment," leaving news broadcasts to the government.[20] In 2006, the government banned transmissions of Radio France International after a diplomatic rupture between Rwanda and France.[21] In April 2009, the government banned the BBC's Kinyarwanda service for two months after an interview with former Prime Minister Faustin Twagiramungu.[22] Government officials have also regularly denounced the Voice of America for promoting divisionism.

While the government does not hinder access to the internet, it does screen private emails, and it monitors social media sites for anti-government sentiments or evidence of divisionism.

CIVIL LIBERTIES 1.93

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	1.38
GENDER EQUITY	2.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	2.00
FREEDOM OF CONSCIENCE AND BELIEF	2.33
FREEDOM OF ASSOCIATION AND ASSEMBLY	1.25

In the past several years, the Rwandan government has improved the legal framework for protection against torture and other forms of physical abuse. In 2007, as part of negotiations with the International Criminal Tribunal for Rwanda to make possible extradition of prisoners to Rwanda, the government eliminated the death penalty, becoming the first country in this region of Africa to do so.[23] In 2008, the government ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment.[24] Yet in practice, the use of excessive force, torture, and extrajudicial execution remains common in Rwanda, particularly for those accused of political offenses.[25] In 2007, for example, police were responsible for 22 shooting deaths of criminal suspects.[26]

Failures of the government to protect activists from physical abuse were particularly serious during the 2010 electoral campaign, in which banned opposition parties reported the torture of many of their arrested members.[27] FDU-Inkingi president Ingabire and her assistant were attacked in February 2010 as they tried to register their party.[28] Officials have failed to investigate politically motivated attacks and murders or have covered up the political nature of attacks. For example, the government attempted to characterize journalist Rugambage's murder as a revenge attack for supposed genocide crimes and DGPR leader Rwisereka's murder as arising from a business dispute.[29]

Although gacaca, the popular judicial system used to try a majority of genocide suspects, was originally intended to speed up prosecutions and reduce Rwanda's prison population, the vast numbers of cases tried in gacaca led to the imprisonment of many additional people, including many guilty of only minor offenses.[30] In 2009, near the completion of gacaca trials, Rwanda's prison population was 64,000. While this is half of the number incarcerated at the beginning of the gacaca process in 2002, it was still over 20,000 more than the prison system was designed to accommodate, leading to serious prison crowding. Prison riots have occurred occasionally over lack of food and limited visitation rights.[31]

Arbitrary arrest is a serious problem, particularly for government critics. Opposition politicians, journalists, and civil society activists have been arrested both for political offenses, such as sowing divisionism and promoting genocide ideology, and for politically motivated prosecution on other charges. For example, in 2007, the editor of *Umuseso* was held on apparently specious rape charges in what was widely regarded as an attempt at intimidation.[32] The gacaca

process also offered numerous opportunities for abuse, with false accusations used for extortion and to exact revenge against enemies.[33]

Rwandan citizens who feel that their rights have been violated by state authorities have few means of redress. Anyone who criticizes a government official risks being accused of promoting divisionism. Although considerable evidence suggests that the government treats members of the Hutu and Tutsi ethnic groups differently, complaints of ethnic discrimination are particularly dangerous. The Office of Ombudsman, created in 2003, focuses on corruption complaints.

The incidence of crime in Rwanda is quite low. Many people often do not report crimes for fear that contacting the police may draw unwanted attention from the authorities.

Trafficking of women and children is a crime, but it is rarely investigated and never prosecuted. The incidence of trafficking appears to be quite limited.

Rwanda remains a leader within Africa on issues of gender equity. Already boasting the highest percentage of women in parliament in the world, the 2008 parliamentary elections made Rwanda the first country to have a majority of women in its parliament, with 56 percent women in the House of Deputies.[34] The RPF has actively placed women in powerful positions, including as ministers of foreign affairs, justice, agriculture, trade and industry, information, and infrastructure, president of the Supreme Court, leaders of the gacaca courts and the National Unity and Reconciliation Commission, and as key advisors to the president.

The growing constraints on civil society have limited the ability of women's organizations to represent the interests of Rwanda's women. Despite legal advances for women's rights in the early part of the decade, few new laws promoting the interests of women have been adopted in recent years. Women face considerable discrimination within Rwandan society. Sexual violence is a serious problem. The police and judiciary have little training on issues of sexual violence, and few cases are ever prosecuted.

Rwanda's population has historically been divided into three groups: the Hutu, who make up an estimated 85 percent of the population; Tutsi, who constitute 15 percent of the population; and the Twa, who are less than 1 percent. These three groups have commonly been considered ethnic groups, though they share a common language and live in integrated communities. Since taking power in 1994, the RPF has promoted the concept of a unified Rwandan national identity. State leaders have advanced the idea that ethnicity is a colonial creation that is not historically valid in Rwanda. Ethnicity was removed from national identity cards, and Article 11 of the constitution bans all forms of discrimination, expressly including discrimination based on ethnic origin.[35] The government claims to have replaced past discriminatory policies in such areas as education and government hiring with merit-based systems.

Despite the government's professed rejection of ethnic politics, many Rwandans privately complain that the government favors former Tutsi refugees

who returned to Rwanda after 1994, particularly those who, like President Kagame, lived in Uganda. These returned refugees are said to dominate not only the civil service and military but civil society and the private sector as well. Many Tutsi genocide survivors feel that, despite the government's regular invocation of the genocide to justify its policies, they receive insufficient official support, while they face continuing threats from their Hutu neighbors and prejudice from many returned Tutsi refugees who assume that they must have betrayed their community to have survived the genocide. Many Hutu feel that genocide trials, particularly the gacaca cases, have been used to marginalize them socially. Hutu complain that social and political discrimination has increasingly pushed them out of professional positions and into manual labor. Divisions have also emerged among returned refugees based on country of exile. A 2008 decision by the government to change the language of school instruction from English and French to English only was widely perceived as a means of providing benefits to returnees from Uganda while disadvantaging the francophone returnees from the Democratic Republic of Congo and Burundi.[36]

Despite widespread perceptions of identity-based conflict and discrimination, the political climate makes it nearly impossible for individuals to seek redress for ethnic or other forms of discrimination. Open discussions of ethnicity have been taboo in Rwanda for a decade, and the laws against divisionism and genocide ideology have made it legally risky for individuals to talk about ethnicity. After FDU-Inkingi leader Ingabire spoke in January 2010 about the government's failure to acknowledge Hutu victims of the 1994 genocide, she was denounced by a number of government officials and state-dominated media outlets and ultimately charged with division and genocide ideology.[37]

Limitations on discussions of ethnicity have been particularly challenging for the Twa, a small minority ethnic group widely believed to be the original inhabitants of the region. Facing prejudice and discrimination from Rwanda's majority population, the Twa have generally lived separately, rarely mixing socially with the Hutu and Tutsi. They are among the poorest segments of the population, with low rates of school attendance and a literacy rate of only 23 percent. Attempts by the Twa community to empower themselves have led to conflicts with the government, which has insisted that the Twa stop identifying themselves as an ethnic group. The government refused to re-register the umbrella organization for Twa civil society groups, the Community of Indigenous People of Rwanda (CAURWA), until it renounced the claim that Twa were Rwanda's autochthonous group. Bowing to government pressure, CAURWA changed its name in 2007 to the Community of Rwandan Potters (COPORWA), a reference to the Twa's traditional economic niche, and changed all references in its work from "Twa" to "Potters," though in fact only a minority of Twa actually works as potters.[38]

After considerable international pressure, a proposal to criminalize homosexuality was ultimately removed from a new criminal code adopted in late 2009.[39] Rwanda has been a leader in Africa on promoting the interests of the

handicapped, providing a reserved seat in the House of Deputies for a handicapped representative.

Rwanda is over 90 percent Christian, and about 5 percent Muslim.[40] Prior to 1994, over 60 percent of the population was Catholic, but due to a high rate of conversion, Protestants today are thought to be almost equal in number to Catholics. The constitution forbids discrimination on the basis of religion and guarantees "freedom of thought, opinion, conscience, religion, worship, and the public manifestation thereof."[41] The government generally respects the right of free religious practice, though with some restrictions. Prior to 1994, the government tightly controlled which religious groups could operate in Rwanda, but in the aftermath of the genocide, the government removed these regulations, leading to a proliferation of religious groups, particularly Evangelical and Charismatic Protestant churches. Nevertheless, in part because of the implication of Christian churches in the genocide,[42] the government does sometimes interfere in the operations of religious groups. Article 33 of the constitution, which guarantees religious freedom also, states that, "Propagation of ethnic, regional, racial or discrimination or any other form of division is punishable by law,"[43] which makes clear the limits of government tolerance for religious organization. Like all NGOs, religious groups must register with the government, which allows the government considerable oversight on their operations. The government has occasionally intervened in church leadership decisions and has restricted some churches that it considers ethnically exclusive.

Conditions for religious minorities are generally good in Rwanda. Muslims are well represented in government at all levels and enjoy full religious freedom. Jehovah's Witnesses have faced harassment and arrest because of their refusal to vote and to participate in certain government programs, such as security patrols. Some Jehovah's Witness teachers have been fired for refusing to attend government re-education camps called "solidarity camps." In 2008, over 100 children of Jehovah's Witnesses were expelled from schools for refusing to sing the national anthem, but most were ultimately readmitted.[44]

Although the constitution states that "Freedom of association is guaranteed and shall not require prior authorization,"[45] in practice the government severely restricts the ability of individuals to form groups. Onerous registration requirements allow the government to prevent many civil society groups and political parties from organizing, and NGO regulations allow the government to interfere in the internal functioning of groups. The government also requires groups to receive police authorization to hold meetings, which is used to restrict freedom of assembly, despite constitutional guarantees. In 2009, the Democratic Green Party of Rwanda was unable to receive authorization to hold a general assembly, preventing it from meeting the requirements for official registration.[46]

Gatherings of more than five people require registration, which is difficult for critics of the government to receive. Public demonstrations are therefore extremely rare.

The constitution guarantees the right of workers to form unions, and trade unions are on the whole allowed to function in Rwanda. Nevertheless, the general restrictions on freedoms of speech, association, and assembly restrict the ability of unions to act independently. The 2009 labor code clarified rules for trade unions and somewhat improved unions' ability to advocate for the members, but the country's major trade unions were not consulted in the drafting of the code. As with regulations on other forms of assembly, the labor code authorizes considerable government interference in union operations.[47]

RULE OF LAW	1.10
INDEPENDENT JUDICIARY	1.40
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	0.40
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	1.25
PROTECTION OF PROPERTY RIGHTS	1.33

Almost two decades after the genocide, the Rwandan judiciary has begun to shift its primary focus from trying genocide cases to adjudicating ordinary criminal matters. Specialized genocide courts that began to hear cases in 1996 continue to adjudicate the most serious genocide crimes, but the massive gacaca court process created to try lesser offenses was mostly completed in 2009, with only a few courts still wrapping up work at the end of 2010. The gacaca courts were a grassroots, community-based judicial initiative that the government created to try the overwhelming majority of genocide cases. Loosely modeled on a traditional Rwandan dispute-resolution mechanism, gacaca involved more than 170,000 judges popularly elected in 9,000 jurisdictions throughout the country.[48]

The gacaca process was initially proposed in 1998 to speed the prosecution and release of the large numbers imprisoned on genocide charges. Genocide crimes were divided into four categories, with only Category 1 offenses—organizing the genocide, extensive or enthusiastic killing, and rape—assigned to the specialized chambers. The other three categories were tried in gacaca courts. After a long legislative process, the test phase did not begin until 2002 and gacaca was not launched nationally until 2005, leaving thousands of accused languishing in prison awaiting trial. Although prisoners who confessed could receive provisional release and reduced sentences, those who wanted to prove their innocence remained in prison. Those who confessed were released only if they implicated others, which encouraged false accusations.

The gacaca process encouraged conversation about the genocide and provided opportunities for victims and perpetrators to reconcile, but the process also suffered from politicization and abuse. The government forbids consideration of crimes committed during 1994 by the RPF and its supporters, which created an impression of ethnic bias in the process. Standards for culpability

were extremely low, allowing the prosecution of hundreds of thousands of individuals not previously charged or arrested. Some Rwandans used gacaca to exact revenge on enemies or for extortion. Gacaca judges were pressured into convicting the accused, since those who found too many people innocent could themselves face charges. As a result, by the end of 2010, the gacaca courts had tried about 1.5 million cases, and half of Hutu men who were adults at the time of genocide had faced charges. Rather than helping to separate the innocent from the guilty, the gacaca courts promoted the idea of collective Hutu guilt for the genocide.[49]

While gacaca has assured that even the smallest genocide crimes have been prosecuted, RPF abuses were immune from gacaca. Only a handful of crimes committed by the RPF have been prosecuted in national courts, and sentences for those few convicted have been very light. This has created an impression of victor's justice and has exacerbated ethnic tensions. Politicians and journalists who have pointed out this inequity, such as Ingabire, have been accused of divisionism. The Rwandan government vociferously rejected a 2010 UN report on human rights abuses in the Democratic Republic of Congo that documented extensive crimes against humanity committed by RPF soldiers.[50]

Problems with participation in gacaca were widespread. In part because of the perception that the process was politicized, many Hutu refused to attend court sessions or attended but did not take an active role. In some communities, individuals who had participated in the genocide protected themselves by intimidating potential witnesses, resulting in a "conspiracy of silence," in which people would not come forward to testify. The government provided inadequate protection to gacaca witnesses, and there were numerous reported attacks on witnesses and potential witnesses. Tutsi genocide survivors felt particularly vulnerable, and several dozen were killed in attacks believed to be related to gacaca.[51]

Outside of gacaca, Rwanda's judicial system has undergone procedural improvements during the past several years. Although trials for the most serious genocide charges, those outside the jurisdiction of the gacaca courts, continue to be treated in special genocide chambers of the national courts, the judicial system as a whole has shifted its attention to ordinary criminal matters. A 2004 judicial reform significantly restructured the judicial system, reducing the number of courts and raising the qualifications for judges in an attempt to streamline the treatment of cases. Human Rights Watch noted that as a result of the reforms, "The conventional courts are now staffed by judges who have more formal education and who deliver judgments more rapidly than in the past. Judicial authorities enjoy greater control over their budget and operations than previously."[52]

Despite these procedural improvements, however, politics continues to impede the realization of judicial independence in Rwanda. The Human Rights Watch report noted that, "the technical and formal improvements in laws and administrative structure have not been matched by gains in independence in

the judiciary and assurance or rights to fair trial. The laws have changed considerably, the underlying political dynamics far less."[53] The RPF continues to use the judicial system to intimidate potential opponents and silence critics. Particularly in the run up to the 2010 elections, numerous journalists and opposition political party acrivists were arrested on politically motivated charges.

A 2008 Human Rights Watch report on the Rwandan judicial system documents improvements in the efficiency of the legal system, leading to speedier trials for non-genocide offenses. However, individuals accused of genocide offenses that fell outside the jurisdiction of gacaca courts continue to languish in prison as their prosecutions remain painfully slow.[54]

Although constitutionally guaranteed, the presumption of innocence is absent in many criminal cases, particularly in genocide cases and those that are politically motivated. The government has regularly published a list of suspects accused of the most serious genocide crimes, who are widely treated as guilty even before their trials. The four parliamentary reports on divisionism and genocide ideology leveled accusations against specific individuals and organizations without offering them an opportunity to defend themselves in court. The right to due process is violated regularly. Government officials and other powerful individuals interfere in the judicial process, influencing decisions, particularly in politically motivated prosecutions.

Access to counsel has been an area of growing concern in recent years. Despite a constitutional guarantee of the right to independent counsel, in practice many defendants lack access to defense. The laws regulating gacaca explicitly forbid defendants from using counsel, denying them access to legal representation. In the regular courts, access to defense counsel is limited in part because of the few qualified lawyers in the country and the inability of most Rwandans to afford a lawyer. Most troubling, however, has been a growing tendency to intimidate and even arrest and charge defense counsel, particularly in politically motivated cases. In the most high profile example, an American law professor, Peter Erlinder, was arrested in May 2010, a few days after he arrived in Rwanda offering to defend FDU-Inkingi presidential candidate Ingabire.[55] He was held for three weeks before being released for health reasons.

Rwanda's military dominates the political process. Little distinction is made between civilians and military personnel in government appointments. President Kagame remains the head of the military, and many RPF officers hold high government posts. Even military leaders outside political positions hold considerable political influence. Despite military dominance of the political system, military personnel are sometimes held accountable for crimes, including abuse of power and corruption, in the military justice system. However, senior officers tend to face prosecution for corruption only if they fall out of favor with President Kagame.

The constitution guarantees the right to own private property, individually and collectively. With approximately 90 percent of the population living in rural areas and involved in agricultural production, land is the most important

form of private property. Land scarcity and competition over land have been major sources of Rwanda's periodic conflicts. In the aftermath of the genocide, hundreds of thousands of long-term, mostly Tutsi refugees returned from exile. Many of these refugees sought to reclaim their land rights, leading to conflict with those who had used the land in many cases for three decades. While government policy resolved these conflicts through partition, disputes over competing claims to these plots remain a potential source of conflict.[56]

In an effort to promote efficiency in agricultural production, the post-genocide government has promoted consolidation of land holdings. A 1998-2000 villagization program that sought to force Rwandans to move out of their traditional dispersed homesteads and into villages was driven primarily by security concerns rather than economic development. A major land reform act adopted in 2005, however, codified the villagization program, promoting consolidation of land holdings, while also providing durable titles to land.[57] Tied to the policy of land consolidation has been a policy of centrally planned agricultural production that regulates the crops farmers are allowed to grow on their land. Local authorities have implemented these policies often with aggressive force, sometimes uprooting crops that do not conform to the regulations. [58]

ANTICORRUPTION AND TRANSPARENCY 2.59

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.20
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.00
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.00
GOVERNMENTAL TRANSPARENCY	2.17

The Rwandan government has made controlling corruption and promoting good governance a major focus of its efforts to attract international investment and promote economic growth. Beginning in 1998, when then-Defense Minister and Vice-President Kagame removed military officers who smuggled wealth out of Congo during Rwanda's cross-border intervention, the government has taken an increasingly strong stand against official corruption. A series of reforms implemented to increase transparency and punish officials engaged in fraud has been quite effective in fighting corruption. As a result of these policies, Rwanda has risen in Transparency International's Corruption Perceptions Index from the 121st most corrupt country in the world in 2006 to 66th in 2010, well ahead of any other state in East Africa.[59]

The Rwandan government has worked hard to limit bureaucratic regulation and eliminate red tape, and Rwanda's civil service has earned a reputation for competence and efficiency. Twenty-two separate regulatory reforms implemented since 2005 have eliminated many bureaucratic hurdles to economic activity. For example, the regulatory environment for construction has been eased by combining applications for sewage, water, and electricity into a single application.[60] The World Economic Forum's *Global Competitiveness Report* in 2010 ranked Rwanda

as having the 3rd lowest burden of government regulation internationally and the 12th most efficient government overall.[61] In the World Bank's rankings on ease of doing business, Rwanda has moved from 158th in 2006 to 58th in 2010. In fact, the World Bank recognized Rwanda as the country that had the second most-improved regulatory environment in 2009.[62]

Bribery is increasingly rare in Rwanda, with the government taking decisive action against officials accused of fraud.[63] In the past decade, the government has undertaken extensive privatization of government businesses, including telecommunications, water, electricity, banking, tea plantations, breweries, and dairies. The privatization process has been largely free from graft, though those from the RPF's core constituency—returned Tutsi refugees, particularly from Uganda—have been best placed to take advantage of the new business opportunities.

Rwanda has established several institutions to fight corruption. The government established the Ombudsman's Office in 2004 to monitor government corruption and take complaints from citizens. Government officials are required to submit assets declarations, though they are not public. In 2009, the Ombudsman's Office was granted additional powers to investigate graft and prosecute cases of corruption.[64]

The Office of the Auditor General regulates financial management and adherence of public entities to financial accountability and transparency standards. The auditor general submits annual audit reports to parliament, which is charged by the constitution with overseeing the budget process. In practice, however, the parliament provides very little executive oversight. Other agencies charged with fighting corruption include the Rwanda Public Procurement Authority, the Rwanda Utility Regulation Agency, the Anticorruption Division in the Revenue Authority, and the National Bureau of Standards.

In a number of high-profile cases, the Prosecutor General's office has aggressively pursued government officials accused of corruption, but prosecution has not always been successful. Permanent Secretary of the Ministry of Education Justin Nsengiyumva was arrested in 2008 for demanding a bribe from companies seeking to sell equipment to the ministry. He remained in jail for a week, but escaped, reportedly with assistance from sympathetic officials. In 2009, Louis Munyakazi, the Director of the National Institute of Statistics, was convicted of embezzlement. Also in 2009, the Permanent Secretary of the Ministry of Infrastructure and the Director of the Central Public Investment and Internal Finance Bureau were arrested in a kick-back scheme in exchange for forgiving a fine.[65] These cases all seem to have been conducted fairly.

Anticorruption efforts have been bolstered by President Kagame's regular public denunciations of corruption and his decisive action against corrupt officials. The government designated July 11 as the annual Public Accountability Day, when government officials open their offices to voters. The government's commitment to fighting corruption, however, has been undermined by the politicization of corruption allegations. Kagame has used accusations of

corruption to justify the removal and arrest of military and government officials who challenge his authority. For example, the April 2010 arrests of Major General Charles Muhire and Lieutenant General Karenzi Karake on charges of corruption and immoral conduct were widely viewed as politically motivated, as they took place a few days after reports of conflicts between Kagame and the two officers who were previously key allies.[66]

As part of its emphasis on education, the government has fought corruption in schools and moved to a merit-based educational system. Students do not have to pay bribes for admission to schools or for good grades.

The official media regularly report on government actions against corrupt officials, but the general government crackdown on the independent media has discouraged investigative reporting on corruption. In 2010, the newspapers *Umuseso* and *Umuvugizi* were suspended in part because of reports on conflicts within the military hierarchy,[67] while three journalists from *Umuseso* were found guilty on charges of libel for reporting on an affair between a minister and the mayor of Kigali. The editor of *Umuvugizi* faced similar charges in 2009 for reporting on a different affair between the Kigali prosecutor and a women's organization leader. The journalists have defended themselves claiming that they are trying to bring transparency to the government and expose links between various officials.[68]

The constitution provides guarantees of government transparency in principle but in practice Rwanda's tightly controlled political climate limits the public's ability to access information about government operations. Weak oversight from the judiciary and the parliament mean that the executive controls which cases of corruption are publicized and prosecuted. This exposes anti-corruption efforts to politicization. There are no legal guarantees for freedom of information, and the general lack of free speech and free association prevent private organizations from providing effective independent oversight.

In a 2008 reform of public financial management, the government created the Rwanda Public Procurement Authority to replace the National Tender Board. The reform was widely praised for increasing transparency in the procurement process.

The government is generally recognized as efficiently administering foreign assistance. Some government critics charge that benefits of foreign aid are not distributed equally within the population, disproportionately benefitting the RPF's core constituency of returned Tutsi refugees. But the civil service has a reputation of competently administering development programs.

RECOMMENDATIONS

- The government should allow independent political parties to function freely. Impediments to the registration of new parties should be eliminated, and parties that seek to oppose the government should be allowed to field candidates and to campaign.

- The parliament should amend the 2001 Law on Discrimination and 2008 Law on Genocide Ideology to give a clear and restricted definition to the crimes of promoting divisionism and genocide ideology, so that they are less apt to be used to punish critics of the regime. Government actions to address divisionism and genocide ideology should incorporate due process and human rights standards. Parliament and government officials should refrain from accusing individuals and organizations of these offenses without providing an opportunity for them to defend themselves.
- The government should stop interfering with the media and civil society. Criticism of the regime should no longer be equated with support for genocide ideology, and the government should stop using the judicial system to intimidate and silence opponents.
- The government should prosecute military personnel and civilians accused of war crimes or revenge killings. The Rwandan government should work with the government of the Democratic Republic of Congo to hold accountable Rwandan forces involved in crimes against humanity in the DRC.
- The government should stop interfering with the judicial process and allow courts to conduct fair trials. Arrests of journalists, politicians, and others on politically motivated charges should cease. The government should eliminate political influences on the conduct and outcome of trials.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

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SENEGAL

CAPITAL: Dakar
POPULATION: 12.5 million
GNI PER CAPITA (PPP): $1,810

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	N/A	3.67
CIVIL LIBERTIES:	N/A	3.88
RULE OF LAW:	N/A	3.24
ANTICORRUPTION AND TRANSPARENCY:	N/A	2.30

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Linda J. Beck

INTRODUCTION

In 2010, Senegal celebrated 50 years of independence, as well as the tenth anniversary of President Abdoulaye Wade's historic election to office. Beginning in 1963, Senegal was a de facto one-party state under the rule of the Socialist Party (PS). One of Africa's early reformers and a PS member, President Leopold Sedar Senghor, slowly initiated a democratic opening in the mid-1970s. In 1975, Wade was permitted to form one of three officially recognized political parties, the Senegalese Democratic Party (PDS), and ran as its presidential candidate in 1976 and every successive presidential election since then. Throughout the 1980s and 1990s, Senghor's successor, Abdou Diouf, undertook political reforms that restored an unlimited multiparty system, adopted a consensual electoral code negotiated by the major parties, and established semi-autonomous agencies to monitor electoral law and balance in the state-run media.

Wade promised during his 2000 campaign to restore a parliamentary system, which had been replaced by a form of hyper-presidentialism after a political showdown between President Senghor and his Socialist ally Prime Minister Mamadou Dia in 1962. The ratification of Senegal's fourth constitution in 2001, however, did little to change the presidential regime. Instead, President Wade has repeatedly taken actions to strengthen the power of the presidency over the other branches of government and undermined the autonomy of oversight agencies such as the Authority for Regulating Public Contracts (ARMP). Unchecked presidential power has contributed to an increase in corruption and allegations of misappropriation that seldom reach the Senegalese courts, which

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are politically constrained from successfully prosecuting well-connected individuals. The capacity of the National Assembly to check executive power has been constrained by the recent reinstitution of a senate in which 65 percent of the members are presidential designees and by the manipulation of the assembly's leadership following its efforts to obtain an account of extra-budgetary spending by an agency headed by President Wade's son, Karim. There is some concern that Karim Wade is being groomed to succeed his father, who plans to run for a third term in office despite a two-term constitutional limit.

Senegal faces a number of challenges. Corruption is a significant brake on economic development, which has been further hindered by the recent global economic downturn. The private sector in Senegal is rather anemic and heavily dependent on favorable relations with state officials for public contracts, though the Senegalese state is notoriously in arrears for its payments to the private sector. Despite a limited advertising base in a weak economy, Senegal's private media is an active watchdog along with a growing number of civil society organizations that focus on governance issues, although questionable professionalism among a few journalists has somewhat tainted the reputation of the Senegalese media and been used to justify its repression. Under the Wade administration, there have been serious infringements on civil liberties, particularly freedom of the press and the right to assemble.

ACCOUNTABILITY AND PUBLIC VOICE 3.67

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	3.60
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	3.43

Despite the dominance of the ruling party, Senegal holds regular competitive elections. President Abdoulaye Wade was re-elected in the 2007 election, which was declared free and fair by ECOWAS observers. His re-election was marred, however, by harassment of political opponents and journalists although it was not seen as a serious hindrance to a free and fair election.[1] During the three weeks of official campaigning, state-operated media demonstrated a clear bias for Wade's re-election, despite the fact that Senegal's electoral code requires balanced reporting on candidates. This bias is particularly egregious given that the only national television station is state-run. The worst offender was the state-run daily paper, *La Soleil*, which repeatedly expressed support for Wade, proclaiming itself "the president's newspaper" and publishing a 12-page special section on Wade's platform. While coverage of the president occupied 40 percent of the newspaper's space, all other candidates combined received less than 9 percent.[2] Given growing economic hardships since Wade's election in 2000, many political analysts anticipated he would not be able to win a majority in the first round of the presidential elections. Under Senegalese electoral law, this

would have required a run-off against the leading opposition candidate. Wade nevertheless managed to win 55.9 percent of the votes, defeating 14 other candidates, including former Prime Minister Idrissa Seck (14.9 percent) and PS leader Ousmane Tanor Dieng (13.6 percent).

The opposition generally praised the Autonomous National Electoral Commission (CENA), which is responsible for the organization of elections and assurance of their transparency. However, the General Direction of the Elections within the Ministry of the Interior, which is responsible for voter registration and electoral lists, was accused of manipulating the process to favor the ruling party through practices that date back to the Socialist regime, such as withholding voter cards from opposition supporters.[3] After Wade's victory, opposition leaders demanded a meeting with the president to discuss their proposals for reforms needed before the June 2007 legislative elections, including the replacement of the interior minister, Ousmane Ngom, who was accused of manipulating the voter registry and blocking the distribution of voter cards to opposition supporters. President Wade refused to meet with the opposition until they recognized his re-election, which most had refused to do. In response, the major opposition parties called for a boycott of the legislative elections under the banner *Siggil Senegal* (Stand Up, Senegal).

While voter turnout is typically lower for legislative elections, participation in 2007 dipped to 35 percent from 70 percent in the presidential election. Wade's PDS party won 131 of the 150 seats (87 percent), up from 89 of the 120 seats (74 percent) in the previous legislature. The twelve other parties that decided to run candidates won no more than three seats each, receiving less than 5 percent of the vote.[4] Most analysts consider the boycott to have been a tactical error, though the decision to boycott was likely motivated by their lack of preparedness and limited resources for the legislative elections, rather than a political strategy.

In March 2009, the opposition came back to successfully contest Senegal's local elections. After having been repeatedly postponed for what many suspected were political motivations, local elections had an usually high turnout of 50 percent. While the PDS performed well in rural areas, receiving an overall plurality of 48.5 percent of votes, opposition victories occurred in most major towns, including Dakar, where President Wade's son Karim lost his first bid for elected office. The opposition claimed that the local elections were a referendum on the Wade administration's performance, especially scandals surrounding Karim, but the ruling party attributed its poor showing to economic problems from the global recession.[5] Despite their electoral victory, opposition leaders have accused the Wade administration of disrupting their efforts to administer their localities, especially the PS mayor of Dakar, Khalifa Sall, since his defeat of Karim Wade.

The National Assembly has on occasion asserted itself beyond its historical role of rubber stamping presidential policy, though the current near-monopoly of the ruling party in the legislature makes this increasingly difficult.

Competition within the ruling party has permitted some demonstration of independence, such as president of the National Assembly Macky Sall's March 2008 request for an audit of the National Agency for the Organization of the Islamic Conference (ANOCI), which is headed by Karim Wade.[6] Infuriated by the audacity of the legislature to request an account from an executive branch official, President Wade pushed for legislation that shortened the assembly president's term, effectively dismissing Sall after that legislation's landslide passage. After Sall was expelled from the PDS, he formed his own party, Alliance for the Republic Yaakaar (Belief). The justification for the shortening of Sall's term included "misunderstandings between the executive and the legislative power . . . [and] a crisis of confidence between the president of the Republic . . . and the president of the National Assembly."[7]

The re-creation of the Senegalese Senate in 2007 has also been interpreted as a means to side-line an "undisciplined" assembly. The Senate was initially created in the waning years of the PS regime, when that regime was similarly losing effective control over the National Assembly and seeking to create patronage positions to prop up lagging support within the divided ruling party. After the PDS took power, the Senate was dissolved as an expensive and unnecessary political tool of its Socialist predecessors. By February 2007, however, President Wade had changed his tune, declaring the need for the Senate to "deepen and consolidate [Senegal's] democratic system."[8] While its predecessor was composed of senators indirectly elected by a college of locally elected officials, only 35 of the 100 seats in the new Senate are similarly selected, with the remaining 65 directly appointed by the president. As 34 of the 35 elected seats went to PDS candidates in the August 2007 senatorial elections, the ruling party now controls 99 percent of the Senate.[9] Technically the Senate's legislative power is comparable to that of the National Assembly, but given the method of selection, it functions primarily as a presidential check on the assembly rather than as an autonomous legislative power.

There are numerous examples of President Wade's utilizing his party's legislative super-majority to push through legal reforms, including a return to the seven-year presidential term starting with the 2012 election, which some critics maintain is an effort to insure that Karim inherits power. In September 2009, President Wade announced his intention to run again in 2012, asserting that he is not constrained by the constitutional limit of two terms as his tenure clock was reset when the constitution was revised in 2001, a justification used by various other African leaders. With the reintroduction of a constitutional provision for a presidentially appointed vice president, the concern is that Wade may resign after winning a third term, ceding power to his filial dauphin, following the model of President Leopold Sedar Senghor, who handed the reins to Abdou Diouf in 1980. An extension of the presidential term would permit Karim more time to consolidate power before he would have to stand for election.[10]

Senegal has a vibrant civil society that benefits from a broadly supportive legal framework. Although there are over 12,000 registered civil society

organizations (CSOs), most are not officially registered, in part because the registration process is cumbersome, lengthy, and dependent on the political sensitivity of the organization. For example, the 1996 accreditation of Senegal's first human rights organization (RADDHO) took six years. It is commonly suggested today that registration is expedited for political allies of the ruling party.

The political influence of CSOs is primarily that of a watchdog, as opposed to an active participant in the formulation of public policy. Testimony by CSO leaders during legislative deliberation, for example, is rare. Government officials do frequently attend forums with CSOs, particularly those funded or organized by international donors. The Wade administration, however, not only refused to participate in but also attempted to undermine the recent National Caucus (AN), organized to promote state-society dialogue on various socioeconomic and political issues facing Senegal. Rather than engage with the more than 140 participating CSOs, the government pressured prominent individuals to decline invitations to participate. Indeed, Farba Senghor, then the minister of handicrafts and air transportation, as well as chief of propaganda for the PDS, publicly threatened retribution against any businessman, marabout, or functionary who participated in the meetings.

Farba Senghor has been at the forefront of several confrontations, including threatening a reporter in August 2007 and publically stigmatizing two private newspapers that were subsequently ransacked in August 2008 by armed attackers driving a state-owned vehicle.[11] Although 12 men were convicted for the vandalism, the managing editor of one of the papers, *24 Heures Chrono*, was also sentenced to prison for offending the head of state, publishing false news, and threatening public order based on an article that alleged the president and his son were involved in money laundering. President Wade ultimately pardoned the editor, but the convicted vandals also received a presidential pardon in 2009.[12] This episode illustrates the rising level of intimidation and attacks on journalists from Senegal's numerous private media outlets.[13] Senegal is frequently criticized for penal offenses that stifle freedom of expression and the press, including criminal defamation and offending the head of state, as well as its lack of a freedom of information act.[14] Since 2004, when President Wade pledged support for the decriminalization of defamation, at least a dozen journalists have been sentenced to prison on libel charges.[15]

Inadequacies of the legal code, combined with frequent harassment and attacks on journalists, have arguably created a climate for self-censorship in Senegal, although clearly not all journalists have succumbed to this pressure. Most prominent is Abdou Latif Coulibaly, who has led a crusade against government corruption and impunity through his investigative journalism and several earth-shaking books that have led to his international acclaim as well as harassment and criminal prosecution for defamation by the Senegalese government.[16]

The open hostility toward the media by various officials as well as powerful Muslim leaders is believed to have been fueled by the president's own contemptuous attitude toward journalists.[17] Perhaps the most egregious example

was his response to the attack on two journalists who were violently beaten in 2008 by police officers after a soccer match. While attending a conference of the National Association of Black Journalists in Chicago, President Wade maintained that the hospitalized journalists had provoked the incident. When asked if he nevertheless condemned their beating, he replied: "Who is a journalist? They are all politicians!"[18]

By contrast, Senegal has next to no regulation of the internet, and there are currently many Senegalese websites and blogs that feature political commentary critical of government policies and performance. The lack of censorship may reflect, however, Senegal's relatively limited access to the internet, and may change as internet access increases.[19] Given Senegal's high illiteracy rate, the most important source of news is radio with more than 80 radio frequencies allocated for community, public, and private radio stations.[20]

CIVIL LIBERTIES 3.88

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.25
GENDER EQUITY	4.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.50
FREEDOM OF CONSCIENCE AND BELIEF	4.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.00

Protection of civil liberties has noticeably declined since President Wade assumed office, with conditions significantly deteriorating since his re-election in 2007. Police brutality and the use of torture during detention are rampant in Senegal. While torture is not explicitly prohibited in the 2001 constitution, the Senegalese penal code banned it in 1996. However, allegations are rarely investigated, let alone prosecuted, without significant external pressure, and rare convictions do not lead to punishment proportional to the perpetrators' crime. This may be attributed in part to the lack of an effective National Observer for Places of Deprivation of Liberty, as required under the Optional Protocol of the Convention against Torture, which Senegal ratified in 2006. After a three-year delay, Senegal finally created an observatory in 2009; however, to date, no one has been appointed to the position of national observer. According to human rights organizations, torture is commonly used in Senegal to both punish and extract (sometimes false) confessions from detainees. Defendants frequently receive prison terms based on these forced confessions, in violation of the United Nations Convention against Torture, which Senegal ratified in 1986.

In addition, deaths during detention are rarely investigated or prosecuted. In one notorious incident in February 2007, an accused thief who appeared to have been beaten by police died in custody. His funeral in the southern city of Kolda sparked a violent demonstration that police repressed with live

ammunition, leading to one death. As of late 2010, the subsequent investigation had not resulted in any report or charges.[21]

The National Human Rights Organization (ONDH), an NGO, has also denounced Senegal's "abnormally long preventative detentions," citing various examples of defendants who have ultimately been sentenced to one to six months in prison after having already served four years in preventative detention. Others who have been acquitted after six or more years in prison have received no reparations for their excessive detention.[22]

Excessive delays in detention are exacerbated by the poor conditions of Senegal's prisons, which are overcrowded and lack adequate sanitation. Prisoners reportedly face sexual assault and lack access to medical care. The ONDH reported a national ratio of one doctor per 5,000 inmates, and the International Red Cross claims that the government spends less than a dollar a day per inmate to cover all costs, one of the lowest rates in the world.[23]

Article 1 of Senegal's constitution recognizes "equality before the law of all citizens without distinction based on origin, race, sex or religion." Senegal has signed a wide array of international conventions and passed various laws to promote the rights and protection of women and girls, including the recently passed Law on Parity that requires gender equality on all party candidate lists for elected office. Currently, women hold 18 percent of the seats in the National Assembly, 40 percent in the Senate, and 6.5 percent of the mayoral positions. Women also hold nearly a quarter of the ministerial posts, including 15 percent of the elite *Ministres d'Etat.*

Senegalese women have a weaker position than men in terms of pay and access to employment.[24] In an effort to promote women's economic empowerment, the Ministry of Family and Female Entrepreneurship has financed more than 700 projects for women since 2005 to encourage them to enter new fields.[25] Senegalese women also have equal property rights and access to bank loans under Senegalese law; however, religious customs and social practices continue to make it difficult for Senegalese women to inherit land or obtain a loan.

Gender inequality in Senegal reflects the need for further reform, such as revision of the family code and better enforcement of existing legislation. Instead of reinforcing the rights of women under the family code, such as the right to opt for a monogamous marriage, in 2003 Islamic leaders pressed for the restoration of Muslim courts and the establishment of Shari'a as the main source of family law. However, the secular tradition of the Senegalese state won out and the debate quickly died down. The state has failed to apply existing provisions in the penal code against domestic violence, sexual harassment, and assault. Various women's organizations have called for the creation of a gender observatory, as promised by President Wade in 2007. An observatory could help address continuing problems related to forced marriage, female genital mutilation (outlawed in 1997), and maternal deaths due to illegal abortions.[26]

Protection of the disabled will hopefully be advanced by the June 2010 passage of the Law on Social Orientation that guarantees handicapped Senegalese various civil rights. Representatives of the disabled, however, have already expressed concern regarding the implementation of provisions, such as the creation of a high authority responsible for handicapped persons, to insure that this is not just another empty legal shell.[27] As for the law's provision that 15 percent of civil service posts are to be reserved for handicapped persons, this goal seems more symbolic than realistic, given their limited numbers and restricted access to education to date.

The disabled community was stunned by the prime minister's edict in August 2010 to enforce a 1975 law banning begging on public thoroughfares. Initially instituted to insure public safety, the law is now being enforced to protect children from being forced to beg for their Koranic instructors, although all classes of beggars were rounded up. For many disabled Senegalese, begging is their only source of income. Leaders in the disabled community have, therefore, vehemently criticized the state's "unilateral" decision to ban begging and the rounding up of beggars as arbitrary acts that demonstrate their status as merely partial citizens.[28]

Human rights organizations, on the other hand, have praised the state's action as long-overdue support for their campaign to stop the exploitation of Senegalese children. Two recent reports by international actors have increased pressure on the Senegalese government to protect children from exploitation, physical and sexual abuse, and human trafficking. *Talibes* (Koranic students) reportedly beg for upwards of seven hours a day, ostensibly in exchange for Koranic instruction, while living under horrific conditions and often subjected to various forms of abuse.[29] The forced begging of talibes is considered child trafficking under the UN Trafficking in Persons Protocol because religious leaders (marabouts) transport or receive talibes for purposes of exploitation.[30]

Although nine marabouts were arrested for the exploitation of their talibes as beggars in September 2010, they only received a six-month suspended sentence and a $200 fine, a far cry from the 5-year and $4,000 maximum penalty under the law.[31] Since then, the Senegalese media has reported that many marabouts intend to continue the practice of requiring their talibes to beg.

Discrimination against the homosexual community has been an increasingly visible problem, including increasing arrests and prosecutions for same-sex acts under Senegal's penal code, which criminalizes homosexual relations. This was the case in the December 2008 prosecution of nine male HIV/AIDS activists criminally charged with having sexual relations with other men. Activists from AIDES Senegal, an officially registered NGO that provides HIV/AIDS prevention services to men who have sex with men, were tortured during their arrest and detainment even after each confessed (under duress) to being a "goorjigen" (man/woman in Wolof). The defendants were sentenced to eight years in prison.[32] The conviction was later overturned, but there was no investigation into the allegations of torture, and most of the men had to go into hiding

in order to escape hostility. The frenzy surrounding this mounting homophobia has been reinforced by the media; one Senegalese journal actually blamed homosexuals who "have abused the tolerance of their compatriots in seeking to live too openly in their sexual deviance, going so far as to organize and publicize their marriages."[33] Many Muslim leaders have publicly condemned homosexuality,[34] and the government has indicated that it has no intention of decriminalizing homosexuality.[35]

President Wade is particularly susceptible to pressure from the Muslim community, having closely associated himself with the Murid Sufi brotherhood. Muslims represent over 90 percent of the population, although they are subdivided into several prominent Sufi brotherhoods, the two largest being the *Tijaniya* and the *Muridiya*. Constitutionally a secular country, the government has historically upheld its citizens' rights to practice the religion of their choice, and political leaders have courted support from all sects and attempted to balance their distribution of political resources among them. In contrast with his predecessors, however, Wade has been criticized for publicly prostrating himself before the Murid supreme leader and lavishing the Murid community with public funds, including an approximately $213 million modernization program for the Murid holy city of Touba announced in December 2007.[36] Tensions with the Christian minority have also been raised as a result of gaffes by the president, such as his comparison of the scantily-dressed figures in Dakar's new Monument of African Renaissance to Catholic images of Jesus Christ in attempt to defend the monument against charges that it is un-Islamic. This blunder compounded the scandal created by Wade's assertion that he should personally receive a percentage of the proceeds generated by the monument, citing intellectual property rights as it was his idea.[37]

In terms of ethnic relations, Senegal has historically been socioeconomically dominated by the Wolof ethnic group, which represents approximately 40 percent of the population, although over 80 percent of Senegalese speak Wolof as the lingua franca the country. Fortunately, there have been relatively few ethnic tensions, let alone violence in Senegal. This can be attributed primarily to the inclusive form of ethnic arithmetic used by Senegalese politicians since the time of President Senghor that insures both ethnic elites and their constituents access to public resources. The notable exception to this is the southern region of Casamance, where a rebel group has led a secessionist movement since the early 1980s. Nevertheless, the Jola ethnic group, which dominates both this region and the rebel movement, has not experienced significant bias or violence outside the region, and many Jola have been calling for peace for over a decade.

Senegal's constitution guarantees freedom of association and assembly, and the right to strike and collective bargaining are also recognized under Senegalese law. Nevertheless, NGO and trade union activists are often harassed, as are journalists and opposition leaders. Senegalese authorities regularly refuse to permit and repress both authorized and unauthorized demonstrations. In May 2007, for example, female teachers were beaten up by the police after the disruption

of an authorized demonstration by the United Teachers' Front. While some protests are permitted in Senegal, any that are seen as politically sensitive or ill-timed are not authorized and are regularly suppressed. Organizers nevertheless often press forward with their planned rallies, risking inevitable harassment and frequently arrest.

Freedom of association in Senegal is limited by various restrictions, including the authorities' broad powers to dissolve a trade union by a simple administrative decision, in violation of the Convention on Trade Union Rights to which Senegal is a signatory. In addition, NGOs and trade unions cannot legally exist without approval by the Ministry of the Interior, which has allegedly led to discrimination in their recognition. Politicians have also been accused of creating unions in "attempts to take over and divide the trade union movement." Some unions have even been recognized without holding a constitutive assembly, while others have had to wait for years for official recognition.[38]

The right to strike is constitutionally limited by the proviso that strikes cannot infringe upon freedom to work or jeopardize an enterprise. In addition, authorities have the power to requisition workers to replace strikers to ensure public safety, order, and continuity of public services and "other essential needs." In cases where union activists have been threatened, fired, or even physically assaulted by their employers, typically no disciplinary or legal actions have been taken. For example, no action was taken against a hospital director who in January 2009 locked a local leader of the General Workers' Federation of Senegal in his office and beat him in response to criticism of the management and a two-month delay in salaries.[39]

RULE OF LAW	**3.24**
INDEPENDENT JUDICIARY	3.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.80
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	3.50
PROTECTION OF PROPERTY RIGHTS	3.67

The Senegalese constitution provides for judicial independence from the executive and legislature, but the judiciary's autonomy is compromised in practice by the politicized process by which the members of judiciary are appointed, promoted, and transferred. The president of the republic names judges to positions based on advice from the Superior Council of Magistrates (CSM) without legislative confirmation. The president, assisted by the minister of justice, also chairs the CSM, which "functions more like a secretariat for the minister of justice than an institution with its own powers."[40] This effectively gives the executive branch control over the judiciary. The executive has used this power to promote like-minded individuals, by "posting a troublesome judge to a remote jurisdiction or promoting more pliable ones to senior positions," which has resulted in

judicial self-censorship.[41] There is nevertheless some evidence of judicial autonomy, such as the Constitutional Court ruling against disproportionate allocation of legislative seats by the president in 2006. However, this is outweighed by examples where the judicial system is seemingly towing the political line of President Wade and his ruling party, including the criminal prosecution of journalists critical of the regime. Even the successful appeal for the release of the HIV/AIDS activists in 2009 can be tied to the government changing its course after it came under international pressure, as opposed to juridical review of the merits of the case.

In terms of the prosecution of public officials, Senegal has an ad-hoc High Court of Justice (HCJ) that tries cases of official misconduct and corruption. Presided over by a member of the judiciary, the HCJ is elected from among the legislature, which, as previously noted, is dominated by the ruling party. Until the arrest of former Prime Minister Seck in 2005, the HCJ had laid dormant for decades, despite rampant allegations of corruption among top officials by the media and various international actors.

The contrast between Seck's treatment by the judicial system and that of Karim Wade is illustrative of the HCJ's politicized nature and the political manipulation of the judicial system more generally. In December 2004, Seck lost his position as prime minister after a falling out with President Wade, who allegedly saw his growing popularity as a political threat.[42] In July 2005, the government alleged that Seck had misappropriated funds from a municipal project and charged him with "endangering national security." In August, the National Assembly voted to also prosecute him for embezzlement through the HCJ. Following a political rapprochement between Seck and Wade, the charges for threatening state security were dropped, and an investigative panel of the Supreme Court partially dismissed the corruption charges and ordered him released from prison in early 2006.[43] In contrast, Karim Wade and other ranking officials of the ANOCI were never questioned by the legislature regarding allegations of corruption that were widely covered in the media.[44]

Under Senegalese law, all detainees and defendants are innocent until proven guilty; however, this legal principle is rarely adhered to during arrests, interrogations, or criminal prosecution. Senegalese law also guarantees the right to a fair public trial, but enjoyment of this right is significantly influenced by the defendant's wealth. While defendants are entitled to counsel, the state is unable to provide one for indigent defendants. In general, Senegal's judicial system is weakened by a lack of adequate resources, including insufficient or often under-qualified personnel.[45]

Senegal is renowned as one of the few African countries to have never experienced a coup d'état. But while the military have characteristically refrained from interfering in the political process, security forces have been repeatedly used by the executive branch to suppress political opposition in the name of social order. In December 2008, for example, security forces severely repressed various demonstrations held around the country against declining living conditions,

high unemployment, and deepening poverty. A demonstration in Kédougou deteriorated into violence and destruction of public property. Security forces fired live ammunition, killing at least one person and wounding several others. Dozens of detainees alleged that they were brutally beaten and even electrocuted to force confessions of their involvement. Although President Wade pardoned the 19 people convicted in March 2009, Amnesty International maintains that they were pardoned to shield the perpetrators of torture from prosecution and end investigations.[46]

Amnesty International has lodged similar charges against the general amnesty granted after the government signed a peace accord in 2004 with leaders of the Movement of Casamancais Democratic Forces (MFDC), which has been waging a secessionist struggle since the early 1980s. Amnesty International maintains that "By declaring an amnesty before taking any legal proceedings against the soldiers of government forces and armed members of the MFDC responsible for serious human rights violations and abuses," President Wade deprived hundreds of victims and their families of their right to justice and reparations for extrajudicial executions, abductions, torture, and long-term arbitrary detention without trial.[47] Despite sporadic violence, the decline in the intensity of the Casamance conflict has also meant a reduction in human rights violations on both sides of the conflict. Unfortunately, this has not brought an end to human rights violations by Senegal's security forces.

Amnesty International charged that Senegalese "authorities have consistently ensured impunity for members of the security forces responsible for human rights violations."[48] A major obstacle to the prosecution of members of Senegal's security forces is the requirement of an *ordre de poursuite*, authorization from the supervising ministry—the Ministry of the Interior in the case of police officers and the Ministry of Defense in the case of gendarmes and military personnel. This procedure in effect grants the executive branch veto power over any judicial proceedings against members of the security forces. Contributing to this impunity, Senegalese security forces are under the jurisdiction of military courts, which typically are less likely than civilian courts to convict.

The Senegalese constitution guarantees its citizens the right to property. Under Article 15, no one can be deprived of their right to property except in cases of "public necessity" for which they must receive a "just and prior indemnity," a provision that does not seem to be widely abused. The article also states that men and women have the same rights to "possess and own land" under the terms set by Senegalese law.

In 2008, the government streamlined procedures for registering property and reduced associated costs. However, in practice the administration of property title and land registration procedures are considered uneven, particularly outside urban areas. In terms of adjudication, Senegal's poorly staffed commercial courts results in decisions that "can be arbitrary and inconsistent." Enforcement of intellectual property rights in particular is weak despite an adequate legal and regulatory framework.[49] Land seizures, particularly in Dakar, are

not uncommon when individuals with political and economic influence have their eye on a piece of property.

ANTICORRUPTION AND TRANSPARENCY 2.30

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.20
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	2.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.50
GOVERNMENTAL TRANSPARENCY	2.17

While President Wade has clearly sought to establish a legacy as an anticorruption reformer, but the government continues to lack effective internal accountability mechanisms and external checks and audits. Agencies established to combat corruption continue to be underfunded, understaffed, and undercut when they attempt to hold government agencies and public officials accountable.[50]

Inadequacies in the government's anticorruption campaign are glaringly obvious to Senegalese citizens, as well as journalists and advocates for transparency, most notably the lack of a legally mandated declaration of assets by public officials. In Nigeria, a country renowned for its rampant corruption, 71 percent of those surveyed by Transparency International (TI) indicated that the government is effective in its struggle against corruption, whereas 72 percent of Senegalese surveyed believe the government's efforts are ineffective. Consequently, Senegal's ranking in TI's Corruption Perception Index continues to slide, dropping from 85 out of 180 to 105 out of 178 countries in just two years.[51]

Both grand and petty corruption are widespread in Senegal, with bribery and other facilitation payments considered normal despite frequent airing in the media. This was the justification used in 2009 when the departing IMF representative to Senegal, Alex Segura, received a $200,000 parting gift from President Wade. After accepting the money, Segura contacted the IMF ethics bureau, which instructed him to take it to his home country of Spain, where it was returned to the Senegalese embassy. After an initial denial of government involvement, President Wade maintained that it was a Senegalese tradition to give a farewell gift and that the large sum of money was a mistake by an aide. The Economist Intelligence Unit was not reassured: "That a presidential aide was able to stuff a briefcase from a stockpile of cash, with an amount decided at his own discretion and without a due account being made, is perhaps more worrying than if the President had in fact intended to reward, bribe, or embarrass Mr. Segura," who had been a harsh, outspoken critic of fiscal malpractice and mismanagement by the Senegalese government.[52]

Senegal has a well-developed commercial and investment code, but its application is not always consistent and lacks transparency. A recent example is the controversy surrounding the cell phone company Millicom, which first

obtained a license in 1998 for $100,000. After operating in Senegal for 12 years, Senegal sought to renegotiate the license. In February 2010, however, an American website published an article that claimed that Karim Wade and a special counselor for new technologies had demanded that $200 million be given to them personally in exchange for renewing Millicom's license. The alleged informant, a representative of Millicom's Senegalese affiliate, later denied witnessing such a shakedown, while the Senegalese government claimed that this was the fee to be paid to the state, a price that they argued reflects the market price.[53]

Senegal is a signatory to various international conventions to combat corruption and has a relatively comprehensive legal framework criminalizing corruption, though it lacks regulations protecting whistle-blowing. The primary problem lies with enforcement largely, which is attributable to the weakness of the institutions responsible for their application. Over a quarter century ago, Senegal created a Court for the Repression of the Unlawful Accumulation of Wealth (CREI), which remains inactive today. In 2004, the Wade administration created the National Commission against Non-Transparency, Corruption, and Misappropriation (CNLCC). Although formally independent, the CNLCC is not permitted to make public the annual reports it submits to the president, nor can it initiate judicial proceedings. Its lack of legal expertise, resources, and regular funding make it susceptible to political pressure and undermine its effectiveness. Similarly constrained, Senegal's National Cell for the Treatment of Financial Information (CENTIF), which was instituted in 2005, has not yet prosecuted a single case related to corruption, money laundering, or other financial crimes it is responsible for investigating. The autonomy of the Supreme Audit Institution (IGE) is even further limited. Serving at the pleasure of the president, the IGE can only initiate an investigation at his request. On the other hand, Senegal's ombudsman's office receives regular funding and is well staffed, with the head mediator protected by a six-year mandate. However, the agency has limited investigative powers, relying on cooperation with the IGE and other public investigative agencies.[54]

Even when there has been significant political pressure, the government has failed to take action against corrupt officials, except when politically motivated, as in the case of Idrissa Seck. A prominent recent example of Senegal's faint-hearted attitude toward pursuing allegations of corruption is the failure to investigate accusations of the mismanagement of ANOCI funds. Responsible for public contracts to complete infrastructure projects in preparation for an OIC summit in 2008, ANOCI's legal status was somewhat ambiguous, with its accounts held separate from the official budget. There were various allegations of kickbacks and other forms of corruption lodged against both Karim Wade as the head of ANOCI and its managing director, Abdoulaye Balde. While political pressure from the president prevented the National Assembly from even questioning Karim, the judicial proceeding against Balde was dropped due to insufficient evidence before CENTIF

could even complete its investigation.[55] Minimally, the alleged "catalogue of mismanagement" should have resulted in an extensive investigation if not reprimands, dismissals, and/or prosecution of those responsible. To date, the final accounts of the ANOCI remain unpublished.[56]

Another recent case is that of Modibo Diop, the former head of the Senegalese Rural Electrification Agency (ASER). As a direct result of pressure from the international financial institutions that were funding the project, an investigation about corruption allegations was initiated against Diop, who was sent to prison, where he remains despite his claims of innocence.[57]

Many Senegalese businesses are dependent on state contracts, but the awarding process lacks transparency and the majority of contracts were until recently awarded without competitive bidding. In 2008, however, Senegal adopted a new procurement code that limits the possibility of awarding contracts without public and open bidding, along with the creation of an independent regulatory agency, the Authority for Regulating Public Contracts (ARMP), to clamp down on the awarding of non-competitive contracts. Although the ARMP, like other anticorruption agencies, is underfunded and without the authority to publicly publish its reports or initiate judicial investigations, in just two years, Senegal dramatically reduced the percentage of government contracts awarded without bids from over 70 percent to just 6 percent. However, after the agency cancelled an uncompetitive contract between Global Voice and Senegal's telecommunications agency (ARPT) in June 2010, President Wade dealt a serious blow to the agency, decreeing that the ARMP does not have authority over the executive and its ministries.[58]

The capacity of governmental institutions, the media, and civil society organizations to hold public officials accountable for corruption is undermined by a lack of transparency in the national budget process. The Open Budget Initiative once again gave Senegal a score of 3 out of 100 in its 2010 Open Budget Index due to the scant information provided to the public on the government's budget and financial activities. Although various budget proposals, reports, and audits are produced and are ultimately leaked to the press by members of parliament, they are not disseminated to the public, nor is complete information provided. This lack of budget transparency is compounded by the absence of freedom of information legislation and weak budgetary oversight by both the legislature and the IGE, as well as a lack of legislative control over extra-budgetary aid received from international donors.[59]

RECOMMENDATIONS

- The government should empower the legislature as a check on presidential power, including elimination of presidential selection of senators.
- The government should enhance judicial autonomy through revision of the role of the executive in the nomination and promotion of members of the judiciary and the legislative approval of judicial nominations.

- The government should reinforce the role of the media as a political watchdog through the decriminalization of defamation, the transformation of the state-run media into a more autonomous public broadcaster, and the privatization of the state newspaper.
- The government should augment the anticorruption campaign through increased budget transparency and accountability, including reinforcement of the role and competence of civil society actors and the *Cours des Comptes*, as well as the elimination of extra-budgetary international aid outside the supervision of the legislature.

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SWAZILAND

CAPITAL: Mbabane
POPULATION: 1.2 million
GNI PER CAPITA (PPP): $4,790

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	1.85	1.61
CIVIL LIBERTIES:	3.03	2.93
RULE OF LAW:	1.98	1.93
ANTICORRUPTION AND TRANSPARENCY:	2.13	1.97

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

John Daniel

INTRODUCTION

Swaziland has no tradition of democracy. With the exception of the first five years of the post-colonial era (1968–73), Swaziland has been an absolute monarchy. Forged as a state in the early decades of the 19th century, the locus of domestic political power has historically resided within the royal lines of the Dlamini clan. Even under British colonial rule, which lasted from the early 20th century to 1968, the supremacy of the monarchy in regard to traditional affairs was acknowledged.

That power was somewhat curbed at the time of independence, when the British imposed a constitution that provided for political competition among parties and regular parliamentary elections. In this new order, the Swazi monarchy was relegated constitutionally to largely ceremonial status. In reality, however, the monarch, Sobhuza 11, held sway as the party of his creation—the Imbokodvo National Movement (INM)—won all parliamentary seats in elections held prior to independence. Sobhuza thus ensured that the parliament did nothing of which he did not approve. The post-independence premier, Prince Makhosini Dlamini, explicity confirmed this arrangement: "It is the king, not I, who leads the people." The principle of monarchical supremacy remains the central tenet of Swazi political life.

In the post-independence elections held in 1972, the INM's monopoly in parliament was dented when an opposition grouping won three of the twenty-eight seats. This setback for the king coincided with the High Court's declaring unconstitutional legislation passed to strip one of the opposition MPs of his

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Swazi citizenship. Sobhuza's response was to declare a state of emergency, dissolve parliament, and outlaw all political parties, including his own INM. He justified the ban on political parties by declaring them inconsistent with Swazi custom, and the importers "of undesirable political practices . . . designed to disrupt and destroy our own peaceful and constructive and essentially democratic method of peaceful political activity."[1]

That political parties remain banned despite the introduction of a new constitution in 2005 reflects both the current king's (Mswati III) hostility to political parties and the fact that for the monarchy to concede the democratic principle that all Swazis should have the right to organize themselves politically would be a paradigm shift ideologically on its part—a shift it shows no signs of making. Mswati does not tolerate any questioning of his absolute authority to govern as he sees fit, and he uses an enormous portion of the state's resources for his personal enjoyment.

For some 30 years after 1973, Sobhuza (who died in 1982 after more than six decades of reign) and Mswati ruled largely by decree. The democratic transition in the 1990s in neighboring South Africa prompted a resurgence in political activity in Swaziland, with various political groupings—notably the Peoples United Democratic Movement (PUDEMO) and its youth wing, the Swaziland Youth Congress (SWAYOCO), as well as the Swazi Federation of Trade Unions (SFTU)—pushing for democratic reform. In response, in 1996 the king appointed his brother to chair a constitutional review commission. It operated largely behind closed doors for eight years, during which period it became clear to the Swazi establishment that its now democratic neighbor would not be pressing it in a similar direction. Its final product, a new constitution, took effect in February 2006. While it introduced some limited reforms in areas like women's rights, it affirmed monarchical supremacy and continued the ban on political parties.

On the status of political parties, the new constitution affirmed the right of Swazi citizens to form and join political parties (Section 25) but maintained the prohibition on political party electoral participation by stipulating that candidates can run only as individuals, not as party representatives (Section 29). Disappointed, civil society groups challenged the continuing ban on political parties in the courts, arguing that it violated the constitutional guarantee of free association. After two years, the High Court affirmed, with one dissenting opinion, the status quo ante. The dissenting judge, Justice Thomas Masuku, found that the ban on political parties was unconstitutional.[2]

Political repression has intensified since 2006. Widely condemned anti-terrorism legislation has been used to curb political opposition and labor activity, and the police appear free to act with increasing levels of impunity, evidenced by the frequency of reports of the torture, abuse, and even some deaths of detainees, as well as violent crackdowns on peaceful demonstrations.

Seven years of sustained drought between 2001 and 2008, combined with the ripple effects of global recession, has left two-thirds of the population living

in poverty and almost half dependent on food aid. Swaziland relies on remittances from revenue generated by its membership in the Southern African Customs Union (SACU) for nearly 70 percent of its annual budget. As a result of the global slowdown in trade, revenue from SACU has declined by two-thirds since 2009. The result is a severe economic crisis with the government unable to meet its monthly public sector wage bill. In early 2011, security forces brutally suppressed protests at the lack of political freedoms and the threatened elimination of 7,000 civil service positions. Compounding the crisis is one of the world's highest HIV/AIDS prevalence rates (at least one-quarter of those between the ages of 15 and 45), resulting in a one-third drop since independence in life expectancy to under 40 years of age.

ACCOUNTABILITY AND PUBLIC VOICE 1.61

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	0.20
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	1.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	3.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	1.57

Swaziland is an absolute monarchy, with ultimate authority over executive, legislative, and judicial matters vested in the king. The partially-elected parliament is subordinate to the king. Parliamentary elections are held every five years, and these are conducted according to the traditional tinkhundla system, in which candidates run as independents in demarcated constituencies. Each constituency is limited to nominating three candidates, and these emerge from a sifting process in which the constituency chiefs decide on who the candidates will be. These candidates then move on to a popular election in which all adults over 18 have the right to vote by secret ballot for one of the three.

There are 65 seats in the lower House of Assembly, 10 of which are nominated by the king and 55 of which are nominated through the tinkhundla system. There are 30 seats in the Senate, 20 of which the king nominates, with the House of Assembly nominating the remaining 10. With the prohibition on political parties, all members of parliament (MPs) are independents, but the controlled candidate nomination process ensures that the bulk of elected representatives are royalist sympathizers.

Elections in Swaziland do not comply with international standards. In addition to the ban on political parties, the unduly prominent role of chiefs is problematic, as they are all appointed by the king—their first loyalty is, thus, to the monarchy, not their subjects. Candidates are not permitted to campaign. Elections are managed by the Electoral Boundaries Commission, whose membership, like all state bodies, requires royal assent. The heavily-restricted electoral process produces a pliable parliament unwilling and unable to change the political status quo. Regime change or a rotation of power is impossible within the current system.

The most recent round of national elections took place in October 2008. A Commonwealth Expert Team monitored the election and described it as neither democratic nor free and fair. The resulting parliament was comprised almost wholly of staunch royalists who rarely express dissent.

Despite the ban on political parties, there are political groups and politically oriented youth and civic associations that wish to see the status of the monarchy reduced and a freely elected legislature empowered. Their model is post-apartheid South Africa, and some opposition activists have moved there in recent years, while many more of them have been forcibly exiled there following threats of torture, imprisonment, or death by Swazi security services; a Swaziland Solidarity Network (SSN) has formed there. The SSN has forged a close alliance with the largest South African trade union federation, the Congress of South African Trade Unions (COSATU), as well as with the South African Communist Party (SACP), and its offices are located amid those of the SACP.

The locus of power is the executive, and the legislature operates at its behest. MPs can in theory initiate legislation, but they rarely do, and essentially the legislature acts as a rubber stamp to the dictates of the king and his advisers.

In the course of 43 years of independence, a scenario has developed where the monarchy, also known as the "Swazi Nation," refuses to honor any judicial ruling which does not suit its interests or its conceptualization of "Swazi tradition." This limits the oversight capacity of the non-executive branches of the Swazi state. The whole political process is designed and managed to ensure that it reflects the specific interests of the monarchy and the vast patronage network through which it operates. The oversight capacity of the judiciary on the executive branch was further weakened in April 2011, when the Chief Justice issued a directive instructing all lawyers that no legal case that questions the actions of the king or his agents would be admitted into court.

Entrance to the civil service is relatively open and competitive, with the exception of the most senior positions, which in practice always go to pro-monarchist candidates. Below this, university graduates in good standing can still gain entrance to the state sector, and there appears to be no recruitment discrimination against female applicants. Indeed, a high proportion of the civil service is female, as is much of the middle and upper management. There is a civil society sector in Swaziland. Authorities leave groups seen as apolitical and primarily developmental or ameliorative, for example in areas like poverty relief or the care of HIV/AIDS orphans, to pursue their objectives and to seek and accept funding from local and foreign donors. The same does not apply to groups the state considers political or inimical to Swazi tradition, including those that work on human rights, or groups that focus on gender violence or the oppressive aspects of Swazi custom in regard to women's issues. At best, their representations are ignored, but some of their leading figures have also at times been subject to harassment.

Civil society groups in the state's good graces and their coordinating agency, the Coordinating Assembly of Non-Governmental Organizations (CANGO), are able to comment upon and attempt to influence policy, but their capacity to influence policy is limited where it impinges on the traditional Swazi world view. Freedom of the press has deteriorated markedly since 2007. Independent media and individual reporters and editors have been subjected to harassment and intimidation and been made to work in a generally hostile environment. The result has been a noticeable cowing of the independent press outlets.

The state has strong control over the media in Swaziland and controls all radio stations except an American evangelical broadcaster. The sole private daily paper in Swaziland, the *Times of Swaziland*, engages occasionally in minimal criticism of the king, largely out of fear and self-censorship,[3] but it does report on cases relating to the political situation in the country and has been more vocal in recent times, including in July 2011 even ignoring an instruction not to publish an article relating to the impeachment of the Chief Justice.[4] The monthly, *The Nation*, despite a limited circulation, covers issues related to politics, corruption, judicial independence, and the rule of law; it does not shy away from covering controversial subjects such as excessive spending by the king and unlawful evictions by the king's agents. In 2010, Reporters without Borders included King Mswati on its list of "Predators of Press Freedom."[5] There is no clear evidence that the state hinders access to the internet, but internet access is minimal in Swaziland and is therefore not as yet perceived as a threat. During the run-up to and in the course of April 2011 protests, pro-democracy groups accused the monopoly internet service provider (in which the king has a significant shareholding), South African-based MTN, of limiting access to Facebook and other internet services under pressure from the Swazi state. MTN denied the charges and claimed that any malfunctioning was a result of unusually heavy traffic.

CIVIL LIBERTIES 2.93

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.38
GENDER EQUITY	2.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	2.75
FREEDOM OF CONSCIENCE AND BELIEF	5.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	1.50

Civil liberties have been further curtailed since 2007 as the king has sought to close political space. Opponents of the Swaziland government enjoy no protection from physical abuse, the torture of detainees is common, attacks on protesters are routine, and there has been at least one death of a political detainee in the period under review. This was of a youth activist, Sipho Jele, who died in

police custody in May 2010. The police routinely ignore the ban on torture as prescribed in the constitution, and it is not enforceable in the courts.

The most severe curtailment of civil liberties was the November 2008 Suppression of Terrorism Act (STA), which gives the state virtually unfettered powers to define and act against anything it considers terrorism. The act was widely condemned internationally: the London-based anti-censorship organization Article 19 criticized it as an assault on the right to free expression, and Amnesty International and the International Bar Association (IBA) in a joint January 2009 statement expressed concern at the wide-ranging, vague, and imprecise definition of terrorism it gives and called for the act's repeal or amendment. The two bodies expressed concern "that key provisions in this anti-terrorism law are inherently repressive, breach Swaziland's obligations under international and regional human rights law and are already leading to the violation of the right to freedom of expression, association, and assembly." They also strongly criticized the "provision for up to seven days incommunicado detention without charge or trial, with the attendant risks of torture, or other cruel, inhuman or degrading or punishment, or enforced disappearances." In response, the government stated publicly that it would not amend the act.[6]

Within days of the act's promulgation, the king classified four opposition groups as terrorist under the STA: PUDEMO, the Swaziland Youth Congress (SWAYOCO), the SSN, and a lesser-known group called Umbane. Two days later, police arrested PUDEMO's leader, Mario Masuku, and charged him with terrorism. Masuku was eventually acquitted after being held for more than a year because of the lack of evidence in the state's case.

On May 4, 2010, 35 year-old Sipho Jele, a prominent trade unionist arrested with other political activists at a rally days earlier, died in police custody. Police claimed that he was found hanging in a bathroom, but his family and colleagues alleged that the police were responsible. PUDEMO's leader, Mario Masuku, was arrested and charged with terrorism after referring to the organization, now a banned entity in Swaziland, in his oration at Jele's funeral. Masuku was freed soon thereafter, and in March 2011 the coroner's report said that Jele had hanged himself.[7] In September 2010, a number of Swazi and South African groups announced the launch of a Swazi Democracy Campaign. Among the South African supporters were the Congress of South African Trade Unions (COSATU) and the Open Society Initiative for Southern Africa (OSISA). Members of the Danish Africa support group, Africa Contact, were also at the announcement. Danish NGOs have long acted in support of the democracy movement in Swaziland. The campaign intentionally coincided with a Swaziland meeting of the Common Market for Eastern and Southern Africa (COMESA). On September 6, a 300-strong police contingent raided a planning meeting and took into custody some 50 attendees, including the Danes and South Africans. The Danes were interrogated for several hours, including being physically threatened but not physically harmed. They and the South African attendees were eventually deported.[8]

There are no reports of police officials being held accountable for detainee mistreatment, torture, or death in the period under review. Nor are there any reports of effective or successful redress actions on the part of those whose rights have been violated. Swaziland has no ombudsman's office. In September 2009, the king announced the appointment of a Commission on Human Rights and Administration, but the commission has no enabling legislation or clear set of powers and functions, and there was little public consultation in regard to the appointment of the commissioners. It appeared to be inactive as of August 2011.

Extended pretrial delays are common in the Swazi judicial system. For example, 16 defendants charged with treason in 2006 still have not stood trial nearly five years later. They remain out of custody on bail. There have been other cases where activists have been arrested, charged, released on bail (often after some delays), and then not brought to trial. The cases are constantly postponed and it appears that this has become a method employed by the authorities to limit the political activities of individuals seen as hostile to the existing order.

Delays were clear in the case of South African Amos Mbedzi, who was arrested in September 2008 when a car in which he was allegedly a passenger exploded close to one of the king's royal palaces. Two other passengers died in the explosion. They were named as Musa "MJ" Dlamini, a Swazi lawyer, and Jack Govender, an Indian South African and reportedly a founding member of the SSN and a former member of the African National Congress' (ANC) underground army, Umkhonto we Sizwe. After a year in detention, Mbedzi was charged with attempted sabotage and appeared in court in late 2009. His trial was then postponed to March 2010, and then again to June 2010, when the original charge was amended to include two murder charges relating to the deaths of Govender and Dlamini. The trial on the new charges took place in February 2011 and a verdict is awaited.[9]

The Swazi constitution allows capital punishment, but no executions have been carried out since 1983, and only one death sentence has been imposed in recent years. That was in April 2011 and involved a serial killer convicted of killing 28 people over a number of years.[10]

Conditions in Swazi prisons are poor, although not especially bad by regional standards. Prisons are overcrowded, in part due to the number of non-bailable offences on the statute book. A large proportion of prison inmates await trial. Detainees can be held for long periods before their cases are heard. Another consequence of poor and crowded conditions in Swazi gaols is that they are a fertile breeding ground for the spread of the HIV virus.

In October 2008, parliament passed the People Trafficking and People Smuggling (Prohibition) Act. There is little evidence of trafficking in Swaziland, but there is an assumption in some of the South African literature on human trafficking that Swaziland represents a comparatively easy transit route for traffickers on account of its porous and poorly policed borders with South Africa and Mozambique.

Violent crime has been on the rise in Swaziland in recent years. In the course of 2010, both the UK and US governments issued official alerts to visitors on the dangers of visiting Swaziland. The UK alert warned travelers of possible terrorist attacks, car hijackings, and street crimes. It also warned visitors of the force that Swazi police use to disperse demonstrators.

Women in Swaziland continue to suffer discrimination and abuse. The 2006 constitution did, however, ameliorate a number of the discriminatory burdens borne by Swazi women regarding property, inheritance, and financial matters. For example, Swazi women married by traditional custom no longer lose their property and other inheritance rights upon the deaths of their spouses; nor do they still require their husbands' permission to acquire passports, open bank accounts, travel outside the country, obtain contraceptive devices, or purchase property. Despite these advances, inequalities persist. Swazi men are legally entitled to practice polygamy but women are not. Forced marriage of young Swazi girls continues to occur, though not frequently. The current king has been linked to one or two such cases.

Swazi women do not have the same access to justice as Swazi men and are not equally protected under the law. Incidents of rape and the violent abuse of girls and women are common and have been on the rise in recent years, and more Swazi women are HIV positive than men. A 2007 survey found that one-third of all Swazi women had been subjected to sexual violence and two-thirds to some form of beating or physical abuse. While both the legal code and customary law offer some protection against gender-based violence, enforcement has been minimal, amounting in effect to impunity.[11]

One area where gender discrimination has eased since independence is employment. As noted earlier, women occupy many senior positions in the public sector. Women are well represented amongst the country's university academics, and the highest office at the University of Swaziland has been held by a Swazi woman. Many Swazi women have been principals in schools and senior administrators in the hospital service, and women may join the Swazi police. The government has not, however, taken specific action to ameliorate the gender gap.

The Swazi population is ethnically homogeneous; only a tiny fraction of the population is not Swazi by origin. Issues of ethnic discrimination are uncommon. Mixed-race Swazis, however, have at times encountered difficulties with passports and nationality issues, particularly in cases in which the father is a foreigner. This discrimination does not, however, appear to be widespread or a matter of policy. Most Swazis are Christians. About 65 percent are Protestant or Catholic and the remainder adhere to the African Zionist faith. Religious practice is essentially free in Swaziland and the state respects the right of citizens to follow the religion of their choice. The one occasional exception is Jehovah's Witnesses, some of whom have been prevented from becoming teachers. All religious groupings are required to register with the government, and they must obtain permission to construct church buildings. There is no record of that

permission being refused. The government has occasionally banned or dispersed interfaith church gatherings where the gatherings were deemed to be political.

Swazis do not enjoy constitutional rights to assemble or protest freely. Police routinely refuse permission for groups to gather, and meetings and marches are routinely and forcibly attacked and broken up when they occur. The most recent attack occurred on April 12, 2011, when a coalition of student and labor groups called a "day of rage" to coincide with the 38th anniversary of the abrogation of Swaziland's independence constitution, which guaranteed multi-party democracy. Branding the protest illegal, the security forces detained hundreds of alleged activists at road blocks and forcibly broke up demonstrations in Mbabane and Manzini. Many dozens of protesters were injured and some hospitalized, but there were no fatalities.[12] Some of the detainees have been charged under the STA. A number of known activists were placed under house arrest in the days leading up to the protest, including the PUDEMO leader, Mario Masuku.Trade unions are lawful in Swaziland, and workers are free to join them. Their activities are coordinated by the Swazi Federation of Trade Unions, one of the two labor federations in Swaziland and in recent years a vocal critic of the government. Together with the Swaziland Federation of Labor (SFL) and other unaffiliated organizations such as Swaziland National Association of Teachers (SNAT), it has been coordinating the work of labor activists in the country. On May 1, 2011, SFTU, SFL, and SNAT announced their unification under the banner of the Trade Union Congress of Swaziland (TUCOSWA). Union officials are regularly harassed and sometimes detained without charge.

RULE OF LAW 1.93

INDEPENDENT JUDICIARY	1.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.60
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	1.00
PROTECTION OF PROPERTY RIGHTS	2.33

Swaziland operates a dual court system comprising traditional courts, in which presiding chiefs apply customary law, and a Roman-Dutch system of magistrate courts, a high court, and a court of appeals. The latter is not a permanent body but one currently staffed mainly by southern African judges, some retired, and one judge seconded to the court by the Commonwealth Secretariat. The court of appeals convenes in Swaziland two to three times each year. The king appoints all judges, including those from outside of Swaziland, and their appointments are not subject to parliamentary approval or scrutiny. In the late 1990s, the government disbanded the Judicial Services Commission (JSC), a body responsible for recommending to the king all judicial appointments. It was replaced with a special committee composed of cabinet ministers, the attorney general,

the director of public prosecutions, the commissioner of police, heads of the security services, the chief justice, and some palace advisers. The organization's operations went well beyond judicial appointments and involved scrutinizing the workings of the entire justice system. It met weekly for close to ten years, and in that time the independence of the court system was badly compromised. With the promulgation of the new constitution in 2006, the king reinstated the JSC, and a degree of legitimacy was restored to the appointments process. The JSC's responsibilities do not include commenting on or interfering with the decisions of judges and magistrates. However, in a worrying development in August 2011, the JSC did just that as part of an investigation into the conduct of Justice Thomas Masuku, one of the allegations being that he had insulted the king in language used in one of his judgments earlier in the year.

The coexistence of two legal traditions with fundamentally different conceptions of rights lies at the core of a crisis that has afflicted Swaziland since the early 1970s. It began with the declaration of a state of emergency in 1973, which was triggered in part by the fact that the high court had acted to overturn the legislative will of parliament. A more recent manifestation was the 2002 resignation en bloc of the appeal bench, stemming from the monarchy's refusal to implement judicial rulings with which it did not concur. The political and legal crisis stemming from this action on the part of the monarchy severely compromised the independence of the judiciary and threw the administration of the judicial system into disarray. Throughout 2003 and 2004, Swaziland did not have a court of appeal, which resulted in a violation of the rights of all those whose civil and criminal cases were at the appeal stage but could neither be heard nor concluded. The court of appeal was reinstituted in 2005, but the ongoing tension between Swaziland's two judicial systems has demonstrated that the will of the monarchy always prevails. What this means politically is that the un-elected monarchical order refuses to accept any constitutional or legal limits to its rule, a modern manifestation of the notion of the divine right of kings.[13]

Despite the system's many shortcomings, the judges, both local and expatriate, who have served in Swaziland's high and appeal courts of Swaziland have a reputation as able and competent judicial officials. While many local judges have lacked the experience and seniority of their foreign colleagues, they have all been trained as legal practitioners with appropriate qualifications. This generally good reputation of the Swazi bench is based on the fact that it has applied the law fairly and consistently but also because it has strongly resisted—albeit sometimes in vain—attempts by the state and traditional authorities to influence decisions through intimidation.

According to the saved provisions[14] of the 1968 independence constitution, a high court judge can be removed from office only on grounds of an "inability to perform the functions of his office, whether arising from infirmity of body or mind or any other cause or for misbehavior." This provision is supposed to be invoked only after the chief justice has requested that the king investigate the conduct of the judge in question, which must occur through a tribunal

appointed by the king. None of these requirements were met in April 2003, when Justice Thomas Masuku, the sole dissenting judge in the high court ruling that the ban on political parties was not unconstitutional, was transferred from the high to the industrial court. This de facto removal from the bench was challenged in the high court by the Swazi Law Society, and the court ruled in May 2004 that the dismissal was unlawful and ordered him reinstated.

The presumption of innocence was undermined by the 1993 passage (with subsequent amendments) of the Non-Bailable Offences Order. According to this legislation, Swazi courts are prohibited from granting bail to persons charged with one or more scheduled offenses. These include murder, rape, robbery, and offenses referred to in public order and anti-subversion laws. The appeal court struck down the order in 2001, but the government quickly issued a decree that re-imposed the provisions of the 1993 order. Challenges to this decree were launched by two pre-trial detainees denied bail, resulting in November 2002 in a second appeal court's ruling striking down the legislation. In response, the prime minister announced that the act would remain in force and that all government agencies had been instructed to ignore the appeal court's ruling, which he described as an attack on the powers of the king.

Citizens have the right to independent counsel of their choice. For most Swazis, however, this is a nominal right, given that over half the population lives below the poverty line. There is no state system of legal aid for those unable to afford counsel. The administration of justice in Swaziland is politicized. While some public officials and ruling party actors are charged before the courts, cases are brought selectively and usually only involve those who fall foul of the traditional authorities. Not all Swazis experience an equal application of the law, despite the best efforts of the Swazi high and appeal courts.

There is essentially no civilian control of the security services by the judicial and legislative branches, as the services essentially function as an enforcement arm of the traditional authorities in the executive branch. Their interference in the political process at the behest of the traditional authorities is frequent. The police and the military are to all intents and purposes above the law, subject only to the authority of the king.

The issue of property rights in Swaziland is complex. There is a dual land system with distinct freehold and leasehold sectors, which roughly corresponds with the urban-rural divide of the country. For those with freehold rights, all residents of the country have an equal right, though obviously not an equal capacity, to property ownership. This sector operates under normal market conditions, and the state adequately enforces and protects property rights and contracts. A very different situation prevails in the communal leasehold sector, in which the majority of Swazi citizens reside. In these areas, land cannot be bought and sold, and the tenure rights of the occupants are dependent on the goodwill of the chiefs who administer the land on behalf of the king. This situation can be manipulated for political and other reasons; there is a long history in Swaziland of the precarious nature of tenure rights being used as

a means to pressure or discipline the commoners in the leasehold sector. In short, those who do not comply with their chiefs' orders can have their land taken from them, and forcible eviction of families or whole communities is not uncommon.

In October 2000, the police forcibly evicted from their homes 120 residents of the KaMkhweli and Macetjeni communities when they refused to accept the appointment of one of the king's brothers as their new chief. On several occasions thereafter, the evictees turned to the courts, and in all but one instance their right to return to their homes was upheld. Finally, the court of appeal in November 2002 made such an order but the government simply stated it would not obey it. It was this defiance by the state which prompted the resignation of the appeal bench. In its ruling, the court also upheld an earlier high court decision to jail the commissioner of police for contempt because he had not implemented earlier rulings. This order has never been implemented, nor have the evictees after a decade been allowed to return to their homes.[15] The latest high-profile land grab by the king's agents, the Kashali demolitions, came to court in February 2011 and has tainted the monarchy's image even among his most loyal subjects; the court ruled in favor of stopping demolitions.[16]

ANTICORRUPTION AND TRANSPARENCY 1.97

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.20
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	1.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.00
GOVERNMENTAL TRANSPARENCY	2.33

The politico-economic environment in Swaziland is conducive to extensive corruption. The result is a level of corruption which is both endemic and pervasive. This is especially true in regard to the monarchy and the institutions of the Swazi Nation, where expenditure is lavish and rarely accounted for. The king has in recent years used state funds to purchase an executive jet for his personal use and to construct new palaces for his 14 wives and 23 children at a cost of $14 million. Each year in April he has spent vast sums on his birthday party, and even in the midst of the most serious economic crisis in Swazi history, parliament increased the allocation for the royal family by approximately six million dollars to celebrate Mswati's 25th year on the throne. In 2008, eight of the queens undertook a shopping visit to Dubai, at a reported cost of about $4 million.

In 2011, with the government unable to meet fully its public sector wage bill, King Mswati and an entourage of 50 attended the wedding of Prince William in London, staying for nearly a week at one of London's most expensive hotels.[17] Corruption in Swaziland stems from the undemocratic and unaccountable nature of the political order and an entitlement culture on the part of the monarchy and political class in general. For example, in the mid-1990s

the Swaziland Development and Savings Bank went bankrupt largely because a series of large loans to members of the royal family and chiefs which were never repaid. No action was taken against the loan defaulters, and the funds were never recovered. Transparency International's 2009 Corruptions Perceptions Index ranked Swaziland 79 out of 178 countries surveyed and the 12th worst performer in sub-Saharan Africa. This represented a drop of seven places on the global list over the course of a year. The 2010 index ranked Swaziland 91 out of 180 countries, a steep fall over a single year.[18]

Corruption in Swaziland is so endemic that in a rare act of candor the minister of finance—a royal appointee—told parliament in 2010 that the country was losing approximately $12 million per month as a result of corrupt activities by high state officials, including cabinet members.[19] Despite this high-level recognition of corruption, the Anti-Corruption Unit set up by parliament in 2007 has not brought a single case of corruption before the courts. Part of the problem is the lack of any whistle-blower legislation to encourage individuals to come forward with allegations of graft and bribery.

The Swazi economy is a capitalist system. Foreign investment is sought and encouraged, and there are few controls on the repatriation of profit. There is, however, considerable state involvement in the economy in the form of royalist-controlled investment corporations. The largest of these is the Tibiyo Take Ngwane Fund. At independence, control over Swaziland's mineral rights and royalties were vested in the Swazi nation and not the government. To administer the concession, the king established the Tibiyo fund. Headed by a board, the majority of whom are male relatives of the king and are answerable only to the monarchy, Tibiyo pays no taxes and is not accountable to parliament.

Over the years, Tibiyo has developed into a major corporation and a source of wealth for the royal family and those close to it. It is involved in all sectors of the economy, establishing a solid partnership with foreign capital, the dividend payments from which have become Tibiyo's largest source of revenue. It has also been the means by which the Swazi aristocracy has acquired for itself a considerable material base in the modern economy, complementing their control of the traditional agrarian sector, which was achieved through a monopoly on the right to allocate and withdraw land tenure rights. The Swazi aristocracy—the royalist lines within the Dlamini clan—is therefore not just a privileged elite but a modestly wealthy capitalist class for whom a regime change, or even a significant democratization of the system, could have strongly negative consequences.

The state does not enforce effective legislative or administrative processes to promote professional integrity or prevent and detect corruption. No adequate financial disclosure procedures prevent or minimize conflicts of interest among public officeholders or those in the private sector. No asset register exists to record the business and other interests of, or gifts to, public officials. The king's wealth is also buffered by the Royal Emolument and Civil List Act of 1992. This law not only gives him a budget from the government, but also requires government ministries to make provisions for the expenditure of the king and

his family. It is because of this provision that government departments are unable to resist the demands of the royal family.[20]

Tax collection is efficient and accountable in the formal sector of the economy, though the financial operation and tax processes in the institutions of the Swazi Nation are completely opaque. Swaziland has no independent auditing office, such as that of an auditor general or ombudsman. Bribes are not necessary to gain admission to higher education, although in some cases pressure has been applied successfully on the authorities of the University of Swaziland to admit members of the royal family and political establishment.

Other than in the courts, victims of corruption have little means or avenues by which to pursue their rights or seek redress when they fall victim to corrupt practices. Allegations of corruption directed at members of the royal family and other figures in the traditional sector (such as chiefs) are rarely investigated and even more rarely acted upon. While in the 1990s the press gave extensive, even gleeful, coverage to allegations of scandal, the state crackdown on the media in recent years has effectively silenced it, with journalists and editors largely succumbing to self-censorship.

The public has little access to state information, and there are no legal mechanisms to facilitate access. The process of awarding government contracts and tenders is public, but it is susceptible to corruption in that tenders are almost invariably awarded to those with political connections. The executive budget-making process is not transparent, although parliament does exercise a watchdog role over the budget and government expenditure. It has at times undertaken this function to good effect by reining in, for example, reckless spending on the part of some government ministries, but it has never acted to curb excessive spending by the monarchy.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

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3 "Swaziland country profile," BBC, http://news.bbc.co.uk/2/hi/africa/country_profiles/1069035.stm, accessed May 17, 2011.

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6 John Daniel and Marisha Ramdeen, "Swaziland."

7 Bheki Makhubu, "Bizarre death at Sidwashini prison," *Nation*, http://www.theswazination.com/Focus-on-the-coroner%27s-report-into-the-death-of-Sipho-Steven-Jele-5.html, accessed September 9, 2011.

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9 Ibid.

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11 Freedom House, "Swaziland," in *Freedom in the World 2010* (New York: Freedom House, 2010), http://www.freedomhouse.org/template.cfm?page=22&country=7925&year=2010.

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13 See John Daniel, "Swaziland," in Freedom House, *Countries at the Crossroads 2005: A Survey of Democratic Governance* (New York and Washington DC: Freedom House, 2006): 523–25.

14 These were provisions in the 1968 constitution which the king decreed remained in effect despite the scrapping of the constitution as a whole.

15 See John Daniel in *Countries at the Crossroads*, op cit, 527.

16 Sikelela Hlatshwayo, "Land question Heating up," *Nation*, August 1, 2011, http://www.theswazination.com/Evictons-The-land-question-heating-up-to-be-a-boiling-kettle.html.

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SYRIA

CAPITAL: Damascus
POPULATION: 22.5 million
GNI PER CAPITA (PPP): $4,620

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	1.37	1.25
CIVIL LIBERTIES:	2.16	1.99
RULE OF LAW:	2.10	1.60
ANTICORRUPTION AND TRANSPARENCY:	1.98	1.25

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Radwan Ziadeh

INTRODUCTION

The Syrian Arab Republic was established as a French-controlled mandate at the end of World War I and became officially independent in 1946. After a period of intermittently-democratic rule and a short merger with Egypt from 1958 to 1961, the Arab Socialist Baath Party staged a coup in 1963, established a one-party government, and declared a state of emergency that remained in place for 48 years. A period of leadership transition among civilian ideologues and army officers, most of them members of the Alawite minority (adherents of an Islamic sect who comprise approximately 12 percent of the population) continued until 1970, when Alawite and Baath Party member General Hafez al-Assad assumed the presidency.

The ongoing state of emergency, Alawite dominance of the security forces, and the omnipresence of the Baath Party enabled Hafez al-Assad to maintain strict authoritarian control over virtually all sectors of political and social life. The regime centralized the state's legislative, judicial, and executive institutions under its control, restricted virtually all forms of dissent, and prohibited the operation of all independent media. The new presidential system revolved around al-Assad's personal will and networks of social, economic, and military interests based on personal loyalty to the president. Syria's 1973 constitution

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designates the Baath as "the leader party in the state and society," and the state is its sole source of funds, creating a very close relationship that renders indistinguishable the distinction between government institutions and ruling party.

Hafez al-Assad's authoritarian control was based in part on the powers granted him by Military Order No. 2, which established Syria's 48-year state of emergency. The order was never subject to review by Syria's parliament, the People's Council, nor any other legislative body. The law designated the prime minister as military governor and the minister of interior as his deputy, and expanded executive control over legislative and judicial powers. It authorized precautionary detention of anyone suspected of being a security threat, which resulted in widespread arbitrary arrest, and enabled the Alawite-dominated security services to suppress all forms of dissent through the regular use of force. The most notorious case of this severe approach was the government's brutal 1982 crackdown on a Muslim Brotherhood rebellion in the city of Hama, which killed as many as 20,000 insurgents and civilians. The state of emergency also restricted freedom of movement and choice of residence; limited freedom of expression in all publications and forms of artistic expression; and authorized official disruption of virtually all forms of public interaction.

Hafez al-Assad maintained power until his death in 2000, when his son Bashar assumed the presidency. Early in his tenure, Bashar spoke of his desire to eliminate corruption and modernize government institutions, and he gradually replaced his father's cronies with allies of his own. During his first months in power, he released a number of political prisoners, permitted the return of exiled dissidents, and allowed more frank political discussion. This opening, called the Damascus Spring, continued only until February 2001, when activists and reformers who had begun to flourish in the liberalized atmosphere were abruptly jailed or subjected to police surveillance and harassment. Some of Bashar's economic liberalization policies remained in place, but the promise of the Damascus Spring was largely extinguished.

Hopes of political reform rose again in 2003 and 2004, when the fall of the Iraqi Baath regime emboldened Syria's political reformers and inspired cooperation between dissidents in the secular and Islamist communities. Activists demanded political reform, including the cancellation of the state of emergency, the legalization of political parties, and the release of political prisoners. Syria's sizable Kurdish community, similarly galvanized by the events in Iraq, pushed for greater rights and recognition, culminating in eight days of rioting in March 2004, during which at least 30 people were killed and more than 2,000 arrested.

Amid international pressure and growing allegations of Syrian involvement in the 2005 assassination of former Lebanese prime minister Rafiq Hariri, Bashar al-Assad's regime attempted to quell the rising dissent through the release of hundreds of political prisoners and public hints of coming political reforms, none of which ever materialized. The opposition boycotted the 2007 elections which, unsurprisingly, resulted in overwhelming victories for al-Assad and the Baath-led coalition.

Despite the lifting of the curtain of fear that existed under Hafez al-Assad, Syria remains under Bashar al-Assad's strict authoritarian control. When the wave of the so-called Arab Spring demonstrations swept across the Middle East and North Africa in January 2011, it initially appeared that the Syrian regime was impervious to the swell of popular discontent that had already proven fatal to authoritarian regimes in Tunisia and Egypt. Scattered protests occurred in Damascus in February, but they failed to catalyze a nation-wide movement and the state's proven approach of quashing the mere hint of dissent seemed to extinguish the possibility of revolution in Syria. Those tactics appeared to backfire, however, in March, when security services arrested and tortured 15 schoolboys for scrawling anti-government graffiti on a public wall. Protests broke out on March 18 after word spread of the severe cruelty with which officials had treated the boys. Security forces, seeking to quell the disorder in the usual manner, unleashed open fire against the peaceful protestors, killing at least four. Outrage spread and the barrier of fear that for so long prevented public political activism seemed to disintegrate.

On April 21, amidst rapidly-spreading public disorder, President al-Assad lifted the long-standing state of emergency and promised to enforce the right of the Syrian people to engage in peaceful protest. The government's continually expanding crackdown on dissent demonstrated, however, that al-Assad's administration was looking only to placate protesters and had no intention of genuine implementation of the announced reforms. The regime continued to use the extensive authority and immunity granted by the state of emergency and eventually developed a large-scale military campaign of repression against protesters. By the summer of 2011, anti-government demonstrations were spread throughout the country and state security forces had reportedly killed more than 800 people and arbitrarily detained and tortured thousands, particularly men and boys.

Even before the protests and the subsequent violent clampdown, the prospects for genuine reform under Bashar al-Assad appeared bleak. Human rights and democracy advocates were subject to intense harassment and torture, and concrete policy improvements were nonexistent. With the proliferation of anti-government demonstrations and the regime's brutal crackdown, the extent of the rigid and inflexible regime's ability to weather continuing popular upheaval was unclear.

ACCOUNTABILITY AND PUBLIC VOICE 1.25

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	1.20
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	1.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	1.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	1.14

Syria is officially a parliamentary republic, but the state of emergency and the ubiquity of the regime override the constitution and dominate all aspects of

political life. The electoral system is not subject to judicial oversight, though civil servants monitor polling station activity, and the regime routinely orchestrates presidential referendums and parliamentary elections. The Baath Party nominates the president, who is then approved by popular referendum for a seven-year term. Hafez al-Assad was confirmed five times while in office, each time standing unopposed and frequently garnering 99 percent approval. Similarly, Bashar al-Assad won the latest unopposed presidential referendum, in May 2007, with 97 percent of the vote.[1]

The regime also heavily manipulates the selection of members in the People's Council. Elections for the Council are decided by a simple majority but two-thirds of the body's 250 seats are reserved for the ruling National Progressive Front (NPF), a coalition of the Baath Party and a small group of innocuous allied parties. NPF members are the only legal political parties in Syria, though regime allies who the party and military have thoroughly vetted are permitted to run as independents for the remaining seats. Elections and referendums typically have very low voter turnout and, given the completely superficial nature of Syria's electoral system, the potential for rotation of power is exceedingly low.[2] The regime won decisive victories in the 2007 parliamentary elections, in which seats for the Baath Party and the NPF increased by three to a total of 170. The remaining 80 seats went to independent candidates, many of them businessmen with close ties to the regime.

The People's Council acts as a rubber stamp for the executive's policies. It does not initiate legislation and has no power to affirm or withdraw confidence in the government. As outlined in the constitution, its role is limited to approving laws proposed by the government. The Council has never defeated any draft law and it does not exercise any monitoring functions over the government. The completely hollow nature of the parliament makes it such that there are no checks and balances on executive power.

The National Democratic Coalition, a collection of five secular political parties that advocate for the expansion of political freedom, is the closest approximation to an opposition in Syria. Its member parties are officially illegal and operate underground without formal offices or publications. Party members face arrest at any time. The coalition boycotted the 2007 elections on the grounds that they lacked minimal standards of legitimacy.

Many hoped that the 2005 Baath conference would prompt political reform, but change has been extremely limited and superficial. For example, as of 2006 new parties were required to act in accordance with the spirit of the revolution that brought the Baath Party to power, and parties dissolved before 1963 were explicitly prohibited, the latter being a clear reference to the Muslim Brotherhood. In 2007, the parliament approved a campaign spending limit of approximately $57,000. This measure was supposedly intended to prevent vote buying and other corrupt activity, but also met the regime's goal to prevent the influence of foreign powers. There is no discussion of substantive issues in

Syrian campaigns: mention of relevant but sensitive topics like foreign relations, political reform, the Kurdish population, and human rights is forbidden.[3]

Syria's civil service is expansive but dominated by party and local interests. The high degree of influence enjoyed by the Baath Party and elites close to al-Assad has shaped the civil service into vehicle for the regime's interests, and its services are particularly inaccessible for those without valuable social connections. The state has tried to improve the quality of the civil service, including by targeting employees accused of corruption, but the executive controls most personnel appointments and graft continues to pervade the system.[4]

Some nongovernmental organizations (NGOs) were allowed to function during the Damascus Spring, but space for such activity has since contracted, despite Syrian first lady Asma al-Assad's public endorsements of an active civil society. In reality, the state exercises extensive control over NGOs and only allows the existence of organizations that are closely aligned with its interests. Groups must obtain a license from the Ministry of Social Affairs, which generally only authorizes apolitical groups conducting charitable activities, for example women's associations and environmental preservation groups. No human rights organization has ever been granted a license. Syrian law forbids international funding of domestic NGOs and the government imposes travel bans on individuals working on human rights and other sensitive reform issues. Civil society operates informally because of these restrictions and has minimal policy influence.

Freedom of expression is similarly constrained. The Baath Party outlawed independent media when it assumed power in 1963. Bashar al-Assad later replaced that ban in 2001 with Decree no. 50, which allows for independent media under the strict control of the government, particularly the Ministry of Information and the Ministry of Culture and National Guidance. The decree empowers state officials to deny and rescind media licenses for any reason they consider to be in the public interest, authorizes the imprisonment of journalists, editors, publishers, printers, and virtually all other media actors, and establishes a wholesale prohibition on coverage of national security issues.[5] Penalties for violations of the law range from one to three years imprisonment and fines between $10,000 and $20,000.

Specific bureaus within the official daily newspapers are responsible for monitoring content for subversive information and the Ministry of Information, the Baath Party media office, and a branch of the security services monitors coverage of Syria by international news agency correspondents inside the country. The Baath Party also owns most newspaper publishing houses in the country and therefore is able to prevent the publication of information it deems at all subversive or critical of the government.

Despite these strict controls, some private print media developed during the Damascus Spring, when authorities granted licenses to economic and cultural publications and political newspapers published by Baath Party members and

allies. The two private daily political newspapers are published by regime stalwarts. *Al Watan*, launched in November 2006, is a daily newspaper published by al-Assad's controversial brother-in-law, Rami Makhlouf (see Anticorruption and Transparency), and *Baladna*, a social affairs newspaper, is published by Majd Suleiman, the son of former security chief General Bahjat Suleiman. All Kurdish-language publications are banned.

The government owns virtually all television and radio stations in the country. As is the case with print media, the only independent outlets are careful to stay well within known boundaries for acceptable content and do not report on political news or any other information that is likely to rile government censors.

In addition to its extensive control over media ownership and operation, the regime also closely monitors and targets individual journalists. The government's harassment of journalists includes arrest, incommunicado and prolonged detention, torture, forced exile from the country and delayed or rejected accreditation requests. Dozens of journalists have been harassed, arrested, and censored, with many put on trial for coverage considered at all critical of the government. Journalists are targeted with a variety of ambiguous and questionable accusations, among them the spreading of false news about the Syrian criminal code, threatening national security or unity, publishing false information, inciting sectarianism, and opposing the goals of the revolution. In 2009, a Syrian Kurdish journalist was arrested and held incommunicado for three months because of his articles on the contentious Syrian-Lebanese relationship.

Defamation is a criminal offense in Syria and the state uses a variety of judicial means to harass journalists, including lawsuits, fines, and forced dismissal for reporters that produce coverage that officials consider critical of the government or the regime. Ahmad Takroun, the editor of a regional newspaper, was fired after publishing an article arguing the importance of regional over national identity. The government has similarly repressed journalists working in broadcast media, shutting down multiple television shows under dubious pretenses.

Advocates for media freedom are subjected to similar treatment. In September 2010, government authorities shut down the domestic office of the Syrian Center for Media and Freedom of Expression with no reason. Unsurprisingly, four decades of strict media control have made self-censorship pervasive among Syrian journalists.

Syria's rate of internet access expansion is among the fastest in the Middle East, but only approximately 18 percent of the Syrian population uses the internet and the government engages in widespread internet censorship. The government amended the press law in 2005 to allow it to monitor and control electronic media. Changes to the code include the arbitrary requirement that editors of online content are Syrian citizens and residents who are a minimum of 25 years of age and who do not work for any foreign government. The law was further extended in 2009, when penalties (including imprisonment) for violating the state's media regulations were extended to internet users.

In 2009, the Committee to Protect Journalists ranked Syria third in a list of the ten worst countries to be a blogger, based on the extent of arrests, harassment, and restrictions that online writers face.[6] In December 2009, state security arrested Tal al-Mallohi, a 19-year old blogger, after she expressed hopes for political reform on her blog and called on foreign leaders to take more interest in the Palestinian cause. She was convicted in a closed trial in February 2011 on charges of spying for a foreign power and sentenced to five years in prison.[7] In July 2007, the blogger Karim Arbaji was arrested and held without trial until September 2009, when he was convicted of undermining national morale and sentenced to three years in prison. Arbaji was granted a presidential pardon and released on January 7, 2010.[8]

According to the Syrian Center for Media and Free Expression, a total of 241 websites were blocked in Syria in 2009, including social network sites and blog platforms.[9] The government lifted the ban on Facebook and YouTube in February 2011, but observers surmised that the measure was intended only to enable more extensive government supervision of social networking activity as pro-reform activism spread throughout the region.[10]

CIVIL LIBERTIES 1.99

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	1.38
GENDER EQUITY	2.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	2.25
FREEDOM OF CONSCIENCE AND BELIEF	2.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	1.00

The extensive immunity granted by the state of emergency and the ongoing de facto exercise of those powers after the state of emergency was lifted allow Syrian security forces to use brutal physical force at will and essentially guarantees that the Syrian people have no protection from physical abuse. Security forces are the subject of widespread allegations of torture, unjustified and prolonged imprisonment, and unexplained disappearances and deaths. There were at least five unexplained deaths in Syrian prisons in 2010 and the government has not undertaken any efforts to investigate these violations. There is an ongoing refusal on the part of the regime to account for the disappearance of approximately 17,000 people since the late 1970s, most of them activists or Muslim Brotherhood members.[11]

Although the Syrian constitution prohibits the use of torture, there are extensive credible reports that security forces regularly torture detainees. Amnesty International has documented 38 different types of torture used by security forces, including the use of electric shocks, burning, hyperextending the spine, the forced insertion of objects into the rectum, whipping and beating, and the

pulling out of fingernails.[12] Security forces regularly deny detainees' families access to or information about their relatives. In June 2010, for example, the family of Mohamed Ali Rahman was deprived of information about his condition and whereabouts after his arrest only to have security service officials later abruptly return his corpse without explanation. The family reported that his body indicated clear signs of torture.

According to Syrian human rights organizations, military police killed at least 25 prisoners in July 2008 during rioting at Sednaya prison near Damascus. After two days of government silence, the official Syrian news agency SANA claimed that convicted terrorists and extremists had rioted, but that security forces restored the peace and that the rioters would be held accountable. The government imposed a total blackout on Sednaya prison, refusing to acknowledge that anyone was killed and preventing prisoners' families from visiting to inquire about their relatives. The authorities allowed some families to go the jail in July 2009, a year after the massacre, but they continue to prohibit visits of non-family members and restrict detainee information. Human Rights Watch estimated in July 2010 that 42 Sednaya inmates are still denied access to the outside world, and other human rights advocates argue that the true number in isolation is much higher.[13]

Syria's prison conditions are a constant focus of criticism from domestic and international human rights organizations. Jails are severely overcrowded such that inmates must sleep on the floor. Prisoners are commonly deprived of food and medical care and visiting rights depend on connections to high-powered individuals. Security forces routinely refuse such legal safeguards as the right to prompt access to an attorney and to independent medical examination; the right to notify a relative; the right to be informed of charges at the time of arrest; and the right to appear before a judge within an appropriate time limit. Such protections are not even nominally guaranteed for security detainees.

The constitution prohibits arbitrary arrest and detention without trial, but the broad and ambiguous powers granted in the state of emergency give security services extensive flexibility to conduct preventative arrests of anyone they consider a political threat, even in cases with no demonstrable evidence. Security services commonly detain subjects without reason for months and years at a time.

Following allegations from international organizations that Syria is a human trafficking hub, particularly for women coming from Iraq, the government drafted legislation on the matter and established a shelter for trafficking victims. The government also co-sponsored with Interpol a conference on human trafficking in 2010.

Citizens have no effective means of petition and redress when their rights are violated. There is no ombudsman's office or state human rights commission and individuals who seek to lodge a complaint against security services must first obtain permission to do so from the very service against which they would like to file a case.

The Baath Party has shown some interest in advancing women's rights, though both genders were of course equally subjected to the wide-ranging crackdown on freedoms that came with the Baath's rise to power. Syria's constitution establishes the need for equality among all citizens and calls for the removal of barriers to women's full participation in political, social, cultural, and economic life. Syrian women gained suffrage in 1949, a very early first in the region, and are active participants in public life, including in ministerial positions.

Despite these advances, however, certain cultural biases and penal code provisions prevent gender equality. Despite the efforts of women's groups, Syrian women married to non-citizens do not have the right to pass Syrian citizenship to their children. Furthermore, honor killing remains one of the most serious gender-related issues in Syria. The government instated in 2009 a minimum two-year sentence for perpetrators of honor crimes, but has not sufficiently enforced that provision and the practice continues unabated. According to official estimates, there were 57 honor killings in 2009. Domestic workers, most of them female, are vulnerable to exploitation and abuse by their employers. The government has put in place regulations to protect domestic workers, but these provisions lack enforcement mechanisms and are largely ineffective.[14]

The state systematically represses and discriminates against Kurds, who constitute the country's largest ethnic minority. Kurdish districts typically have poor economic development and few social services. The government has arbitrarily denied citizenship to approximately 300,000 Kurds born in Syria, and political representation of the Kurdish community is virtually nonexistent.[15] The Syrian government has replaced Kurdish names of villages and areas with Arabic names and has moved members of the population away from what it considers sensitive areas. The government routinely prevents Kurds from fully exercising their rights to property ownership and employment, and prevents them from registering marriage and birth certificates. Kurds classified as "denationalized people" are not registered with the Syrian government and lack official identification cards.

Bans on Kurdish-language publications and music prevent the community from expressing its cultural identity and security forces regularly break up gatherings of Kurdish people, often with the use of lethal force. For example, three people were killed on March 20, 2008, when security officials fired on a group of Kurds gathered in Qamishli in celebration of the Kurdish New Year.

Unlike most Middle Eastern countries, Syria has no official religion, though its constitution does require the president to be a Muslim and specify Islam as the source of jurisprudence. The vast majority of Syrians are Muslim, with 74 percent of the population being Sunni and 13 percent being Shia, Alawite, and Ismaili Muslims. The population is 10 percent Christian, 3 percent Druze, and a very small Jewish community numbers approximately 100 people. The Baath Party adheres to a secular ideology and the government generally allows the small Christian and Jewish populations to worship without interference.

Government interference in religious matters tends to be confined to Islamist groups, who the regime has controlled and repressed for nearly three decades. The Muslim Brotherhood, who the government targeted in a 1982 assault in Hama that resulted in the death of approximately 20,000 people, remains illegal, and police and security services closely monitor suspected members of the Muslim Brotherhood and Salafist organizations. The government appoints all of the country's Islamic religious scholars (*'ulama*) with the goal of promoting moderation. Given the extensive reach of the government's suppression of Islamist organizing, it is difficult to ascertain the size of the Islamist community and the extent of the threat it poses.

The Baath Party under Hafez al-Assad paid relatively little attention to regulation of the religious sphere. It did not invest in the Ministry of Awqaf (Religious Endowments) and paid little attention to the training of clerics. It repressed Islamist movements for the purpose of preventing Islamist mobilization, but the regime did not focus on everyday religious affairs. When Bashar took power, however, the regime was under significant pressure to build legitimacy, and it expanded space for Islamic charities and informal prayer networks to operate in hopes that such liberalization would garner social favor. As external threats receded after 2006, the regime began reclaiming the opened space, and again restricted a range of informal practices by Islamic movements. In 2008, the regime began the most extensive expansion of state regulation of the religious sphere since 1963, including by overseeing religious education and expanding the Ministry of Awqaf.

Some discrimination on the basis of religion exists in practice. The Alawite community, despite its relatively small size in the population, dominates the military and security sectors and adherents of banned religions like the Jehovah's Witnesses are routinely subjected to interrogation and harassment.

In 2004, the government issued a law to empower and protect Syrians with disabilities, including by encouraging improvements in public access and establishing fee reductions for persons with disabilities at monuments and cultural sites. The Ministry of Social Affairs and Labor launched a media campaign with the president's wife to raise awareness about the issue. In 2010, the government passed a labor law requiring that at least 2 percent of private sector company employees be from the disabled community. Despite these advancements, however, major problems remain and very few government offices, buildings, or methods of public transportation are accessible to people with disabilities.

Since 1968, all Syrian workers have been required to belong to the General Federation of Trade Unions (GFTU), a nominally independent organization whose president is a senior member of the Baath Party. The Ministry of Labor appoints the GFTU congress and sets regulations for the organization's use of funds. The GFTU has extensive control over its members, including the ability to dissolve the executive committees of member organizations as it sees fit and to determine which groups of workers can unionize. The GFTU generally acts as a conduit between workers, management, and political leadership in

discussions of the minimum wage, hours, working conditions, and measures to address unemployment.

Strikes are legal in all non-agricultural sectors but are very rare, likely because striking workers are subject to serious penalties, including forced labor, if they do not comply with the strict rules for strikes. Such regulations include the fact that strikes in particular sectors can involve no more than 20 workers, and cannot occur in public places or on job sites. Foreign workers cannot serve in union leadership positions and have few legal protections.

Those wishing to stage public demonstrations or gatherings of more than three people must first apply for permission from the Ministry of the Interior, a process that includes the submission of a list of all possible participants. Permission is typically refused and the rare protests that do occur are almost always organized by the Baath Party or the government itself. Aware of the unlikelihood of receiving permission, many groups hold secret meetings, which are subject to disruption by state intelligence services.

In March 2010, 26 Kurdish university students were arrested for participating in a short, silent observation of the anniversary of the 2004 Kurdish uprising. The following month, 24 Kurdish activists were sentenced to more than a year in jail for their participation in a 2007 demonstration against Turkish attacks in Iraqi Kurdistan. Security forces also target apolitical gatherings; in March 2010, they conducted a series of raids to shut down groups of women gathered to commemorate International Women's Day.[16] As noted above, the Syrian government reacted to widespread antigovernment protests in the spring and summer of 2011 with brutal force, reportedly causing the death of more than 800 civilians.[17]

RULE OF LAW 1.60

INDEPENDENT JUDICIARY	1.40
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	1.60
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	0.75
PROTECTION OF PROPERTY RIGHTS	2.67

Syria's constitution explicitly endorses the separation of powers, but the state of emergency overrode this principle and endowed the executive and various security services with a wide range of authority that has serious implications for judicial independence.

The Syrian judicial system is influenced by both French and Egyptian traditions. It has three levels of courts of general jurisdiction: magistrate courts, courts of first instance, juvenile courts and customs courts; civil and criminal appeals courts; and the court of cassation, which is divided among civil and commercial, criminal, and personal status sections.[18] The country has separate courts for religious matters, which include personal, family, and religious cases

between Muslims or between Muslims and non-Muslims. There are separate courts for members of the Druze sect, Christians, Jews, and other non-Muslims.

The Supreme State Security Court (SSSC) was created in 1968 under the authorization of the state of emergency. The SSSC is exempt from Syria's rules of criminal procedure and its prisoners, the vast majority of whom are political dissidents and Kurdish and Islamist activists, have no right of appeal. Defense attorneys are not allowed to argue in defense of their clients or to call witnesses. Three judges, including one from the military, preside over each of the SSSC's two divisions. The president has extensive control over SSSC proceedings, including the power to ratify or annul verdicts, call for a retrial, and commute sentences. SSSC trials are closed to the public.

The judiciary is not independent and is, like much of the government bureaucracy, a mouthpiece of executive will. The Minister of Justice is a direct representative of the president in the Supreme Judicial Council and as such, the judiciary is akin to an executive-run state department.[19] According to Legislative Decree 40, judges do not have immunity and can be dismissed or transferred by unilateral order at any time. Such a dismissal requires no justification and cannot be appealed. An overwhelming proportion of judges are members of or close allies with the Baath Party. The party, government, and security services control judicial appointments and compensation and bribes and gifts are common. The lack of judicial immunity and broad executive powers ensure that the judiciary protects executive interests. The reputation for corruption and the perception that access to justice is dependent on informal personal connections inspires little public confidence in judicial institutions.

Despite constitutional guarantees, defendants are regularly denied access to a fair and timely trial. Detainees are technically considered innocent before proven guilty but, as with most procedural rights, that is not the case in practice. Defendants in civil and criminal courts are entitled to legal representation, and counsel is assigned for those who cannot afford it, but the efficacy of these services is severely hindered by the fact that lawyers often have limited access to their clients and are prevented from presenting complete cases with testimony and evidence. There are no procedural rights in SSSC cases. SSSC defendants and their lawyers are not present when prosecutorial evidence is presented and defendants are often prohibited from meeting with their lawyers before trial.

There are very few cases in which government officials or Baath Party members have been tried before a court for misconduct or abuse of power, and those that do go before a court are generally situations in which the defendant has fallen out of political favor. In cases of alleged abuse, victims must obtain permission from state security to file complaints. A member of the security apparatus has not been tried before a court since 1963.

In May 2010, the UN Committee against Torture expressed strong concerns about numerous, ongoing, and consistent allegations of the routine use of torture by law enforcement and investigative officials, particularly in detention facilities. The regime has not conducted any substantive investigation of such claims.

There are four security services in Syria: the General Intelligence Administration (or State Security), affiliated with the Ministry of the Interior; Political Security, a division of the Ministry of the Interior; and Military Intelligence and Air Force Intelligence, both nominally under the control of the Ministry of Defense. The Bureau of National Security of the Baath Party Country Leadership oversees all of these services. With the exception of the Air Force Intelligence, which has special tasks, all other security branches conduct domestic surveillance at the local level. Headquartered in Damascus, they have branches in all provinces.

The military underwent a process of professionalization and subordination to the Baath Party after 1970, but it remains an influential force in Syrian life, including through its extensive economic interests. Despite its subordination to the party, military officials continue to be able to operate without transparency and with complete impunity. The heads of security branches often have close relationships with the president, and these relationships expand their influence beyond that of their own parent ministries. As a result, security branches have a decisive say in political, economic, and administrative decisions, but are accountable only to the president.

Syrian law is unique in the extent of immunity that it grants to officials, particularly those who work for security services. Legislative Decree No. 549, for example, prohibits legal action against any member of the state's security services for crimes committed in the course of duty. Further, any prosecution of police, customs, and security officials must be approved by the army and armed forces.[20] This immunity shields government actors from accountability for human rights violations.

Bashar al-Assad's economic liberalization program included the reform of Syria's private property laws. Outright nationalization and seizure of property no longer occur and the regime has streamlined legislation on commercial and industrial ownership and foreign direct investment. The right to own property is guaranteed by law but protection of private property rights is weak in practice and, like many other rights, is often tied to an individual's access to members of the regime, security, and the Baath Party. Disputes over property are often determined in court according to personal connections with the security forces and bribery.[21]

ANTICORRUPTION AND TRANSPARENCY 1.25

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	1.40
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	1.00
CITIZEN PROTECTIONS AGAINST CORRUPTION	1.25
GOVERNMENTAL TRANSPARENCY	1.33

Despite the fact that Bashar al-Assad spent the most recent of his pre-presidency years establishing an anti-corruption campaign, corruption and transparency

issues in Syria do not appear to have improved under his rule. Instead, the economic liberalization policies that Bashar has enacted may have created the opportunity for the growth of crony capitalism, which is perhaps the biggest corruption problem in the country at present.

Transparency International's 2010 Corruption Perceptions Index gave Syria a score of 2.5 on a 10-point scale, and a rank 127 of 178 countries surveyed.[22] Syria performs below average on indicators of transparency, public voice, and accountability, as well as control of corruption. Petty corruption is pervasive in Syria. Citizens must commonly pay bribes and rely on personal connections (*wasta*) to obtain services, conduct business, and gain access to government and civil service information.

Citizen access to information on government activities and spending is limited, even among regime officials and members of parliament. There is no legislation that establishes the right to access to information and news about the security services and Ministry of Defense is particularly difficult to obtain. The government has made no effort to increase the transparency of its operations, including information on the budget and the official procurement processes. Syria's tax collection system is plagued by weak administration capacity and corruption, which has allowed private sector actors to avoid the payment of taxes.

There is no official anti-corruption framework or organization to fight graft. Given the strict controls on reporting and the complete lack of independent media, there is no public coverage of corruption allegations. Journalists that report on corruption are subject to severe harassment and intimidation on the part of security services. This level of control over the media's discussion of fraud allows executive and party officials to enjoy absolute immunity. Prosecution for corruption is virtually unheard of, as the only government officials who are subject to disciplinary actions are those who have fallen out of the government's favor. The former MP Riad Saif was arrested in 2001, for example, when he was working to uncover corruption among mobile phone companies, one of which was owned by al-Assad's cousin, Rami Makhlouf. Saif was sentenced to five years in jail.

Makhlouf is in fact no stranger to allegations of corruption. Considered one of the most powerful men in the Syrian economy, Makhlouf is involved in a wide range of major commercial transactions in Syria. He maintains a monopoly on two Syrian mobile phone companies, and is also said to control the free trade zones on Syria's borders. In February 2008, the U.S. Department of the Treasury designated Makhlouf as a beneficiary and facilitator of public corruption in Syria,[23] in conjunction with a White House executive order expanding American sanctions on Damascus. This action was taken pursuant to Executive Order 13460, which targets individuals and entities determined to be responsible for or who have benefited from the public corruption of senior officials of the Syrian regime. In the spring of 2011, Makhlouf quickly became a focal point of antigovernment protesters, as he had become a symbol of the corruption and excess of Syria's developing crony capitalist system. In June 2011,

Makhlouf declared he would resign from business and focus on charity work in an apparent effort to appease demonstrators, though the extent to which this intention was genuine is unclear.[24]

The Syrian government has refused to register any civil society groups working to fight graft and bans activists and experts from travelling to attend anticorruption training workshops and conferences. These restrictions have prevented civil society from doing any meaningful work to combat corruption.

RECOMMENDATIONS

- The state should genuinely enforce the cancellation of the state of emergency and repeal all legislation related to it, including the impunity guaranteed to all government officials.
- The al-Assad regime must establish legislation for a genuine multiparty system and free and fair presidential and parliamentary elections to allow for the full participation of the Syrian people.
- Constitutional limitations on executive power should be established, along with clear and enforceable checks on executive power.
- The state should release all political prisoners, lift travel bans on reformers and activists, and allow the freedom of movement of all foreign and domestic journalists.
- The government should take steps to resolve the legal status of the Kurds and establish protections for their equal enjoyment of rights as Syrian citizens.
- The state should discontinue all censorship of media and internet and establish fair legislation regarding libel.

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THAILAND

CAPITAL: Bangkok
POPULATION: 68.1 million
GNI PER CAPITA (PPP): $7,640

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	2.91	2.62
CIVIL LIBERTIES:	3.65	3.38
RULE OF LAW:	3.88	3.68
ANTICORRUPTION AND TRANSPARENCY:	3.45	3.41

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Duncan McCargo

INTRODUCTION

From April 2007 to September 2010, Thailand was in political turmoil, torn between two competing factions that divided the nation. There was a constitutional referendum, a general election, three governments, and four different prime ministers during this period, in addition to several major protest movements, some of which ended in violence. Yet neither parliamentary politics nor extra-parliamentary developments could bridge the color-coded divide between yellow and red shirts that threatened to tear the nation apart.

Thailand is now divided between two competing power networks, each backed by a sizeable element of the population. On one side are those loyal or sympathetic to Thaksin Shinawatra, a self-exiled billionaire former police officer who made his fortune in telecommunications. Thaksin's Thai Rak Thai Party won decisive election victories in 2001 and 2005. Thaksin supporters look back on his period in office with great nostalgia, as a time of unprecedented civilian political dominance, when the bureaucracy became more responsive and efficient, and the government paid more attention to the concerns of the less well-off. His support base is strongest in the populous north and northeast regions of the country, which contain the majority of the country's parliamentary seats. On the other side are those whose primary orientation is towards the monarchy, the military, and the bureaucracy, often linked to the Democrat Party. The Democrats form the core of the government, led by Abhisit Vejjajiva. The Thai monarchy exerts considerable extra-constitutional influence, mainly through

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an extensive network of allies. Rightly or wrongly, the monarchical network viewed the rise of Thaksin as a challenge to the status of the King. Supporters of network monarchy are typically concentrated in the great Bangkok region and in the south of the country.

The turbulent politics of Thailand during the period under review defy simple summary, but may be best characterized as a struggle to gain the upper hand before the impending royal succession. King Bhumibol enjoys enormous prestige, but is 83 years old and in poor health. His son, Crown Prince Vajiralongkorn, is less popular, and few look forward to the day when he ascends the throne. In the new reign, the military and bureaucracy will no longer have their standing buttressed by monarchical charisma, and may have to cede ground to elected politicians. Other than Thaksin, elected politicians in Thailand have been content to play second fiddle to the palace. The idea of a country in which the prime minister is the most popular public figure is alarming to many Thais.

The government of the post-coup Council for National Security (CNS), led by retired general and privy councilor Surayud Chulanont (2006–2008) was widely criticized for its ineffectiveness. Surayaud admitted after stepping down from the premiership that he had hated the job, while coup leader Sonthi Boonyaratglin declared that making Surayud prime minister had been a mistake.[1] Nevertheless, the National Legislative Assembly (NLA), an unelected parliament created by the junta, passed a huge amount of legislation during the last few months of 2007, much of it both regressive and hastily-drafted.[2] It would take Thailand's normally sclerotic parliamentary system many years to unravel the gordian legal legacies of the NLA.

Thai politics have been in near-constant turmoil since the ratification of the 2007 constitution that August. Despite the hostility of the junta to the pro-Thaksin People Power Party, the PPP won the December 2007 elections and remained in office for nearly a year. During the period the pro-royalist People's Alliance for Democracy (PAD) staged a series of huge protests against the government, including occupying Government House (the office of the prime minister) for three months. PAD protests culminated in the seizure of Bangkok's airports, which was followed soon afterwards by the dissolution of the PPP and the emergence of a Democrat-led government. Abhisit Vejjajiva became prime minister without an electoral mandate, and presided over a turbulent period during which pro-Thaksin demonstrators led by the UDD (United Front for Democracy against Dictatorship) sought to destabilize his administration. In April 2009 an ASEAN summit had to be hastily abandoned in the resort town of Pattaya when protestors stormed the conference hotel; the Chinese and Japanese premiers were forced to flee by helicopter. Violence then broke out in Bangkok. From March to May 2010, mass redshirts protests paralyzed areas of central Bangkok, and more than 90 people were killed, many of them at the hands of the security forces. A harsh crackdown by the

authorities saw many redshirt leaders arrested and driven into hiding, resulting in an uneasy semi-calm.

[*Editor's Note:* On July 3, 2011, the pro-Thaksin Phuea Thai Party won elections with a large majority. Thaksin's younger sisister, Yingluck Shinawatra, was subsequently appointed prime minister.]

ACCOUNTABILITY AND PUBLIC VOICE 2.62

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	2.00
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	2.14

Elections have been held regularly in Thailand since the 1980s, interrupted only by military coups in 1991 and 2006. In both cases, coups were followed by a year or so of military-based government during which a new constitution was drafted before the holding of fresh elections. Nevertheless, electoral politics have been extensively disrupted in recent years by legal challenges. Pro-Thaksin parties won the last four elections (2001, 2005, 2006, and 2007), but the 2006 election was annulled by the courts, which went on to dissolve the winning party in the 2007 elections (see below). Since December 2008, Thailand's government has been led by the Democrat Party, despite the fact they lost the 2007 elections. This reversal happened as a result of defections by former pro-Thaksin politicians following the dissolution of the Palang Prachachon Party. These events parallel a similar volte-face in late 1997, which allowed the Democrats to hold power until the beginning of 2001. Although legal, such non-electoral power transitions lacked popular legitimacy, and testify to the continuing dominance of entrenched elites.

Thai political parties carry relatively little ideological baggage, and all apart from the Democrat Party are of recent origin. Thai elections are characterized by vote buying and other abuses. Since 2007, four pro-Thaksin political parties have been dissolved by the courts for allegedly manipulating electoral laws and committing voting fraud: the Thai Rak Thai Party (2007), and the Palang Prachachon Party, Chart Thai Party, and Matchimathipataya Party (2008). The Democrat Party narrowly escaped dissolution on technical grounds in 2010. 220 executive members of these dissolved parties were banned from holding political office for five years, including Thaksin himself and virtually everyone who had served as a minister under his party's cabinet quota. Thaksin supporters have criticized these legal decisions for their partiality. It is an open secret that virtually all Thai parties and candidates routinely violate election laws, so decisions about prosecuting and convicting offenders often appear partisan.

Thailand's current constitution dates from 2007, and was promulgated during a period of military-backed rule. Although widely viewed as less legitimate

than the popular 1997 constitution, the 2007 constitution was the first to be ratified in a national referendum. The 2007 constitution provides for a range of independent agencies, including an Election Commission (EC), but in practice much of the responsibility for refereeing the Thai political game lay with the courts, notably the Constitutional Court and the Supreme Court's Criminal Division for Holders of Political Positions. The new election commission was rather even-handed in its first parliamentary election test in December 2007, and its interventions to 'yellow card' and 'red card' rogue candidates had no significant impact on the final result.

Under the 2007 constitution, the 150 senators are supposed to be nonpartisan. One senator is elected for each of Thailand's provinces (of which there are currently seventy-six) and the remainder are appointed. Since Thaksin was believed to have controlled the former senate through the old system of a wholly elected upper chamber, the appointed members were apparently intended to ensure that the bureaucratic elite retained the upper hand. The post-2007 senate had more powers than its predecessor. The 2007 constitution also reduced the number of proportional representation seats from 100 to 80, and carved up those seats using districts that slightly favored the Democrats.

Most civil service posts are gained through open appointment procedures, although some processes—notably for the police and the interior ministry—have been tainted by persistent reports of cheating. Thailand's recent political polarization has contributed to a greater politicization of public sector promotions.

Civic groups are able to comment relatively freely on policy issues and legislation, and many have been very influential. But in recent years Thailand's once-thriving civil society sector has been politicized and factionalized. During the Thaksin period, many previously critical groups were co-opted by the government. Following the 2006 coup, most prominent civil society organizations and activists adopted pro-coup stances and lost much of their credibility as progressive voices. Some joined or supported the royalist People's Alliance for Democracy (PAD) movement in their campaign against the pro-Thaksin governments during 2008. A smaller number of social activists, including some former leftists, supported the 2009 and 2010 protests by the pro-Thaksin UDD.[3] Because there are demanding requirements for nongovernmental organization (NGO) registration under legislation dating from 1942, most NGOs are not formally registered with the interior ministry. In practice, legal registration is not required.

Electronic media are largely controlled by the state and have always been subject to considerable political interference. Thai PBS, a supposedly neutral public broadcasting television channel created in the wake of the coup, has adopted a consistently pro-royalist line. The anti-Thaksin PAD has its own extremely popular satellite channel, ASTV. Radio frequencies remain dominated by the military, supposedly for reasons of national security, but in practice because they are a lucrative source of revenues. Anachronistic arrangements

for the control of electronic media were reinforced in the 2007 Radio and Television Broadcasting Bill. Nevertheless, the red-shirt movement has used a network of community radio stations, especially in the north and northeast, to help bolster its support base. Almost 50 such radio stations were closed down in April/May 2010.

Thailand has a long tradition of vigorous and outspoken print media, with a parallel tradition of press manipulation and cooptation by power-holders. The Thaksin government was widely criticized for putting pressure on critical media voices and for using a combination of sticks and carrots to promote more favorable coverage.[4] Since the 2006 coup, most of the Thai print media has fallen into line, and adopted a broadly anti-Thaksin, pro-Democrat line.[5] One prominent dissenter, veteran *Matichon* journalist Sathien Junthimathorn, was reportedly forced to drop his column in 2009 on account of his pro-Thaksin views, as was *Matichon* editor Chulalak Phukert.[6]

Thai libel and defamation laws are deeply problematic: those charged with libel may face immediate imprisonment if they are unable to produce the large sums typically required for bail. Politicians and their associates have not hesitated to harass critics through use of these punitive laws. Several journalists were killed and injured during the 2010 red shirt protests, apparently shot by members of the security forces. The deceased included a Japanese and an Italian national.

Since the 2006 coup, successive governments have made extensive attempts to control the internet. The 2007 Computer Crime Bill, supposedly designed to protect national security, has been widely abused to curtail freedom of expression online.[7] The Abhisit government has invested heavily in monitoring internet traffic and has closed down numerous websites. 75,000 web-pages have been blocked by the courts using the legislation, 57,330 because of inappropriate content concerning the monarchy; 44,000 web pages were blocked in 2010 alone.[8] Although there is considerable freedom of cultural and political expression in Thailand, a notable exception lies in lèse majesté laws, which outlaw all criticism of the royal family. These laws have been increasingly politicized since 2005, and have begun to assume a catch-all character. For example, in October 2006, Surayudh's principal aide urged people to desist from criticizing the new cabinet line-up as such criticisms could constitute lèse majesté.[9] Both red shirt and yellow shirt leaders have faced lèse majesté charges, as did former BBC Bureau Chief Jonathan Head. A number of issues of *The Economist* have been informally banned in Thailand because of their critical references to the royal institution. The proliferation of lèse majesté charges—from an average of 2.5 in the 1980s to 164 in 2009—has undermined the standing of the law.[10] The authorities are now using the Cybercrime Bill to do the work of lèse majesté legislation, as in the case of Chiranuch Premchaiporn, the webmaster of the Prachatai news site. She faces a possible fifty-year jail sentence because of anti-monarchy comments posted on a web-board, despite the fact that they were promptly removed.[11]

CIVIL LIBERTIES 3.38

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.38
GENDER EQUITY	4.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.50
FREEDOM OF CONSCIENCE AND BELIEF	4.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	3.00

Despite constitutional injunctions against it, torture and abuses of pretrial detainees by both police and military agencies continue, especially in relation to rural protest movements and alleged drug offenders. Punishment of state officials for such abuses is very rare. Pretrial detention for up to eighty-four days is widely used in criminal cases, and extensions may be requested for complex cases. Thai prisoners are kept in poor conditions: they sometimes have to pay for a space to sleep (even on the floor) and generally need money from the outside in order to obtain reasonable food. International monitors claim that prisoners are often shackled in leg irons, despite the fact that this is illegal, and trusted convicts are sometimes allowed to beat fellow prisoners.[12] No state officials have faced arrest, prosecution, or trial for acts of torture.

Murders of local politicians, journalists, and activists occur regularly in Thailand. Around twenty human rights defenders were murdered between 1999 and 2005, including Somchai Neelaphaijit, a lawyer who accused the police of torturing five suspects charged with involvement in the southern unrest, a claim that was verified by the National Human Rights Commission. On March 12, 2004, Somchai disappeared and the case remains unsolved.

The most serious assault on civil liberties in modern Thai history was the 2003 war on drugs, an apparently officially sanctioned policy of extrajudicial killing that involved over 1500 deaths in its initial three months. While the authorities implausibly claimed that most of these killings resulted from drug dealers turning their weapons on each other, there was ample evidence of widespread official collusion in numerous murders.[13] To date, no proper investigation of the war on drugs has taken place, no list of its victims has been published, and no one has been brought to trial over the extrajudicial killings.[14]

A further area of concern relates to the government's handling of political violence in the southern border provinces since January 2004. Around 80 percent of the populations of Pattani, Yala, and Narathiwat provinces are Malay Muslims, whose first language is not Thai.[15] This region has been characterized by longstanding yet sporadic separatist violence. The Thaksin government dismantled the existing security command structure in May 2002, placing the police in charge of maintaining order. Tensions mounted following a large-scale attack on an army base on January 4, 2004, and a spate

of shootings and small explosions followed. Martial law was subsequently imposed in these provinces. By February 2011, over 4,300 people had been killed in political violence; some had been murdered by the security forces or had disappeared, while many others apparently met their deaths at the hands of Muslim extremists.[16] Many others had been injured. Victims included Buddhist monks, Islamic teachers, government school teachers, village leaders, a judge, a deputy governor, and a prominent Muslim senator.

While most victims were killed by militant groups, the security forces were responsible for the largest incident. Eighty-four Muslim protesters died in events arising from a demonstration on October 25, 2004, outside a police station in Tak Bai, Narathiwat province. The authorities claimed that seventy-eight of the deceased had died as a result of suffocation after they were arrested and piled into army trucks. An investigation was highly critical of the military commanders responsible but concluded that the deaths were unintentional.[17] A Songkhla court declared in 2009 that there had been no intention by state officials to kill anyone, a verdict which was met with disappointment and incredulity among the Malay Muslim community.[18] Amnesty International found evidence of extensive use of torture by military units in the south during 2008 and 2009, and a number of high profile cases suggested that this practice continued even after pledges by the Abhisit government to clamp down on abuses. The most notorious case was that of Imam Yapa Kaseng, who was tortured and killed by soldiers while in their custody in Narathiwat in 2008.[19] Some torture was carried out at improvised military camps inside Buddhist temples. The state has wavered between a rhetorical commitment to reconciliation and 'winning hearts and minds,' and recourse to heavy-handed security tactics.

Emergency legislation hastily introduced in August 2005 allowed suspects in security cases to be held for up to thirty days without charge; these provisions have been used extensively in the southern border provinces.[20] The law also allows for prisoners to be held in irregular places of detention and grants immunity from prosecution to enforcement officials accused of human rights violations. The emergency legislation was widely criticized by lawyers and human rights organizations both inside and beyond Thailand.[21] Though ostensibly introduced to address the ongoing insurgency in the South, the provisions were also widely used in Bangkok and numerous other provinces during red-shirt protests in 2009 and 2010. The draconian 2007 Internal Security Act (ISA), another product of the post-coup NLA, was also used on various occasions by the Abhisit government. The ISA was deployed by the Abhisit government to deal with large scale protests in Bangkok, Hua Hin, and Cha-am in October 2009 and in Bangkok and surrounding provinces in March 2010. The ISA has been criticized by the ICJ for its vagueness and for granting virtual impunity to security officials.[22] Hundreds of arrests were made under the ISA during and immediately after AprilMay 2010 protests, and there is evidence that some detainees were abused in custody.[23]

Despite legislation forbidding trafficking in people, Thailand is a major nexus for human trafficking, notably from Burma, Cambodia, China, Laos, and to a lesser extent, Vietnam. Much of this trafficking involves placing women and children in the lucrative Thai sex industry, though some of those trafficked are employed in sweatshops, agriculture, construction, and fisheries. The state has made some efforts to tackle the problem by prosecuting offenders and protecting some victims, but there have been no recent prosecutions of police officers or other government officials, some of whom are believed to be implicated in the trade.

Thailand established an Office of the Ombudsman to deal with citizen complaints following the 1997 constitution. Under the 2007 constitution, the agency's role was extended to focus more on monitoring ethical abuses by powerholders. To date, the agency remains only weakly institutionalized.

Under the 2007 constitution, the state was committed to promoting equal rights between men and women (Article 30) and the rights of children, youth, women, and the disabled to access justice, education, health, and welfare. Millennium Development Goal 3—concerning the promotion of gender equality and empowering women—has already been achieved in Thailand, but little progress has been made as regards national and local political participation. Thailand has a very high level of female participation in the labor force—65 percent—but in 2010 around 13 percent of MPs and senators were female, and only three of the 35 cabinet ministers: Commerce Minister Pornthiva Nakasai and the deputy ministers for education and health. While around two-thirds of civil servants were female in 2006, only 20.2 percent of those in the top three civil service grades were women, and only 9.7 percent in the top grade.[24] Some women are now serving as ambassadors (nineteen percent),[25] but the important positions of provincial governor (1.4 percent) and district officer (0.3 percent) remain overwhelmingly dominated by men.[26] Only ten of the hundred members of the 2007 constitution-drafting assembly were women.

A number of constitutional provisions support gender equality, but changes in both legislation and practice are needed in relation to issues such as rape and domestic violence, which are often not taken seriously or handled sensitively by the police. According to a Labor Ministry survey, women are paid around 17 percent less than men, a figure that compares favorably with those in many developed countries.

Racial discrimination is prohibited under the 2007 constitution (Article 30), but there was no specific mention of ethnic minorities. This reflects the official view that all Thais are simply Thai and a persistent tendency to deny the significance of ethnic difference. Chapter III of the 2007 constitution was explicitly entitled "Rights and liberties of the Thai people," thereby excluding all noncitizens from exercising those rights. As one informant told Amnesty International, "The Thai constitution does not apply to me, because I am an ethnic minority."[27]

Many ethnic minority peoples in the northern highland areas of Thailand are not Thai citizens and have been subject to persistent discrimination; similar problems apply in the case of Burmese refugees and illegal workers from Burma, Cambodia, and Laos. Many of these illegal workers—whose estimated numbers range from 1.8 to 3 million, or between 5 and 10 per cent of Thailand's workforce—are systematically abused by the Thai authorities, notably through extortion rackets run by the Royal Thai Police and other local officials: Human Rights Watch reported that virtually all migrants held in police custody that representatives of the organization were able to interview indicated that policy officials had demanded bribes for their release.[28] The estimated half million Karen or other so-called 'hill tribe' people lack Thai citizenship and are effectively stateless. Many are unable to prove that they were born in Thailand, while others are similarly unable to claim Burmese citizenship. These groups are also vulnerable to arbitrary arrest.[29] Early in 2009, the Thai military allegedly cast adrift nearly a thousand Rohingya refugees from Burma, leaving them to die at sea.[30] In response to criticism, Thai premier Abhisit Vejjajiva declared, "Let's get that straight—they're not refugees, they're just illegal migrants."[31] During the Christmas period in 2009, taking advantage of low staffing levels at foreign embassies and international organizations, the Thai military forcibly repatriated over 4,000 Hmong refugees to Laos, an action condemned by UNHCR.[32]

A large proportion of Malay Muslims in the southern border provinces have a poor command of the central Thai language, which further restricts their already limited economic opportunities. The Thai state has been slow to recognize the need to address issues of discrimination on racial and ethnic grounds; for many local government officials, minority groups are stereotyped as sources of insecurity, crime, and social problems, to be dealt with by forcible incorporation into Thai cultural norms.[33]

Discrimination against people with disabilities is illegal under the constitution but widespread in practice, and many public buildings lack proper access. The Surayudh government passed the Disabled Persons Promotion and Development Life Quality Act in 2007, providing a stronger basis for disabled rights.[34] However, the government has a poor record of making information available to people with disabilities through, for example, Braille, or audio versions of important documents. On the positive side, sign language is widely used to accompany television broadcasts. Overall, the government's record on enforcing equality issues is mixed.

More than 90 percent of Thais are Buddhists, though the Muslim minority is growing and probably exceeds 3.5 million, or 5 percent of the population. In theory, Thais enjoy freedom of religion, and religious observance is not restricted. However, the Thai state exercises control over the *sangha* (Buddhist order) and has moved to exclude dissident religious groups from the officially sanctioned order. In other words, the state has arrogated to itself the right to determine what does and does not constitute true Buddhism.[35] During 2007,

there was renewed debate about designating Buddhism as the national religion, but ultimately this amendment was not made in the 2007 constitution.

In 2006, a former minister assumed the supposedly independent role of secretary-general of the Islamic Council of Thailand, allegedly claiming in a television interview that Thaksin had assigned him to this position.[36] Since 2002, Islamic, Christian, and other religious groups have been overseen by the Department of Religion (part of the Ministry of Culture), while a National Office of Buddhism is located in the office of the prime minister. Registering a new Christian church in Thailand is virtually impossible, as the Department of Religion asks the existing registered churches whether new applicants should be regarded as genuine Christians,[37] with predictable results. As a result, many Christian and other religious organizations operate without formal registration.[38]

Freedom of association is broadly respected in Thailand, although levels of unionization remain low (at less than 2 percent of the total workforce) except in state enterprises, where more than half of employees are union members. Although people are free to join unions, there is evidence that some employers have dismissed union leaders or executive members. When such cases were brought to government-backed tribunals, the union activists received back pay but employers were not otherwise penalized. The Thaksin government failed to fulfill election pledges to ratify ILO Conventions 87 and 98, on freedom of association and collective bargaining, and subsequent administrations have also stalled on these issues. There is no evidence of citizens being forced by the state to join particular associations.

The right to peaceful organization and mobilization is widely practiced, but the state has supported harsh repression of certain kinds of protest movements. In recent years this has applied especially to pro-Thaksin red shirt protestors. Around 92 people were killed during red shirt demonstrations March-May 2010, and there is considerable evidence that many of the victims died at the hands of the security forces, in flagrant violations of both domestic and international law.[39] The heavy-handed state repression of the 2010 protests echoed earlier traumatic events in recent Thai political history, showing how little progress has been made since the harsh crackdowns of the 1970s and of May 1992.

Thaksin's legal team has sought to initiate a case against Prime Minister Abhisit Vejjajiva at the International Criminal Court in The Hague for his complicity in these events.[40] The Abhisit government has appointed a committee to investigate the protests, chaired by respected former attorney general Kanit na Nakorn. But at an early stage of the proceedings, Kanit declared that he would not be seeking to apportion blame for the deaths, a comment that raised grave doubts concerning the value of his investigation.[41] A leaked report by Thailand's Department of Special Investigations appeared to confirm that the military was responsible for many of the deaths.[42] In the wake of the deaths, the government has invoked emergency powers to suppress red shirt forces, and made extensive use of military camps as detention centers, practices condemned by human rights groups.[43]

RULE OF LAW 3.68

INDEPENDENT JUDICIARY	4.20
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	4.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.00
PROTECTION OF PROPERTY RIGHTS	4.33

The 2007 constitution, like the 1997 constitution, includes provision for a Constitutional Court, though the Supreme Court is the highest chamber overseeing normal criminal cases. The post-2007 Constitutional Court has been involved in controversial decisions, notably debarring former prime minister Samak Sundaravej from office, and dissolving the People Power Party in 2008.[44] Thailand's judiciary is generally independent but also sometimes corrupt. This skews the justice system based on the suspect's ability to pay bribes, leading to structural inequalities and often allowing the guilty to walk free. A national survey in 2000 found that a third of those who had been involved in court cases had been asked to pay bribes to secure a favorable outcome. Of the bribes, forty-seven percent were paid to public prosecutors, fifteen percent directly to judges, and twenty-nine percent to other court officials, some of whom may have been acting on behalf of judges.[45]

Despite a series of widely publicized fraud cases in the 1990s—such as the collapse of the Bangkok Bank of Commerce, in which a number of prominent politicians were implicated—not a single conviction had been achieved by the end of 2002.[46] Well-publicized criminal cases such as the 2004 acquittal of a politician's son on charges of murdering a policeman have undermined public confidence in the judicial system.[47] However, in several high-profile security cases, judges appeared to act independently and rejected political pressures to convict. These included cases against Dr. Waemahadi Wae-daoi, a Narathiwat doctor accused of terrorist offenses, and Najmuddin Ummar, a southern TRT member of parliament (MP) who had been accused of treason.[48] By contrast, the Supreme Court for political office-holders has convicted some prominent figures of crimes, notably former prime minister Thaksin Shinawatra, who was given a two year jail sentence on corruption-related charges in 2008.

The Appeal Court has a rather mixed reputation, especially concerning the length of time taken to reach appeal decisions, often between five and 15 years; it is alleged that these times may be expedited through the payment of informal fees.[49] The Central Bankruptcy Court has also been criticized for making politicized decisions that undermined the confidence of foreign investors.[50] However, Thailand's strict contempt-of-court laws—which apply outside the courtroom—make open discussion of the judicial system very difficult. This, in turn, curtails critical reporting where abuses in the legal process may be widely suspected. A Thaksin lawyer was charged with contempt of court for his criticisms of some 2006 verdicts concerning the

Election Commission.[51] Successive Thai governments have always complied with judicial decisions.

All career judges must be qualified as barristers, have a minimum of two years of legal experience, and pass a difficult and competitive examination before being appointed as trainee judges for a trial period of one year. There is no jury system, and notes dictated by judges themselves often constitute the only formal record of court proceedings, a practice that makes appeals difficult to substantiate. Judges are generally held in high regard in Thai society. In a major policy statement, the Surayudh government identified the "non-political" professional judiciary (in contrast with judges of the Constitutional Court, whose appointments have been politicized) as the most dependable institution in Thailand.[52] Relative to other Thai institutions, the judiciary has a clean and positive image, but the Supreme Court has been harshly criticized in recent years for a series of decisions negatively impacting pro-Thaksin political forces.

Article 39 of the 2007 constitution specifies that criminal suspects are presumed innocent until convicted. Citizens have the right to a fair trial with independent counsel. Despite these provisions, extrajudicial killings have taken place in recent years, notably in the southern border provinces. Those accused of serious crimes are provided with lawyers by the state if they cannot afford to pay for their own defense. However, these court-appointed lawyers are often recent graduates with little experience in conducting a defense. Thammasat University runs an active legal aid and legal literacy program. There are persistent allegations that prosecutors are sometimes subject to political influence.

Leading politicians (including a former prime minister and the former secretary-general of the ruling Democrat Party) and senior officials have been tried on corruption-related charges by the Constitutional Court. However, Constitutional Court judgments have been criticized as erratic,[53] especially the controversial acquittal of Prime Minister Thaksin on charges of asset concealment in 2001.[54] Full written judgments were sometimes not published for up to a year after Constitutional Court decisions, thereby undermining the court's credibility. The post-2007 Constitutional Court was smaller than the post-1997 court, and the majority of its members were now former career judges.

The Thai military (mainly the army) has attempted and successfully staged numerous coups since the end of the absolute monarchy in 1932. Until the violence of May 1992, the military was a prominent and outspoken participant in the political processes of the country. After 1992, the military returned reluctantly to the barracks, maintaining a low profile but retaining various economic and other privileges. In the face of rising discontent with the Thaksin government and a deteriorating security situation in the south, the military grew increasingly assertive during 2005 and 2006 and finally seized power in a bloodless coup d'état on the night of September 19, 2006. Although a civilian, elected government was re-established at the beginning of 2008, the military

retained considerable political influence, and was strongly aligned with the Democrat Party in 2008 and 2009.

Despite much talk of security sector reform, no substantive changes have been enacted. Civilian politicians have remained wary of interfering with the military's internal workings, despite general recognition that the armed forces are bloated (with an estimated 1,400 generals) and of doubtful professional competence. Thaksin co-opted the military, and relatives and former classmates of the prime minister were appointed to numerous key positions.[55] Legal changes following the 2006 coup curtailed the authority of politicians to intervene in military promotions, so reducing accountability. The army is now firmly controlled by a royalist faction, and is once again a major player in Thai politics.[56]

Both the military and the police enjoy close relationships with a range of actors engaged in legal and illegal business activities. Making complaints against the police is difficult if not impossible in most cases.

Like the Surayud government before it, the Abhisit government has called for police reform. In 2010, Abhisit tasked the well-respected retired Police General Vasit Dejkunjorn with drawing up reform plans, but progress has been slow given the strength of vested interests involved.[57] Vasit has argued that de-politicization of the police must be a priority for any reforms to succeed. Longstanding rivalries between the police and the military may have contributed to the deteriorating security situation in the south. Police and military officers have rarely been held accountable for abuses of power or violations of human rights, which have included the use of torture and carrying out of extra-judicial killings.

Property rights are recognized in law, although in practice the system of land title deeds is complex, and many poor people do not have proper ownership of the land they farm. They often hold so-called 'possessory' deeds, or usufructuary land licenses,[58] which may be contested by rival claimants.[59] Abuse of land and contractual rights by local elites and corrupt officials is widespread in rural areas, and structural corruption in the legal system often disempowers the poor. The Economist Intelligence Unit describes Thai courts as "generally competent and effective in enforcing property and contractual rights," but notes that "extra-legal means" may complicate cases involving wealthy or powerful individuals.[60] Problems are exacerbated by legal provisions that allow people to sell land provisionally yet retain the right to redeem it. Many sell their land in this way, only to discover that in practice their redemption rights are almost impossible to exercise.[61]

The Sor Pho Kho 4-01 land reform program in the 1990s resulted in many local elites improperly obtaining lands that were supposed to be allocated to poor farmers. Local traditions of common land usage have been widely overridden by the state; the Kho Jo Ko program of the 1980s and early 1990s saw many poor farming communities forcibly evicted from lands designated as reserve forest areas, despite their having lived on them for decades or even generations.[62]

ANTICORRUPTION AND TRANSPARENCY 3.41

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.40
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.00
CITIZEN PROTECTIONS AGAINST CORRUPTION	3.75
GOVERNMENTAL TRANSPARENCY	3.50

Thailand is a legalistic and bureaucratic state in which opportunities for official corruption are legion. The state is extensively involved in the economy, notably through numerous state enterprises, including the Electricity Generating Authority of Thailand, the Petroleum Authority of Thailand, the State Railway, Thai Airways International, and the Thailand Tobacco Monopoly. Privatization of state enterprises has been much discussed, but progress has been slow. Given the current structure of the economy, it seems likely that greater privatization would simply allow privileged elites further opportunities for self-enrichment.

Under Article 265 of the 2007 constitution, parliamentarians are not permitted to hold state concessions or contracts, or act as employees or shareholders of any company. In practice the provision widely flouted. Then Prime Minister Samak Sundaravej was forced out of office in September 2008, on the grounds that he had illegally hosted a television cooking show. Deputy Prime Minister Suthep Theuksuban resigned his seat in July 2009 after he was accused of violating the same provision, but Suthep never quit his ministerial post, and returned to parliament the following year. In both cases, judicial decisions were highly controversial.

Former prime minister Thaksin Shinawatra, ousted in the 2006 military coup, has been widely demonized by his opponents as a by-word for corruption and abuse of power. In February 2010, the Supreme Court resolved to seize $1.4 billion of the $2.2 billion Thaksin family assets seized after the coup. Thaksin is still seeking the return of this money. Thaksin himself was convicted on corruption charges in 2008, while his former wife escaped on a technicality, but has been convicted of tax evasion.

Asset declarations are required from all cabinet members, MPs, senators, and other senior elected officials. Those made by ministers (including the prime minister) are open to public and media scrutiny, but the assets declaration system has so far failed to stop endemic conflicts of interest between politicians and the business sector. Concessions allocations in Thailand typically reflect a culture of benefit sharing rather than the public interest or the interests of individual consumers.

The award of government contracts has never been open and transparent in Thailand: formal procedures are widely seen as vitiated by structural corruption. Following the controversial sale of his family company, Shin Corp., to Singapore's Temasek in January 2006, Thaksin was accused of abusing his powers as prime minister to further his business interests.[63] The Thaksin case has raised public awareness about the issue of conflicts of interest, but there

is no culture of state intervention to regulate private sector interest conflicts. The military have often been accused of involvement in corrupt procurement practices; one notorious recent case involved large-scale purchases of GT200 'bomb detectors' which in 2010 turned out to be little more than empty plastic boxes. To date, no dismissals or prosecutions of military officers involved have taken place.[64]

Transparency International rated Thailand 78 out of 163 countries assessed in its 2010 Corruption Perceptions Index, with 3.5 out of a possible 10 points.[65] However the 2010 Global Corruption Barometer found that 39 per cent of Thais surveyed thought corruption had declined in the past three years. In theory, victims of corruption may lodge complaints with the National Anti-Corruption Commission (NACC), which has extensive powers to investigate corruption by state officials, but in practice the recent performance of the agency has been patchy and there is a large backlog of investigations. A major 2009 investigation into corruption at the Ministry of Public Health—which culminated in the resignation of minister Withaya Kaoparadai—was conducted not by the NCC but by a taskforce appointed by the cabinet.[66] Access to higher education is generally open, although scandals concerning alleged abuses of the entrance examination system surface occasionally.[67]

The original post-1997 National Anti-Corruption Commission was captured by pro-Thaksin forces during his premiership and effectively ceased to function. The new NACC, relaunched under the 2007 constitution, was widely seen as a pro-royalist entity with a primary focus on bringing Thaksin and his supporters to book. A major case of public sector corruption occurred in 2009, when Minister of Public Health Withaya Kaoparadai was forced out of office following an investigation by a cabinet-appointed independent task force.[68] The creation of this taskforce suggested that the NCCC was not the most effective agency to address a major political scandal involving corruption. At least seven counter-corruption campaigners and activists have been assassinated in recent years, and in each case the killing was linked to the abuse of state power. One of these campaigners, Police Lt Chit Tongchit, was killed a group of fellow police officers on January 15, 2009.

Collection of income taxes is uneven. In 2004 there were 6.27 million taxpayers (including corporate and value-added taxpayers), a figure the Revenue Department hopes to increase to 20 million by 2009.[69] The Revenue Department has been encouraging taxpayers to pay online, as this reduces the scope for bribery; between 60 and 70 percent of taxpayers are now doing so.[70] The Economist Intelligence Unit has suggested that up to $3 billion (one fifth of potential revenue) may be lost annually through tax evasion.

The State Audit Commission and the auditor general have extensive authority to monitor the proper use of public funds, but in the past their effectiveness has been hampered by lack of timely cooperation on the part of the police, as well as lack of power to implement their findings. Auditor General Jaruvan Menthaka was ousted in controversial circumstances in 2004, allegedly because of her critical

position concerning various mega-projects backed by leading ministers.[71] Though she returned to office following the 2006 coup, she has faced repeated challenges to her authority and even over the legality of her position.

Issues concerning corruption by politicians are widely aired in the print media, although the electronic media rarely offer critical perspectives on current power-holders. Whistle-blowers do not feel secure; as media activist Supinya Klangnarong has said, there is a hierarchy of punishment in Thailand: "If you act too much, you'll be killed. If you talk too much, you will be sued. If you're an academic, you might be discredited."[72] The Abhisit government has clamped down on commentators and media practitioners who are supportive of pro-Thaksin positions.[73]

Thailand enacted the Official Information Act in 1997. In principle, this legislation affords extensive disclosure rights to citizens, but in practice its provisions have been extensively circumvented and thwarted by government agencies.[74] In theory, the national budget is open to scrutiny by the legislature—and dozens of senior officials attend annual parliamentary sessions for this purpose—but in practice certain areas of the budget, especially relating to the military, are off-limits. Foreign assistance can be freely distributed in Thailand, although the relatively high level of economic development means that apart from long-standing support from Japan and from the Asian Development Bank, Thailand is not a major aid-recipient country.

RECOMMENDATIONS

- Repeal the 2007 Computer Crime Act to prevent the law from being used to curtail legitimate free expression.
- Amend lèse majesté laws to ensure that they cannot be exploited for political purposes.
- Investigate the deaths of 92 people during the 2010 red shirt protests properly and independently, by creating a commission specifically charged with the task of determining who was responsible.
- Initiative a substantive program of security sector reform, with the core objective of reducing the number of generals—a problem that underpins a culture of military privilege.
- Reform land tenure laws so that wherever possible those who actually farm the land own the land, and revise laws to allow farmers to borrow money without having to hand over their land to predatory creditors.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

[1] "Surayud rues the day he became premier," *Bangkok Post*, January 31, 2008; Wassana Nanuam, "Sonthi admits Surayud failed in interim govt," *Bangkok Post*, January 28, 2008.

2 See Duncan McCargo, "Thailand: State of Anxiety," in *Southeast Asian Affairs* (2008): 348–50, http://muse.jhu.edu/journals/southeast_asian_affairs/v2008/2008.mccargo.html.

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TUNISIA[1]

CAPITAL: Tunis
POPULATION: 10.5 million
GNI PER CAPITA (PPP): $7,810

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	1.47	1.35
CIVIL LIBERTIES:	3.08	2.86
RULE OF LAW:	2.59	2.40
ANTICORRUPTION AND TRANSPARENCY:	3.12	2.83

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Clement Henry

INTRODUCTION

Only 95 miles southwest of Sicily, Tunisia is among the most economically and socially advanced of the southern Mediterranean countries. Its average per capita income growth rate of 5 percent since the 1980s has far outstripped the performance of its neighbors, and the society, where home ownership reaches 80 percent, is largely middle class.[2] Politically, however, Tunisia was an anachronism, a highly-developed police state designed to perpetuate the autocratic rule of President Zine el Abidine Ben Ali. Its poor human rights record delayed the country's efforts to achieve advanced partnership status with the European Union (EU) and massive high-level corruption discouraged private investment. Finally the Revolution of January 14, as Tunisians prefer to call the Jasmine Revolution, removed the dictator. The spark for the uprising was the self-immolation of vegetable vendor Mohamed Bouazizi, who on December 17, 2010, after being publicly humiliated by a policewoman who arbitrarily confiscated his wares, went to the provincial headquarters and lit himself aflame. Outrage over the incident, combined with long-simmering resentment of the lavish lifestyle of the kleptocratic ruling family, created a groundswell of anger and protest, and the military and police were soon faced with a widespread popular revolt. The regime's brutal response, which included the indiscriminate use of live ammunition and the death of an estimated 200 civilians, proved unsuccessful and President Ben Ali fled to Saudi Arabia on January 14, 2011.

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This dramatic exit marked the close to 23 years of executive rule under Ben Ali, who originally entered the government by moving up the ranks of military intelligence to be appointed interior minister and later prime minister. On November 7, 1987, Ben Ali had unseated Tunisia's aging founder, Habib Bourguiba, in a bloodless coup. He promised democracy, and most Tunisians greeted the takeover with relief despite its dubious constitutionality. Contrary to these hopes, however, Ben Ali's regime tightened over the following five years into a dictatorship worse than his predecessor's and replete with the latter's cult of personality despite the fact that Ben Ali lacked Bourguiba's historical legitimacy as the founding father who had won independence from France in 1956. Ben Ali compensated by expanding the security forces fourfold, and by the turn of the century Tunisia was blanketed with up to one officer for every 70 civilians, almost triple the coverage of neighboring Italy, the EU's most heavily-policed state.[3]

By the close of the Ben Ali era, Tunisia's ruling family had developed into a mafia in the eyes of the opposition, albeit one that usually punished opponents with prison sentences and violent harassment rather than assassination and forced disappearances, which it employed only rarely.[4] Stories of the family's extortion of public and private lands and extensive bank loans and shares of enterprises proliferated during Ben Ali's final decade in power. With the reelection of her infirm husband to a fifth five-year term in October 2009, the first lady, Leila Trabelsi, was dubbed the "Regent of Carthage,"[5] a reference to the seat of the presidential palace. Most large Tunisian economic ventures either paid tribute to or came under the direct or indirect control of the president's various in-laws and relatives, including his daughters by a previous marriage.[6] Indeed, anger over the expansive luxuries and excesses that the Trabelsi and Ben Ali families enjoyed, many of which were confirmed in confidential US cables released in November 2010, played a significant role in the uprisings that ousted Ben Ali.

Post-revolution Tunisia continues to be at the crossroads as it faces a difficult transition to a more democratic form of government. Many Tunisians fear, rightly or wrongly, that elements of the old regime or their Islamist opponents will compromise any democratic transition.[7] As of late August 2011, however, the transitional authorities had taken a number of major steps in the right direction. Fouad Mebazaa, the President of the Chamber of Deputies became the acting president and kept Ben Ali's long-serving prime minister, Mohammed Ghannouchi, an efficient technocrat. The latter in turn named a number of independent personalities to lead commissions to reform the constitution, to liberate the media, to investigate the crimes committed by the ancien régime during the revolution, and to expose its corrupt practices. Under pressure from renewed massive demonstrations against the government ("Kasbah 2"), Mohamed Ghannouchi resigned in late February amid criticism of his close ties to the former regime. The 77 year-old president then appointed his former patron from the Bourguiba era, 84 year-old Beji Caid Sebsi, to serve as prime

minister.[8] In his first week in office he abolished the Ben Ali constitution—along with its parliament—and enabled the constitutional reform commission to expand from a small number of jurists headed by a retired law school dean into a virtual transitional parliament of 155 representatives of political parties, civil society organizations, professional and labor unions, and independent personalities. This Higher Instance for Achieving the Goals of the Revolution, Political Reform, and Democratic Transition somewhat buffers the ongoing street protests by citizens demanding faster political and economic reform, not just more jobs and better pay but purges of corrupt judges and police, including the snipers who killed demonstrators in cold blood during the Revolution of January 14.[9] The Higher Instance, for instance, successfully persuaded the prime minister in June 2011 to delay elections for members of a constitutional assembly from July to October to allow time for more voter registration and the development of new political parties. It also drafted a new electoral law that reflected the advice of political science experts on transitions. It selected proportional representation so as to include as many as possible of the ninety-odd new political parties crowding Tunisia's political landscape while limiting the potential of a reconstituted ruling party or its well-rooted Islamist opposition.[10] The Higher Instance went on to elect an independent commission to supervise fair and free elections. Despite their ongoing struggle for a new democracy, Tunisians of course did not forget former President Ben Ali and his reviled wife: in June 2011 they were convicted in absentia of embezzlement and misuse of public funds, fined approximately $66 million, and each sentenced to 35 years in prison, with trials on more serious charges yet to come.

ACCOUNTABILITY AND PUBLIC VOICE 1.35

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	1.20
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.33
CIVIC ENGAGEMENT AND CIVIC MONITORING	1.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	0.86

The party Bourguiba founded in 1934 to fight for independence from France has dominated Tunisian politics since independence and served to consolidate the president's rule. The Constitutional Democratic Rally (RCD), as it was renamed in 1988, had a membership of over two million, or over one-quarter of Tunisians over the age of 15,[11] until February 6, 2011, when the new interior minister suspended its operations and petitioned the courts to dissolve it.[12] Until that point, the party monopolized the public stage and mobilized the public to claim support for President Ben Ali. For example, eight months after his 2009 reelection, a mere hint by the RCD's Central Committee that the president was needed "for the coming stage" sufficed to elicit waves of petitions for Ben Ali to run for office again in 2014, even though another term would have required increasing the constitutional age limit for a presidential

candidate.[13] Signing a petition was not much of a choice: one businessman who declined to do so, claiming a desire to stay out of politics, suffered a tax increase of approximately $285,000.[14]

Only a few token opposition parties were allowed to participate in elections under the Ben Ali regime, but the RCD regularly won landslide victories and the regime did not allow the participation of genuine opposition parties or candidates. Indeed, the only true competition allowed was that between individual candidates vying for presidential favor. The regime was particularly focused on repressing Islamist parties and had since the early 1990s vigorously repressed the popular Islamist Ennahda movement. This crackdown included the forced exile of the movement's leaders, the imprisonment of thousands, and the torture and assassination of scores. Ennahda members and those suspected of involvement with the banned party were prevented from participating in any political activities and were consistently harassed and intimidated by security forces. Finally recognized officially in 2011, the battle-hardened Ennahda was by far the strongest of Tunisia's many parties preparing to contest elections to the Constituent Assembly.

Elections in Ben Ali's time took place under the full control of the Ministry of the Interior, with no independent validating authority, and were often criticized for allegations of counting irregularities, fraud, and intimidation on behalf of the RCD and its supporters. Every five years, the RCD held its national congress in the summer, followed more than a year later by concurrent presidential and legislative elections in the autumn, then local elections the following spring. In the most recent cycle, the party congress was convened July 30–August 2, 2008, national and Chamber of Deputies elections held on October 25, 2009, and local elections took place on May 9, 2010. Official estimates of electoral participation were high: 89.5 percent for the presidential contest and 89.4 percent for the legislature. Of the eligible population of voters, citizens 18 years old and above, rather than the much smaller number of registered voters, turnout still hovered at around 60 percent, a testament to the RCD's continuing capacity to bring out the vote in the countryside.[15] By August 14, 2011, only 3.7 million Tunisians, 52 percent of the eligible electorate, had voluntarily registered to vote in the October elections to the Constituent Assembly.[16]

Amendments to the electoral law approved by the previous parliament on April 13, 2009 included the establishment of a government observatory empowered to invite foreign observers. A team of 10 from the African Union deployed observers to six voting centers and concluded that the elections occurred "in a calm and serene atmosphere."[17] Another amendment banned all parties from using private or foreign media in their campaigns "to ensure equality among all candidates and prevent the intervention of foreign parties in Tunisian internal affairs."[18]

Tunisia's Chamber of Deputies, which was dissolved on March 4, 2011,[19] used a hybrid electoral system whereby the party whose list won an absolute

majority—in practice, always the RCD—won all parliamentary seats in the given constituency, with additional seats reserved for the few small, innocuous opposition parties that were allowed to participate. The opposition quota was increased in the 2009 elections from 20 to 25 percent of the Chamber of Deputies' 214 seats, to be allocated proportionately to the total votes won. Quotas were necessary for opposition parties because the RCD blocked them from developing grassroots public support, and none typically won more than 5 percent of the vote.

In the 2009 elections, the RCD candidates for parliament, while calibrated to not outperform their president, won another landslide victory with 84.6 percent of the vote.[20] The Democratic Socialist Movement, a party that had enjoyed some credibility in earlier years, won only 16 of the 53 seats reserved for the loyal opposition. The Popular Unity Party came in second among opposition parties with 12 seats, and the Unionist Democratic Union, the Social Liberal Party, the Green Party for Progress, and the ex-communist Renewal Movement received the remaining seats. The illusion of competition among a group of parties served the dual purpose of weakening established opposition parties while ensuring some representation of less well-known groups. Under the generous arrangements for the pseudo-opposition, these parties took seats with half the votes won on average by the RCD candidates. The regime did not allow the participation of any party with even a trace of Islamist sentiment.

In the 2009 presidential elections, President Ben Ali's share of the vote slipped from his 2004 victory of 94.5 percent to 89.6 percent, a result that government critics claimed was designed make the existence of genuine opposition appear more credible. Three opposition leaders were also prompted to compete with Ben Ali for the presidency, although Ahmed Brahim, the only serious contender, was allowed just 0.22 percent of space in the state-dominated print media during the electoral campaign.[21]

The indirectly-elected upper house, the Chamber of Advisors, was established by constitutional amendment in 2002 and constituted in 2005 after the local elections, but it too was dissolved on March 4, 2011. According to the electoral framework, one-third of its 126 members are elected by local officials, one-third by national business, agriculture, and labor organizations, and one-third are appointed by the president. The most recent Chamber had only 112 members, however, because the labor union refused to nominate its quota of 14 members, arguing that the election procedures violated the principle of trade union independence.[22] Half of the Chamber of Advisors was supposed to be renewed every three years, but new elections did not happen in 2008 or after the local elections in 2010.

The Chamber of Advisors, almost coequal in legislative powers, had the authority to disregard any independent perspectives offered by its deputies, three-quarters of whom are loyal to the RCD. As for the remaining quarter,

leaders of opposition parties in the lower house learned from hard experience over the years that even the mildest real opposition could land them in jail.

In practice, the government was not accountable to parliament, and there were no real checks or balances on executive power. Opposition members could in theory initiate a motion of censure against the government but the ruling party's complete dominance neutralized that and any other possible challenge. Legislation introduced by the president had priority over any legislation introduced by the deputies.[23]

An effective administrative apparatus dating from the pre-independence era survived the fall of the Ben Ali regime and is facilitating Tunisia's ongoing transition to democracy. The Revolution of January 14 has not interrupted continual efforts at administrative reform, including the adoption of e-government.[24] The Tunisian civil service is recruited largely by merit, but personal connections are often taken into consideration. According to various polls conducted or financed by the World Bank, the Tunisian bureaucracy is quite effective relative to its counterparts in other southern Mediterranean states.[25]

Tunisia's civil society includes thousands of voluntary associations and national organizations that pre-date the country's independence. The number of such groups rose quickly during the Ben Ali years, from 1,776 in 1987, the year he seized power, to some 9,350 in 2009. Only a dozen or so of these organizations operated independently in sensitive areas like human rights and civil liberties, however.[26] The constitution guarantees freedom of association, but a 1959 law requires that groups be apolitical and register with the government. Amendments in the early 1990s made it more difficult for an association to obtain a license without government support and imposed penalties for meetings of people not legally registered as associations. Prospective associations often waited in vain for official confirmation that the ministry had received their applications, and had no legal existence or recourse without the confirmation despite the government's three-month deadline. Even legally-registered associations had to watch their step, and limit their work to government-approved specializations, which included women's issues, sports, science, culture and the arts, charity, social aid, development, and friendship. There is also a "general" category, which designates an organization as open to public participation and hence subject to takeover by RCD activists.

The regime promoted the idea that Tunisian civil society was vibrant and enthusiastically supportive of the ruling party's leader. In the run up to the 2009 elections, for example, some 8,500 associations demonstrated their public support for Ben Ali in the press.[27] Many of these associations were alleged to be government-organized nongovernmental organizations (GONGOs) set up by the regime to promote the image of pluralism but actually intended to spread government propaganda."[28] For instance, one GONGO, the Tunisian High Commission on Human Rights, tried to discredit and delegitimize independent human rights associations by contradicting any evidence of human rights

violations. It tried in particular to neutralize the venerable Tunisian League of Human Rights (LTDH), founded in 1976 and the most senior affiliate of the International Federation of Human Rights in Africa and the Arab world. In 1992 the new law of associations classified the LTDH as "general" and thereby opened its doors to ruling party activists seeking to control it. The RCD did not succeed in electing its members to leadership positions at the LTDH congress held in 2000, but the independent elected bureau was subsequently unable to hold a new congress, collect dues from the organization's 3,500 members, or solicit new members. The distinguished NGO operated "in a state of artificial coma," harassed by break-ins to its offices by unidentified thugs (a common Tunisian police tactic) and by frivolous lawsuits.[29]

Two more recent affiliates of the International Federation of Human Rights, the Tunisian Association of Democratic Women (ATFD) and the National Council for Tunisian Liberties (CNLT), survived the Ben Ali era with difficulty. The ATFD, founded in 1989, was the last genuinely independent human rights and civil liberties association to have obtained legal recognition from the regime.[30] The CNLT, founded in 1998, was turned down when it presented its official request for legal recognition but nonetheless continued to operate, even fielding a radio station, Kalima, and an online sister newspaper. When the Tunisian authorities shut down Radio Kalima in January 2009, it was forced to start broadcasting from Italy.

The "flics," or plainclothes political police, were pervasive throughout Ben Ali's rule. For example, the LTDH estimated that even in its near-comatose state, some 200 flics constantly monitored its activity. Amnesty International has a regional office in Tunis but was not allowed to operate within the country or to hold a small private meeting of human rights activists in its office.[31] The police prevented activists from entering the building, claiming that such measures were necessary for the group's own protection.

Professional associations, particularly those of journalists, lawyers, judges, and students, were also subjected to intensive police surveillance. For example, the RCD infiltrated and paralyzed the National Professional Association of Tunisian Journalists (SNJT) after it aroused considerable official animosity for its first annual press freedom report in May 2008. Four RCD members elected to the executive bureau proceeded to resign in May 2009 and call for a new congress to elect a new bureau. Party loyalists organized the congress and elected new leaders, who charge as the official representatives of Tunisian journalists until January 2011, when the ousted chairman regained his elected position.[32]

The government owns or tolerates approximately 250 newspapers, including those of token opposition parties, but such publications were closely controlled until the January 14 Revolution in order to present a false image of pluralist discourse.[33] The Tunisian Agency for External Communications (ATCE), scrapped after the revolution, effectively censored the press by controlling government and public sector advertisements.[34] Foreign media sources, such as

Le Monde, were blocked from the newsstands if they carried any articles critical of Tunisia. The only independent voice in Tunisia was *Kalima*, the online newspaper as well as a privately owned radio station. In 2010, the government censors blocked its website, like those of human rights dissidents, as part of an elaborate system of monitoring and filtering under the ostensible direction of the Tunisian Internet Agency (ATI).[35] When Radio Kalima resorted to satellite broadcasting in early 2009, its operations in Tunis were shut down, as were those of another satellite television network, El-Hiwar Ettounsi.[36] One of that network's journalists, Fahem Boukadous, who reported on the Gafsa labor disturbances of 2008 (see Civil Liberties), was jailed for his efforts in 2009 and again in 2010.

Journalists were constantly harassed and attacked throughout the Ben Ali era, particularly toward the end.[37] On October 28, 2009, Slim Boukhdhir, a blogger whom the regime had jailed earlier for investigative reporting on corruption, was stopped on the street, forced into a car by five men in plain clothes, driven off, beaten up, and stripped of his possessions shortly after he gave an interview about rampant corruption in the presidential family. Omar Mestiri, the managing editor of *Kalima*, suffered a similar fate three weeks later. Recently released from jail, prominent journalist and government critic Taoufik Brik was again brought to trial in November 2009 on dubious charges of assaulting a woman and sentenced to six more months of jail. This occurred after a French newspaper published Brik's satirical mock interview in which Ben Ali confessed to corruption, nepotism, and various techniques of political repression. After his release from jail, Brik observed to a foreigner that they do not kill journalists in Tunisia, just their profession.[38]

The Ben Ali administration developed a highly sophisticated framework for monitoring the internet to identify and disrupt political and activist activity online. A corps of cyberpolice patrolled the internet and even targeted known dissidents working abroad with viruses that stole their email and prevented their computers from reaching forbidden websites.[39] At home, the state blocked opposition websites and "anonymizers" that enable people to surf free of observation. These elaborate measures in the end apparently failed to prevent antigovernment organizing online, as social media played a significant role in enabling the political activism that brought down the regime. Ironically, blocking Facebook and shutting down the internet were interpreted by the public as a sign of weakness that further encouraged people to rally against the police state.[40]

Since February 2011 transitional authorities have been working on new guidelines to consolidate the media's newly won freedoms. Presided by Kamel Laabidi, a Tunisian journalist and human rights activist who had vigorously opposed Ben Ali's practices, the Commission on Media Reform was pressing for a new legal framework and preparing a white book on censorship practices of the ancien régime to be documented by the archives of the defunct Tunisian Agency of External Communication.[41]

CIVIL LIBERTIES 2.86

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.38
GENDER EQUITY	4.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.00
FREEDOM OF CONSCIENCE AND BELIEF	2.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	1.25

The government cracked down harder on civil liberties in its two final years as Tunisia attempted to acquire advanced partnership status with the EU and thus could tolerate no public criticism that might further tarnish its human rights image.[42] In June 2010, an amendment to the penal code was rushed through parliament to criminalize the actions of "any persons who shall, directly or indirectly, have contacts with agents of a foreign country, foreign institution or organization in order to encourage them to affect the vital interests of Tunisia and its economic security." In the discussion in parliament the responsible minister explained that these interests included "inciting foreign parties not to grant loans to Tunisia, not to invest in the country, to boycott tourism or to sabotage Tunisia's efforts to obtain advanced partner status with the European Union." Consequently, human rights activists and any other Tunisians lobbying the EU or any other foreign organization to exert pressure on Tunisia's police state were subject to penalties of up to 25 years in jail, the same penalties as under the old law for people who had contacts with foreign agents to "undermine the military or diplomatic situation in Tunisia."[43] Any complaints made to foreigners about the country's human rights situation were now liable to be treated as treason.

Ali Ben Salem, the 80-year-old president of the Bizerte branch of the LTDH, was systematically harassed by police who monitored his home on a daily basis. Ben Salem's phone and internet access were cut in 2005 and security officers have physically assaulted him on numerous occasions, including an incident in which they beat him up severely and left him for dead at a construction site.[44]

Arbitrary arrest was another common tactic for suppressing dissidents. The International Association for Support to Political Prisoners (AISPP) reported about 1,300 political detainees jailed in Tunisia in 2009. Although the last 21 of the thousands of Islamist Ennahda activists arrested in the early 1990s were finally released in 2008, one of their leaders was rearrested for giving a foreign interview. Hundreds more Ennahda activists were arrested and convicted after the passage of the 2003 law on money laundering and antiterrorism that allows sentencing on the basis of vague allegations.[45] Whether released or still in jail, political dissidents remained under close surveillance and were frequently subjected to arbitrary detention and harassment.[46] Once free, their daily lives did not differ markedly from prison, as they were prohibited from seeking gainful employment, required to report regularly to the local police, and are sometimes exiled to distant parts of the country.[47] Prisons were overcrowded and detainees

did not have access to their own medical records upon their release, much less passports to travel abroad.

Despite Tunisia's ratification of several international human rights conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, there were many credible allegations of torture at the hands of the police—notably in Gafsa during the summer of 2008—and the Ben Ali regime did not permit visits by the Special Rapporteur for the UN Commission on Torture. Human Rights Watch outlined the most common forms of torture and abuse during police interrogation, including threats of sexual assault to the prisoner or women in the prisoner's family, physical attacks, particularly beating on the soles of the feet; sleep deprivation; and the tying and suspension of prisoners in mid-air.[48] Victims of state abuse had the option to lodge a complaint with the Office of the Ombudsman, but that office's decisions were not binding and other state agencies commonly disregarded them.

On September 24, 2010, a French court upheld the 2008 conviction of a former vice consul, Khaled Ben Said, for his complicity in the torture in Tunisia of a Tunisian resident in France. The appeals court added four years to Ben Said's original eight-year prison sentence.[49] Despite an Interpol warrant for his arrest, Ben Said occupied a high post in Tunisia's Ministry of the Interior as late as November 2010.[50] In February 2011, after the fall of the Ben Ali regime, Human Rights Watch was finally permitted to visit Tunisia's jails.[51]

In general, compared to its immediate neighbors Algeria and Libya, Tunisia's is a pacific population, long accustomed, like Egypt, to rule by a strong state. Security was not always guaranteed, as terrorist activities on the island of Djerba in 2002 and operations allegedly against Al-Qaeda in the environs of Tunis in 2006–07 indicated.[52] But citizens in general were relatively secure in Ben Ali's Tunisia.

With respect to women, Tunisia enjoys the reputation of being among the most progressive countries in the Middle East and North Africa. Legislation enacted in 1956 abolished polygamy and established women's legal equality in most matters except inheritance.[53]

Under Ben Ali's dictatorship women were subjected to equal levels of harassment and violence by the police. The security forces insulted, roughed up on the streets, and generally mistreated prominent female journalists, activists, and spouses of activists. Women are encouraged to participate in public life and won 33.6 percent of the seats in the 2010 municipal elections, but men continue to dominate the political realm. The first lady insisted months before the fall of her husband's regime that women's active participation in society was a top priority of the Ben Ali administration.[54] The regime often pointed to improvements in the status of women to present itself as a progressive and modern administration, and the government did work to eradicate such anachronisms as underage marriage, female genital cutting, and similar customs. The new transitional

regime's electoral law requires that women comprise at least half the candidates in the elections to the Constituent Assembly scheduled for October 23, 2011.[55] Ennahda, strongly rooted among families that had resisted Ben Ali, welcomed the initiative. Despite these efforts, however, gender inequality persists in the country, particularly in rural areas.

Tunisians are essentially ethnically homogenous and approximately 98 percent are Sunni Muslim, mostly of the Malikite rite, but other religions are tolerated. Despite massive departures in the mid-1950s, some 1,500 indigenous Jews remain in the country, concentrated on the island of Djerba and in Tunis. The chief rabbi is a paid official of the Tunisian government. Christians are also allowed to practice their faith without restriction. Discrimination based on religion primarily affects Muslims, whose religiosity may be interpreted as a cover for political uses of Islam. For instance, wearing a headscarf was publicly discouraged in Tunisia, leading one Islamist to complain that "a Tunisian woman who is to perform Hajj or 'Umrah (minor pilgrimage) can wear the hijab only after the airplane leaves Tunisia and has to take it off once the airplane lands on Tunisian lands."[56] A schoolteacher won a 2007 case against a 1986 administrative directive banning the hijab in schools and was allowed to return to the classroom and continue to wear the veil.[57] The government also controls the appointment of imams, who are paid by the state, and the hours during which mosques are open.

The Tunisian state has permitted the French branch of Handicap International since 1992 to operate in Tunisia and encourage services and best practices for disabled people, including soccer for disabled youth.[58] Handicap International has created mobile screening and rehabilitation units and worked to build technical capacity of local professionals and disability organizations in the southeastern region.[59] Such services tend, like many other social services, to be concentrated in the eastern urbanized coastline at the expense of the interior of the country.

In regards to freedom of association, however, no region was favored under Ben Ali. Even private meetings in homes and offices were the targets of police raids. Of Tunisia's unions, only the Tunisian General Union of Labor (UGTT) and the General Union of Tunisian Students (UGET) were allowed a degree of independence. Founded independently of the dominant nationalist party in 1947, the UGTT supported Bourguiba's Neo-Destour Party in the struggle for independence but never agreed to become its satellite. Its general secretary expressed support for Ben Ali in the 2009 elections but did not take sides in the legislative ones, and he rejected the procedures for designating labor representatives in the upper house because they could enable the party to seize control of the union.

Labor union leadership in Tunis walked a fine line to retain a degree of autonomy and represent workers' grievances as effectively as possible. In 2006, disillusioned trade unionists formed a rival trade union federation, the General

Confederation of Labor (CGTT,) but it was not granted official recognition. The UGTT leadership was notably silent in 2008 during massive demonstrations in Gafsa precipitated by the arbitrary hiring practices in the poverty-stricken phosphate mining region. Eventually hundreds were arrested, many of them tortured, and 38 workers, including local UGTT officials, received long jail sentences. They were conditionally released from jail in November 2009, thanks not to the labor leadership but to a pardon from President Ben Ali, in celebration of his 22nd year in power.[60]

The UGTT was well positioned, however, to support the antigovernment uprisings in late 2010 and early 2011 once they were underway. Prior to the ousting of Ben Ali, the union took a strong position against the excessive use of force against demonstrators in Thala and Kasserine, and the organization also contributed logistical support to the protest movement. Union representatives were initially included in the provisional government of national unity formed on January 15, but they withdrew within three days because the government still included too many holdovers from the old regime.

Tunisia's other principal national organizations, the Tunisian Union of Industry, Commerce, and Crafts (UTICA), the Tunisian Union of Agriculture and Fishing (UTAP), and the National Union of Tunisian Women (UNFT), have always been satellites of the ruling party, promoting the regime's interests. Hedi Jilani, president of UTICA, married several of his children into the families of Ben Ali and his wife, presumably furthering the network of mutual interests between the two groups. He consequently resigned from his official post on January 19, five days after Ben Ali's departure.

After the summer of protest in Gafsa in 2008, there were few if any political demonstrations and ever-increasing crackdowns on independent journalists that covered such activity. When protests did occur, state officials closely monitored and contained groups and occasionally used violence to disperse the gatherings. This was not the case, however, with the rapidly-expanding antigovernment demonstrations that swept the country after the self-immolation of Mohamed Bouazizi in December 2010. Shortly after the incident, protests spread first throughout the city of Sidi Bouzid, and then gradually throughout the country. Police disrupted the early protests with tear gas and mass arrests, but as the demonstrations spread, officers began to use physical force, including indiscriminate live fire. By the time Ben Ali exited the country, security forces had killed approximately 200 people and injured dozens more.[61] Post-revolution prosecution of security forces has been a sensitive subject. On May 29, 2011, authorities arrested high-ranking police officer Samir Feriani after he submitted a letter to the minister of the interior identifying top ministry officials responsible for civilian deaths during the revolution and accusing ministry staff of destroying incriminating records from the Ben Ali era. Feriani remained in custody without having been charged as of August 2011.[62]

RULE OF LAW 2.40

INDEPENDENT JUDICIARY	2.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	1.75
PROTECTION OF PROPERTY RIGHTS	3.67

The Tunisian Constitution of 1959 guarantees judicial independence, but the president chairs the Superior Council of the Judiciary, which appoints judges. There is also, outside the judiciary, a Constitutional Council appointed by the president to rule on the constitutionality of any legislation before its final passage into law. Within the judicial system there are hierarchies of civil, criminal, and administrative district courts; courts of first instance; and three appellate courts located in Tunis, Sousse, and Sfax. At the apex of the system sits a Court of Cassation that renders final verdicts on questions of civil, criminal, and administrative law. The end effect of this arrangement is that any meaningful judicial independence is deeply compromised.

Despite a relatively efficient judicial administration, the Ben Ali regime undermined what remained of the rule of law under Bourguiba's autocracy. Judge Mukhtar Yahyaoui, one of three judges in the Tunis Court of First Instance, sounded the alarm in 2001 when he wrote an open letter to President Ben Ali stating, "Tunisian judges at all levels are frustrated and exasperated by their forced duty to deliver verdicts which are dictated to them by the political authorities and which are not open to impartial thought or criticism."[63] Judge Yahyaoui was fired for blowing the whistle, then briefly reinstated in 2002, but the problems he cited continued through the end of the regime. Like journalists, the legal profession and the judiciary are held as virtual hostages. Any judge who ruled outside of the regime's preferences risked being exiled, if not worse.[64] As with bankers, who were forced to lend money to members of the president's family, judges were systematically corrupted and obliged to do the ruling family's bidding.

The Association of Tunisian Judges (AMT), the purpose of which is to defend the independence of the judiciary, was essentially shut down in 2005, and its leaders replaced by docile judges. Women among its former leadership were especially targeted, being dispatched to courts far away from their homes and children. The former secretary general was assaulted in Kairouan in 2009 while conducting her judicial duties, and her assailant was not apprehended.[65]

Appointment and dismissal procedures were arbitrary, established at the whim of the president and his family, and well-trained judges either had to rule closely in line with the regime's interests and priorities, or risk dismissal.

The Tunisian Bar Association periodically came under attack, its offices invaded or surrounded by police to discourage meetings. Defense lawyers,

particularly those defending human rights activists, were also common police targets. Their telephones could be tapped and communications with their clients disrupted in other ways. Their professional reputations were at risk, and police sometimes pressured their regular clients, including banks and corporations, to seek legal services elsewhere.[66]

Complaints about torture and other serious human rights violations were not processed through the legal system. Coerced confessions were common and sufficed as the sole evidence for a guilty verdict, and witnesses delivering crucial incriminating testimony were not subject to cross-examination.[67] By law, everyone charged with a criminal offense is presumed innocent until proven guilty, but police arbitrarily detained people for indefinite periods of time without bringing formal charges. Defense lawyers were often harassed and prevented from accessing relevant evidence and meeting with their clients. Police brutality was treated with complete impunity, and the tamed judiciary ignored or suppressed allegations of torture, ignoring Tunisia's international treaty obligations.

The police, the primary agents of repression, were accountable only to the Ben Ali administration. Including paramilitaries, plainclothes officers, hired street thugs, and conventional police, Tunisia competed with Egypt for having the highest density of security forces in the Mediterranean region.[68] In addition to uniformed police in the cities, the National Guard acted as a rural constabulary, and the Brigades of Public Order were used to quell any public demonstration.[69] The ruling party also used local committees of informers and frequently hired thugs to harass and intimidate civilians acting against the regime's interests. The intelligence services, squads of hired thugs, and regular police were under the control of the Ministry of the Interior, but the Tunisian Army also had its own intelligence service, from which Ben Ali originally entered the official structure. The executive directly commanded a Presidential Guard of some 3000 men, headed by General Ali Seriaty, and another member of the president's inner circle oversaw the cyberpolice through the ATCE. General Seriaty also commanded a special emergency paramilitary force, whose brutal crackdown of protests from January 8–12, 2011, which included the deaths of at least 21 protesters, was one catalyst for widespread antigovernment demonstrations.[70] When Ben Ali left the country on January 14, 2011, he unleashed Seriaty's forces on the population of Tunis.[71] In a decisive step, however, the military defended the people by flying helicopters over snipers on rooftops. The various security and paramilitary forces outnumbered the 45,000-man army more than two to one but they were no match for Tunisia's professional US-trained military. Within a few of days of Ben Ali's departure, the military had rounded up the remnants of the Presidential Guard at their base in the northern suburbs of Tunis.

Private property in Ben Ali's time was in theory protected by law, and contracts were adequately enforced unless the ruling family's interests were involved, in which case the president and his relatives were above the law. The first lady was particularly notorious for her seemingly endless collection of villas

and bank accounts.[72] One case in recent years involving private education stood out. The Bouebdelli Foundation, an organization created by Mohammed and Madeleine Bouebdelli that managed several private schools in Tunisia, incurred the first lady's wrath when Trabelsi's poorly-prepared niece was denied admission to one of the foundation's elite schools. The authorities briefly shut down the school in 2004 and again in 2007, just as the first lady was opening her new private school.[73] In January 2010, another Bouebdelli school was forbidden from enrolling new students, with its engineering school closed and the remaining 1,500 students given until 2013 to graduate.[74] But after the demise of Ben Ali and his first lady all of the Bouebdelli schools were again up and running in 2011–12.[75]

ANTICORRUPTION AND TRANSPARENCY 2.83

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.40
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	2.67
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.25
GOVERNMENTAL TRANSPARENCY	3.00

Despite capital flight and extensive evidence of high-level corruption,[76] Ben Ali's government managed the economy more effectively than its peers in neighboring countries and built up a manufacturing base surpassing that of Algeria, a country with three times Tunisia's population.[77] The country is gradually meeting International Monetary Fund (IMF) guidelines to reduce reliance on import duties, cut taxes on businesses, and increase consumption taxes.

Tunisia ratified in 2008 the United Nations Convention against Corruption, and was a founding member of the Middle East and North Africa Financial Action Task Force, established in 2004 to combat money laundering and terrorist financing. An economic unit in the Ministry of the Interior combats fraud. The Audit Office of the Republic of Tunisia has broad powers to monitor public enterprises for financial irregularities, but it depends administratively upon the Council of State, which the president chairs. Consequently, Ben Ali's extended family and its allies were immune from investigation or prosecution.[78]

Prior to Ben Ali's departure, Tunisia scored relatively well on Transparency International's Corruption Perceptions Index, although it dropped from a score of 5 on a 10-point scale in 2005 to 4.3 in 2010, placing it 59 out of 178 countries.[79] On the World Bank's Control of Corruption Index, its score was also slightly better than the average.[80] The World Bank's *Doing Business* surveys of businesspeople ranked Tunisia 69 out of 183 countries in 2010.[81] The government revised Tunisia's national accounts to meet updated international standards in 2010.[82] Tunisia had also previously worked with the IMF and World Bank to publish Reports on the Observance of Standards and Codes for monetary and financial policy transparency, fiscal transparency, banking supervision, securities regulation, and insurance supervision.[83] Despite reform

in government procurement procedures introduced in 2002, those procedures remained burdensome and Tunisian officials required significant technical assistance from the World Bank.[84]

Despite the range of relatively positive indicators, nepotism and corruption were widespread throughout the Tunisian economy under Ben Ali in the form of an informal system designed to concentrate wealth in the hands of the ruling family and its allies. This informal structure was so highly centralized and shielded from public view, however, that the staggering extent of high-level graft partially escaped international attention. Ben Ali's relatives and other influential families owned most businesses in the Tunisian economy and were consistently granted preferential treatment and impunity for corrupt practices, including favored access to enterprises in the process of privatization. Prosecution for corruption was extremely rare, as the majority of people able to engage in such practices did so with the complicity of the regime. Corruption extended to procurement, where the few rules in place regarding competitive bidding processes for government projects were not followed and the same elite families were highly favored. Tunisian banks were essentially barred from granting loans to entrepreneurs not related to the ruling family and were heavily pressured to loan exorbitant sums to regime allies, with the full knowledge that such loans were unlikely to be paid back. The number of nonperforming loans held in the commercial banking system, although reduced from 24.2 to 13.2 percent of outstanding loans from 2003 to 2009, remained substantial in Ben Ali's final years in power.[85] After 2007, moreover, the total outstanding loans of the family businesses were escalating, reflecting the growing kleptomania of the Trabelsi, Materi, and Mabrouk clans as they gained control of leading banks and other pricy assets.[86]

Tunisians also complain of petty corruption, such as bribes needed to prevent being ticketed for alleged traffic violations or payments for good grades in school or admission to an elite school or faculty. Indeed, an initial spark for the 2011 revolution was the rampant cynicism and frustration among citizens with a system in which access to government services was based mainly on the ability to pay bribes, and the ability to succeed as an entrepreneur depended entirely on connections to influential individuals.

Tunisia has no freedom of information law and citizens have little access to the government's financial information. Parliament has limited time to seriously discuss the budget, much less analyze off-budget enterprises such as the National Solidarity Fund. The fund, also known as Caisse 26-26, collected virtually obligatory donations from over 2 million citizens and financed public works but lacked transparency, and many Tunisians considered it an added tax rather than a voluntary fund. Some Tunisians praised it as a successful experiment in social solidarity, as the fund supported housing for the poor and other good works,[87] but critics viewed it as an "intolerable shadow" and "another form of subjection" of the Tunisian people.[88]

Tunisia has not permitted any NGOs, including the national chapter of Transparency International, which operates in Morocco and Lebanon, to conduct independent investigations of corruption from within the country. As noted above, independent journalists like Slim Boukhdhir were subjected to jail time and physical assaults for their coverage of corruption. The only civil society initiatives to combat corruption operate in informal formats, including blogs and commentary on internet sites based outside of Tunisia.[89] On January 17, 2011, however, the transitional government named Abdelfattah Amor, UN Special Rapporteur on Freedom of Religion or Belief, chairman of the commission to investigate corrupt practices during the Ben Ali regime.[90]

RECOMMENDATIONS

- Constitutionally guarantee freedom of information, the protection of journalists, and unfettered access to the Internet and implement these guarantees with sound legislation and effective management, notably of the Tunisian Internet Agency (ATI).
- Ensure fair and free elections, by continuing to support an independent and credible electoral commission, enforce equal campaigning opportunities for a wide variety of political parties, take all necessary action to insure transparency in party financing, and allow international monitors to further validate the electoral process.[91]
- Immediately end all interference in the judicial system and enforce the rule of law "in such a way as to permit, to all citizens, the effective exercise of the liberties guaranteed by the Constitution."[92]
- Remove and sanction corrupt judges and police officials after due process.
- Empower the successor to the Chamber of Deputies to exercise its constitutional authority, notably to oversee the budget and to supervise the government, especially the Ministry of the Interior and the police.
- Draft a freedom of information law to give citizens access to information of public concern, including the government's off-budget financial accounts.
- Make government economic activities, notably in the procurement of goods and services and management of state properties, more transparent and open to meaningful public scrutiny.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

[1] The author gratefully acknowledges the financial and logistical support by the United States Institute of Peace (USIP) and the Center for the Study of the Maghrib in Tunis (CEMAT) of the writer's field research in Tunisia, June 9–20, 2011.

[2] "Communication Minister lectures at Chatham House," Tunis Afrique Presse News Agency, July 8, 2010, http://www.tap.info.tn/en/index2.php?option=com_content&do_pdf=1&id=9414.

3 Michel Camau and Vincent Geisser, *Le syndrome autoritaire: Politique en Tunisie de Bourguiba a Ben Ali* (Paris: Fondation Nationale des Sciences Politiques, 2003), 203–205.

4 Nicolas Beau and Catherine Graciet, *La Régente de Tunis: Main Basse sur la Tunisie* [The Regent of Tunis: Laying Hands on Tunisia] (Paris: La Découverte, 2009), 12.

5 Nicolas Beau and Catherine Graciet, *La Régente de Carthage: Main Basse sur la Tunisie* (Paris: Ed. La Découverte, 2009).

6 For a useful diagram of the family businesses, see "Ali Baba gone, but what about the 40 thieves?," *Economist*, January 21, 2011, http://www.economist.com/node/17959620?story_id=17959620. See also "Ben Ali's hated in-laws looted Tunisia's wealth, experts say," Agence France Presse, January 17, 2011, http://english.ahram.org.eg/NewsContent/2/8/4141/World/Region/Ben-Alis-hated-inlaws-looted-Tunisias-wealth,-expe.aspx. For a list of 48 family members whose funds were subsequently blocked in Switzerland, see "Les 48 personnes dont les fonds sont bloqués en Suisse," *Le Temps*, February 8, 2011, http://www.letemps.com.tn/article-52743.html.

7 Graham Usher offers a balanced discussion of the problem in "That Other Tunisia," *The Nation*, Sept. 12, 2011, http://www.thenation.com/article/162966/other-tunisia?rel=emailNation (accessed Aug. 27, 2011)

8 For their respective career backgrounds, see Mounir Charfi, *Les Ministres de Bourguiba 1956–1987* (Paris: Editions l'Harmattan, 1989), pp. 208, 221.

9 L'armée tunisienne lève un coin de voile sur les "snipers"! *Kapitalis*, Aug. 19, 2011: http://www.kapitalis.com/fokus/62-national/5482-larmee-tunisienne-leve-un-coin-de-voile-sur-les-snipers.html (accessed Aug. 26, 2011).

10 Experts usually recommend proportional representation for channeling democratic transitions. See Wael Abdel Hamid, "Experts advise Proportional representation for successful transition in Arab world," *FairVote*, Feb. 25, 2011: http://www.fairvote.org/experts-advise-proportional-representation-for-successful-transition-in-arab-world (accessed Aug. 27, 2011) and Larry Diamond, "Transition Traps," *New Republic*, Feb. 16, 2011: http://cddrl.stanford.edu/news/larry_diamond_transition_traps_20110216 (accessed Aug. 27, 2011)

11 Michel Camau and Vincent Geisser, *Le Syndrome Autoritaire* (Presses de Science Po, 2003), 217–218. On the eve of the most recent elections in July 2008, the RCD claimed 2,196,323 members, according to "Congress of Challenge: enriching and strengthening the volume of Tunisia's gains and achievements," Tunisia News, http://news.marweb.com/tunisia/feed/politics/congress-challenge-enriching-tunisia-gains-achievements.txt, accessed May 3, 2011.

12 Interior Minister Farhat Rajhi urged the Tunis Court of First Instance to dissolve the RCD on the basis Article 19 of the organic law number 32 of 1988 concerning the organization of political parties. See "Le gouvernement tunisien demande la dissolution du Rassemblement constitutionnel démocratique (RCD)," Tunisia Watch, February 22, 2011, http://www.tunisiawatch.com/?p=4097.

13 A constitutional amendment adopted in May 2002 enabled President Ben Ali (1936–) to run in 2005 and 2009 by abolishing terms limits and increasing the candidate's age limit from 70 to 75.

14 "Un homme d'affaires sanctionné pour avoir refusé de signer l'appel au 6e mandat," *Kalima*, October 4, 2010, http://www.kalima-tunisie.info/fr/modules.php?name=News&file=article&sid=256.

15 Calculating the number of eligible voters from the US Census Bureau's age pyramid for Tunisia, turnout for Ben Ali was 61.4 percent, and turnout for the legislative elections held on the same day was 57.6 percent. See "Population Pyramids: Tunisia," U.S. Census

Bureau, http://www.census.gov/ipc/www/idb/country.php, accessed September 25, 2010.

16 52 % des Tunisiens inscrits sur les listes électorales, *Le Nouvel Observateur*, Aug. 14, 2011: http://tempsreel.nouvelobs.com/actualite/monde/20110814.OBS8542/52-des-tunisiens-inscrits-sur-les-listes-electorales.html (accessed Aug. 26, 2011)

17 "La mission d'observateurs de l'UA: 'Le scrutiny du 25 octobre en Tunisie s'est déroulé dans le calme et las sérénité'," Elections Presidentielle et Legislatives en Tunisie [Tunisia's official website for presidential and legislative elections], October 28, 2009, http://www.elections2009.tn/fr/index.php?option=com_content&task=view&id=237&Itemid=1. The writer joined a pre-electoral survey in 1993 commissioned by USAID to assess the utility of sending international observers to the 1994 presidential and legislative elections. We concluded such a mission would not be useful, a conclusion that intervening changes over the years have not negated. See Jeff Fischer, Clement Henry, Adila R. Laidi, and Keith Klein, *Pre-Election Technical Assessment: Tunisia* (International Foundation for Electoral Systems, December 1993), http://www.ifes.org/Content/Publications/Reports/1994/Pre-Election-Technical-Assessment-Tunisia-December-15-22-1993.aspx.

18 "Tunisia: Elections," United Nations Development Program, Program on Arab Governance, http://www.pogar.org/countries/theme.aspx?t=3&cid=20, accessed September 25, 2010.

19 Tunisie : les 2 chambres du Parlement seraient dissoutes de fait Le Nouveau Observateur, March 5, 2011: http://tempsreel.nouvelobs.com/article/20110305.OBS9162/tunisie-les-2-chambres-du-parlement-seraient-dissoutes-de-fait.html

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TURKEY

CAPITAL: Ankara
POPULATION: 73.6 million
GNI PER CAPITA (PPP): $13,500

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	4.52	4.12
CIVIL LIBERTIES:	3.72	3.81
RULE OF LAW:	3.87	3.92
ANTICORRUPTION AND TRANSPARENCY:	3.64	3.62

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Adam Smith Albion

INTRODUCTION

Turkey is the crossroads country *par excellence*. Its geographical location spanning Europe and Asia aptly symbolizes a country that has historically looked to the West for its institutional models—ever since the Turkish republic was established in 1923 and was launched on a crash modernization program by its founder, Mustafa Kemal Atatürk—yet has never lost its essential character as a culturally conservative, Muslim nation. The current government embodies that character. The Justice and Development Party (AKP), led by Prime Minister Recep Tayyip Erdoğan, was elected in 2002 and reelected in 2007 with pluralities of votes that translated into large majorities of seats thanks to a vagary of the political system. Erdoğan heads a mildly Islamic government with a voter base in the Anatolian heartland and political instincts that put it at odds with the pro-secular elites who have set the tone of Turkish politics for decades.

Turkey's reform efforts have ebbed and flowed but have usually been headed in the direction of improved governance. Its acceptance as an official candidate by the European Union (EU) in 1999 provided fresh impetus to make legal and institutional reforms harmonizing with EU requirements. Erdoğan's first administration distinguished itself with an impressive reform record, but the pace has slowed considerably as European countries have shown themselves increasingly cool toward Turkey's membership prospects.

Progress on reforms has also been dogged by fundamental contradictions that were built into the state that Atatürk created or have developed over time. Tensions around three longstanding problems in particular have come to a head

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in recent years. The first is the adherence to an ideology of homogenous nationhood in a multiethnic state. The second is the role of the military as the custodian of democracy. The third is rigid state secularism in a country where much of the population is pious.

Modern Turkey was forged from remnants of the shattered Ottoman Empire. That experience of dismemberment moved the republic's founders to enshrine Turkish nationalism and territorial integrity as non-negotiable elements of the new dispensation. These principles successfully consolidated the state but have restricted basic freedoms of the country's minority populations, especially millions of Kurds demanding cultural rights and full equality. A guerilla war between Turkish forces and Kurdish separatists in the southeast of the country has gone on, with intermittent ceasefires, for a quarter century and claimed tens of thousands of lives. In 2009 the AKP government announced a "democratic opening" aimed at expanding Kurds' rights and ending the insurgency. After an encouraging start the initiative has gradually petered out.

The indispensible role of Atatürk (a military commander) and the army in creating the republic and then securing its existence has given the military an elevated status in Turkey. The constitution makes the armed forces ultimately responsible for defending Turkish democracy. To that end, they have staged three coups against elected civilian governments—in 1960, 1971, and 1980, along with a fourth government pressured out of power in 1997—when they thought that political stability and the constitutional order were threatened. In each case, the soldiers gave up power and reinstated democracy relatively quickly. Nevertheless, the military's perception that it has the right to influence the political process has long been controversial. Erdoğan's government has taken unprecedented steps to clip the military's wings, investigating hundreds of top-ranking officers for allegedly plotting acts of violence as part of a secret organization called Ergenekon. The aim of taming the military has been achieved, although it is not clear that justice has always been done—indeed, it remains unproven that Ergenekon even exists.

Secularism is a core principle of the Turkish republic, fiercely guarded by both the military and the judiciary. Within both institutions, the AKP is distrusted because of its sociocultural orientation and political heritage: it is an Islamic-conservative (although economically liberal) party that emerged from former political Islamist parties. The AKP defines itself as "conservative democrat." Nevertheless, the perception that it has a religious orientation has made it the object of dire suspicions that its eventual goal is to overturn Turkey's secular democracy. Attempts by the government to ease restrictions on wearing the Islamic headscarf in state organizations have been seen as first steps on a slippery slope towards Islamization of the country. In 2008 the Constitutional Court almost shut down the AKP on charges of violating the secular character of the state. Thus the courts have turned into an ideological battlefield between partisans of an inflexible and interventionist version of secularism,

who see themselves as loyal to the vision of Atatürk, and the government and its supporters, who think that such inflexible secularism discriminates against the pious.

In September 2010, a package of 26 amendments to the constitution was put to a public referendum and passed with 58 percent in favor. The current constitution is an adapted version of one dating from 1982, drafted by the military-led government of the time: there is general agreement in Turkey that it needs a major overhaul or should be rewritten altogether. The changes approved in the recent referendum include measures to restructure the justice system, expand labor rights, promote equality for women and the disabled, and establish an ombudsman's office. As of June 2011, implementation of the package remains in the early phases.

[Editor's Note: The AKP secured a third term in power in parliamentary elections on June 12, 2011, winning 49.9 percent of the vote, which translated into 326 out of 550 seats in the legislature.]

ACCOUNTABILITY AND PUBLIC VOICE 4.12

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	5.00
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.00
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	3.14

The Republic of Turkey is a multiparty parliamentary democracy. The head of state is the president, who is directly elected by universal suffrage and may serve a maximum of two consecutive five-year terms.[1] The president is not formally involved in the policymaking process. National government is led by the prime minister. The unicameral parliament (Turkish Grand National Assembly) is composed of 550 deputies who are elected to a four-year term (reduced from five years following changes in the law in 2010). Seats are allotted by proportional representation, with the crucial restriction that a party must win at least 10 percent of the votes cast nationwide to enter parliament. While elections in Turkey are competitive and conducted in a free and fair manner, this 10 percent threshold—the highest in any Council of Europe member state—has led to significant distortions in electoral outcomes. In the July 2007 election only three parties surmounted the 10 percent barrier; as a result, Prime Minister Erdoğan's AKP, which was reelected with 46.7 percent of the vote, netted 62 percent of the seats in the National Assembly. The rules particularly disadvantage pro-Kurdish politicians. They have managed to circumvent the threshold by running as independents and then coalescing as a parliamentary group once elected. However, the absence of an official political party deprives pro-Kurdish politicians of regular, significant financial assistance from the state budget that is allotted to parties that clear the 10 percent hurdle.

[Editor's Note: Three parties won seats in the June 2011 elections. The AKP secured 326 seats by winning 49.9 percent of the vote, the Republican People's Party (CHP) took 135 seats with 25.9 percent, and the Nationalist Movement Party (MHP) took 53 seats with 13 percent. The remaining seats were taken by independents.]

Turkey's democracy is impaired by the internal mechanics of its major political parties. The parties are commanded by leaders who, in conjunction with a close circle of bosses around them, make all the important decisions about party policies and appointments. This modus operandi is primarily a cultural rather than an institutional issue. However, the personal dominance of party heads is coupled with inadequate state oversight of parties' finances, a combination that is replete with opportunities for cronyism and graft. Campaign finance laws require that all individual and corporate donations be recorded, but in practice the registration of gifts is poorly monitored.[2] Tighter legislation to improve transparency in campaign financing was passed in March 2010. Incumbent politicians, including the AKP, have a history of regularly abusing state resources during campaigns. Meanwhile, party funds are not subject to any rigorous controls since the Constitutional Court merely reviews, and is not empowered to verify, the annual balance sheets presented to it by the parties themselves.

Turkey's civil service functions reasonably well but is overly centralized. Public administration would benefit from more transparency in the procedures determining appointments and promotions to ensure they are merit-based. The bureaucracy needs better regulation to enforce common standards and make sure that rules are implemented uniformly across the system.[3]

The separation of powers has become one of the most contentious issues of Turkish political life in recent years. Nominally the debate is over the role of the judiciary and the military as the guardians of secularism. Both institutions have intervened decisively in politics at various points in Turkey's history, and both have been at loggerheads with the AKP government for its supposed attempts to undermine the secular underpinnings of the republic. In its political clashes with the military the AKP has emerged the winner, to a point where the army today finds its reputation and influence over political affairs much reduced. Meanwhile, the judiciary's structure has been overhauled by constitutional amendments adopted in September 2010. Whether the changes will make the judiciary more democratic and accountable (as the government contends) or, on the contrary, will render it more pliable to political manipulation, is a question over which legal commentators and the Turkish public itself are much divided (see Rule of Law). One area where the courts have been used improperly for political ends with the tacit support of the government is in shutting down political parties. In December 2009 the Constitutional Court voted unanimously to ban the pro-Kurdish Democratic Society Party (DTP) on the grounds that it promoted ethnic separatism and maintained links to the outlawed Kurdistan Workers' Party (PKK). Simultaneously, 37 DTP leaders were banned from politics, igniting days of rioting in Istanbul and elsewhere.

The DTP is the fifth pro-Kurdish party to be closed by the courts in the last decade and a half.[4] Ironically, the AKP itself narrowly avoided being shut down by the Constitutional Court in 2008 on an indictment, filed by the chief prosecutor of the Supreme Court of Appeals, that the party had an Islamist agenda to undermine the secular foundations of the state.

Turkey has a plethora of civic associations and nongovernmental organizations (NGOs)—80,000 registered associations and several hundred unions and chambers by some estimates—the vast majority of which are allowed to function unhindered.[5] That said, the red tape involved in obtaining permission to operate and raise funds can be onerous. Civil society groups have benefited from the 2008 Foundations Law which, among other things, permits community foundations to receive foreign funding. However, there is scant evidence that NGOs have much impact on the policymaking process, despite promises by the AKP to pay more heed to the public voice in its decision making. The government did an inadequate job of reaching out to NGOs in the process of formulating and discussing the constitutional amendments that were put to the public in the September 2010 referendum. It even sidelined the country's most influential NGO, the Association of Turkish Businessmen and Industrialists (TÜSIAD). When TÜSIAD and other powerful organizations declined to take a public position on the referendum, Erdoğan castigated them publicly for refusing to give him positive support.[6]

Despite some notable advances in freedom of expression in recent years, the overall trend in Turkey has been negative. Turkish mass media is lively but not of high quality. It suffers from the fact that Turkey's major newspapers and television channels belong to giant holding companies, which tend to regard their media operations as instruments to influence the authorities and advance their own business interests. On two of the litmus test issues for freedom of expression in Turkey, the Armenian and Kurdish issues, the government has sent mixed messages. On the one hand, it permitted in April 2010, for the first time, demonstrations in Istanbul in commemoration of the 1915 mass killings and deportation of Armenians by Turks (regarded by many as genocide). Yet writers and broadcasters have continued to face sanctions for raising the subject. Similarly, Turkey crossed an historic line in 2009 with a government directive removing all remaining restrictions on broadcasting in minority languages, particularly Kurdish. Nevertheless, Kurdish-language editors and journalists are still targeted for their alleged sympathies for separatists.[7] In 2010 Reporters without Borders ranked Turkey 138th out of 178 countries for press freedom, its lowest score in ten years.[8]

Freedom of speech and independence of the media are guaranteed by the Turkish constitution. However, this guarantee is hedged with restrictions, of which the two most damaging are Article 301 of the Turkish penal code and the country's Anti-Terrorism Law. Article 301 criminalizes "insults to the Turkish nation"—typically meaning any allusions to the 1915 killings of Armenians but also interpretable as criticism of the state and state institutions such as the police

and armed forces. Article 301 was amended in April 2008, but the changes were minor and cosmetic.[9] The Anti-Terrorism Law punishes any form of "propaganda for a terrorist organization" with up to five years in prison and has been used to target journalists and suppress newspapers for reporting on sensitive Kurdish issues. Discussing Kurdish rights to self-determination, quoting a communiqué by the PKK, and interviewing former PKK leaders have all been recent causes for prosecution under the Anti-Terrorism Law.[10] In 2009–10 the Kurdish-language daily *Azadiya Welat* was repeatedly banned, while two of its chief editors received sentences of 166 years and 22 years for publishing material that allegedly supported the PKK's goals of separatism and terrorism.[11] As of late 2010, more than 40 journalists were in jail and some 700 awaited trial for violating these and other vaguely-worded laws against undermining the integrity and fundamental interests of the nation.[12] The government has reneged on pledges to reform the country's restrictive media law as well as over two dozen provisions in the penal code used to harass journalists (such as Article 125, which makes defamation a crime). In addition to high-profile trials leading to criminal convictions, there is a rising trend of harassment, arbitrary arrests and physical attacks on journalists that contribute to the worsening climate for free speech in the country.

The government has contributed to a climate of intimidation and self-censorship through its handling of the so-called Ergenekon case, a massive ongoing investigation begun in 2006 into an alleged clandestine military-backed organization plotting a series of assassinations and terrorist acts. Progovernment media outlets have been responsible at times for uncritical coverage of discredited evidence, published accusations by anonymous informants, and smeared critics of the proceedings.[13] Meanwhile, prosecutors have launched over 4,000 investigations against journalists for their reporting on the Ergenekon case.[14] Yet no strong evidence has been produced that the organization even exists. The thousands of pages of indictments contain confusions over facts and dates, and include internal contradictions and improbable assertions, leading some commentators to speculate that at least some of the papers have been fabricated.

Erdoğan has become increasingly intolerant of political criticism since his reelection in 2007 and made aggressive moves both to build a loyalist media and to eliminate media opponents. An early manifestation occurred when the country's second-largest media group, Sabah/ATV, was seized by the state under murky circumstances and auctioned off in 2008 to a holding group run by Erdoğan's son in law. However, the harshest blow to media pluralism was struck in 2009, when Turkey's biggest media conglomerate, the Doğan Media Group (DMG)—a vocal opponent of the AKP through its best-selling newspapers and popular TV stations—was hit with fines totaling $3 billion for alleged tax evasion. Earlier, Erdoğan had publicly called on his supporters to boycott DMG outlets after its journalists reported on a corruption case in Germany that implicated top officials from the prime minister's circle, including his appointee to

lead the Supreme Council of Radio and Television (RTÜK). The case revealed that donations to a Turkish charity in Europe had been embezzled and illegally diverted to fund Turkey's Kanal 7, a progovernment TV station, and indicated systematic efforts by the AKP to pump money, sometimes illegally, into progovernment media outlets. While Erdoğan has denied any political motive behind the tax penalties against DMG, commentators have warned that the assault has further entrenched self-censorship among editors and journalists. Moreover, there are worries that if DMG is obliged to sell its major media assets to a pro-AKP conglomerate (as seems likely) the government will have secured hegemony over all the most important media holdings in the country.[15]

Turkey has censored more than 5,000 websites since the passage in 2007 of Law 5651 on the internet, which permits censorship of sites promoting various crimes, including pedophilia, suicide, drug use, gambling, and insulting Atatürk. YouTube was officially blocked from May 2008 to November 2010 because of a dozen videos posted on the site that public prosecutors deemed disrespectful of Atatürk. Internet legislation has also been used to block various Google services, discussions of Kurdish and Armenian issues, gay sites, atheist sites, and criticism of the military. The EU and other groups have reproached Turkey for violating rights to freedom of information with its internet policies.[16]

CIVIL LIBERTIES 3.81

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.63
GENDER EQUITY	4.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.00
FREEDOM OF CONSCIENCE AND BELIEF	3.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	3.75

Turkey's record on preventing and punishing torture has improved, albeit from a low baseline, with a decrease in the number of reports of ill-treatment by state officials in detention centers. Training programs have been held for law enforcement officials (50,000 received human rights training in 2008–09) as well as for judicial and medical personnel on looking into torture cases.[17] Turkey has committed to ratify the Optional Protocol to the United Nations Convention against Torture. However, serious problems remain. The courts are "notoriously lenient" towards security officials accused of torture, who are routinely prosecuted on lesser charges such as excessive use of force that yield lighter sentences.[18] Although the criminal code provides for the independent investigation of human rights violations by judicial police supervised by a prosecutor, in reality police often hold extended in-house investigations into misconduct by their fellow officers, giving rise to doubts about the impartiality and thoroughness of their inquiries. The majority of such investigations have

either absolved officers of responsibility or resulted in suspended sentences.[19] In many cases, victims of abuse at the hands of security forces refrain from filing complaints for fear of being slapped with countercharges.[20] However, in a groundbreaking verdict in June 2010, nine prison and police officials received heavy sentences for torturing to death Engin Çeber, an activist with the Rights and Freedoms Association, who had been arrested during a peaceful protest against police brutality. For the first time, a senior prison official was found guilty of torture perpetrated by the guards under his command. A further 10 officials were convicted for complicity in Çeber's death and the torture of two of his associates. The justice minister at the time made an unprecedented public apology to Çeber's family.[21]

In other areas of policing, a culture of impunity has spread with a rash of police shootings since 2007, when legal amendments expanded officers' authority and discretion to use lethal weapons while making arrests. Unarmed demonstrators and fleeing suspects who allegedly failed to obey stop warnings have been shot, sometimes fatally. There were 48 reported cases of fatal shootings by Turkish law enforcement officers in 2009 alone.[22] Convictions for police violence have rarely led to prison sentences. Arrest of individuals without proper justification is also a longstanding problem, but has gained more public attention recently because of the waves of arrests connected with the Ergenekon case. The number of protestors, activists, or journalists who have been arbitrarily detained by the police has led to suggestions that arrest itself has become a form of punishment without trial in Turkey.

Turkey has taken steps to improve prison conditions and detention regulations. In the case of Turkey's most controversial prisoner, Abdullah Öcalan, serving a life sentence for his role as former leader of the Kurdish guerilla movement, European monitors recently found his situation slightly improved.[23] However, Turkish penitentiaries are chronically overcrowded, and the high proportion of prisoners remanded in pretrial detention (50 percent of the country's prisoners are awaiting either trial or a verdict) has been acknowledged by the government to be unacceptable.[24] Children arrested for allegedly participating in pro-Kurdish demonstrations have often been held in adult prisons while awaiting trial for up to three or six months.[25]

The trials related to the murder of the Turkish-Armenian journalist Hrant Dink, who was gunned down in 2007, have become a touchstone case of whether Turkey protects its citizens from nonstate violence. Dink had complained to the police of death threats from ultranationalists for his views on the Armenian killings. Investigations have revealed that the police had prior knowledge of the plan to murder him but neglected to act. In September 2010 the European Court of Human Rights (ECHR) ruled that Turkey had failed in its obligation to protect Dink's right to life and ordered compensation to be paid to his family.[26] The trials of the gunman and seven gendarmes charged with professional negligence are continuing.

Turkey has made positive strides in creating independent human rights institutions, including a Human Rights Board, an independent police complaints mechanism, and an equality and nondiscrimination commission, but all remain at the draft law stage.[27] The constitution has been amended to clear the way for the establishment of an ombudsman's office. Although citizens' options for petition and redress are improving, the sheer number of Turkish cases still being referred to the ECHR, many of them concerning the right to a fair trial, is an indication that domestic avenues are currently inadequate.[28]

There is an implementation gap between Turkey's legal framework, which strongly enshrines gender equality, and a patriarchal culture that subordinates and discriminates against women. The government has made efforts to promote women's rights through awareness campaigns and training for officials; the establishment of a Parliamentary Commission on Equal Opportunities for Women and Men that investigates, for example, forced early marriages and domestic violence against women; and a planned national board for monitoring and coordinating matters related to women's employment.[29] In September 2010, the constitution was amended to permit the adoption of positive discrimination measures for women.

Nevertheless, Turkish women remain disadvantaged and disempowered in private and public life. Thirty-nine percent of women have reportedly been victims of domestic violence.[30] There is evidence of a recent increase in honor killings, whereby women are killed by male relatives for alleged sexual transgressions bringing dishonor on their families. The law has been toughened to ensure that the penalty for honor killings can no longer be reduced for "unjust provocation," but these crimes are still not explicitly treated in the penal code as aggravated homicide.[31] In the sphere of education, Turkey has eliminated gender inequality in primary education, but has made less progress at higher levels, particularly in rural provinces where reluctance to enroll girls in school is attributed to their household duties and stereotyped notions of "family values."[32] While women acquired the right to vote and run for office in 1934, a mere 9 percent of parliamentarians, and 12.5 percent of senior state administrators, are female.[33] Despite government-sponsored training and incentives to work, only 22 percent of women are employed in the formal workforce.[34] Most of the women working in Turkey are engaged in agriculture, laboring for their families without pay or entitlements.

Turkey is a destination and transit country for trafficking in women and children for prostitution and (to a lesser extent) forced labor. The government has taken serious steps to combat trafficking, prescribing new penalties and aggressively prosecuting traffickers, and adopting a national action plan to rehabilitate and provide shelters for trafficked persons. However, insufficient human and financial resources have held back implementation of parts of the plan.[35]

Turkey's definition of minorities is not in line with international standards, recognizing only three non-Muslim minorities it pledged to protect under

the Lausanne Peace Treaty of 1923: Jews (numbering about 23,000), Greek Orthodox Christians (2,500) and Armenian Orthodox Christians (60,000).[36] Ethnic, racial, linguistic, sexual, or other minority groups are not recognized as such and consequently do not enjoy any special legal protections; in theory their rights are secured by overarching constitutional safeguards prohibiting discrimination and hate crimes and guaranteeing freedom of expression and association. In practice, Turkey has historically pursued policies of repression and assimilation towards its minorities, especially against the Kurdish population, which currently numbers some 15 million people, in efforts to head off separatism and anchor the state in Atatürk's ideology of Turkishness. Although many Kurds are well integrated into Turkish society, as an ethnic minority they have seen their rights to express their cultural identity sharply curtailed. They have suffered violence and institutionalized rights abuses by Turkish security forces over the course of two decades of fighting insurgencies in the southeast of the country that have claimed over 35,000 lives. However in summer 2009, in a departure from traditional state policies, the government announced a "democratic opening" addressed primarily at the Kurdish minority. This ended restrictions on broadcasting in minority languages (see Accountability and Public Voice) and briefly led to unprecedented freedom to debate the Kurdish question. The political experiment foundered when the DTP was shut down at the end of the year, but by autumn 2010 there were signs of its cautious revival.

While homosexuality is not technically illegal in Turkey, the state is intolerant of lesbian, gay, bisexual, and transgender (LGBT) people, who have faced discrimination at work and obstacles in forming associations. Most of the LGBT groups registered in the country have been targeted at one time or another with closure cases that typically rely on laws prohibiting "offences against public morality" and "public exhibitionism," which have also been used to ban gay pride marches.[37] At least nine transgender people have been murdered in Turkey since the beginning of 2009. In October 2010 police officers arbitrarily detained and beat up five transgender rights activists in Ankara.[38]

Government measures to improve the employment prospects of persons with disabilities include a constitutional amendment permitting positive discrimination in their favor, and allowing more of the disabled to work in public institutions by lifting budget-related limitations on recruiting staff. That said, disabled people's access to education, health, social and public services are still "critical issues" for Turkey.[39]

Freedom of belief and worship is constitutionally protected and generally respected in Turkey, the population of which is overwhelmingly Muslim (99 percent according to official figures). The Directorate of Religious Affairs (Diyanet), a state organ reporting to the prime minister's office, oversees the country's mosques and employs its imams, who are civil servants and are sometimes told by the government what to preach in their sermons. Religious and moral instruction is compulsory in public schools. Notwithstanding the

government's control over religious affairs and education, secularism—the principle of separating state and religion—has been the bedrock of the Turkish state's identity since the republic was founded. The constitution upholds secularism, and to that end overt expressions of religious belief are banned in government offices and other state-run institutions. But there have always been tensions involved in the premise and application of inflexible secularism in a country with a large pious population, and the fracture lines have become increasingly visible since the democratic election of the AKP's mildly Islamic government. Those tensions have come to a head over the issue of Turkish women's right to wear Islamic headscarves in universities;[40] the ban has effectively forced many women to choose between their faith and education. After nearly precipitating a political crisis in 2008 by seeking to eliminate the ban—feared by secularists as a move towards the Islamization of the country—the AKP has backed away from the issue, but the cause is effectively won: the Higher Education Board now turns a blind eye and in late 2010 instructed universities not to expel students wearing headscarves.[41]

Similarly, the government has eased restrictions on the operation of medreses (theological schools), Sufi lodges, and other unofficial Muslim organizations whose existence, strictly speaking, is illegal.[42] However, some religious communities have reported a pattern of discrimination and administrative uncertainty, notably the Alevis, heterodox Muslim believers, of whom there are an estimated 15–20 million in Turkey. Alevis have complained that the state does not accord any legal status to their *cem* houses (places of gathering) as houses of worship, referring to them as cultural centers, and creates obstacles to their establishment.[43] Furthermore, the Alevis are not represented in the Diyanet, which is for Sunni Muslims only.

Freedom of assembly and association is constitutionally protected. A large number of civil society organizations operate in the country, although some have faced harassment and prosecutions, notably LGBT associations and some human rights watchdogs. Public gatherings in 2010 to mark the Kurdish New Year, the Armenian killings, and international labor day were staged without incident.[44] Other demonstrations do not pass so peacefully, however, with police using excessive force at various times to break up rallies by laid-off workers, trade unionists, students, and Kurdish protesters.[45]

Constitutional amendments have broadened trade union rights. Prohibitions were lifted in September 2010 on general strikes and other forms of resistance. Civil servants and public employees were granted the right to collective bargaining and to judicial review of disciplinary decisions made against them. Civil servants do not have the right to go on strike, however. Overall, the influence of trade unions in Turkey has waned in recent years in tandem with a process of de-unionization in some public and private workplaces, although progovernment unionization has been promoted.[46] In addition, labor watchdogs have noted ongoing problems with dismissals and legal charges against trade unionists.[47]

RULE OF LAW	3.92
INDEPENDENT JUDICIARY	3.60
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.40
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	4.00
PROTECTION OF PROPERTY RIGHTS	4.67

Turkey's judiciary, particularly the Constitutional Court, has traditionally regarded itself as the guardian of the integrity of the state and a bastion of the secular political establishment. It has a track record of judgments that have skirted the letter of the law in favor of upholding secular orthodoxy. As such, the judiciary's relationship with the religiously conservative AKP party has been strained. In 2008 the Constitutional Court nearly shut the party down for allegedly eroding secularism. Against that background, the package of constitutional amendments adopted in September 2010 reorganizes the judicial system in ways that have sparked fierce controversy over whether the government is driven more by zeal for reform or by revenge—whether the changes in practice will promote democracy and accountability or strengthen the prime minister's power over the courts. On balance the reforms seem to represent democratic progress, although much depends on how they are implemented, and whether the gains will be underpinned with further reforms in the training and recruitment of judges and prosecutors and improved court procedures.

Two key judicial bodies have been restructured: the Constitutional Court and the High Council of Judges and Prosecutors (HSYK). The number of members of the Constitutional Court was increased from 11 to 17, of which 4 are directly appointed by the president, 10 are chosen by the president from a slate of nominees, and 3 are elected by parliament by a simple majority vote. Although the slate of nominees is selected by a wide set of judicial bodies and the Higher Education Council, there is concern that the government has strong influence over at least some of those agencies. Moreover, with both the presidency and the legislature presently under AKP control, Erdo an's critics have warned that the separation of powers is under threat and the prime minister has a free hand to pack the court with his political supporters. There are countervailing views that these fears are overblown and that, in practice, the details of the mechanisms to elect nominees will forestall such an outcome.[48]

The HSYK, which is responsible for appointing judges and prosecutors across the country, has similarly been expanded from 5 to 22 permanent members. Dismissal decisions by the HSYK are now open to judicial review, and the body will be more professionalized by having its own general secretariat. However, there remains room for government interference in the fact that the Minister of Justice continues to serve as president of the HSYK (albeit with reduced powers) and appoints the head of the Secretariat.

The political impartiality of the HSYK is a source of concern. It has been much criticized by legal monitors in the past for the cozy, closed system whereby it chose the higher judiciary staff, who in turn nominated the members of the HSYK. In 2006 the High Council made an unwarranted intervention into an active case when it dismissed the prosecutor who prepared an indictment against three members of Turkish military intelligence suspected of a grenade attack on a Kurdish bookshop in 2005. In another strike against prosecutorial independence, Ilhan Cihaner, a public prosecutor in eastern Turkey, was removed from his post and arrested in February 2010, accused of being a member of the Ergenekon network, after reportedly ignoring warnings from the Ministry of Justice to abandon his inquiries into illegal activities involving Islamic networks with ties to the AKP. In this instance the HSYK responded to the government in tit-for-tat fashion by firing four public prosecutors seen to be sympathetic to the AKP.[49]

The law guarantees the presumption of innocence until proven guilty in court and defendants have the right to an attorney. Yet there are indications that many detainees have gone without legal counsel and were unaware they had the right to a court-appointed lawyer. Access to free legal aid is limited, notably in the Kurdish areas of the country, and no court-appointed counsels were made available in Istanbul for a period of nine months in 2009–2010 as the Istanbul bar association was boycotting the free legal aid scheme.[50] The quality of judges can be low: candidates to the bench require a bachelor's degree (not necessarily in law) followed by two years' training at the Justice Academy. According to Transparency International, judicial appointments in Turkey can depend on "clientelist ties, not legal qualifications."[51]

The president, cabinet ministers, and parliamentary deputies enjoy legal immunity from prosecution according to the constitution. Erdoğan has reneged on a pre-election pledge to end immunity. Yet many Kurdish MPs have had their immunity stripped and been taken to court on the grounds that crimes against "the indivisible integrity of the state" (Article 41 of the constitution) warrant the exception. Attempts to prosecute state officials after leaving office for alleged misdeeds have foundered on the statute of limitations.

Alongside the judiciary, the military has acted as the ultimate guarantor of Turkey's secularist ideology and state order since the creation of the republic, ousting governments four times in the last half century in the name of protecting those fundamental values, although each time it returned power to civilian authorities relatively quickly. More generally, the military has exerted influence over political processes through the clandestine network of intelligence services, internal security forces, and police collectively known in Turkey as the "deep state." However, the AKP has mounted an unprecedented challenge to the autonomy and prestige of Turkey's once untouchable military. Although it remains the most respected institution in the country, the reputation of the military has plummeted—and the power of the deep state with it—with the barrage

of disclosures about senior officers' supposed involvement in terrorist conspiracies as members of the alleged Ergenekon organization.[52] The government has asserted its authority over military promotions and jailed generals and admirals accused of plotting against the state.

A constitutional amendment in September 2010 removed cases dealing with state security from the jurisdiction of military courts and transferred them to the civilian courts. The military justice system is now limited to handling military offenses and explicitly forbidden to try civilians. Furthermore, decisions of the Supreme Military Council (YAŞ) are now open to appeal. Sending a message that the days of the army's impunity are over, the government abolished immunity from prosecution for the commanders behind the 1980 military coup d'état, although the move is symbolic only since the statute of limitations has passed. In February 2010, the government cancelled a secret protocol that permitted military operations to be conducted without the consent of civilian authorities.[53] These moves have improved civilian control over Turkey's security forces. On the other hand, details of the defense budget remain murky and are not subject to proper parliamentary oversight. Moreover, two military judges continue to sit on the Constitutional Court, which is a dubious situation in a civilian legal system.

Property rights and contracts are generally respected in Turkey, although the legal procedures involved can be lengthy. Judges lack training for commercial cases, which commonly drag on for more than a year as a result. On the other hand, registering a property requires six procedures and can be completed within six days.[54] In some instances women encounter legal and social obstacles to owning property. Women who married before 2002, when the Civil Code was amended on the issue of joint ownership of property acquired during marriage, find themselves at a disadvantage in trying to assert possession since the revisions have not been applied retroactively.[55] Non-Muslim religious communities face difficulties in owning property stemming from the fact that Turkish law does not recognize them as legal entities. Consequently their places of worship and other real estate must be owned on their behalf by community foundations. The Foundations Law passed in February 2008 allows community foundations to apply to recover seized property that is still in the hands of the state. Problematically, it does not cover property that has already been sold on to third parties. The law is being implemented—in a recent high-profile case, Turkey's Greek Orthodox Patriarchate recovered an orphanage building that the state had seized in 1997—but slowly.[56]

ANTICORRUPTION AND TRANSPARENCY 3.62

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.40
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	2.67
CITIZEN PROTECTIONS AGAINST CORRUPTION	4.25
GOVERNMENTAL TRANSPARENCY	4.17

Prime Minister Erdoğan came to power in 2002 promising clean government, and compared to the corruption and economic mismanagement of previous administrations the AKP deserves credit for its relative honesty and efficiency. Yet despite the initial hopes of many voters that the party's conservative religious leanings would translate automatically into strong public ethics, there are signs after eight years that power is having its proverbial corrupting effects. The Transparency International 2010 Corruption Perceptions Index ranked Turkey 56 out of 178 countries, with a score of 4.4 on a 10-point scale.[57]

On paper, Turkey's anticorruption legislation is robust. In February 2010 the government adopted a five-year national anticorruption strategy and action plan for enhancing transparency and accountability in public administration. The law establishes a zero-tolerance policy for civil servants to accept any gifts or hospitality.[58] The government has promulgated a code of ethics for investigators and auditors, and in 2009–10 some 7,000 civil servants received ethics training.[59] In daily life, however, anecdotal evidence indicates that the difference between bribes and tips is blurred in the public mind, in a culture that accepts (and expects) that services should be rewarded. Even some government officials have shrugged off the practice, saying that gifts to bureaucrats averaging $15 were merely tips by grateful citizens.[60] The media has reported widely on low and mid-level corruption cases involving local government and real estate agencies. In March 2010 the mayor of the provincial city of Adana was relieved of his duties following corruption allegations—the first time a serving mayor has been suspended for graft.

Nearer to the centers of power, however, the picture grows murkier. Cabinet ministers and parliamentarians are shielded from prosecution by immunity laws. Journalists are dissuaded from peering into their affairs too closely—first, because the conglomerates that control news organizations are worried about political retribution; second, because Turkey's major media assets have been steadily gathered into the hands of AKP allies (see Accountability and Public Voice). While anticorruption NGOs are allowed to operate freely, whistleblowers are poorly protected in law against recrimination or other consequences, and in any case they face an uphill struggle within a culture that frowns on airing dirty laundry in public.[61] Scandals have come to light nonetheless about AKP members, most notoriously the party's deputy chairman, Şaban Dişli, pocketing millions thanks to favorable decisions on building permits and rezoning regulations in Istanbul, a municipality the AKP controls. Neither the individuals in question nor the party itself came under serious legal scrutiny. In 2008 the Çalik Group, a business conglomerate headed by Erdoğan's son in law, took over the influential media group Sabah/ATV in an auction where it was the only bidder; there have been persistent, though unproven, claims that other potential bidders were warned off by senior government officials.

The adoption of a law on freedom of information in 2004 contributed to much wider publication and dissemination of information about the workings of government bodies. In line with that law, transparency of the state's financial activities has also improved in recent years. The information published in its budgetary statements and reports has become fuller and more detailed, and is mostly accessible to the public.[62] At the same time, the country's supreme audit institution, the Turkish Court of Accounts, is under-resourced. Consequently, its independent audits of the state's books are not sufficiently comprehensive to guarantee confidence that the government's self-reporting of its revenues and expenses is totally reliable. Furthermore, the parliament's powers of oversight over budgetary expenditures are weak—for example, it lacks full authority to amend the budget over the course of the fiscal year. Elected representatives are required to file asset disclosure forms, but they are kept confidential unless there is a criminal investigation. Moreover, their declarations are not independently audited, nor is there any obligation to mention possible conflicts of interest; in fact, many Turkish politicians are involved in businesses that could conflict with their public duties.[63]

Turkey has a functioning market economy. The Heritage Foundation's 2010 Index of Economic Freedom gave Turkey a score of 63.8 out of 100, above the world average, noting recent improvements in fiscal and investment freedom and freedom from corruption.[64] The role of private companies in Turkey has steadily increased along with progress in deregulation and privatization of state holdings in the energy sector. The legal and institutional safeguards for private companies are strong.[65] Life has been made easier for businesspeople—and opportunities for foot-dragging bureaucrats to demand bribes have been reduced—by simplifying the procedures to register a company and diminishing the time required.

There are plenty of other nooks and crannies in Turkey's fiscal system where the government has not done enough to root out opportunities for corruption. Plans to unify all tax administration functions under a single revenue administration—a measure that would enhance transparency in tax collection and strengthen internal audit capacities—have yet to be completed. Tax evasion is reportedly widespread and fuelled by complaints that tax laws are not always applied fairly.[66] Another source of contention is the opaque system of state aid. Competition policy is undermined and the economy distorted by government decisions that allocate money to favored economic sectors. New regulatory frameworks have, in the main, made the award of government tenders and concessions more fair and open. An independent public procurement board has the authority to void contracts. In May 2010, comprehensive guides were published on the procedures relating to supply, service, and public works contracts. Yet overall, public procurement policies are still far from coherent and subject on occasion to improper influence by the government, which cites one-time exceptions to the rule.[67] In sum, while the AKP has introduced some important

measures to combat corruption and increase fiscal transparency, much remains to be done.

RECOMMENDATIONS

- The Anti-Terrorism Law should be revised, and its language more restrictively defined, so that it can no longer be used as an instrument to suppress freedom of expression and imprison journalists and editors whom the government disapproves of. Article 301 of the penal code should be abolished.
- Allegations of human rights violations, including police shootings and torture by security officials, must be followed by thorough and independent investigations by an independent police complaints review board or an ombudsman's office, leading to the timely prosecution of offenders.
- Turkey should adopt and enforce international legal standards, such as those promoted by the United Nation's Committee on the Elimination of Racial Discrimination,[68] on minority rights with a view to ensuring the equal treatment of all the country's religious, ethnic, and cultural groups.
- The immunity from prosecution enjoyed by top government officials and legislators should be abolished, and transparency increased in the system of political party financing, so that corruption and other wrongdoing by politicians classes can be detected and prosecuted.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

1 Previously the president was elected by the parliament and served one non-renewable seven-year term. Since the changes were made after the current incumbent, Abdullah Gül, was elected in 2007, it is unclear when the next presidential election will actually take place.

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5 Bertelsmann Stiftung, *BTI 2010—Turkey Country Report* (Gütersloh: Bertelsmann Stiftung, 2009), 10, http://www.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/middle-east-and-north-africa/turkey.

6 Svante E. Cornell, "What is Turkey's Referendum About?," *Turkey Analyst* 3, no. 14 (August 2010), http://www.silkroadstudies.org/new/inside/turkey/2010/100830A.html.

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VENEZUELA

CAPITAL: Caracas
POPULATION: 28.8 million
GNI PER CAPITA (PPP): $12,220

SCORES	2006	2011
ACCOUNTABILITY AND PUBLIC VOICE:	2.81	2.14
CIVIL LIBERTIES:	4.10	3.77
RULE OF LAW:	2.70	1.90
ANTICORRUPTION AND TRANSPARENCY:	2.10	1.77

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Angel E. Alvarez

INTRODUCTION

In historical terms, Venezuelan democracy emerged from an extended process of political learning. The lessons obtained from the breakdown of the democratic experiment led by the Democratic Action (AD) party from 1945–1948 paved the road for a 1958 governability accord known as the Punto Fijo pact. Leaders during the subsequent era of political stability were particularly inclined to heed lessons about the damaging effects of extreme polarization. Democratic political parties—aside from AD, the most important group was the Social Christian Party (COPEI)—were convinced that political stability depended on the exclusion of antidemocratic forces like the leftist guerrillas and right-wing militarists that engaged in sporadic attacks. Although this mode of stability entailed violations of human rights, democracy did indeed prevail.

Venezuelan democratic continuity was based2 on oil revenues, and both political stability and oil dependence increased after the nationalization of the industry in 1974. In the 1970s, AD and COPEI continuously captured more than 80 percent of the vote, with only small groups of ultra-radical leftists violently challenging the government. This exceptional political steadiness, in a region plagued by authoritarian regimes, was based on massive distribution of the oil rent. Yet by the 1980s, oil prices fell dramatically and Venezuelan external debt skyrocketed. In 1983, the government depreciated the bolívar, the dramatic initiation of an era in which middle class voters, the political base of both parties, became progressively alienated by economic crisis exacerbated by blatant corruption.

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Political dissatisfaction with democratic politics became evident through declining electoral turnout between 1983 and the 1988 election of Carlos Andrés Pérez as president. Soon after his inauguration, an increase in retail gasoline prices and transport fares detonated mass protests, looting, and violence concentrated in the capital city, Caracas, in late February 1989. Hundreds died at the hands of the security forces, and the fragility of late-era *puntofijismo* was exposed. Two coup attempts in 1992 failed to overthrow the government, but the political consequences were devastating. Pérez was impeached in a controversial process in 1993.[1] That same year, a critical juncture occurred when Rafael Caldera, a former COPEI stalwart, won the presidential election supported by a coalition operating outside of the AD and COPEI-led system. As this antiparty offensive accelerated, a convicted (and later pardoned) leader of the February 1992 coup attempt, Hugo Chávez, won the 1998 elections. The new president alleged a popular mandate for constitutional reform, and the Supreme Court of Justice authorized the election of a constituent assembly. On December 15, 1999, a referendum ratified the new constitution with more than 95 percent of the votes amid mediocre turnout. In the post-reform election of 2000, President Chávez was reelected with 59.8 percent of the vote.

In 2001, President Chávez received limited decree powers via the passage of an Enabling Act *(Ley Habilitante)*. He used this authority to issue 49 decree laws in November 2001; the radical nature of these measures marked the starting point of increasing polarization, which eventually led to a temporary breakdown of democracy in April 2002. That month, a faction of military officers, backed by key business leaders and some opposition politicians, reacted to an increasingly massive and deadly series of protests and counterprotests by attempting to remove Chávez from office. The group took control of the presidential palace and AN, and appointed a provisional government that dismissed the legislature. However, troops loyal to Chávez, supported by huge throngs of pro-Chávez demonstrators, managed to reinstate the deposed leader, who quickly moved to replace scores of untrustworthy officers with more loyal figures.

Protests continued, however, culminating in a general strike beginning in December 2002 that lasted for over two months and strangled the economy, while both failing to force the president's ouster and further discrediting opposition tactics. In August 2004, Chávez prevailed in a presidential recall referendum with nearly 60 percent of the vote. Opposition parties decided to boycott the 2005 legislative elections, alleging deficiencies in the electoral roll and a fingerprint-scanning system that jeopardized ballot secrecy. This decision handed near-monopoly control of the National Assembly (AN) to the ruling coalition until the end of 2010. In the most recent presidential election, in December 2006, Chávez won another term in office in convincing fashion as he garnered around 63 percent of the vote in balloting that featured 75 percent turnout.

Venezuela's political regime, at least after a 2009 constitutional amendment that codified the possibility of unlimited reelection to all offices, has shifted

toward electoral authoritarianism, a system characterized by elected leaders who "violate the liberal-democratic principles of freedom and fairness so profoundly and systematically as to render elections instruments of authoritarian rule."[2] The government controls the electoral authority and has manipulated electoral laws to disproportionately favor official candidates. Party and campaign funding is extremely opaque, and the government blatantly and illegally uses public resources for political campaigns.

Nevertheless, as in other electoral authoritarian regimes, elections are not totally meaningless. From 2006 to 2010, Venezuela held five electoral events: the 2006 presidential elections; the 2007 constitutional reform referendum; the 2008 election of mayors and governors; the 2009 constitutional amendment referendum, and the 2010 AN elections. Despite differences in their nature and objectives, all of these elections were turned into plebiscites on the Chávez revolution. The contests in which the government prevailed (the 2006 presidential election and the 2009 referendum) were considered mandates to radicalize government policies. Yet when the government lost (as in the 2007 referendum) or performed below expectations (as in the 2008 regional elections and the 2010 legislative elections), the results caused no reconsideration of the direction of governance. Even though electoral support for Chávez has decreased in each contest (with one exception, the 2009 referendum), the government finds ways to interpret all results as popular endorsements of the revolutionary project and as a mandate to radicalize the transformation to so-called 21st century socialism.

The governance cost has been high: in the last five years, civil and political rights have been eroded through repeated legal reforms, informal actions, and unchecked administrative and political decisions. Abetted by the legislative and judicial branches' disinterest in challenging presidential power, the government has used legal and institutional arrangements to concentrate power in the executive—in practice, in the person of Hugo Chávez. Freedom of speech, information rights, property rights, and labor rights have all deteriorated. The work of independent journalists is hindered in both law and practice. The number of expropriated enterprises grows nearly by the day.

Opposition parties have progressively abandoned confrontational civil disobedience and adopted an electoral strategy to contest the government. Although a small-but-vocal subset of the opposition shows little evidence of political learning, virtually all opposition leaders agree that the unconstitutional actions of 2002 and the 2005 boycott of legislative elections were grave mistakes; while elections have legitimized the government's authoritarian practices, they also create incentives for opposition parties and leaders to coordinate their efforts and maximize electoral gains. Following state and local elections in 2009, opposition parties control five gubernatorial offices and one-third of the country's mayoralties, including some in the most densely populated regions. In addition, the opposition won 40 percent of the AN seats, allowing for a highly visible presence inside parliament.

One key paradox in Venezuelan politics is that while Chávez remains a popular leader, most of his domestic and foreign policies are far less accepted. As of mid-2011, some polls indicate that the vaunted emotional linkage between Chávez and the poor—which the president relies on to assure his continued status as the country's central figure—is decaying due to weak government responses to popular demands. Government policies regarding unemployment, inflation, crime, and housing are all judged increasingly harshly. Venezuela was the hardest-hit Latin American nation following the 2009 global recession, and inflation has been among the region's highest in recent years. Crime is overwhelmingly cited as the country's most pressing problem in polls, and rates of murders, kidnappings, and assaults have skyrocketed.[3] Even President Chávez has recognized the depth of the housing deficit, which was exacerbated by severe flooding in late 2010.[4] The extent of needs has occurred despite massive oil revenues accrued during Chávez's second term, and contrasts with continued beneficence abroad.[5] Finally, a series of mysterious illness-related absences of Chávez from public view in 2011 culminated with the dramatic announcement in July that the president required treatment for an undisclosed form of cancer. Although he assured Venezuelans a quick recovery, rumors about the gravity of the president's illness led to a new round of speculation about what might befall Venezuela if the indispensable man were to disappear from the political scene.

ACCOUNTABILITY AND PUBLIC VOICE 2.14

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	2.00
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	1.67
CIVIC ENGAGEMENT AND CIVIC MONITORING	2.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	2.57

Venezuelan politics are highly polarized. Polls consistently reveal resistance to the government's attitude toward democracy and the concept of 21st-century socialism. Nonetheless, the president has repeatedly stated that the revolution is irreversible.[6] Prominent politicians and media analysts, meanwhile, debate Chávez's democratic credentials and Venezuela's position along the democracy–dictatorship spectrum.[7] The centrifugal effect of polarization is clear: no political party or candidate is able to occupy the middle ground. A recent example involves former *Chavista* governor Henri Falcón and his Fatherland for All (PPT) party, a former satellite of the ruling United Socialist Party of Venezuela (PSUV), which was quickly pushed into full opposition after Falcón's rupture with Chávez.

Elections in recent years have been plural and competitive, with secret ballots, universal and equal suffrage, and broad voter enfranchisement. Balloting in Venezuela is free, in the sense that almost anyone can vote and votes are generally tabulated accurately. But elections are not fair: the government manipulates the electoral rules and opportunities for campaigning in an extremely unequal

fashion.[8] More than 200 politicians, most of them from opposition parties, have been selectively banned as candidates for a decade or more based on allegations of corruption and other offenses, even without any formal finding of wrongdoing. The case of one prominent opposition member, Leopoldo López, is currently before the Inter-American Court of Human Rights, and its ruling will set an important precedent for other controversial candidate suspensions.

A critical feature of Venezuelan elections is the lack of independence of the electoral authority. The National Electoral Council (CNE) is composed of a five-member board, of which four clearly favor Chávez's party. The lack of autonomy of the CNE has been manifested in crucial matters such as non-enforcement of the constitutional ban on public funding for electoral campaigns.[9] Despite the prohibition, the government abuses its power over state-owned mass media and other public resources. Government propaganda, including giant signs featuring the president's image, is permanently posted on government vehicles, street walls, billboards, and state buildings. Moreover, independent nongovernmental organizations (NGOs) have denounced the use of public resources to directly finance the ruling party's electoral campaign.[10] Yet the AN has not reformed the obsolete and inefficient regulatory framework of electoral campaigns,[11] nor has the CNE enforced disclosure rules and mandatory monitoring of party and candidate finances.

The CNE's lack of independence has contributed to opposition parties' ongoing dilemma over participating in unfair elections (see Introduction). This dilemma has led to erratic behavior, such as politicians denouncing electoral fraud while almost simultaneously arguing that elections are the only game in town, and it has also been a disincentive for turnout among opposition voters. Nonetheless, since 2006, trust in elections has increased despite blatant unfairness, probably because of the failure of other strategies, such as strikes, demonstrations, and the 2002 coup, along with some improvements in the electoral process.

A key moment occurred in December 2007, when opposition parties helped defeat the referendum that would have altered 69 constitutional articles, including an abolition of the ban on consecutive reelection after two terms—the opposition's first electoral triumph in the Chávez era. In 2008, a multiparty opposition coalition won important regional and local offices, retaining power in two states (Zulia and Nueva Esparta), and took office in three others (Miranda, Carabobo, and Táchira) and the Caracas Capital District (DC), all previously controlled by the PSUV. Zulia, DC, Miranda, and Carabobo are the most populated regions in Venezuela. In the 2010 legislative elections, the opposition won 67 seats to the government's 98. The opposition, now largely unified during electoral periods as the Democratic Unity Roundtable (MUD), also governs many of the largest cities in the country, including notoriously troubled, poverty-stricken zones like Petare, near Caracas. The government, in contrast, is stronger in rural, less economically-diversified areas.

Despite the opposition's increasing governing presence, the government has distorted the effects of the many referendums and elections held since 2005.

Chávez not only verbally abuses opposition leaders and supporters and demeans the importance of the results when he loses, but blatantly circumvents the people's mandate stemming from the elections. The first and most emblematic example occurred when Venezuelans voted down the December 2007 constitutional reform. Yet in July 2008, Chávez used powers granted by the AN via enabling law in January 2007 to issue 26 decrees imposing many of the reforms that had been rejected in the popular vote. Indefinite reelection—the linchpin of the 2007 referendum—was voted on again in 2009, and Chávez prevailed. There was a crucial difference between the two referendums: in 2007, only the president would be reelected, while the 2009 ballot called for reelection for all offices, thereby giving other elected officials a stake in the referendum's passage.

Similarly, after losing the 2008 election for the metropolitan mayor's office, the AN created a new post, head of government of the Capital District, to be appointed by the president. Financial resources, buildings (including the mayor's offices), and legal powers were transferred to the appointed authority. The government has repeatedly refused to execute constitutionally-mandated resource transfers to states governed by opposition parties.

Finally, in September 2010, the MUD won approximately 49 percent the vote, to the ruling party's 48 percent. Despite the Electoral Processes Law of 2009, which diminished the number of seats elected through proportional representation seats, disproportionately favored the party winning a majority in each state, and facilitated gerrymandering, the PSUV did not win the 60 percent of seats required to grant legislative powers to the president. The combined opposition (MUD and PPT) won 52 percent of the popular vote and 41 percent of the legislative seats. To circumvent this extremely mild check on his authority, Chávez requested, and was granted by the lame duck 2006–2010 legislature, decree powers over a broad swath of issues until June 2012. Such submission on the part of the legislature is illustrative of the nearly nonexistent separation of powers, especially during the 2006–2010 legislature. Nearly all laws originate with the executive, and many PSUV legislators explicitly state that their prerogative is to act according to the will of President Chávez. Other laws rushed through in December 2010 limit the time that individual parliamentarians will be able to speak in during AN proceedings, and require all parliamentarians to vote in accordance with the platform they submitted as candidates; the latter was viewed primarily as a coercive tool to ensure that no Chavista legislator switches sides. The judiciary has also failed to act as a check on executive authority (see Rule of Law).

The civil service, which has expanded enormously under Chávez, is subject to abuse and intimidation. Under threat of losing their jobs, government employees are forced to wear red clothing, particularly when they are supposed to attend political rallies. The constitution bans discrimination on the basis of politics, but government services and jobs are offered according to political qualifications. Indeed, the government divides the nation between deserving revolutionaries and the rest—who are labeled as traitorous, pro-imperialist,

oligarchic, bourgeois, fascist coupmongers. Government employees have been threatened and fired on the basis of appearing on lists (the Tascón and Maisanta lists) of opposition sympathizers. Chávez, in a public speech in 2005, ordered the "burial" of the Tascón List, but he has also denigrated public workers who fail to support the revolution.[12]

Opposition politicians are not the revolutionary government's only targets; independent NGOs, particularly in the human rights field, are impeded by legal and extralegal actions, and threatened by legal reforms that jeopardize their financial survival. After several years of fits and starts in the AN, in December 2010 the lame-duck AN approved the Law for the Defense of Political Sovereignty and National Self-Determination, which explicitly prohibits foreign donations to political parties and political rights NGOs. At least one NGO, Public Space, has been subjected to criminal investigation for receiving international funding; Carlos Correa, a journalist, human rights defender, and director of the group, has faced public criticism on Venezuelan public television,[13] and was attacked during a demonstration organized by NGOs to protest the December 2010 fast-track passage of laws.[14] Chavista officials and legislators have on multiple occasions demanded investigations into the finances of human rights, good governance, and other groups not aligned with the government—particularly when they are suspected of receiving funds from the U.S. government. Less political groups are allowed to operate more freely, but their level of influence on policymakers is extremely low.

The media has been one of the areas of greatest contention during the Chávez administration. Criticism of the government is widespread in newspapers, but coverage is subject to restrictions under the 2004 Social Responsibility Law (*Ley Resorte*), which gave the government-friendly National Telecommunications Commission (CONATEL) significant powers to take action against outlets that are deemed to have transmitted irresponsible speech. Defamation remains criminalized, and journalists have been prosecuted and convicted, though few have actually served jail time in recent years. In 2010, journalist Francisco Peréz was convicted of defaming a mayor in Carabobo state, fined, and prohibited from practicing journalism for almost four years, though the conviction was reversed on appeal.[15] A December 2010 bill could further limit freedom of expression in electronic media by extending the Ley Resorte's strictures to the internet—including electronic social networks such as Twitter and Facebook, as well as comments made on web forums and blogs. Although internet access has remained generally free following the expropriation of the primary national telephone company (CANTV) in 2007, the government now possesses a powerful tool to potentially affect web access and content, and occasional accusations of suspicious activity have already been leveled.[16]

In addition to legal impingements on press freedom, journalists face systematic violations including physical attacks, threats, and intimidation. Public Space registered 101 incidents of aggression, threats, attacks, and intimidation in 2010, a figure that actually represented a decline from 2009.[17] Fewer

journalists have been killed in Venezuela than Latin American countries with similarly high rates of violence and corruption, but the Committee to Protect Journalists has registered at least three, and as many as six, journalists killed in relation to their work since 2002.[18] One positive note was the May 2010 conviction of the perpetrator of the 2009 murder of reporter Orel Sambrano, along with the potential extradition from Colombia of the alleged intellectual author, businessman and suspected narcotics trafficker Walid Makled (see Rule of Law).[19]

From 2007 to 2009, the government's communication policy targeted broadcast outlets. To date, the government has closed nearly 40 radio and television stations. The most controversial act was CONATEL's May 2007 nonrenewal of the broadcasting license of RCTV, the country's largest open-broadcast television station. The government confiscated the station's equipment; after a series of protests led by students, RCTV reopened on cable and satellite before being definitively blocked in January 2010 after it was classified as domestic broadcaster, thereby subjecting it to regulations viewed as unacceptably onerous. Similarly, Globovisión, the most critical private television station, "is facing more than 40 legal and administrative charges brought by the government, as well as an official strategy aimed at undermining its credibility."[20] The company's two main stockholders are exiled and face prosecution for alleged economic and financial crimes, and the government holds a 20 percent stake in the company after taking control of a failing bank owned by the station's director.

Controls on currency exchange, which have been in force for several years, have limited access to the foreign currency needed for newsprint and other supplies not produced in Venezuela. Although mass media are not specifically targeted, these controls affect business and citizens in general, and important newspapers have been besieged by financial regulations and judicial decisions. In August 2010, two strongly anti-Chávez publications (*El Nacional* and *Tal Cual*) were censored by a court for publishing a picture of the overcrowded Caracas morgue showing dead bodies partially covered by sheets. The sentence, which banned the publication of similar photographs, was revoked in the case of *El Nacional*, but upheld for *Tal Cual*.

In the meantime, the government has spent millions of dollars to finance a plan for a "new communicational hegemony,"[21] which implies the promotion and subsidization of newspapers and magazines; national and regional television channels; community radio networks; and domestic and foreign pundits. A key instrument of the government's communications model is the so-called *cadena*, a mandatory broadcast of presidential speeches, which are often long and inflammatory. According to prominent politician and journalist Teodoro Petkoff, in 11 years, Chávez has forcibly interrupted regular radio and television programming 2,125 times.[22]

By 2011, the government's media empire included 5 of the 12 open-signal national television channels, along with 79 out of 472 radio stations; over 240 lower-wattage community radio stations, the content of which is often heavily

influenced by the government; and two of the eight national daily newspapers, *Vea* and *Correo del Orinoco*.[23] Government-owned mass media tend toward propaganda rather than a neutral public service role. Defenders of the government approach note that private outlets, particularly Globovisión and several daily newspapers, are also highly politicized and prone to inflammatory and caricatured portrayals of the news. Some private media, such as the powerful Venevisión, which has largest audience share; Televen, the second most important network; and *Últimas Noticias*, one of the most influential newspapers, have editorial lines that are closely aligned with the government's political agenda. Influential talk shows formerly on these networks have been cancelled with no public explanation, leading to accusations of owner-imposed censorship. Moreover, even journalists from Globovisión, in private conversations, have recognized that they regularly self-censor in order to avoid personal risks and government sanctions.

CIVIL LIBERTIES 3.77

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.50
GENDER EQUITY	4.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.25
FREEDOM OF CONSCIENCE AND BELIEF	4.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	2.75

Venezuelan citizens ostensibly enjoy legal protections against torture, extrajudicial execution, and other forms of physical violence by state officials. Yet the situation of human rights in Venezuela has deteriorated so sharply that in 2009 the Inter-American Commission on Human Rights (IACHR) included Venezuela in Chapter IV of its annual report,[24] which covers Organization of American States members that require special attention because of their human rights deficiencies. In addition, the IACHR labeled legal provisions allowing the military to participate in law and order "incompatible with a democratic approach to the defense and security of the State."[25] The government has refused to allow an IACHR country visit since 2002.[26]

In an atmosphere of rising crime and extremely weak accountability for physical abuse, official figures indicate that the number of killings involving security officers has climbed in recent years, reaching at least 134 in 2008. That year, the ombudsman's office reported 2,197 cases of police mistreatment, 87 cases of torture, and 33 alleged forced disappearances that, in addition to those denounced in 2007, raised the total to 67 forced disappearances in two years.[27] Human rights NGOs have offered additional information on the number of violations attributed to the security forces. From October 2006 to September 2010, the Venezuelan Program for Human Rights Education and Action (PROVEA) registered 75 cases of torture, 2,042 cases of inhuman or degrading

treatment, 144 injuries at the hands of police and other security officers, and 116 illegal police break-ins. Yet these figures almost certainly understate the number of citizens killed by police. On December 6, 2009, Interior and Justice Minister Tarek El Aissami stated during President Chávez's weekly television and radio program that 20 percent of homicides and kidnappings were committed by police officers, mainly from municipal and state police departments.[28] If correct, such a figure would imply several thousand deaths at the hands of police each year.

In some cases, the victims have been human rights activists, and several deaths have occurred under suspicious circumstances, although political motivations have never been confirmed. For example, Mijail Martínez, shot twice on his doorstep in November 2009, was working on a documentary film about victims of human rights violations by police officials.[29] Moreover, human rights defenders allege that the judiciary is used as an instrument of political harassment against political activists.[30] In March 2011 civil society groups reported 77 attacks against human rights defenders between 2007 and 2010.[31]

Moreover, security and defense are no longer monopolized by the regular Venezuelan police and armed forces. Despite the lack of an explicit constitutional mandate, the government has created a special armed corps, the Bolivarian Militia, which is intended to act as a bridge between the National Bolivarian Armed Forces and Venezuelans.[32] In fact, the militia is a parallel army, directly commanded by the president. In addition, a variety of illegal armed groups (the so-called "collectives") have emerged, particularly in the slums of Caracas, claiming the right to defend the revolution and the president against imperialism and its domestic agents, understood to include the middle class, private media, and opposition parties. The president has occasionally sought to distance himself from these groups, particularly when they have publicly threatened or attacked members of the media. The collectives' most visible leader, Lina Ron, spent two months in jail in 2009 after leading an attack on Globovisión's headquarters. Similarly, in January 2009, after the so-called La Piedrita Collective declared some media outlets and journalists (particularly RCTV director Marcel Granier) to be military targets, President Chávez strongly censured the group. Indeed, the government can quickly turn on its supporters when their actions are perceived as political liabilities: both Lina Ron and La Piedrita were accused of being infiltrated by the CIA. Yet, as of 2011, no member of *La Piedrita* or any other armed collective has been prosecuted.

Crime rates have consistently risen over the last decade, but official numbers are not available as the Scientific, Penal, and Criminal Investigations Unit (CICPC) does not provide statistics. The NGO Venezuelan Violence Observatory (OVV) estimated the total for 2010 at approximately 17,600 murders,[33] which would imply nearly 60 murders per 100,000 residents and make Venezuela one of the world's most violent countries. Rates in Caracas

are even higher, and crime is overwhelmingly described in polls as the country's most pressing problem. Impunity is rampant: according to official figures provided by the attorney general's office, nearly 92 percent of cases opened failed to lead to a conviction in 2010.[34] The government launched a significant reform in 2009 by creating the National Bolivarian Police (PNB) as a part of gradual transformation of the Venezuelan police system. The reform is supposedly based on the suggestions made by the National Commission for Police Reform in 2006. As of mid-2011, the PNB is limited to roads and neighborhoods in western Caracas. Authorities claim that in the areas it patrols, the PNB has contributed to over 60 percent drops in murder and robbery rates.[35] Raw politics are not absent even in policing initiatives: the establishment of the PNB coincided with Antonio Ledezma's entry as Caracas metropolitan mayor and, not coincidentally, the central government takeover of the Metropolitan Police, which had remained under mayoral control when pro-Chávez officials held power.

The law protects citizens against arbitrary arrest. Yet arbitrary arrest of alleged criminals is considered common. Nor is status necessarily any protection. In 2010, two political figures were subject to arbitrary arrest. Former Zulia state governor Oswaldo Álvarez Paz was arrested on charges of inciting crime, conspiracy, and spreading false information after stating on Globovisión that Venezuela had become "a drug-trafficking hub." He was released after over seven weeks in pretrial detention. In March, Globovisión part-owner Guillermo Zuloaga, currently living under political asylum in the U.S., was arrested for "inciting collective panic by means of false information through the press." Zuloaga's charge was based on accusations at a meeting of the Inter-American Press Society that Chávez ordered the shooting of protesters in April 2002. In 2009 the AN passed a reform of the 1998 criminal code that allows the attorney general to obtain phone call registers from any citizen without the need for a previous search warrant.[36]

It is difficult to overstate the degree of problems in the Venezuelan prison system. Prisons are characterized by "weak security, insufficient guards, and corruption" which "allow armed gangs to effectively control prisons."[37] The government has announced a series of promising plans to "humanize" prisons, but they remain unimplemented. Violence has fluctuated but remains stratospherically high. The NGO Venezuelan Prison Watch (OVP) reported an astounding 1,286 prison deaths as a result of violence, and 2,512 injuries, from 2007 to 2009,[38] amid confrontations between armed inmates, and between prisoners and the National Guard. In 2007, the OVP reported 498 deaths among a prison population of approximately 22,000, or nearly 2 percent of all prisoners.[39] The numbers dropped to 365 in 2009 but rose again (as have prison populations, to over 40,000) to 476 in 2010, according to the OVP.[40]

Venezuela has failed to comply with rulings by entities in the Inter-American system regarding protection and promotion of human rights and the provision

of redress for victims of emblematic cases of massive human rights violations, such as the massacre of 14 fishermen in Apure state in October 1988, the hundreds of killings during the 1989 Caracas riots, and the protest-related deaths on April 11, 2002. Moreover, the ombudsman's office has acted as a faithful government ally. Current ombudswoman Gabriela Ramírez has on several occasions dismissed IACHR and UN special rapporteur's reports as biased and in 2009 dismissed the country's crime issue as merely a "sensation."[41]

The Venezuelan constitution bans discrimination on the basis of politics, age, race, sex, faith, or any other factor. Men and women are legally equal, legal protections for women have improved, and women's rights and political participation have been promoted. As of mid-2011, women serve as the head of the National Assembly, the Supreme Tribunal of Justice (TSJ), and the CNE, as well as the ombudswoman and the attorney general. The labor code bans discrimination against women with regard to salaries or working conditions and protects pregnant women and new mothers. Anti-discriminatory regulations are usually enforced in the formal sector of the economy, but the substantial portion of population that works in the informal sector lacks these protections. In 2007, the AN passed an ambitious anti-domestic violence law, but in practice, domestic abuse is still a major problem. Between 2007 and 2009, the attorney general's office received 101,750 reports of violence, according to TSJ justice Yolanda Jaimes, who noted that the spike was likely the result of a far higher reporting rate.[42] The legislation established a set of institutional mechanisms, including special courts for violence against women, but greater capacity is needed within the police, judiciary, and women's ministry, among others. Meanwhile, according to local NGOs, every two days a woman was murdered in 2009 because of gender issues.[43]

Racism in Venezuela is a subtle and complex phenomenon. Most Venezuelans are of mixed ancestry, and there is a long-lasting tradition of illusory racial integration and rhetorical equality among all races. Nonetheless, as in many regional peers, much of the traditional political and economic elite class is light-skinned. Close observers describe racism in Venezuela as a kind of shameful prejudice. Venezuelans do not regularly express racism openly, but racial discrimination appears veiled in common situations.[44] As with women, mixed-race and Afro-Venezuelans have enjoyed greater attention and been elected and appointed to important posts, but social indicators for darker-skinned Venezuelans remain below average. A law against racial discrimination, which has been submitted by the government to the AN, is yet to be approved.

The constitutional and legal rights of indigenous people living in Venezuela have improved greatly since 1999, particularly in terms of political rights, bilingual education, and cultural protection. Other important provisions, particularly the rights of indigenous people to enjoy the use of their lands and natural resources, are only infrequently enforced. Health indicators for indigenous groups in Venezuela are significantly worse in the Amazon region, where

20 different indigenous cultures are settled, than in the rest of the country.[45] Impoverished social conditions lead to indigenous migration from jungle regions to urban centers, where living conditions and the ability to maintain social ties and cultural traditions are hindered. Indigenous groups also face significant abuse by guerrillas, paramilitaries, and drug traffickers along much of the Colombian border, clashes with informal miners in Bolívar and Amazonas states, and conflicts with ranchers and farmers in Táchira and Zulia states.

Freedom of religion is guaranteed in both law and practice, on the condition that religious practices do not alter public morality, decency, or public order. Nonetheless, President Chávez and the hierarchy of the Catholic Church frequently engage in verbal battles. The bishops criticize government performance in crucial areas of social and economic policy, civil liberties, and political rights, while the government responds with (generally rhetorical) threats and accuses the Church of being aligned with the opposition. As a consequence of the dispute between the president and the bishops, the government has reduced public subsidies to Catholic schools. To date, the banning of missionary activity in indigenous regions remains in place, and Mormon missionaries have been expelled from the country.

There have been significant tensions between the Jewish community and government supporters. After Israel's 2009 military operations in Gaza, President Chávez broke off diplomatic relations between the states. A few days later, on January 31, the Venezuelan Association of Israel was attacked by vandals who damaged religious documents and scrawled anti-Semitic graffiti. The director of the Confederation of Israeli Associations of Venezuela, Abraham Levy, claimed that attack was a consequence of the Venezuelan government's criticisms of Israel. President Chávez has sought to emphasize that his disagreement is with Israeli foreign policy and not Jews, but his friendly relations with the leaders of Iran, Libya, and other states considered hostile to Israel and Jews have left Venezuela's small Jewish community wary of the government.

The constitution guarantees the right to participate in peaceful demonstrations. However, a 2005 addition to the criminal code penalized protest and even nonviolent demonstrations.[46] While demonstrations are common regarding a wide array of political, economic, and social issues, Provea reported in March 2011 that more than 2,400 protesters had been detained and charged with protest-related crimes in the previous five years.[47] Most of them are members of unions and NGOs. Although the vast majority of protests proceed unhindered, the police at times deny permits and use force to break up demonstrations.

A majority of those facing charges were arrested during labor-related protests. NGOs and journalists have denounced a sharp rise in union deaths, including 122 between June 2008 and August 2010, mostly in the construction industry.[48] Contract killing has been a common method of attacking union leaders, and most such murders go unpunished. Legal harassment occurs as well: a recent example involves Rubén González, the secretary of the union

representing workers at the state-owned Ferrominera Orinoco iron ore mining firm. He was imprisoned in September of 2009 after leading a strike demanding adherence to the collective bargaining agreement. In November 2010, the International Labour Organization (ILO) recommended that the government free González and provide redress for the deprivation of his rights, but he remained imprisoned until receiving probation in March 2011.

Another controversial issue involves parallel unionism, as the government reacts to losses by its preferred factions in union elections by encouraging the formation of revolutionary unions in both state-owned and private enterprises. The same applies to union confederations: the previous primary confederation, the Venezuelan Workers' Central (CTV), was split in 2003, when the National Workers' Union (UNTV) was created after favored government candidates lost internal elections. The government strategy of tying unions' hands has faced resistance, and aggrieved workers have in some cases gained support from the ILO. However, complaints regarding the government's refusal to abide by established collective bargaining agreements and negotiate new ones are frequent.

RULE OF LAW	**1.90**
INDEPENDENT JUDICIARY	1.60
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.60
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	1.75
PROTECTION OF PROPERTY RIGHTS	1.67

According to the constitution, one pillar of Venezuelan separation of powers is an independent judiciary. Yet in December 2009, in the context of the tenth anniversary of the 1999 constitution, Luisa Estela Morales, the president of the TSJ, declared that judicial independence weakens the state and the constitution orders cooperation instead of division of powers.[49] Her questionable interpretation is in practice unnecessary, as the president has concentrated sufficient political power to pack the TSJ with loyal judges appointed by the legislature. As Human Rights Watch has pointed out, President Chávez and his supporters in the National Assembly have taken over the TSJ through a combination of removing dissident justices and appointing more pliable ones. As a consequence, the TSJ has surrendered its constitutional responsibility to check and balance the executive and has neglected to protect fundamental rights of individual citizens.[50] The key moment occurred in 2004, when a reform expanded the court from 20 to 32 justices, appointed and removed by rules favorable to the progovernment majority within the AN. Following this court-packing moment, decisions that contravene the executive have been increasingly rare.

Following the mildly adverse electoral outcome in September 2010, PSUV leaders in the AN accelerated the process to vote in 9 new justices (as well as 32 substitute justices) during the lame-duck session, replacing relatively

moderate—though still progovernment—justices with appointees that have yet closer linkages to the ruling party than their predecessors.[51]

Ruling party control of the TSJ also serves as a mechanism to pack the lower courts with supporters of the executive branch.[52] Indeed, the probability that decisions will go against the government is diminished by the high number of provisional judges. In 2010 alone, 245 judges were discretionarily appointed by the TSJ, despite legal provisions requiring a competitive hiring process.[53] Moreover, all public prosecutors are discretionarily appointed by the attorney general's office. In 2009, the Inter-American Court of Human Rights ordered Venezuela to reform its rules and practices regarding appointment and removal of provisional judges.[54] The issue is politically controversial: Attorney General Luisa Ortega Díaz has explicitly called for merit-based selection processes "to bring stability to the prosecutors," while TSJ president Morales has claimed that "[one's] appointment as an interim, substitute, or permanent judge absolutely does not change the autonomy of the judge."[55] In any event, no reform has occurred. Even though the National Magistrates School, a department of the TSJ, and the National Bolivarian University agreed on a training program for judicial candidates in 2006, as of April 2011 no merit-based competition has occurred.

The constitution grants equal treatment of citizens under the law. In practice, protections are selectively conducted. Opposition politicians, journalists, protesters, demonstrators, and lawyers for poor defendants have denounced denial of justice and vindictive, arbitrary, and selective prosecution. An emblematic case is the former judge María Lourdes Afiuni, who was arrested in December 2009 after ordering the release of Eligio Cedeño, a businessman whose detention had surpassed the two-year maximum period of pretrial detention, as denounced by the UN Working Group on Arbitrary Detention. In a nationally broadcast speech, President Chávez commanded the attorney general and the president of the TSJ "to punish her as severely as possible to prevent similar actions by other judges."[56] She was promptly arrested and remained in jail throughout 2010, with her case subject to repeated delays, before being moved to house arrest in February 2011. For average citizens, judicial processes are prolonged and open to abuse and corruption. The severe shortage of prosecutors contributes to protracted investigations and prosecutions, a particularly problematic scenario given the condition of the jails in which pretrial detainees languish (see Civil Liberties).

The executive also exercises tight control over the military. The National Bolivarian Armed Force is formally loyal to the constitution, but in practice is mainly loyal to the president and the revolutionary government. While factionalism has not disappeared following the post-2002 coup purge, the military is now considered to generally be a steadfast ally of the president and the revolution. A showcase of how prior loyalty can be transformed into personal and political mishap is the case of General Raúl Isaías Baduel. A hero in the Venezuelan revolution due to his crucial role in Chávez's restoration in April

2002, he became minister of defense in 2006 before retiring in July 2007. Baduel then campaigned for a "no" vote in the December 2007 constitutional reform referendum. In April 2009, he was arrested on corruption charges, and in May 2010 was sentenced to nearly 8 years in prison.

Chávez has sought to integrate revolutionary ideology into the military. In 2007, as the revolutionary process became more radicalized, the military adopted the motto "fatherland, socialism, or death," which resembles the official Cuban slogan. Military politicization and the alleged presence of Cuban military forces in Venezuela have been denounced by retired military officers. At least one, General Antonio Rivero, faces prosecution for allegedly revealing secrets, a result of his denunciation of the supposed influence of Cuban officers in the country. On November 10, 2010, General Henry Rangel Silva declared that the military is "married" to the revolutionary project. Chávez not only welcomed the declaration, but immediately ordered Rangel Silva's promotion.[57] Nonetheless, other reports indicate an ongoing split in the military between Chávez loyalists and the institutionalist officers.[58] The lack of oversight of the military, increases in military spending under Chávez—especially in military procurement—and the alleged expansion of drug trafficking through Venezuela have created a situation in which the perception of military corruption has risen substantially. The most prominent examples in recent years are alleged weapons sales to Colombian guerrillas and accusations by a Venezuelan drug trafficker arrested in Colombia, Walid Makled García, who claimed to have operated under the protection of government and military officials.

Property rights are imperiled in Venezuela. The constitution establishes a procedure for expropriation of private property and requires just compensation, but the government has expropriated hundreds of firms and large expanses of land, often at enormous expenditure, although sometimes with weak or no compensation. The Venezuelan Confederation of Industries, a business association, estimated an expropriation debt of approximately $25 billion as of late 2010.[59] Venezuelan citizens perceive the trend. According to polling firm Consultores 21, in June 2007, 48 percent of Venezuelans said that Chávez wanted to abolish private property, a number that increased to 65 percent by June 2010.[60] Another threat to property rights comes from the invasions and confiscations of factories and so-called *latifundios* (large private estates). The National Institute for Land has confiscated numerous estates across the country—including small- and medium-sized. Between 1999 and late 2010, the government nationalized or expropriated nearly 400 companies, half of them in 2010.[61] Decisions about which firms are confiscated are highly political. In addition, state-owned industries have become increasingly inefficient. Production at the steel firm SIDOR, which was nationalized in 2008, declined 48 percent in 2010,[62] and production in the large state-owned aluminum companies has similarly plummeted.[63] Weak planning has left the state unable to keep up with increased demand for electricity, or even maintain existing capacity, and blackouts have become more common.[64]

In the private sector, investment has declined in nearly every industry, with production falling in most areas as well. Expropriation of lands and, in general, the adverse climate for investment has strongly constrained agricultural production, with imports surging, production of fruits, vegetables, sugar, and beef falling significantly, and food inflation spiking.[65] The housing sector offers yet another example. With officials encouraging building invasions and arbitrarily issuing new rules regarding rents and zoning, the government has made it irrational to invest in the housing market and helped exacerbate the housing crisis. As a result, the housing deficit has, by the government's own estimates, reached 2 million units.[66]

ANTICORRUPTION AND TRANSPARENCY 1.77

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	1.60
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	1.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	2.50
GOVERNMENTAL TRANSPARENCY	1.67

The anticorruption fight has long been used in Venezuela as a political flag-waving exercise. Anticorruption rhetoric has been a staple of Chávez's speeches since his 1992 coup attempt, and he reached power in 1999 after a long series of scandals involving traditional political leaders, including the last two presidents of the so-called "fourth republic" (Jaime Lusinchi and Carlos Andrés Pérez). The "rotten elites" (*cúpulas podridas)* were seen by the public and portrayed in Chávez's speeches as the cause of all Venezuelan problems. However, 11 years later, a sincere fight against corruption seems an increasingly distant aspiration.

Bureaucratic regulations, registration requirements, economic controls affecting private companies, and nationalizations, all of which have increased opportunities for corruption, have skyrocketed under Chávez. Petty corruption is also an important issue, with police and government functionaries requiring bribes in order to complete ever-multiplying bureaucratic errands. The constitution grants the state ownership of the oil industry and other "strategic" economic sectors. Petróleos de Venezuela (PDVSA), one of the most lucrative businesses in Latin America, conducts its contracts, joint ventures, expropriations, asset sales, debt payments, soft loans, subsidies, transfers to the central government, and social spending with very little independent oversight, although it does publish an audited annual report that usually contains useful data. The vagueness of the concept of "strategic" industries has allowed for the nationalization of a wide array of companies in sectors as disparate as steel production, fertilizer distribution, and glass bottling. The role of the state, both as owner and regulator, has grown to the point that Venezuela currently is perceived as both one of the world's least market-oriented economies and one of its most corrupt societies.[67]

The mixture of excessive economic regulation and blatant corruption is the breeding ground for the emergence of a nouveau riche class—the so-called Bolivarian bourgeoisie. Ricardo Fernández Barrueco is a conspicuous example. His meteoric rise started in 1999, when he helped Hugo de los Reyes Chávez, President's Chávez's father and then governor of Barinas state, overcome a food crisis. He became an important provider for a governmental food distribution program, and in 2002 supplied food and logistical support during the oil strike. Within a few years, he owned scores of companies in a vast swath of industries, and was dubbed the "czar of MERCAL" due to his privileged relation with the government-owned chain of subsidized food shops.[68] However, in early 2010 he was detained and placed under investigation, and as of spring 2011, he is facing prosecution for embezzlement and fraud. The process is emblematic of the infighting at the highest levels of the new policy elite, whose continued good fortune relies less on adherence to rules and regulations than the avoidance of offending even more powerful actors.[69] Multiple other similar cases exist, many of which involve taking advantage of privileged access to policymakers in a context of unpredictable and frequent shifts in regulations and policy priorities. With vast outlays of money following the oil windfall, little accountability, and routine circumvention of procurement norms, the revolution's fiscal policy is perceived to have benefited many corrupt actors. However, the distortions introduced by monetary policy also play an important role: significant wealth and power accrues to those who are able to trade domestic currency for dollars at the official rate, and then re-exchange the dollars back to bolívars at the much higher black market rate.

The offices of the attorney general and comptroller general are the two most important state institutions in charge of enforcing anticorruption laws. The country lacks a specialized unit of anticorruption prosecutors; investigation and prosecution is part of the general activities of the attorney general's office. However, neither prosecutors nor officials in the comptroller's office are insulated from political influence. Anticorruption investigation is politically biased, selectively enforced against the opposition, and relatively lenient toward leaders of the revolution. The law also requires most public officials to submit a declaration of personal assets under affidavit within 30 days of assuming office and 30 days after leaving it, but the statements are not publicly disclosed. The declarations are used for administrative and criminal investigations and sanctions, including the disqualification of officials from holding public office in the future, a provision that has been enforced selectively to punish opposition members and dissident politicians. To date, close to 300 public servants, most of them opposition politicians or former allies of the ruling party, have been disqualified by the comptroller general's office from running in elections and holding public office—without necessarily having been convicted of any wrongdoing. The case of General Raúl Baduel (see Rule of Law) illustrates the problem of political retaliation conducted in the name of anticorruption efforts. While President Chávez has stayed relatively free of accusations of personal

corruption, many close associates and even family members are perceived as having amassed suspicious, sometimes conspicuously displayed signs of wealth.

The anticorruption law establishes rules of disclosure for both individual officials and institutions.[70] Venezuelan government must release information on expenditures, except for those related to security issues and national defense. Yet the government rarely publishes detailed account balances. This combination of opacity and weak accountability has led to scandals that reveal large-scale waste and incompetence, particularly the "Pudreval" scandal of 2009–2010, in which it was revealed that the PDVSA subsidiary charged with food importation and distribution had wasted tens of thousands of tons of food that rotted in ports, even as shippers and importers received vast overpayment for their services.[71] In the end, three PDVAL managers were prosecuted, but the AN and the executive branch repeatedly rejected opposition demands for a thorough and transparent investigation of the scandal.[72]

Unlike many countries, accusations of corruption in education come from the government, which accuses the universities of weak transparency and requiring bribes to gain admission. Corroborating evidence remains scant, however, and the anti-Chávez student movement's leaders claim that the allegations are part of a government strategy to undermine university autonomy—the universities have maintained significantly more independence than most other state institutions. Citizens have little recourse when they are victims of corruption; accusations may get broad play in the media, especially when they involve opposition sympathizers, but coverage of corruption is politicized in both pro- and antigovernment outlets.

Despite constitutional provisions regarding the right to information, Venezuela lacks access to information legislation citizens can use to compel release of governmental records. If anything, the government has moved toward even less transparency: in June 2010 it announced the creation of the Center for Situational Studies of the Nation, an entity that, if made operational, would have the power to declare confidential "information, facts, or circumstances" deemed harmful to the nation's interest.[73] The opacity of expenditures has increased substantially, and a large portion of government expenditure is not overseen by the legislature. The Venezuelan budget, drafted by the Ministry of Finance and approved by the AN, is based on oil price estimates. Any differences between the real and the estimated prices goes directly either to the National Development Fund (FONDEN), which is discretionarily managed by the executive, or to additional credits claimed by the executive to finance specific programs. The official 2011 budget was calculated with a baseline oil price of $40 per barrel; during the first quarter of 2011, the average per barrel price of Venezuelan crude was over $90. The underestimation of oil prices allows not only to avoid legislative oversight, but also to circumvent the mandatory transfer of resources from the central government to regional administrations. Between 2005 and 2010 the central bank transferred over $38 billion to FONDEN, with PDVSA contributing an additional $28 billion.[74]

RECOMMENDATIONS

- Executive authorities, the police, prosecutors, and the judiciary should coordinate actions to accomplish significant reductions in the crime rates. This effort should be accompanied by a firm commitment to coordinate policing reform efforts with mayors and governors. Reforms should include better training, improved living standards for police officers, and accountability for abuses committed by members of the security forces.
- Confiscatory practices, policies and laws affecting property rights should be eradicated. Expropriations, which must include prior compensation, should be decided by independent courts rather than executive decrees. Existing disputes between the government and private owners should be subject to arbitration by truly independent national arbitrators or recognized international authorities.
- The legislative role of the National Assembly, along with its oversight functions, should be restored and strengthened. The requirement that ministers testify should be established as a regular (at least annual) practice. All legislators must be empowered to subpoena government departments, records, and witnesses.
- Peaceful protest should be decriminalized, and the use of the penal code's terrorism clauses against protesters should be halted.
- A public disclosure and access to information law that ensures denial of information to citizens only on narrow and highly specific grounds is required to improve government transparency and accountability, along with informed popular participation.
- The executive should be subject to checks and scrutiny by a plural legislature elected in free and fair elections. The independence of the National Electoral Council must be restored in order to impede abuse of state resources by the government. In addition, the CNE and legislators should work to implement a new electoral system that avoids gerrymandering and excessive disproportionality in political representation.

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ZAMBIA

CAPITAL: Lusaka
POPULATION: 13.3 million
GNI PER CAPITA (PPP): $1,280

SCORES	2007	2011
ACCOUNTABILITY AND PUBLIC VOICE:	4.08	3.89
CIVIL LIBERTIES:	4.57	4.47
RULE OF LAW:	4.12	4.07
ANTICORRUPTION AND TRANSPARENCY:	3.52	3.27

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Thomas R. Lansner

INTRODUCTION

Despite progress toward establishing many core democratic principles, Zambia faces critical challenges to consolidating its democracy as the country struggles to find consensus on a new constitution and assure a broad perception of fairness in presidential and parliamentary elections expected by October 2011. Since the country's transition from a one-party state in 1991, the incumbent Movement for Multiparty Democracy (MMD) has effectively used state powers over patronage and the media to preserve its rule. The current MMD administration, led by President Rupiah Banda since 2008, has failed to adequately combat endemic corruption that hampers economic development and erodes many Zambians' faith in the democratic process. A 2009 survey found that while a great majority of Zambians believe democracy is the best form of governance, less than half are satisfied with how the system is working in their own country.[1]

Zambia was ruled by the United National Independence Party (UNIP) and President Kenneth Kaunda from its independence from Britain in 1964 until 1991. Kaunda outlawed the vigorous multiparty competition that had developed in the last years of colonial rule and oversaw an increasingly corrupt one-party system. Zambia's authoritarianism was relatively mild, however, and the trade union movement and groups within the nascent civil society joined with UNIP's political opponents to broker a peaceful return to multiparty politics in the late 1980s. The MMD gathered as a broad collection of prodemocracy

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groups, and led by union leader Frederick Chiluba, achieved a convincing victory over Kaunda and UNIP in October 1991 elections.

Chiluba ruled for a decade, during which time Zambia's hopes for an open and honest democratic government became mired in the MMD's manipulation of power to protect its privilege, as well as a growing morass of corruption. Chiluba twice assumed emergency powers, and the MMD made constitutional changes to disqualify former president Kaunda and other leading candidates from contesting the flawed 1996 presidential poll that kept Chiluba in power. Chiluba's efforts to scrap the presidential two-term limit provoked strong domestic and international donor resistance, however, and in 2001 former vice president Levy Mwanawasa stood as the MMD candidate, with Chiluba's strong support. Against a divided opposition, and amid serious doubts over the election's conduct, Mwanawasa prevailed with only 29 percent of the vote, while the MMD retained control of the National Assembly.

Surprisingly, the new president soon broke with his mentor by launching an anticorruption campaign that gained wide support within Zambia and from donor countries. Mwanawasa was reelected in September 2006 with broader support in what was viewed as a more credible contest; the MMD again narrowly retained its National Assembly majority. As his second term began, Mwanawasa continued his efforts to raise governmental integrity, including corruption investigations against his predecessor and other senior officials.

Mwanawasa died in August 2008 after suffering a stroke. His death raised fears of turmoil in Zambia, as the constitution details no automatic succession and requires a special election for the remainder of a presidential term. The election campaign was calm, however, and in October 2008, the MMD candidate, Vice President Rupiah Banda, was elected president with 40 percent of the vote, over 38 percent for Michael Sata of the Patriotic Front (PF) party, and 20 percent for Hakainde Hichilema of the United Party for National Development (UPND). As in previous contests, the MMD used state resources, including a strong presence in Zambia's media, to promote its candidate's bid, and some observers again noted electoral anomalies. A few violent protests that flared after results were announced subsided when Sata appealed for restraint. Zambia's Supreme Court dismissed a PF challenge to the election's validity in March 2009, a decision widely expected whatever the merits of the case, given the strong influence of the executive on Zambia's judiciary.

The Banda Administration subsequently adopted an increasingly confrontational approach to politics and policymaking. The faltering anticorruption campaign was spotlighted by the dismissal of graft charges against former president Chiluba, which reinforced questions about judicial independence—and led to suspensions of international aid. Civil society and independent media have faced renewed pressures, and the constitutional reform process has faltered. While economic liberalization and soaring copper prices have continued to spur economic growth, poverty remains widespread, while privatizations and the treatment of workers in foreign-owned mines are contentious issues.

Chinese-controlled enterprises in particular are accused of flouting Zambian investment and labor regulations. The ethnoregional bases of Zambia's three main political parties also raise concerns that ethnicity might become more influential in Zambian politics in future elections.

ACCOUNTABILITY AND PUBLIC VOICE 3.89

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.00
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.00
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	3.57

Improvement in the efficiency of Zambia's electoral system and the conduct of its elections has been uneven since the country's transition to multiparty politics in 1991. Elections are still marred by anomalies that affect the fairness of the electoral landscape and potentially the propriety of voting. While all parties have been able to mount energetic election campaigns over the last two decades, sporadic violence and intimidation during some by-elections in 2009 and 2010 presents a worrying trend.[2]

The current first-past-the-post presidential system—also applied in the single-member district National Assembly races—awards office to the candidate receiving the greatest number of votes. Many Zambians believe that the change most necessary to enhance presidential legitimacy is a constitutional revision to require presidential candidates to gain over 50 percent of the popular vote to win office, as was suggested in 2005 by the Mung'omba Constitutional Review Commission appointed by the late President Mwanawasa. The ruling MMD, which retained power in each of the last three presidential contests without winning a majority vote in any, rejected this reform for the 2011 presidential polls, though the NCC decided to let the issue go to a referendum. Because of the need to first complete a national census, the referendum could not take place before the 2011 elections. According to a recent opinion poll from the Synovate group, public opinion on this issue is sharply divided. A clear choice between two leading candidates could produce a winner with far greater legitimacy across the Zambian electorate.

Elections are overseen by the Electoral Commission of Zambia (ECZ), whose members are appointed by the president, and whose autonomy is questioned by the opposition and civil society groups. Under the Electoral Act of 1996, the ECZ created a new Electoral Code of Conduct, which made voter intimidation a punishable offense. It also prohibited the use of state resources for campaigning and required "fair and balanced" media reporting, with equal airtime in state media for all parties.[3] Nonetheless, most state media still strongly promote the government/MMD positions, and the Media Institute of Southern Africa complained of a spike in media freedom violations during the 2008 presidential campaign. All community and private radio stations were ordered to

suspend live phone-in programs, and the leading private newspaper, the *Post*, was enjoined by the Lusaka High Court from publishing allegedly libelous articles about President Banda.[4]

The ECZ is credited with improving electoral administration, including better logistics and more transparent procedures for vote counting and tabulation. It is currently implementing donor-backed campaigns to increase voter registration incorporating biometric technology, with the goal of enrolling 2.5 million new voters by the 2011 elections.[5] Electoral participation, which had risen to an unprecedented 2.8 million voters and 71 percent turnout in 2006, plummeted to fewer than 1.8 million voters and 45 percent turnout in 2008.[6] The ECZ and nongovernmental organizations (NGOs) such as the Anti-Voter Apathy Project have mounted civic and voter education campaigns in hopes of reviving voter participation in what might be a hotly disputed election. In 2010 and 2011 the ECZ implemented a voter registration exercise and managed to increase the numbers on the roll to over five million for the first time in Zambia's history. Because of the inefficiency of the national births, marriages, and deaths registration system, however, serious flaws with the roll remain, and the names of hundreds of thousands of dead or migrated people still appear on it. An ECZ-led multi-stakeholder review of the Electoral Code of Conduct in October 2010 urged that all election results be released within 48 hours, and suggested that the police and other law enforcement agencies help assure compliance with its provisions.[7] However, the ECZ's investigative and enforcement capacities are very limited. Moreover, the dismissal of the ECZ's director and the resignation of its chair in January 2011 increased concerns over preparations and conduct of the 2011 election. These fears calmed somewhat with the appointment of the experienced Deputy Chief Justice Irene Mambilima to the post of ECZ Chair. Mambilima had previously held this post and is viewed as fair and competent. But further worries were raised by allegations by the Patriot Front that the ECZ had engaged in corrupt practices relating to the tender for printing of ballot papers.

National Assembly elections have been more open and competitive than presidential contests, but also are more subject to localized intimidation and violence, as well as abuse of state resources. There are no effective regulations or practical controls on campaign funding or spending. Zambia's unicameral parliament is composed of 158 members, of which 150 are elected to five-year terms; 8 are appointed by the president, which has served to reinforce MMD leadership. Parliament has been controlled by the ruling MMD since the revival of a multiparty system. In the 2006 legislative polls the MMD won 75 seats, the Patriotic Front (PF) took 43, and the United Democratic Alliance coalition 27. Opposition parties have often fared better in local council elections. There are 72 local authorities (4 city, 12 municipal, and 56 district councils), although little real power or resources have been accorded to these decentralized structures.[8] A 27-member House of Chiefs also exists to advise the government on traditional customs and practices. The power of local chiefs varies widely.

They control customary courts, which often handle family and property disputes in rural areas, and whose rulings and practices may clash with national laws and human rights standards, especially regarding women's rights. On the other hand, the chiefs' engagement can be positive in a variety of matters, such as encouraging better health practices.[9]

Greater opposition representation in parliament has promoted more active debate on national priorities and policies. Yet the executive remains dominant in Zambia's governance. The parliament has proved unable or unwilling to provide effective oversight of the executive branch, and constituent services are more closely linked to the MMD's party patronage machine than parliamentarians' advocacy. A donor-supported Parliamentary Reform Programme (PRP), now in its third phase, has strengthened some areas of parliamentary performance, but legislators have little involvement in the budget process, and lack staff and research capacity to contribute consistently to policy debate. More than 60 members of parliament (MPs) were serving as ministers or deputy ministers in 2009, further eroding parliamentary autonomy vis-a-vis the executive.[10] On a broader scale, Zambia's parliament has not pursued effective action to curb endemic corruption, despite recognition of the gravity of the challenge demonstrated by the creation of various anticorruption mechanisms. The Parliamentary Public Accounts Committee, for instance, has provided some oversight but is limited by capacity and enforcement constraints.

Senior positions in Zambia's civil service are filled by presidential appointees, and the government bureaucracy has long been viewed as subject to nepotism and patronage, a pattern unchanged under the Banda administration, despite strong government rejection of such claims.[11] Some observers also charge that executive appointees in the civil service steer official funding to support the ruling party's electoral needs.[12] Donor-supported efforts to improve public sector capacity are ongoing, including a long-running Public Service Reform Programme (PSRP).[13]

Zambia's civil society has grown from its bases in the trade union and church sectors to include a broad range of groups engaged in research, mobilization, and advocacy on many issues. They mostly operate openly and freely, despite occasional governmental attempts to curb specific organizations. Civil society organizations seek to shape public awareness and debate through educational and lobbying campaigns, offer testimony to parliament, and have been invited to join official dialogue on some issues. On one of the most important issues facing Zambia, constitutional reform, many civil society groups declined to participate in consultations of the National Constitution Commission (NCC), which concluded in mid-2010, asserting that the entire process was a flawed and politically motivated mechanism to revise many progressive recommendations in the earlier Mung'omba Commission draft.[14] Many are largely donor-funded, raising questions of sustainability and agendas.

Legislation passed in August 2009 requires all NGOs to reregister every five years, and to supply annual reports on their activities, accounts, funding

sources, and the individual assets of their officials. A government-dominated NGO Registration Board will have broadly-defined powers to influence NGO operations, and noncompliance could lead to suspension or cancellation of registration.[15] Local and international groups made strong protests against several of the still-unimplemented law's provisions, which could have a chilling effect on the entire civil society sector.[16] Even under the previous law, the government had attempted to silence NGO critics through registration requirements. An appeal against the deregistration of the Southern Africa Centre for the Constructive Resolution of Disputes (SACCORD) was rejected by the High Court in March 2010. SACCORD, a persistent and vociferous critic of what it sees as abuses of power, was deregistered on the basis that it was "dangerous to State security."[17] However, SACCORD continues to function as its legal status is determined at the Supreme Court.

The future of Zambia's constitution, including its provisions for media freedom, has been the subject of considerable debate in the Zambian media. The NCC draft cut a proposed clause from the Mung'omba Commission draft affirming that "subject to this constitution, a law shall not make any provision that derogates from freedom or independence of the press and other media."[18] Articles 20.1 and 20.2 of the current constitution guarantee freedom of expression and press freedom, respectively, but Article 20.3 immediately devalues these rights by offering a litany of limitations in the interest of national defense, public safety, public order, public morals, public health, and more. The penal code empowers the president to ban at his "absolute discretion" any publication whose content he deems contrary to the public interest. Other laws limit freedom of expression by protecting the president and MPs from criticism. The penal code also provides up to seven years' imprisonment for sedition, broadly and vaguely described as the "intention . . . to excite disaffection against the government" or "to raise discontent or disaffection among the people of Zambia".[19] In January 2011, two journalists were charged with sedition in relation to their coverage of unrest in Zambia's Western Province.[20]

The state relinquished its media monopoly in 1990. While a great deal of information is available to Zambians with access to English-language print media and private broadcasting, state media remains dominant. The government controls the Zanis news agency and two of Zambia's three major newspapers, the *Times of Zambia* and the *Zambia Daily Mail*. These dailies, and the state-run Zambia National Broadcasting Corporation's radio and television services, have the deepest and broadest penetration countrywide, and are rarely critical of government or the MMD. Nonetheless, the *Post* has a daily circulation of approximately 50,000 copies nationwide, which is significantly more than either the *Times* or *Daily Mail*. About 35 private and community radio stations, including religious and educational outlets, usually operate without overt governmental interference, as do four private television stations. Increases in police raids (as on Mobi-TV in June 2010), official threats against individual outlets (as against SKY-FM in June 2009), and physical assaults on journalists,

however, may lead to wider self-censorship.[21] The independence of private broadcast media and the autonomy of state-owned media were—nominally—greatly enhanced by the Independent Broadcasting Authority (IBA) Act of 2002, and the Zambia National Broadcasting Corporation (ZNBC) Amendment Act of 2002, but neither law has been implemented by the executive.[22]

Zambia's media have come under renewed and increasing pressure since President Banda took office in 2008. The government's proposed statutory media regulation has been sharply debated in recent years. Media groups' suggestion of voluntary self-regulation through the Zambia Media Council (ZAMEC) has been dismissed by Information and Broadcasting Services Minister Lieutenant General Ronnie Shikapwasha.[23] The role and control of media in the 2011 electoral cycle may also be contentious. State media has shown a marked tendency to support the ruling party during previous elections. The Electoral Code of Conduct requires public and private media outlets to "provide fair and balanced reporting of the campaigns, policies, meetings, rallies and press conferences of all registered political parties and candidates."[24] Such a highly subjective standard could limit media freedom even if the requirement was imposed impartially by the ECZ, and the commission itself has noted the difficulty of enforcement.[25] There is no apparent demarcation between requirements for taxpayer-funded and private media, except in the broadcast sector, where the electoral code requires that "all public television and radio broadcasters shall allocate public air time equally to all political parties for their political broadcasts." Moreover, it is possible that the government will again suspend live radio phone-in shows on private and community radio stations during the 2011 election season.

The independent *Post* newspaper, and especially its top editor, Fred M'membe, have faced continual harassment and intimidation by the state for over two decades. In November 2009, *Post* editor Chansa Kabwela was acquitted of "distributing obscene photos likely to corrupt public morals" in the form of photographs of a woman giving birth in a street outside a hospital without medical assistance during a health workers' strike. Kabwela, who had not published the photos in the *Post*, but sent them to government officials and civil society groups, stated that her acquittal showed "that this was a pure case of harassment and intimidation."[26] In a related case, M'membe spent three days in prison in June 2010 before being conditionally released pending appeal of a four-month sentence for contempt of court. He was convicted after the *Post* published an article by Muna Ndulo, a U.S.-based Zambian law professor, titled "The Chansa Kabwela Case: A Comedy of Errors." President Banda also filed a personal suit against the *Post* in 2008 alleging defamation, although the case was postponed on the request of the president's lawyers, keeping alive the threat of renewed prosecution.

Physical assaults on media practitioners are also increasing, with several aimed at *Post* staff and blamed on supporters of the ruling MMD; activists from other parties have also been denounced for perpetrating similar acts. President

Banda has condemned such attacks, and in November 2010 an MMD youth wing leader was convicted in connection with two assaults. The Committee to Protect Journalists recorded at least seven attacks against *Post* staffers in 2009, and noted what appeared to be an implicit threat of future assaults when information minister Ronnie Shikapwasha declared at a May 2009 press conference that "the *Post* newspaper is reaping what it sowed because you cannot have a newspaper that reports negatively about the republican president most of the time."[27] In mid-2009 several Zambian media groups petitioned the government to protect media workers and take further legal action against alleged assailants.[28] There is no reported governmental interference with access to or content on the internet, although the government briefly threatened to shut down five of the country's main internet service providers in October 2010 over a licensing dispute.

CIVIL LIBERTIES 4.47

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.75
GENDER EQUITY	3.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.75
FREEDOM OF CONSCIENCE AND BELIEF	6.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.50

Zambia's constitution and laws protect many civil liberties, but a range of statutes and official and traditional practices sharply limit full enjoyment of these rights. On its webpage "About Human Rights In Zambia," the official national monitoring body, the Human Rights Commission (HRC), observes that "by ratifying international conventions Zambia has an obligation to respect, protect and fulfill the human rights of all citizens [but] the provisions of these treaties are not locally effective if not incorporated into the domestic legislation." And even when Zambia's laws meet African and international standards, implementation and enforcement is often lacking. United Nations (UN) bodies have pointed out deficiencies in Zambian laws and have repeatedly requested a detailed response to at least one report of abuse submitted to the UN Human Rights Committee.[29]

The HRC is remarkably frank in describing the Zambia Police Service as "a major violator of human rights. Some of the worst human rights abuses such as torture and extra-judicial killing of suspects have been committed by police officers and these have been widely condemned by human rights defenders," the HRC writes on its webpage, adding, "other common human rights abuses by the officers include false arrests, illegal and over detention without trial."[30] Such acts have been documented by the HRC as well as local, regional, and global civil society groups.[31] The Police Public Complaints Authority handles allegations of police misconduct, but few of the cases brought by the public have led

to action against police personnel; Human Rights Watch (HRW) reported that only 27 of 245 complaints in 2009 resulted in action against allegedly abusive officers.[32] The HRC, while publicizing and urging action on a litany of rights abuses, including torture and terrible prison conditions, relies on other institutions to carry out its recommendations. HRC commissioners are appointed to three-year terms by the president, subject to parliamentary approval.

Zambian prison conditions range from inadequate to horrific and life threatening. Prisons are severely overcrowded, with over 15,000 inmates in facilities designed for one-third that number, and the prisons service is understaffed and poorly resourced. The Prisons Care and Counseling Association (PRISCCA), the AIDS and Rights Alliance for Southern Africa (ARASA), and HRW reported in April 2010 that physical abuse was compounded by abysmal nutrition and an absence of health care, which abets the spread of HIV/AIDS and drug-resistant tuberculosis.[33] Overcrowding is exacerbated by the long-term incarceration of numerous detainees awaiting trial, many on bailable offences, due to lack of legal representation and the backlog of unheard cases in Zambia's courts. The government has pledged to increase prison capacity and improve staff conditions, and several civil society groups are active in lobbying for prisoner rights.

Zambian police are reported to routinely mistreat detainees, and on occasion to use torture to force confessions. They also sometimes respond with excessive force to peaceful protests. In March 2010, police fired tear gas on a crowd in the northern city of Kitwe that was protesting the jailing of Frank Bwalya, a Catholic priest and anticorruption activist, and detained 22 people.[34] Police shot dead a woman in a refugee camp in northern Zambia and wounded several others during a protest in April 2010, after which 36 refugees were summarily deported to the Democratic Republic of Congo.[35] In July 2010, police shot and wounded a man protesting the eviction of informal miners from a disused mine site near Ndola.[36] Lack of training, discipline, and crowd control equipment all contribute to a police tendency to quickly resort to live fire if they feel threatened, as does general impunity for such actions.

Zambia media also report instances of police firing on vigilante crowds to rescue people accused of various crimes or witchcraft. Accusations of witchcraft are sometimes used as leverage in local disputes. The "instant justice" of vigilantism reflects both thin policing and people's uneven faith in the judicial system. Zambia ranks in the middle of African nations in terms of reported crimes, although statistics are unreliable. The police force of about 15,000 remains far below the 27,000 officers the government believes are required, and is supplemented by local volunteer "crime prevention units."[37]

While Zambia's Anti-Human Trafficking Act of 2008 criminalizes all forms of trafficking, there have been very few prosecutions under the law. The United Nations Office on Drugs and Crime describes Zambia as a transit route for trafficking of women and children for sexual exploitation from Lesotho and South Africa, and records reports of forced labor and sexual exploitation within

Zambia.[38] A $2 million effort to counter human trafficking in Zambia involves various UN bodies working with government agencies and civil society groups, and includes public awareness media campaigns and police training.

Citizens can make complaints through the courts and to various state bodies, including the HRC, the Anti-Corruption Commission, and the Police Public Complaints Authority. The effectiveness of such complaints is problematic, as these bodies possess limited investigative capacity and are subject to various degrees of political or bureaucratic influence or interference. The Commission for Investigations, headed by the investigator-general (ombudsman), is similarly weak.

There are few complaints of discrimination against ethnic or religious minorities in Zambia, although the ethnoregional bases of the main political parties are a potential source for more acute ethnic rivalries. Capacity to transcend ethnic bases is a key to success in future elections. Bemba-speaking people living primarily in northern Zambia comprise nearly 30 percent of Zambia's population and are the largest single linguistic group, although not all are ethnically Bemba. Nyanja and Tonga-speaking groups are each about 10 percent of the population. In 2010, Zambia experienced renewed activism by the Barotse Freedom Movement in Western Province, where ethnically Lozi groups predominate. In late October 2010, police refused a permit for and then dispersed a rally by supporters of the Barotse Freedom Movement, arresting several people. On January 14, 2011, police shot at protestors in Mongu, killing two and injuring scores, as calls for the government to recognize an independence-era agreement on the region's independence intensified. Subsequently, the government arrested dozens and charged them with treason.

Zambian law has maintained colonial-era prohibitions on homosexuality and current law provides up to 14 years' imprisonment for individuals who engage in homosexual acts.[39] Zambia's lesbian, gay, bisexual, and transgender population has been subject to vilification by politicians and church leaders during discussions of gay rights in the draft constitution, and rights activists warn that rising intolerance could threaten the rights and health of many Zambians if homosexual men fear seeking medical care.[40] Although Zambia is praised as one of the best-performing countries for antiretroviral drug access in Africa,[41] the Zambia AIDS Law Research and Advocacy Network has urged lawyers in Zambia to help defend the rights of the approximately 1.5 million Zambians living with HIV/AIDS.[42]

Zambia ratified the UN Convention on the Rights of Persons with Disabilities in December 2009, and the official Zambia Agency for Persons with Disabilities has launched awareness programs in cooperation with several disabled persons organizations. The Zambian Constitution requires provision of just and equitable social benefits and amenities for disabled people, and The Persons with Disabilities Act 1996 prohibits discrimination on the grounds of disability. The International Labour Organization is cooperating with Zambian government agencies and CSOs to improve governmental capacity to implement and

enforce these laws and regulations and mainstream disabled people into employment programs.

Religious freedom is guaranteed by the Zambian constitution and respected in practice, although the constitutional designation of the country as Christian in 1996 raises concerns of possible discrimination against the small minority that are practitioners of other religions or nonreligious. Christian religious education is required in public schools. Some church groups' engagement in social justice issues has created tensions with the government and ruling party.

Zambia's modern legal system offers formal equality for women in official life and matters in which the state is directly involved. However, there are exceptions for customary practice that seriously undermine women's rights in the areas of marriage, inheritance, and property. Many women face serious difficulties if they are widowed or divorced, as the husband's family often claims nearly all family property. Under customary law, a divorcee is entitled only to kitchen utensils and gifts given by her husband. Lack of ownership rights and legal title to property also mean women have great difficulty obtaining credit.[43] Zambia has ratified the Convention for the Elimination of Discrimination Against Women (CEDAW), but remains far from fully implementing its statutes into law and practice. Women hold few senior positions in official or private life; only 15 percent of parliamentarians are female, and women are sharply underrepresented in other government posts. The pipeline for increased female participation is still narrow, as male students predominate at the country's top universities.[44] The participation of women in media production is low, and the representation of women in media output help shape negative perceptions regarding female rights and roles in society, according to media monitoring research.[45]

Violence against women is widespread and frequently goes unpunished. Traditional attitudes hinder governmental, civil society, and donor efforts to combat gender violence.[46] Educational awareness programs, safe houses for gender violence victims, and increased training for police have been undertaken. A police body, the Victims Support Unit, is responsible for handling domestic violence, but suffers from obstacles to successful protection and prosecution, including a shortage of resources, equipment, and training.[47] The draft constitution includes a formal Gender Equality Commission, but does not remove provisions that allow discriminatory practices under customary law. In September 2010, the official Zambia Law Development Commission announced that it is developing legislation to assure that women in marriages contracted under customary law gain the same rights to property, maintenance, and compensation as are provided by statutory law.[48]

Freedom of association and assembly are protected by the constitution and by law, although various regulations are applied to restrict these rights in practice. NGO registration requirements, including high fees, can dissuade grassroots organizations in particular from mobilizing. De facto permits for rallies

or demonstrations are required in the form of seven-day police notification under the Public Order Act, and are sometimes denied on an apparently political basis. Other seemingly mundane laws are deployed politically: nine people, including two opposition MPs, were detained for five days in October 2009 after noisily protesting the dismissal of corruption charges against former president Chiluba. Patriotic Front parliamentarians Jean Kapata and Mumbi Phiri were charged with unnecessarily sounding their horns under the Road Traffic Act, as well as disorderly conduct.[49]

Police are sometimes quick to use force against unauthorized or unruly public gatherings, including trade union actions. Trade unionism was heavily state controlled under the one-party system, and remains amply regulated by provisions of the Industrial and Labour Relations Act. Most unions are members of the Zambia Congress of Trade Unions or the Federation of Free Trade Unions of Zambia. Trade union rights are respected in principal by the constitution, but essential workers, broadly defined to include the mining sector, are forbidden from striking. Even for workers legally permitted to strike, the process of declaring grievance and strike notification is long and complex; there have been no legal strikes in Zambia since 1994. Mineworkers have complained that government does not enforce labor laws, especially in foreign-owned enterprises.[50] Chinese investment in Zambia's extractive industries has become a particular flashpoint, with political cultivation of populist resentment of the presence of Chinese workers and traders.[51] There are reports of mistreatment of both Chinese and Zambian workers, and of disregard for Zambian investment and labor laws.[52]

RULE OF LAW	**4.07**
INDEPENDENT JUDICIARY	4.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.40
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	4.75
PROTECTION OF PROPERTY RIGHTS	3.33

Zambia's judiciary presents a mixed record of independence and integrity—and on occasion, apparent bows to the political influence of the ruling party, especially in high-profile cases. Supreme Court and High Court judges are appointed by the president subject to parliamentary approval, and magistrates by the Judicial Services Commission in what is generally regarded as a fair process. However, the president may dismiss lower court judges at his discretion. According to an African Human Security Initiative monograph, "partisan politics, nepotism . . . and the status of the litigants were possible factors in the determination of certain cases;" moreover, as in any open legal system, many state and non-state actors seek to influence the courts, including advocacy groups, media and traditional chiefs.[53]

The dismissal of corruption charges against former president Chiluba in August 2009 elicited myriad claims of executive interference, but officials at all levels respect decisions rendered by the courts. The December 2009 decision of Supreme Court Chief Justice Ernest Sakala that high-level corruption cases—including an appeal by ex-president Chiluba's wife against a corruption conviction—would be heard by three-judge panels was also contentious.[54] Some prosecutions, particularly those for defamation or public order violations against independent media and oppositionists, appear to have clear political motivation. The president appoints the director of public prosecutions, whose office is funded through the Ministry of Justice; this lack of autonomy, and a general opacity in its operations, undermines confidence in the office.[55] However, decisions such as the 2009 dismissal of charges against journalist Chansa Kabwela indicate that the government cannot be assured of judicial acquiescence in all matters.

At all levels, access to the system of statutory justice and its timely delivery are seriously affected by a lack of resources and court facilities. Accused criminals are considered innocent until proven guilty, have the right to legal representation, and trials are held in open court. Long delays in trials are onerous for all concerned, however, and extended periods of pretrial detention in abysmal conditions are common. Low remuneration for judges, magistrates, and other court officials increases susceptibility to corruption.

Physical access to formal courts is an obstacle for the rural poor, and the cost of retaining private counsel is beyond most Zambians' capacity. Especially in rural areas, traditional courts, which have power to impose fines but not imprisonment, are a favored means to resolve minor crimes or conflicts. The parallel traditional justice system operates according to local customs among Zambia's disparate ethnic groups, and is neither codified nor formally recognized in statutory law. Most traditional courts disfavor women. Yet these courts remain widely used because they are accessible and because they typically operate on principles of "restoration and reconciliation" within the local community.[56] Official legal aid is usually limited to people accused of serious crimes. Legal aid NGOs offer legal and paralegal services, but can meet only a fraction of the overall demand. The Judicial Complaints Authority is appointed by the president and can receive complaints from any person, group or body regarding alleged judicial misconduct. Its proceedings are secret, however, and court officials other than judges are outside its scope.[57] Appeals can often take at least two years, and the government has announced plans to increase the number of High Court and Supreme Court judges to help meet the backlog of cases.

There were no reports of interference by the security forces in court proceedings, and the military and intelligence services appeared to accept civil authority as a matter of course. As in many other areas, parliamentary oversight of military budgets is weak. Several top military commanders who served under former President Chiluba have been convicted of corruption. While Zambia

armed forces have been notable for their lack of any overt political role, opaque military procurement and associated corruption remains a challenge.

Zambians have the right to own property individually or in association with others, and property rights and contracts are generally respected, although contract enforcement suffers from the general inadequacies of the overburdened court system. Under the Lands Act of 1995, land is held under customary tenure, and people may apply for title, although relatively few have done so. There have been reports in recent years of uncompensated appropriation of smallholder farmland for mining, tourism, and industrial agriculture.[58] Civil society groups such as the Zambia Land Alliance have called for sweeping revisions to land laws. As noted above, women's and children's property rights, particularly those of widows and orphans, are frequently violated, particularly in rural areas where customary law biased against women often still holds sway.[59]

ANTICORRUPTION AND TRANSPARENCY 3.27

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.40
ANTICORRUPTION ENFORCEMENT AND FRAMEWORK	3.33
CITIZEN PROTECTIONS AGAINST CORRUPTION	3.50
GOVERNMENTAL TRANSPARENCY	2.83

The experience and perception of endemic corruption in Zambia is an obstacle to economic growth, good governance, and faith in the democratic system. Support for a genuine anticorruption campaign appears to have died along with President Mwanawasa in 2008. In October 2009, President Banda disbanded the Task Force on Corruption created by Mwanawasa, reportedly after its leaders sought to appeal the acquittal of former president Chiluba (Mwanawasa's predecessor and a Banda ally until his death in June 2011) on graft charges. And in 2010, the government decided not to appeal the Zambian High Court's refusal to enforce a British court's 2007 finding that that Chiluba should repay Zambia $58 million that he gained corruptly as president from 1991–2001. The Anti-Corruption Commission (ACC), which has nominally taken up the defunct Task Force's investigations, is underresourced and underskilled, and the offices of the investigator-general (ombudsman) and auditor general have been described as "effectively moribund" due to "a policy of deliberate underfunding coupled with a failure to punish corrupt officials [with results that a] culture of impunity has developed and corruption has permeated government structures from the Presidency down to the lowest-ranking public service employee."[60]

Prosecutions do sometimes occur, but most former senior officials convicted of corruption remain free while pursuing a lengthy appeals process whose outcome is uncertain. MMD National Secretary and former finance minister Katele Kalumba was sentenced to five years' imprisonment for corruption in May 2010, but was freed pending an appeal to the High Court. Others convicted of various graft charges but free on bail while appeals are heard include MP Claver Silavwe,

former Zambia Army commander General Geojago Musengule and two former Zambia Air Force commanders, General Christopher Singogo and General Sunday Kayumba.[61] The results of these appeals will be a strong indication of the future of Zambia's anticorruption efforts.

Zambia has aggressively privatized state assets since the demise of one-party rule in 1991. Critics say the efforts have mostly benefited businesses close to the government who, according to a former senior official, "treat enterprises and assets lined up for privatisation as goods fallen from the back of a delivery truck."[62] The 2010 sale of the insolvent government telecommunications company Zamtel to the Libyan government's sovereign wealth fund yielded $257 million and provided redundancy packages to company workers, but, the *New York Times* reported, "opposition figures, transparency advocates and some analysts argue that the transaction was cloaked in secrecy and riddled with irregularities," over payment to the sale's advisors and the government's refusal to release a valuation report.[63] Other privatizations have been less contentious. In 2007, the Dutch Rabobank took a 49 percent stake and management of the Zambia National Commercial Bank, which has since improved profitability, listed successfully on the Lusaka stock exchange, and received investment to promote services in rural areas.[64] The Zambia Revenue Authority reported that a buoyant economy and improved collection has helped increase tax revenues from January to August 2010,[65] although a large portion of the country's economic life remains in the largely untaxed informal sector.

As in many countries, public contracting is a source of corruption. In 2009, the Zambia Public Procurement Authority (ZPPA) replaced the Zambia National Tender Board as part of several public financial management reforms. However, procurement standards often remain opaque or are not honored, and Transparency International Zambia and other groups have sharply criticized government procurement practices. The decision to cut the abuse of authority clause, a principal tool in prosecuting top-level corruption in Zambia, from the Anti-Corruption Commission Act passed in November 2010 removed an important control on future corruption. Zambia has scored very low on international corruption indexes, and a slight rise in the country's score in the 2009 Transparency International Corruption Perceptions Index was ascribed to the since circumscribed anticorruption efforts launched by Mwanawasa.[66]

Several donors have suspended aid programs due to alleged corruption. In 2009, Sweden and the Netherlands withheld $33 million in health ministry assistance after $5 million of aid went unaccounted for. In 2010, the Global Fund to Fight AIDS, Tuberculosis and Malaria announced that it had stopped $137 million in funding to Zambia's Ministry of Health, and was seeking alternative agencies with which to continue its work.[67] The European Union has also halted aid to road-building projects. President Banda responded in June 2010 by accusing donors of interfering in Zambia's internal affairs ahead of the 2011 elections, stating, "we did not ask anyone to fund the road sector or the health sector, so they must not use that as blackmail,"[68] adding on state-run radio, "this

is not a banana republic. If somebody is fed up with us they should pack their bags and go where they came from."[69]

Donors are still supporting anticorruption efforts, however, with assistance both to state agencies and civil society groups whose voice is mostly heard through independent media. Private media outlets such as the *Post* have repeatedly reported allegations of official corruption. Donors are also supporting the government's agreement with the country's Chamber of Mines and civil society groups in 2010 to implement the Extractive Industries Transparency Initiative.[70] Serious concerns over mineral exploitation continue, as royalty and taxation levels have allegedly contributed little to government coffers even as copper prices have soared.[71] Issues regarding land rights, environmental effects, and working conditions in mining operations have been raised by civil society groups. The potential impact of exploiting the recent discovery of commercially viable uranium deposits is under particular scrutiny.[72] A new measure giving some protection to whistleblowers was enacted in 2010. According to an AfroBarometer survey in 2009, Zambians perceive that corruption is increasing significantly, although only about 14 percent said they had paid a bribe directly in the previous year.

A 2010 report by the Media Institute of Southern Africa–Zambia found that the education ministry and ECZ have improved sharing information with the public, but that the information ministry and other government agencies remained highly secretive.[73] Citizens have neither the right nor the means to access public information. A freedom of information bill has languished in parliament since 2002, and the Zambian government remains reticent in sharing any information it deems sensitive, especially in a timely manner. There is scant disclosure of assets or income of public officials; only presidential candidates—and NGO board members, if the 2009 NGO law is implemented—are required to file asset reports. The state budget process remains opaque, especially in supplementary budgets and use of foreign aid. Inconsistent reporting by the auditor-general's office also reduces public ability to know how public funds are spent.[74] Yet business and civil society groups, with donor assistance, are increasing capacity to successfully influence the budget process and other legislation by lobbying parliament.

RECOMMENDATIONS

- Ensure that the entire electoral process allows the will of the Zambian people to be freely expressed by preventing the abuse of state resources and working with domestic and international observers to monitor compliance with voting secrecy requirements across the country.
- Ensure that the draft constitution enshrines all regional and international standards, and fully reflects a high level of engagement by the broadest range of Zambians and their elected and civil society representatives.

- Respect and promote independent media, establish a genuinely independent broadcasting authority that assures all state-owned media serves as public media and is not misused to advance partisan political interests, and enact and implement a robust freedom of information law.
- Empower official anticorruption watchdogs to pursue all investigations without political influence or interference by increasing their autonomy and resources, and ensure that private and civil society actors engaged in monitoring or advocating regarding corruption may operate without interference.
- Engage openly and fully with Africa Peer Review Mechanism to monitor and promote human rights and democratization in Zambia.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at http://freedomhouse.org.

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METHODOLOGY

Countries at the Crossroads is an annual survey of government performance in 70 strategically important countries worldwide that are at a critical crossroads in determining their political future. The in-depth comparative analyses and quantitative ratings—examining government accountability, civil liberties, rule of law, anticorruption efforts and transparency—are intended to help international policy makers identify areas of progress, as well as to highlight areas of concern that could be addressed in diplomatic efforts and reform assistance. A new edition of *Crossroads* is published each year, with approximately half of the 70 countries analyzed in odd-numbered years and the other half in even-numbered years.

The 2011 edition is the sixth in the *Countries at the Crossroads* series. It evaluates 30 of the countries last examined in the 2007 edition, providing an opportunity for time series analysis and assessment of the extent to which this group of countries is backsliding, stalling, or improving in terms of democratic governance. The time frame for events covered by the country scores is December 1, 2006 through December 30, 2010. In addition, 5 countries are included in the survey for the first time.

In cooperation with a team of methodology experts, Freedom House designed a methodology that includes a questionnaire used both to prepare analytical narratives and for numerical ratings for each government. The survey methodology provides authors with a transparent and consistent guide to scoring and analyzing the countries under review, and uses identical benchmarks for both narratives and ratings, rendering the two indicators mutually reinforcing. The final result is a system of comparative ratings accompanied by narratives that reflect governments' commitment to passing good laws and also their records on upholding them.

Freedom House enlisted the participation of prominent scholars and analysts to author the survey's country reports. In preparing the survey's written analyses with accompanying comparative ratings, Freedom House undertook a systematic gathering of data. Each country narrative report is approximately 7,000 words long. Expert regional advisers reviewed the draft reports, providing written comments and requests for revisions, additions, or clarifications. Authors were asked to respond as fully as possible to all of the questions posed when composing the analytical narratives.

For all countries in the survey, Freedom House, in consultation with the report authors and academic advisers, has provided detailed numerical ratings.

Authors produced a first round of ratings by assigning scores on a scale of 0–7 for each of the 75 methodology questions, where 0 represents weakest performance and 7 represents strongest performance. The scores were then aggregated into seventeen subcategories and four main thematic areas. The regional advisers and Freedom House staff systematically reviewed all country ratings on a comparative basis to ensure accuracy and fairness. All final ratings decisions rest with Freedom House.

In devising a framework for evaluating government performance, Freedom House sought to develop a scale broad enough to capture degrees of variation so that comparisons could be made between countries in the current year, and also so that future time series comparisons might be made to assess a country's progress in these areas relative to past performance. These scales achieve an effective balance between a scoring system that is too broad—which may make it difficult for analysts to make fine distinctions between different scores—and one that is too narrow—which may make it difficult to capture degrees of variation between countries and therefore more difficult to recognize how much a given government's performance has improved or eroded over time.

Narrative essays and scoring were applied to the following main areas of performance, which Freedom House considers to be key to evaluating the state of democratic governance within a country:

Accountability and Public Voice

- Free and fair electoral laws and elections
- Effective and accountable government
- Civic engagement and civic monitoring
- Media independence and freedom of expression

Civil Liberties

- Protection from state terror, unjustified imprisonment, and torture
- Gender equity
- Rights of ethnic, religious, and other distinct groups
- Freedom of conscience and belief
- Freedom of association and assembly

Rule of Law

- Independent judiciary
- Primacy of rule of law in civil and criminal matters
- Accountability of security forces and military to civilian authorities
- Protection of property rights

Anticorruption and Transparency

- Environment to protect against corruption
- Anticorruption Framework and Enforcement
- Citizen Protections against Corruption
- Governmental transparency

Scoring Range

The survey rates countries' performance on each methodology question on a scale of 0–7, with 0 representing the weakest performance and 7 the strongest. The scoring scale is as follows:

Score of 0–2: Countries that receive a score of 0, 1, or 2 ensure no or very few adequate protections, legal standards, or rights in the rated category. Laws protecting the rights of citizens or the justice of the political process are minimal, rarely enforced, or routinely abused by the authorities.

Score of 3–4: Countries that receive a score of 3 or 4 provide some adequate protections, legal standards, or rights in the rated category. Legal protections are weak and enforcement of the law is inconsistent or corrupt.

Score of 5: Countries that receive a score of 5 provide many adequate protections, legal standards or rights in the rated category. Rights and political standards are protected, but enforcement may be unreliable and some abuses may occur. A score of 5 is considered to be the basic standard of democratic performance.

Score of 6–7: Countries that receive a score of 6 or 7 ensure all or nearly all adequate protections, legal standards, or rights in the rated category. Legal protections are strong and are enforced fairly. Citizens have access to legal redress when their rights are violated, and the political system functions smoothly.

METHODOLOGY QUESTIONS

1. Accountability and Public Voice

1.a. Free and fair electoral laws and elections

i. Electoral Framework: Does the electoral framework established by law provide for regular, free, and fair elections, with universal and equal suffrage, open to multiple parties, conducted by secret ballot, and monitored by independent electoral authorities?

ii. Electoral Conduct: Are elections regular, free, and fair in practice, with effective implementation of electoral laws and honest tabulation of ballots, and without fraud and intimidation?

iii. Campaigning: Are there equal campaigning opportunities for all parties?

iv. Rotation of Power: Is there the opportunity for the effective rotation of power among a range of different political parties representing competing interests and policy options?

v. Campaign Finance: Are there adequate regulations to prevent undue influence of economically privileged interests (e.g., effective campaign finance laws), and are they enforced?

1.b. Effective and accountable government

i. Checks and Balances: Are the executive, legislative, and judicial branches of government able to oversee the actions of one another and hold one another accountable for any excessive exercise of power?

ii. Freedom from Domination: Does the state system ensure that people's political choices are free from domination by the specific interests of power groups (e.g., the military, foreign powers, a totalitarian party, organized criminals, regional hierarchies, and/or economic oligarchies)?

iii. Civil Service: Is the civil service selected, promoted, and dismissed on the basis of open competition and by merit?

1.c. Civic engagement and civic monitoring

i. Civic Group/NGO Engagement and Influence: Are civic groups and nongovernmental organizations able to testify, comment on, and influence pending government policy or legislation?

ii. Legal Environment for Civic Groups/NGOs: Are civic groups and nongovernmental organizations free from legal impediments from the state and from onerous requirements for registration?

iii. Donors and Funders: Are donors and funders of civic organizations and public policy institutes free of state pressures?

1.d. Media independence and freedom of expression

i. Media Environment: Does the state support an environment conducive to media freedom, including through constitutional or other legal protections for freedom of expression?

ii. Libel and Legal Harassment: Does the state oppose the use of onerous libel, security, or other laws to punish through either excessive fines or imprisonment those who scrutinize government officials and policies?

iii. Intimidation and Attacks: Does the government protect journalists from extralegal intimidation, arbitrary arrest and detention, or physical violence at the hands of state authorities or any other actor, including through fair and expeditious investigation and prosecution when cases do occur?

iv. Censorship: Does the state refrain from direct and indirect censorship of print, broadcast, and web-based media?

v. Internet: Does the state hinder access to the internet as an information source?

vi. State Funding: Does the state refrain from funding the media in order to propagandize, primarily provide official points of view, and/or limit access by opposition parties and civic critics?

vii. Other State Influence: Does the government otherwise refrain from attempting to influence media content (e.g., through direct ownership of distribution networks or printing facilities; prohibitive tariffs; onerous registration requirements; selective distribution of advertising; or bribery)?

2. Civil Liberties

2.a. Protection from state terror, unjustified imprisonment, and torture

i. Protection from Physical Abuse: Is there protection against torture, extrajudicial execution, and other physical violence by officers of the state, including through effective punishment in cases where abuses are found to have occurred?

ii. Prison Conditions: Are prison conditions respectful of the human dignity of inmates?

iii. Attacks on Activists: Does the state effectively refrain from, protect against, and respond to attacks on political opponents or other peaceful activists?

iv. Arbitrary Arrest: Are there effective protections against arbitrary arrest, including of political opponents or other peaceful activists?

v. Detention without Trial: Is there effective protection against long-term detention without trial?

vi. Crime and Terrorism: Does the state protect citizens from abuse by private/nonstate actors (including crime and terrorism)?
vii. Human Trafficking: Does the state take measures to prevent human trafficking?
viii. Redress: Do citizens have means of effective petition and redress when their rights are violated by state authorities?

2.b. Gender equity

i. Recognition of Gender Equity: Does the state recognize, in its laws and practices, that men and women are entitled to equal enjoyment of all civil and political rights?
ii. Amelioration of Gender-Based Societal Discrimination: Does the state take measures, including legislation, law enforcement, and education, to combat discriminatory or abusive customs and practices that infringe on women's personal autonomy and security?
iii. Gender Discrimination in Employment: Does the state make reasonable efforts to protect against gender discrimination in employment and occupation?

2.c. Rights of ethnic, religious, and other distinct groups

i. Recognition of Minority Rights: Does the state recognize, in its laws and practices, that persons belonging to ethnic, religious, sexual minority, and other distinct groups are entitled to equal enjoyment of all civil and political rights?
ii. Amelioration of Societal Discrimination: Does the state take measures, including legislation, law enforcement, and education, to combat discriminatory or abusive customs and practices that infringe on the autonomy and security of persons belonging to ethnic, religious, sexual minority, and other distinct groups?
iii. Discrimination in Employment: Does the state make reasonable efforts to protect against discrimination against ethnic, religious, sexual minority, and other distinct groups in employment and occupation?
iv. Discrimination against Disabled People: Does the state make a progressive effort to modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against disabled people?

2.d. Freedom of conscience and belief

i. General Freedom of Religion: Does the state accept the right of its citizens to hold religious beliefs of their choice and practice their religion as they deem appropriate, within reasonable constraints?
ii. State Involvement in Religious Faiths: Does the state refrain from involvement in the appointment of religious or spiritual leaders and in the internal organizational activities of faith-related organizations?

iii. State Restrictions on Religious Practice: Does the state refrain from placing restrictions on religious observance, religious ceremony, and religious education?

2.e. Freedom of association and assembly

i. General Freedom of Association/Assembly: Does the state recognize every person's right to freedom of association and assembly?

ii. Trade Unions: Does the state respect the right to form, join, and participate in free and independent trade unions?

iii. Rights of Associations to Organize: Does the state effectively protect and recognize the rights of civic associations, business organizations, and political organizations to organize, mobilize, and advocate for peaceful purposes?

iv. Demonstrations and Public Protests: Does the state permit demonstrations and public protests and refrain from using excessive force against them?

3. Rule of Law

3.a. Independent judiciary

i. General Judicial Independence: Is there independence, impartiality, and nondiscrimination in the administration of justice, including from undue economic, political, or religious influences?

ii. Protection from Interference: Are judges and magistrates protected from interference by the executive and/or legislative branches?

iii. Compliance: Do legislative, executive, and other governmental authorities comply with judicial decisions, which are not subject to change except through established procedures for judicial review?

iv. Appointments and Dismissals: Are judges appointed, promoted, and dismissed in a fair and unbiased manner?

v. Training: Are judges appropriately trained in order to carry out justice in a fair and unbiased manner?

3.b. Primacy of rule of law in civil and criminal matters

i. Presumption of Innocence: In both law and practice, is everyone charged with a criminal offense presumed innocent until proven guilty?

ii. Due Process: Are citizens given a fair, public, and timely hearing by a competent, independent, and impartial tribunal?

iii. Access to Counsel: Do citizens have the right and access to independent counsel?

iv. Prosecutorial Independence: Are prosecutors independent of political direction and control?

v. Prosecution of Public Officials: Are public officials and ruling-party actors prosecuted for the abuse of power and other wrongdoing?

3.c. Accountability of security forces and military to civilian authorities

i. Democratic Civilian Control over Security Forces: Is there effective and democratic civilian state control of the police, military, intelligence services, and internal security forces through the judicial, legislative, and executive branches?

ii. Interference in Political Process: Do police, military, intelligence services, and internal security services refrain from interference and/or involvement in the political process?

iii. Involvement in and Accountability for Corruption: Are the police, military, intelligence services, and internal security services held accountable for any abuses of power for personal gain?

iv. Involvement in and Accountability for Human Rights Abuses: Do members of the police, military, intelligence services, and internal security services respect human rights, and are they held accountable for violations of those rights?

3.d. Protection of property rights

i. Legal Property Rights: Does the state give everyone the right to own property alone as well as in association with others?

ii. Enforcement of Contracts: Does the state adequately enforce property rights and contracts?

iii. Land Seizure: Does the state protect citizens from the arbitrary and/or unjust deprivation of their property (e.g., Does the state unjustly revoke property titles for governmental use, to pursue a political agenda, or to serve powerful economic actors?)?

4. Anticorruption and Transparency

4.a. Environment to protect against corruption

i. Bureaucratic Regulations/Red Tape: Is the government free from excessive bureaucratic regulations, registration requirements, and/or other controls that increase opportunities for corruption?

ii. State Activity in Economy: Is state activity in the economy (including the administration of public enterprises and privatization processes) regulated and monitored in a manner that minimizes opportunities for corruption?

iii. Revenue Collection: Does the tax administrator implement effective internal audit systems to ensure the accountability of tax, royalty, and tariff collection?

iv. Separation of Public and Private Interests: Does the state enforce the separation of public office from the personal interests of officeholders?

v. Financial Disclosure: Are there adequate financial disclosure procedures that prevent conflicts of interest among public officials (e.g., Are the assets declarations of public officials reasonably open to public and independent scrutiny and verification?)?

4.b. Anticorruption Framework and Enforcement

i. Anticorruption Framework and Processes: Does the state establish and enforce an effective legislative or administrative framework and process designed to promote integrity and to prevent, detect, and punish the corruption of public officials?

ii. Anticorruption Bodies: Are there effective and independent investigative and auditing bodies created by the government (e.g., an auditor general, court of accounts, anticorruption commission, or comptroller), and do they function without impediment or political pressure?

iii. Prosecution: Are allegations of corruption by government officials at the national and local levels thoroughly investigated and prosecuted without prejudice?

4.c. Citizen Protections against Corruption

i. Media Coverage: Are allegations of corruption given wide and unbiased airing in the news media?

ii. Whistleblower Protection: Do whistleblowers, anticorruption activists, and investigators operate in a legal environment that protects them, so they feel secure about reporting cases of bribery and corruption?

iii. Redress for Victims: Does the state provide victims of corruption with adequate mechanisms to pursue their rights?

iv. Corruption in Education: Does the state protect education from pervasive corruption and graft (e.g., Are bribes necessary to gain admission or good grades?)?

4.d. Governmental transparency

i. General Transparency: Is there significant legal, regulatory, and judicial transparency as manifested through public access to government information?

ii. Legal Right to Information: Do citizens have a legal right to obtain information about government operations, and means to petition government agencies for it?

iii. Budget-making Process: Is the executive budget-making process comprehensive and transparent and subject to meaningful legislative review and scrutiny?

iv. Expenditure Accounting: Does the government publish detailed and accurate accounting of expenditures in a timely fashion?

v. Government Procurement: Does the state ensure transparency, open bidding, and effective competition in the awarding of government contracts?

vi. Distribution of Foreign Assistance: Does the government enable the fair and legal administration and distribution of foreign assistance?

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- **Analysis.** Freedom House's rigorous research methodology has earned the organization a reputation as the leading source of information on the state of freedom around the globe. Since 1972, Freedom House has published Freedom in the World, an annual survey of political rights and civil liberties experienced in every country of the world. The survey is complemented by an annual review of press freedom, an analysis of transitions in the post-communist world, and other publications.

- **Advocacy.** Freedom House seeks to encourage American policymakers, as well as other governments and international institutions, to adopt policies that advance human rights and democracy around the world. Freedom House has been instrumental in the founding of the worldwide Community of Democracies, has actively campaigned for a reformed Human Rights Council at the United Nations, and presses the Millennium Challenge Corporation to adhere to high standards of eligibility for recipient countries.

- **Action.** Through exchanges, grants, and technical assistance, Freedom House provides training and support to human rights defenders, civil society organizations, and members of the media in order to strengthen indigenous reform efforts in countries around the globe.

Founded in 1941 by Eleanor Roosevelt, Wendell Willkie, and other Americans concerned with mounting threats to peace and democracy, Freedom House has long been a vigorous proponent of democratic values and a steadfast

opponent of dictatorships of the far left and the far right. The organization's diverse Board of Trustees is composed of a bipartisan mix of business and labor leaders, former senior government officials, scholars, and journalists who agree that the promotion of democracy and human rights abroad is vital to America's interests abroad.

REFERENCE / POLITICS

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Countries at the Crossroads: An Analysis of Democratic Governance evaluates government performance in 70 strategically important countries from across the globe, including emerging market countries and at-risk states. The in-depth comparative analyses and quantitative ratings—examining accountability and public voice, civil liberties, rule of law, and anticorruption and transparency—serve as a valuable tool for public analysts, educators and students, government officials, and the business community.

FREEDOM HOUSE is a nonprofit, nonpartisan organization that supports democratic change, monitors freedom, and advocates for democracy and human rights.

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