

Democratization from above: The case of Bhutan

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Bhutan is a small kingdom located between India and the region known as Tibet (now part of the People's Republic of China). It appears seldom in Western media - football fans may have noticed the film 'The Other Final'. It is featuring a match of Bhutan's national soccer team versus Montserrat. The match took place on the same day as the World Cup Final 2002, but at the time Bhutan and Montserrat were the world's two lowest ranked teams.

The entire country is mountainous except for 13-16 km strip of subtropical plains in the extreme south. Bhutan is one of the most isolated nations in the world; the government to preserve its traditional Tibetan Buddhist culture heavily regulates foreign influences and tourism. Non-Buddhists complain of human rights violations. Approximately 100,000 ethnic Nepali (who are generally Hindu) left the country in the 1980s because they were negatively affected by new government policies designed to reduce the growing illegal immigration from Nepal.

Bhutan is the only country to measure happiness. Gross National Happiness (GNH) is an attempt to define quality of life in more holistic and psychological terms than Gross National Product. It was introduced in 1972. Conventional development models stress economic growth as the ultimate objective. The concept of GNH is based on the premise that true development of human society takes place when material and spiritual development occur side by side to complement and reinforce each other. Critics allege that because GNH depends on a series of subjective judgments, governments may be able to define GNH in a way that suits their interests.

Basics

Size:	47 000 sq km
Capital:	Thimphu
Population:	2,279,723 - <i>note</i> : other estimates range as low as 810,000 (July 2006 est.)
Age structure:	0-14 years: 38.9% (male 458 801/female 426 947) 15-64 years: 57.1% (male 671 057/female 631 078) 65 years and over: 4% (male 46 217/female 45 623) (2006 est.)
Population growth rate:	2.1% (2006 est.)
Life expectancy at birth:	total population: 54.78 years
Natural Resources:	timber, hydropower, gypsum, calcium carbonate
Natural hazards:	violent storms from the Himalayas are the source of the country's name, which translates as Land of the Thunder Dragon; frequent landslides during the rainy season
Ethnic groups:	Bhote 50%, ethnic Nepalese 35% (includes Lhotsampas - one of several Nepalese ethnic groups), indigenous or migrant tribes 15%
Religions:	Lamaistic Buddhist 75%, Indian- and Nepalese-influenced Hinduism 25%
Languages:	Dzongkha (official), Bhotes speak various Tibetan dialects, Nepalese speak various Nepalese dialects
Government type:	monarchy; special treaty relationship with India
Constitution:	no written constitution; in 2001, the king commissioned the drafting of a constitution, and in March 2005 publicly unveiled it (See below)
King:	Jigme Singye WANGCHUCK

History

The first written mention of Bhutan was the passage of the Buddhist saint Padmasambhava in the 8th century. Bhutan's early history is unclear, because most of the records were destroyed through a fire

in 1827. Until the early 17th century, Bhutan existed as a patchwork of minor warring fiefdom until unified by the Tibetan lama and military leader Namgyal. After his death Bhutan fell into anarchy and was attacked by the Tibetans in 1710 and 1730 (with the help of the Mongols). Both attacks were warded off. In the 18th century, the Bhutanese invaded and occupied the kingdom of Cooch Behar, which appealed to the British East India Company, who assisted them in ousting the Bhutanese, and later in attacking Bhutan itself in 1774. During the next 100 years border skirmishes with the British continued. During the 1870s, power struggles between two rival valleys caused a civil war in Bhutan. The governor (ponlop) of Tongsa, Ugyen Wangchuck defeated his political enemies and united the country following several civil wars and rebellions in the period 1882–1885. In 1907 an assembly of leading Buddhist monks, government officials, and heads of important families unanimously chose Ugyen Wangchuck as the hereditary king of the country. The British government at once recognized the new monarchy, and in 1910 Bhutan signed a treaty which let Great Britain control Bhutan's foreign affairs. After India became independent Bhutan became one of the first countries to recognize India's independence. A treaty with India replaced the one with Great Britain containing nearly the same conditions. After the Chinese entered Tibet in 1951 Bhutan closed its northern frontier and improved bilateral ties with India. To reduce the risk of Chinese encroachment, Bhutan began a modernization program that was largely sponsored by India.

In 1953, King Jigme Dorji Wangchuck established a 130-member National Assembly. In 1965, he set up a Royal Advisory Council, and in 1968 he formed a Cabinet. In July 1972 Jigme Singye Wangchuck ascended to the throne at the age of 16 after the death of his father.

Current Ethnic Problems

“The Exodus of Ethnic Nepalis from Southern Bhutan”

(Taken from: <http://www.unhcr.org/>)

“In 1988, citing concerns about the possibility of a rapidly increasing illegal immigrant population, the Bhutanese authorities began to carry out a census in southern Bhutan to determine citizenship. Shortly after the census began, the Government also introduced a series of measures ostensibly designed to integrate ethnic Nepalis more fully into Bhutanese society. As a result, a series of demonstrations, unprecedented in the country's history, took place in southern districts of Bhutan in September 1990 as thousands of ethnic Nepalis protested about the census and the Government's so-called 'Bhutanization' policies. The Government's response to the demonstrations was reportedly swift and harsh, and the months that followed saw widespread arbitrary arrests, ill-treatment and torture, followed by an exodus from the country of thousands of ethnic Nepalis from southern Bhutan.”

This crisis caused tensions between Bhutan and Nepal.

Present

In 1998 the King introduced political reforms, transferring most of his powers to the Prime Minister and allowing for impeachment of the King by a two-thirds majority of the National Assembly. In 1999 the king also lifted a ban on television and the Internet. A draft of new constitution was presented in early 2005, which will be put up for ratification by a referendum before coming into force. In December 2005, the King announced that he would step down as King of Bhutan in 2008, saying his son (the crown prince) would succeed him.

Bhutan is divided into four *dzongdey* (administrative zones). Each *dzongdey* is further divided into *dzongkhag* (districts). There are 20 *dzongkhag* in Bhutan. Large *dzongkhags* are further divided into subdistricts known as *dungkhag*. At the basic level, groups of villages form a constituency called *gewog* and are administered by a *gup*, who is elected by the people.

The Draft of the Constitution

Overview

The suggested new constitution consists of 34 Articles. Article 7 guarantees fundamental human rights. Quite a few articles of the draft not only describe formal rules and regulations about the process of adopting a law and for the constitutional institutions but also are setting content with regard to the countries objectives.

Article 1 describes (amongst other things) the “Kingdom of Bhutan” as a “Democratic Constitutional Monarchy” and constitutes that “Sovereign power belongs to the people of Bhutan”. Article 2 concentrates on the “Institution of Monarchy”, containing 26 clauses. The king will be the Supreme Commander of the Armed Forces and the Militia (Article 27). In Article 3 the “Spiritual Heritage” of Bhutan is put into writing and describes the country in clause 1 as follows: “Buddhism is the spiritual heritage of Bhutan, which promotes among others the principles and values of peace, non-violence, compassion and tolerance.” Article 4 binds e.g. in clause 1 the state “to endeavor, protect and promote the cultural heritage of the country”, recognizing it “as an evolving dynamic force” (Clause 2). Article 5 talks about Bhutan’s natural resources and the environment.

Article 6 is - with respect to the country’s past and present – critical, because it is setting the regulations about the “**Citizenship**”. A Bhutan citizen will be:

- “1. A person, both of whose parents are citizens of Bhutan, shall be a natural born citizen of Bhutan.”
- “2. A person, domiciled in Bhutan on or before the 31. of December 1958 and whose name is registered in the official record of the Government of Bhutan shall be a citizen of Bhutan by registration.”
- “3. A person who applies for citizenship by naturalization shall: a) Have resided in Bhutan for at least 15 years; b) Not have any record of imprisonment (...); c) Be able to speak and write Dzongkha; (...)”

Article 7 deals with the “**Fundamental Rights**” (see below) and is contrasted with Article 8, the “Fundamental Duties”.

Article 9 describes within the following 24 clauses the “**Principles of State Policy**”, e.g. demands in clause 7 that “The State shall endeavor to develop and execute policies to minimize inequalities of income, concentration of wealth among citizens, and promote equitable distribution of public facilities among individuals and people living in different parts of the Kingdom.” Or, e.g., clause 16 demands that the state “shall provide free education to all children of school going age up to 10th standard (..)”.

The draft of the constitution establishes later on several **commissions** and similar institutions:

- The Royal Audit Authority
- The Royal Civil Service Commission
- The Anti-Corruption Commission
- The Pay Commission

Further on the draft describes in Article 31 the procedure for impeachment of holders of constitutional offices. A successful impeachment procedure needs “not less than two-thirds of the total number of members of parliament” and “parliament shall have the sole power to impeach.”

The draft for Bhutan’s constitution as well includes rules for “**Emergency**”-situations (Article 33). The king may proclaim an emergency situation on the “written advice of the Prime Minister”. The Bhutan Government then will be able “to take measures derogating from the provisions of this Constitution to the extent strictly required by the exigencies of the situations.” The state of emergency is limited to “a period of not more than 22 days from the date of the first sitting of Parliament after such a Proclamation unless Parliament in a joint sitting, resolves by not less than two-thirds of the total number of members of Parliament to extend it within the said period.”

Parliament is able with a minimum of one-fourth of its members "to move a resolution to disapprove such a Proclamation" in a written statement to the king if the house is not in session. In consequence a joint sitting of parliament will be held within a 21-days period.

If the state of emergency is proclaimed the enforcement "of the rights (...) under section 2,4,5,14 and 18 of Article 7 may be suspended." (See below).

Fundamental Rights

In Article 7 the draft of the constitution assures fundamental human and citizen rights to the people of Bhutan:

Bhutanese people shall have the right (excerpt) :

- to life, liberty and security of person
- freedom of speech, opinion and expression
- freedom of thought, conscience and religion
- freedom of the press, radio and television and other forms of (..)information
- to vote
- freedom of movement and residence within Bhutan
- to practise any lawful trade, profession or vocation
- to equal pay for work of equal value
- freedom of peaceful assembly and freedom of association
- to be presumed innocent until proven guilty in accordance with the law
- not be subjected to torture or to cruel, inhuman or degrading treatment or punishment

"All persons are equal before the law and are entitled to equal and effective protection of the law and shall not be discriminated against on grounds of race, sex, language, religion, politics or other status."

But "the rights conferred by this Constitution, nothing in this article shall prevent the State from subjecting reasonable restrictions by law, when it concerns..." (excerpt of clause 20)

- "the interests of the sovereignty, security, unity and integrity of Bhutan
- the interest of peace, stability and well-being of the nation.
- the interest of friendly relations with foreign States."

Now we will now take a closer look on the articles of the draft – Article 10 to 23 and Article 32 -, which deal with the parliamentary system, executive government, judiciary system and National Referendum, as well as the political parties.

The Political System

A) Overview

The draft of the constitution follows the classic concept of most democracies and institutionalizes the separation of the legislative, executive and judiciary system.

The legislative powers will be born by the Parliament, which consists of 3 constitutional institutions, resp. Houses:

- The King
- The National Council
- The National Assembly

All members of the National Assembly, as well as 80% of the members of the National Council will be elected by the people of Bhutan. 20% of the members of the National Council will be nominated by the king.

Just the National Assembly can be called a "political" institution, as its members will be candidates and representatives of political parties. The draft of the constitution institutionalizes a two-phase election for the National Assembly: After the primary election, just the 2 political parties who got the most votes in the primaries will take part in the final elections. The political party who will gather the majority of the votes in the second round will be the governing party and forming the government.

On the other hand, the members of the National Council are not allowed to belong to or have any affiliation with any political party.

B) More Details

(Note: In this overview the focus is on the national level)

Separation of powers

Parliament

(Article 10)

The parliament "shall have all legislative powers (...) and shall consist of: the Druk Gyalpo (the King of Bhutan), the National Council and the National Assembly."

The election period of the National Council and the National Assembly will be 5 years. Premature dissolution of the National Assembly is possible under the recommendation of the Prime Minister to the King or in case of a motion of no confidence against the Government being passed in the National Assembly.

Members of Parliament or any Committee will be granted privilege.

The National Council

(Article 11)

The National Council consists of 25 members. 1 member is elected as representative in and for each of the in total 20 districts ("Dzongkhags"). The King nominates the 5 Members.

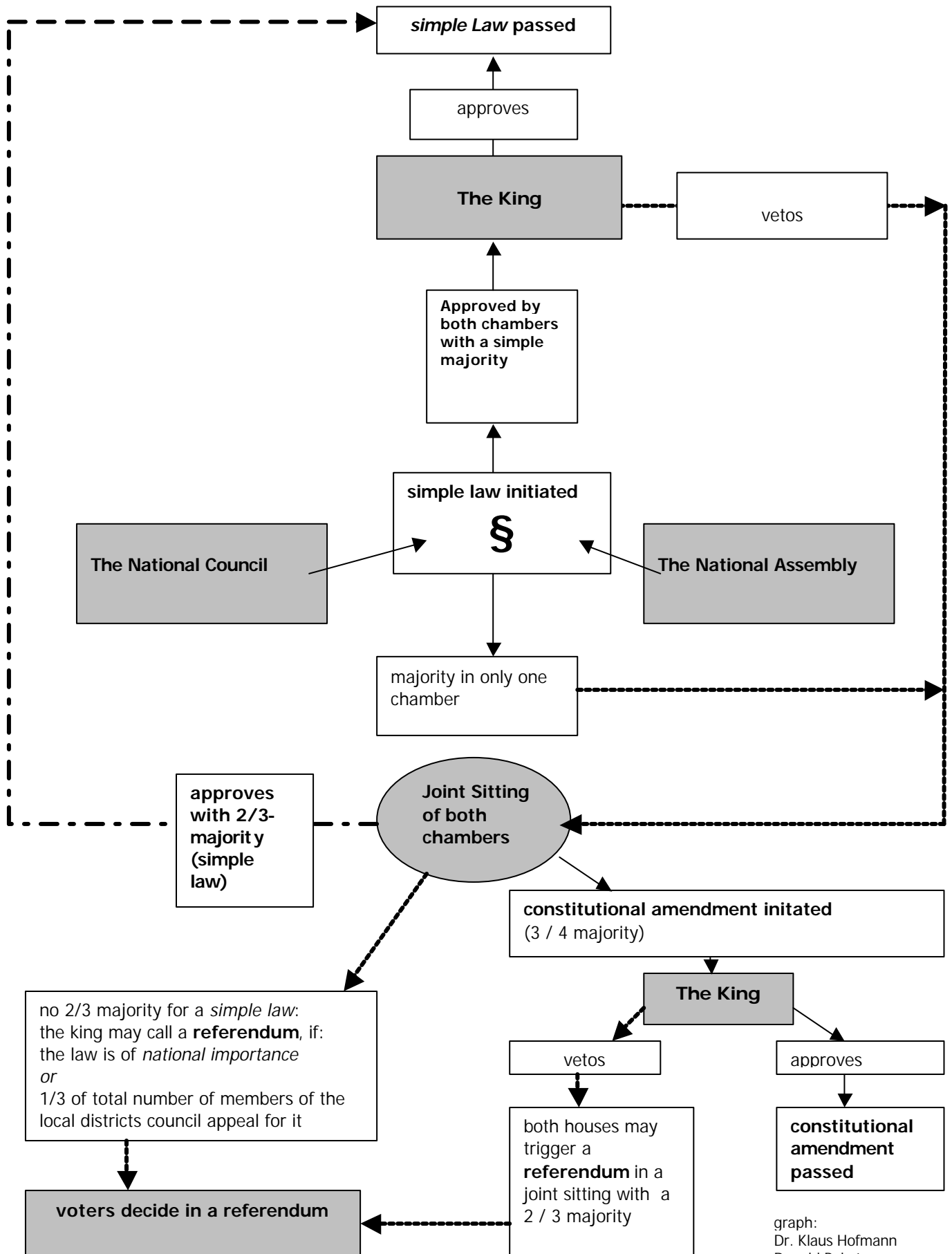
No candidate to the National Council is allowed to belong to or have any affiliation with any political party!

The National Assembly

(Article 12)

In maximum having 75 members, each member is elected by each Dzongkhag in proportion to its population. Each Dzongkhag will have at least 2 representatives, but not more than 7 members in the National Assembly.

Passing of Bills



Passing of Bills (Article 13)

According to the draft a bill can be originated either in the National Assembly or the National Council. Exceptions are bills concerning money or financial issues, which only can be originated by the National Assembly.

A bill will be usually passed by a simple majority of the total number of members of the respective House, or, in case of a *joint sitting*, by not less than 2/3 of the total number of both Houses present and voting.

a) Both Houses passing an introduced bill

In case both Houses pass the bill, the bill will be presented to the king for his assent.

If the King does not grant assent to a bill, the bill will be returned with amendments and objections. In this case the bill can be passed in a joint sitting of both houses (see above).

b) One house does, the other does not pass a bill

If a bill is passed in the House where it was originated, it will be presented to the other House to vote on. In case the bill will then not be passed, it will be returned to the other House with amendments and objections. In case these amendments or objections will be refused by the originating house, there will be finally a joint sitting (see above).

In case, the other House neither passes nor returns the Bill within a time period of 30 days, the bill will be considered as have been passed by that house.

Again: If the King does not grant assent to a bill, the bill will be returned with amendments and objections. The bill then will have to be passed in a joint sitting of both houses (see above).

The Executive

The Royal Government of Bhutan will be “collectively responsible to the Druk Gyalpo (King) and to Parliament” and headed by the Prime Minister.

The King will appoint the leader of the winning party in the secondary elections as Prime Minister. Further, the King has the right to appoint the Ministers among the members of the National Assembly, on the recommendation of the Prime Minister.

A candidate for the post of Prime Minister or Minister shall be an elected Member of the National Assembly and a natural born citizen of Bhutan (see above).

A successful motion of no confidence against the Government needs

- in minimum 1/3 of the total number of members of the National Assembly for the move
- 2/3 majority in the National Assembly to be dismissed by the king.

The Judiciary

The draft introduces a Supreme Court as highest appellate authority. The King is able to refer questions of importance to the Supreme Court. The Court can also get active independently on its own motion. Additionally, the Attorney General or one of the parties in dispute can pass a case to the Supreme Court.

High Court and Supreme Court will have the exclusive jurisdiction to enforce the Fundamental Rights.

The appointment of the Judges of the Supreme and the High Court, the Chief Justice of Bhutan and other important judges is usually a matter of the King either in consultation with or on the recommendation of the National Judicial Commission. The National Judicial Commission itself will be appointed by the King and includes The Chief Justice of Bhutan, the senior judge of the Supreme Court, the chairperson of the Legislative Committee and the Attorney General. The King on the recommendation of the Prime Minister will appoint the Attorney General.

Political Parties

Political Parties (as described in Article 15) "shall ensure that national interests prevail over all other interests (..)." (Clause 1)

Political parties are not allowed "to resort to regionalism, ethnicity and religion to incite voters for electoral gain." (Clause 3)

The needed registration will be denied e.g. if the party "receives money or any assistance from foreign sources" or not "broad-based with cross-national membership and support and is committed to national cohesion and stability". (Clause 4).

Elections (National Level)

Voting requires being a Bhutanese citizen, a minimum of being 18 years of age, registered in the census and not otherwise disqualified from voting under law.

The Elections for the *National Assembly* will consist of two rounds.

The purpose of the primary round will be "to select the two political parties for the general election on the expiry of the term of the National Assembly or in accordance with the provision of section (...)" "The political parties having the highest number of the votes in the primary election shall be declared as the two political parties (...) to contest in the general election." (Clauses 6 and 7)

The constitution demands certain qualities for a candidate for an elective office. Some problematic examples: Persons are not allowed to be under foreign protection or married to a person who is not a citizen of Bhutan; the candidate needs to "have the necessary educational and other qualifications as may be prescribed by Parliament."

Even more problematic is the filling of Constitutional Offices (Chief Justices e.g.). The holders must be "Natural born Citizens of Bhutan, not under foreign protection or not married to a person who is not a citizen of Bhutan" and not having political affiliations.

Elements of Direct Democracy

The draft of the Bhutan constitution does not provide its citizens the right to start an initiative. But on the other side National Referendums will be part of the constitutional political process from the very beginning.

The proposed constitution will be ratified by the people in a National Referendum.

Additionally Article 32 of the draft introduces the National Referendum, which though depends on the decision of the king. He will then be able to decide to "command a Referendum", if

- "In His opinion a Bill, which is not passed in a joint sitting of parliament, is of national importance, or
- An appeal is made by not less than one-third of the total number of members of all Dzongkhag Tshogdues (the district councils)."

A Referendum cannot be held on the questions of imposition, variation or repeal of taxes.

A simple majority of the total number of votes cast will decide.

In case of a constitutional amendment, which passes the Parliament (3/4-majority in a joint sitting), but did not get granted assent by the king, Parliament is able to call for a National Referendum.

Summary

The draft for a new constitution for the Kingdom of Bhutan appears to be a big move towards a democratic constitution, initiated by the King of Bhutan: It guarantees human and citizen rights and institutionalizes a National Assembly, as well as a National Council, elected by the people of Bhutan. Still the king keeps quite some influence on his country's destiny: his possibilities to influence the law-making process, his powers in the selection process for candidates of constitutional offices, being the Supreme Commander of the armed forces and more.

There are some critical aspects in the constitution: It is possible to restrict human and citizen rights under certain conditions which are very vague.

The constitution knows three types of citizenship. Only the natural born citizens shall enjoy all rights within the political system. The other (citizenship by registration, citizenship by naturalization) are not entitled to take part in all aspects of public life (see page 8), by way of example especially with respect to constitutional offices. This concept in fact suggests different classes of citizens. This violates the principle of equality which is an important basic for the concept of democracy.

Hopefully, future peaceful experiences of the Bhutanese people with this new constitution and a stable development of the country will convince Bhutanese to grant also equal citizen rights to everyone.

The voting law favors strongly the establishment of a two party system. However, the reason for that is not clear to us. We presume this as measure to ensure the representation of the "national interest" by each party. Thus it may be a hurdle for the creation of parties representing single clans or minorities as the Nepalese. We do not know if the foundations of parties are already prepared.

There is a severe division between the Parliament, which is dominated by parties, and the National Council. Members of the latter are not allowed belonging or even having any affiliation to a party. This division may become obsolete, as personal ties are likely to develop within the political process.

The citizens of Bhutan shall not be allowed to initiate laws. Bhutan is a small country with about 2.3 Million inhabitants. Looking at it from the outside it seems to be reasonable to introduce these direct democracy possibilities.

Looking from the outside to a country so far away from our political and cultural background, it is not easy to give an opinion about the development. However, the draft constitution seems to combine cultural and traditional elements with democratic values.

Finally, the Bhutanese will decide about this draft in a referendum. So the King of Bhutan grants the populations a final decision on their future destiny - this is more than most Europeans get from their governments concerning the draft of the European constitution.

Klaus Hofmann

Sources used:

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"The Constitution of The Kingdom of Bhutan – Draft of Tsa Thrim Chhenmo as on 26th March 2005"