The Peruvian Constitution (Titles I – III)

The basis of Peru’s current political system is illustrated in its latest constitution, enacted in 1993 during the Fujimori presidency (1990-2000).

The following version was used in this analysis:

http://www.congreso.gob.pe/_ingles/CONSTITUTION_29_08_08.pdf

This post is a summary of Titles I – III of the Peruvian constitution.

A follow-up post will summarize Titles IV – VI.

Preamble

The preamble reads as follows:

The Democratic Constituent Congress invoking Almighty God, obeying the mandate of the Peruvian people and remembering the sacrifice of all preceding generations of our land, has resolved to enact the following Constitution:

Title I: Person and Society

Chapter 1: Fundamental Rights of the Person (Articles 1 – 3)

This chapter guarantees basic rights to Peruvian citizens, including life, well-being, equality before law, freedom of religion, freedom of information.

For more information see Article 2 and Articles 3.

Chapter II: Social and Economic Rights (Articles 4 – 29)

This chapter discusses additional rights given to Peruvian citizens.

State guarantees several rights related to individual welfare, such as rights of children, mothers, and the family. (Article 4) Marriage defined (Article 5).

The national policy on population defined (Article 6). Right to health (Article 7); the regulation and prohibition of drugs (Article 8). Further items include the guarantee to free healthcare (Article 11), use of social security funds (Article 12), and educational policy (Articles 13 – 19.)

Remainder of articles discuss role of associations, protection of archaeological sites and labor rights. See Articles 20-29 for more information.

Chapter III: Political Rights and Duties

This chapter summarizes the right to suffrage as well as political asylum, and extradition.

The right to vote and suffrage
Suffrage enacted to all at age 18 (Article 30). Referendums available for constitutional amendments. (Article 31) Approval of “binding rules,” municipal ordinances, and “matters on decentralization process (Article 32). Citizenship can be stripped by “judicial interdiction,” imprisonment, and “sentence of disqualification from political rights.” (Article 33)

The military’s right to vote

While members of the military are permitted to vote, they are prohibited from concurrently holding political office (Article 34)

Political parties

Political parties and organizations are allowed exist, provided they are registered. (Article 35)

Asylum

Political asylum may be granted by the government’s discretion. (Article 36)

The Executive Branch

Defined: “…the sole competent authority for granting extradition after prior opinion of the Supreme Court, in accordance with the law and treaties, and in compliance with the principles of reciprocity.” (Article 37, Paragraph 1)

Extradition

Individuals may be extradited, so long as extradition is not “motivated by persecution or punishment on grounds of religion, nationality, opinion or race…” (Article 37, Paragraph 2) Political crimes, with the exception of terrorism, genocide, and assassinations are exempt from extradition. (Article 37, Paragraph 3)

Duty of Peruvians

“All Peruvians have the duty to honor Peru and to protect national interests, as well as to respect, obey and defend the Constitution and the code of laws of the Nation.” (Article 38)

Chapter IV: Public Service (Articles 39 - 42)

The Government

Structure: “The President of the Republic is the highest official at the service of the Nation, followed in this order of importance by the Members of Congress, Members of the Cabinet, the Members of the Constitutional Court and the Council of the Magistrature, Justices of the Supreme Court justices, the Prosecutor General of the Nation and the Ombudsman in the same ranking; and below them, the representatives of the decentralized agencies and Mayors, in accordance with the law.” (Article 39)
Public officials and civil servants.

Public officials are prohibited from holding multiple positions, except teaching posts (Article 40) Anti-corruption measures and requirement of statement of property owned by public officials. (Article 41) Civil servants are allowed to unionize and strike; military and police are prohibited from doing so. (Article 42)

Title II: State and Nation

Chapter I: State, Nation and Territory (Articles 43 – 54)

The State

Republic of Peru: “democratic, social, independent and sovereign…” (Article 43)

Government: “Its form of government is unitary, representative and decentralized, and it is organized pursuant to the principle of separation of powers.” (Article 43) Duties of state, promotion of Latin American integration, borders (Article 44)

Power

“All power emanates from the people,” constitutional constraints. Military coups are acts of sedition. (Article 45) Coups are illegitimate and violators of the constitution. Right to “insurrection in defense of constitutional order.” (Article 46)

Judiciary, official languages and capital

State attorneys responsible for representing government (Article 47). Spanish is official language; Aymara and Quechua “wherever they are predominant.” (Article 48). Lima is the capital of the Republic; Cusco is the historical capital. (Article 49, Paragraph 1) Definition of national symbols. (Article 49, Paragraph 2)

The Catholic Church

Recognized as an “important element in the historical, cultural, and moral formation of Peru and lends it its cooperation.” (Article 50)

Supremacy Clause

“The Constitution prevails over any other legal rule, the law over other lower level provisions and so on successively. Publication is essential to enforce any legal rule of the State.” (Article 51)

Peruvian nationality

Citizenship by birth, birth abroad to Peruvian partners also guarantees citizenship. Naturalization detailed. (Article 52)

To renounce Peruvian nationality, one needs to “express renunciation before competent government authority.” It cannot be given up unless this is done. (Article 53)
Integrity of Peruvian territory

The territory of the Republic: “inalienable and inviolable.” (Article 54, Paragraph 1)

Maritime territory: “coasts, as well as the seabed and subsoil thereof, extending out to a distance of 200 nautical miles measured from the baselines established by law.” (Article 54, Paragraph 2)

Airspace: “sovereignty and jurisdiction on the airspace over its territory and its adjacent sea up to the limit of 200 miles.” (Article 54, Paragraph 4)

Chapter II: Treaties (Articles 55 – 57)

Treaties are incorporated to national law. (Article 55) Treaties must be “approved by Congress before their ratification.” (Article 56) President retains right to refuse to sign or ratify treaties, but must notify Congress. (Article 57)

Title III Economic Regime

Chapter I: Generalities (Articles 58 – 65)

The role of the state in the economy defined (Article 58). Promotion of wealth creation and freedom to work (Article 59). Recognition of economic pluralism, participation of the State in the economy (Article 60). Anti-trust and anti-monopoly measures. Mass media cannot be controlled by the state. (Article 61) Contractual guarantees; resolution of disputes in courts. (Article 62) Foreign protectionism may be retaliated. Guidelines for international trade disputes. (Article 63) Foreign currency possession allowed. (Article 64) Consumer protection. (Article 65)

Chapter II: Environment and National Resources (Articles 66 – 69)

Renewable and non-renewable natural sources are “patrimony of the Nation.” Private individuals and companies may be granted concessions for their use. (Article 66) State responsible for environmental policy. (Article 67) Promotion of “biological diversity” and environmental conservation. (Article 68) Sustainable development of the Amazon. (Article 69)

Chapter III: Property (Articles 70 – 73)

State guarantees right to property. (Article 70) Aliens given the same property rights as Peruvian citizens. Diplomatic protection cannot be exercised. (Article 71, Paragraph I) Aliens prohibited from concessions within 50km of borders. (Article 71, Paragraph II) The government reserves the right to set restrictions on the ownership transfer of certain property for national security reasons. (Article 72) Property owned by the government is “inalienable and imprescribable” [sic]. Government owned property may be transferred to “private parties” for economic development. (Article 73)

Chapter IV: Special Tax Treatment and Budget System (Articles 74 – 82)
Taxes are exclusively set up, modified, or abolished, and exemptions set by law or legislative decree. (Article 74, Paragraph I) Regional and local governments "may set up, modify and eliminate taxes and rates or exempt the same within their jurisdiction and within the limits defined by law." (Article 74, Paragraph II)

Public debts, bidding, and contracting

Payment of public debt is guaranteed by the State when “contracted by constitutional governments in accordance with the Constitution and the law.” (Article 75) Public works, contracting and bidding (Article 76)

Budget

Budget Act governs the economic and financial administration of the State. Passed annually by Congress. (Article 77) Budget bill subject to annual August 30 deadline from President to Congress. (Article 78, Paragraph I) No initiative to increase public spending; “Congress may not pass taxes for predetermined purposes, except upon request of the Executive Branch.” (Article 78, Paragraph II) Special tax treatment for “specific zone of the country” requires approval from two-thirds of Congress. (Article 78, Paragraph III)

Minister of Economy and Finance is responsible for reporting national income before the Plenary Assembly of Congress. (Article 80, Paragraph 1) “If the enrolled bill on the Budget Act is not referred to the Executive branch by November 30th, its own bill comes into effect and is enacted by legislative decree.” (Article 80, Paragraph 2) President of the Republic must submit the General Account of the Republic and the audit report of the Office of Comptroller General by November 15. (Article 81, Paragraph I) Review Committee examines and reports on the General Account within 90 days of receiving. (Article 81, Paragraph II) Overview of the Office of Comptroller General. (Article 82)

Chapter V: Currency and Banking (Articles 83 – 87)

Currency and the Central Reserve Bank

Monetary system determined by law of the Republic; issuance of currency is “the exclusive power of the State, responsibility of Central Reserve Bank. (Article 83) Overview of Central Reserve Bank. (Article 84) Central Reserve Bank and international reserve imbalances. (Article 85) Management of Central Reserve Bank. (Article 86) “The state promotes and guarantees savings.” (Article 87)

Chapter VI: Agricultural Regime, Rural and Native Communities (Articles 88 – 89)

The State supports the agricultural development of land and guarantees land ownership; abandoned lands revert to State ownership and are sold. (Article 88)

Rural and native communities recognized as legally existent artificial persons. Lands cannot be taken away. Cultural identity respected. (Article 89)