**05NEWDELHI5912**

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| **Reference ID** | **Created** | **Released** | **Classification** | **Origin** |
| 05NEWDELHI5912 | 2005-07-29 13:12 | 2011-08-30 01:44 | CONFIDENTIAL | Embassy New Delhi |

This record is a partial extract of the original cable. The full text of the original cable is not available.

 C O N F I D E N T I A L SECTION 01 OF 08 NEW DELHI 005912 SIPDIS E.O. 12958: DECL: 07/27/2015 TAGS: PGOV PHUM PREF PREL ECON KDEM KIRF SENV IN NP BT SUBJECT: BHUTANESE DRAFT CONSTITUTION: A STEP IN THE RIGHT DIRECTION Classified By: Charge Robert O. Blake, Jr. for Reasons 1.4 (B, D) [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par1) 1. (C) Summary: The RGOB released a draft constitution on March 26, continuing the process of democratic reform started when the King abdicated power to a council of ministers in [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par1998) 1998. The draft, if approved, would create a constitutional monarchy with a Parliament consisting of an upper and lower house, as well as executive and legislative branches. King Wangchuck's decision to implement the constitution advances his own interests in preserving his role and protecting Bhutanese sovereignty, but it also constitutes a remarkable concession of power that will help usher Bhutan into the modern world. Human rights activists and Bhutanese refugee leaders were critical, stating that the constitution does not adequately protect human rights, solidifies the power of the monarchy and allows the king to maintain de facto control over the government. Their comments reflect the fact that the constitution has serious imperfections and will not result in an instant transition to liberal democracy. Bhutan's King is determined to avoid the pitfalls found by the hereditary leaders of neighboring Nepal and Sikkim. Many Bhutanese citizens need convincing democracy is the best way forward, due to the many problems in governance they see in the democracies in the region. End Summary. Background: A Step Forward a Long Time Coming --------------------------------------------- [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par2) 2. (C) On March 26 the Royal Government of Bhutan (RGOB) released a draft constitution to the public, bringing the country a step closer to fulfilling King Wangchuck's promise to transform the isolated Himalayan kingdom into a constitutional monarchy. The process began in 1998, when the King formally devolved executive powers to a Council of Ministers elected by secret ballot in the National Assembly. Although an important step at the time, the King maintains a large amount of control by personally selecting a sizable portion of the 150-member National Assembly. Under the current system, the general population elects 105 representatives, the king appoints 35 and the Buddhist clergy selects 10. The members appointed by the King and the clergy vote in a solid bank with the Monarchy, requiring that King Wangchuck only garner 31 of the remaining 105 votes to prevail on any given issue. This allows the King effectively to control appointments to the Council of Ministers and the judiciary. With the Council of Ministers acting as the country's Executive Branch, the King retains considerable control over the day-to-day operations of the government. [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par3) 3. (U) The draft constitution was written by a 39-member committee, chaired by the Chief Justice of the High Court and comprised of the Speaker of the National Assembly, two Buddhist monks, one elected member from each of Bhutan's 20 dzongkhags (districts), the Royal Advisory Council (a nine-member board consisting of six members chosen from the National Assembly, two by the clergy and one appointed by the King), five representatives from the civil service and three High Court lawyers. The document was reviewed by the National Assembly and has now been distributed to the people of Bhutan for their examination. During the review period, King Wangchuck plans personally to discuss the document with the populace, before it goes to a national referendum, which the RGOB has yet to schedule. Bhutanese Ambassador to India Tshering told Poloff on July 13 that monsoon rains would SIPDIS likely hold up the King's consultations with the people until the end of the summer. A copy of the constitution is available on line at www.constitution.bt. Overview of the Constitution: Looks Decent on Paper --------------------------------------------- ------ [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par4) 4. (C) The constitution would create a constitutional monarchy with a Parliament consisting of an upper and lower house, along with executive and judicial branches. The constitution prescribes a two-party system, with the majority party selecting a Prime Minister. The electorate will select Members of Parliament through two rounds of elections. The first round will be open to any registered party. The two parties that receive the most votes in the first round will then face off in a second round to determine which will form the government. The constitution specifies that no political party can be based on region, sex, language, religion or place of origin, must promote national unity and must "strive to ensure the well-being of the nation." The constitution would also outlaw political parties banned by the current government, and obligate the opposition party to play a "constructive role" and promote national integrity, unity and harmony among all sections of society. [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par5) 5. (C) The new constitution won endorsement from at least one important RGOB critic. Vice President Kesang Lhendup of the Druk National Congress (DNC), a political party representing eastern Bhutanese expelled from the country in the mid 1990's, opined that a government formed under the constitution would allow his group to return. "Democracy is what we have been asking for," stated Lhendup "and those wishes would be answered by this constitution." He acknowledged that the constitution is not perfect and predicted it would "evolve and improve over time." The constitution defines the role of the monarchy as well as its powers and benefits. It sets Buddhism as the spiritual heritage of the country, while granting freedom of religion as a fundamental right. The document also guarantees the right to life, liberty, security, freedom of speech and press, freedom of movement, and the due process of law. The constitution allows for national referendums, and describes how the RGOB can declare a state of emergency, remove the king from power, and replace him with the crown prince. Reasons for Change: It Suits the King ------------------------------------- [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par6) 6. (C) Delhi-based analysts shared differing opinions on King Wangchuck's reasons for seeking the creation of democracy in Bhutan. Some believe he genuinely wants political reform, while others believe he is merely using the process to solidify his control over the country. South Asian Studies Foundation Director Dr. Parmanand maintained that the King is dedicated to true democratic reforms and saw the constitution as one more step in that direction. Parmanand acknowledged that the King maintains a large degree of power under the constitution, but indicated that political change moves slowly in Bhutan and was confident that the system will continue to evolve into a truly representational democracy. DNC's Lhendup told us that while the King is a forward thinking man and understands Bhutan's need for democracy, he would remain in control of the government if the constitution were formalized in its current iteration. Lhendup reiterated that the DNC, which currently is not allowed to operate in Bhutan, hoped to return after the constitution is accepted. Interlocutors also asserted that most Bhutanese currently do not want the system of government in the Kingdom to change, because of shortcomings they see in the democracies around them. Due to severe governance issues and opaque decision making processes in India, Nepal and Bangladesh, Bhutanese will need convincing that democracy is the best way forward. The Long-Term Plan: Avoid Being Swallowed By India --------------------------------------------- ----- [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par7) 7. (C) South Asian Human Rights Documentation Center (SAHRDC) Director Ravi Nair agreed that the constitution is a step forward, but commented that King Wangchuck's true motive is to solidify and legitimize his power. He argued that the King understands that he must shed the antiquated monarchical system and embrace modern government to be taken seriously in the international arena. Nair argued that the King was strongly influenced by the experiences of Nepal and Sikkim, and is determined not to repeat their mistakes. The King, according to Nair, believes that Nepal's numerous regional and ethnic political parties do not work for the national interest and is determined to limit this possible source of friction in Bhutan. Nair also theorized that Wangchuck is determined that Bhutan does not follow Sikkim's example and be absorbed by India. Noting that a steady migration of Nepalese preceded Sikkim's 1975 annexation by India, Nair theorized that King Wangchuck sees a close parallel to Bhutan and designed this constitution to pre-empt more radical change and make certain this will not happen to his country. [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par8) 8. (C) Nair suggested that King Wangchuck could be using the constitution to legitimize his control over the country, noting that the Bhutan populace has yet to consent officially to the rule of the Wangchuck monarchy. Until 1907, Bhutan was governed by a feudal system, with each dzongkhag (district) ruled by a different family. During the Raj, the British hoped to negotiate a route through Bhutan to Tibet, but found it difficult to deal with so many disparate power centers. In order to simplify negotiations, the British signed an agreement with the Baron of the Trongsa dzongkhag, Ugyen Wangchuck, naming him king of Bhutan. Nair argued that the acceptance of the constitution would, for the first time, truly legitimize Wangchuck rule in Bhutan. [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par9) 9. (C) Dr. Parmanand, who is also the author of a book on Bhutanese politics, agreed with Nair's historical assessment of the Wangchuck Dynasty's rise to power, but argued that its legitimacy is not in question. Parmanand asserted that the Bhutanese people, including other noble families, recognize the Wangchucks as the legitimate monarchs and the King does not need a constitution to legitimize his reign. Parmanand stated the king has kept the other feudal lords (Dashos) content by providing them numerous benefits, such as greater access to business licenses and government jobs. Parmanand noted that the Dashos, who are small in number, would continue to receive preferential treatment under the proposed government and would not oppose the constitution. Concerns and Praise: On the Whole, A Good Start --------------------------------------------- -- [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par10) 10. (C) Our interlocutors warned that the constitution contains many contradictions and ensures that much authority will continue to rest with the King, while mentioning a number of positive aspects. They listed the following issues as significant: -- Article 1 (Kingdom of Bhutan) states that "Bhutan is a sovereign kingdom and sovereign power belongs to the people of Bhutan," however, other sections grant the king extensive powers and immunity. The king has veto power over laws passed by parliament, can reverse executive council decisions, sack the executive council, and remains supreme commander of the armed forces. The king is also above the law and cannot by tried in court for any reason, although provision does exist for his removal from office. -- Article 2 (The Institution of the Monarchy) solidifies the Wangchuck line as the hereditary rulers of Bhutan and stipulates that this article cannot be amended or changed in any way. This section gives control of all "Royal Projects" to the King, but does not define them. DNC Secretary Karma Dupthop stated that numerous work and construction ventures fall under the purview of "Royal Projects," giving the King control over large capital programs. This section also allows the King to demand that bills of his choosing be introduced in Parliament while reserving all power not otherwise listed in the constitution for himself. He would also have the authority to appoint the Chief Justice of the Supreme Court without consulting with others in government. SAHRDC's Nair noted that since the judiciary is responsible for many of the checks enshrined in the constitution, the King's ability to choose the Chief Justice calls the validity of those checks into question. Constitutional Checks --------------------- [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par11) 11. (C) The constitution does limit the King's authority by forcing him to step down at age 65 and relinquish the thrown to the crown prince. Most notably, it stipulates that a joint sitting of Parliament can call for the King to abdicate his thrown for willfully violating the constitution or permanent mental disability. The King must also abdicate, again to the crown prince, if three-fourths of Parliament pass a vote of no confidence in a joint sitting, followed by a national referendum in which a simple majority of the electorate votes for his removal. Our interlocutors agreed that the ability of the National Assembly to call for the King's removal is a very important and positive aspect of the constitution. -- Article 3 (Spiritual Heritage) stipulates that Buddhism is the "spiritual heritage of Bhutan," promoting the values of peace, non-violence, compassion and tolerance. This section also states that religion shall remain separate from politics. Interlocutors questioned how this was possible, considering the numerous references to Buddhism throughout the document. -- Article 4 (Culture) had no provisions deemed problematic. -- Article 5 (Environment) was hailed as significant for creating constitutional safeguards to protect the fragile high-altitude ecosystem of Bhutan. Dr. Parmanand emphasized that this Article would prevent the type of deforestation and environmental degradation found in Nepal. Notably, it calls for 60 percent forest cover nationwide at all times, and environmentally sustainable economic development. However, the DNC questioned Bhutan's environmental record, stating that the RGOB has "failed miserably" in protecting the environment and that "deforestation and land degradation takes place continuously," due to tree harvesting and mining projects. -- Article 6 (Citizenship) does not alter the status quo. This section states that questions concerning citizenship shall be, "subject to the provisions of this Article and the Citizenship Act," and that Parliament may regulate the issue. Dr. Parmanand commented that this article could make it difficult for Bhutanese refugees in Nepal to regain their citizenship, because it contains a number of hurdles that they must overcome. It mentions that any person applying for citizenship must have "no record of having spoken or acted against the King, the Country and the People of Bhutan," and must be able to read and write Dzongkha, which many people in the camps do not speak. -- Article 7 (Fundamental Rights) lists numerous rights bestowed to the Bhutanese people, including freedom of speech, assembly, press, movement, from arbitrary arrest, and the right to property, work, and a fair trial. However, this article also allows the state to create, "reasonable restrictions" in the interests of "peace and stability and the well being of the nation" and "friendly relations with foreign states." Nair and DNC's Dupthop asserted that these clauses give the government wide latitude to control other freedoms listed in this article. Dupthop commented that if the government decides a person's comments offend an allied nation, it could censure or arrest him or her. Nair also warned that the RGOB could declare a demonstration against government policies to be against the "well-being of the nation" and take action against the protesters. -- Article 8 (Fundamental Duties) lists responsibilities of the citizenry and did not raise concerns. -- Article 9 (Principles of State Policy) was not deemed problematic, and mentions the country's commitment to the pursuit of "Gross National Happiness (GNH)." Interlocutors postulated that the RGOB's decision to strive for GNH as opposed to other indicators of success fits with Buddhist ideals and could be the right avenue for the country, but wondered how it would be measured. -- Article 10 (Parliament) lists the powers vested in the National Council and the National Assembly. The DNC noted that this section grants the King the ability to send messages to the assembly, and convene extraordinary sessions. -- Article 11 (The National Council) allows the king to appoint five of the 25 members of the upper house of Parliament. Dupthop observed that this would give the king a "considerable head start," with 20 percent of the votes on a given issue. This section also states that candidates for the council "shall neither belong to nor have affiliation to any political party." Dupthop noted that it was not clear whether prior affiliation to a party would disqualify a candidate from office. -- Article 12 (The National Assembly) specifies the size and terms of the lower house. The DNC claimed the constitution is not fully democratic because it does not provide for "one-man-one-vote" (sic). It would create a federalist structure in which each dzongkhag would have between 2 and 7 seats in the National Assembly. The DNC argued that this would be inherently unfair, as it would give districts with a smaller electorate greater legislative power than more populous ones. -- Article 13 (Passing of Bills) grants full veto power over all legislation to the King. Nair argued that this is a major deviation from "modern" constitutional monarchies in which royals are generally figureheads rather than actual heads of state. He proffered that Bhutan should have followed the British or Dutch models in allocating powers to the monarchy. Parmanand noted that most Bhutanese would be pleased that the King retains final authority over legislation, because they are still relatively uncomfortable with democracy and see him as an important safeguard against the unknown. -- Article 14 (Finance, Trade and Commerce) was not controversial according to our sources. -- Article 15 (Political Parties), our interlocutors argued, sets serious limits on political freedoms in Bhutan. This section states that "political parties shall ensure that national interests prevail over all other interests" and that they shall "promote national unity," ensuring the well being of the nation. Dupthop and Nair commented that these statements are very open-ended and leave much room for interpretation. "The government can use this article as the basis to crack down on political parties that do not agree with the administration," argued Dupthop. This section allows the Supreme Court to dissolve a party it deems contravenes the constitution. Lhendup warned that this section, along with the other vague sections dealing with individuals' rights, leaves opposition parties vulnerable, especially since the Chief Justice is beholden to the King. Political Rational ------------------ [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par12) 12. (C) King Wangchuck told Poloff during an October 2004 meeting that one goal of the constitution would be to limit regional, ethnic and religious tensions in the political system. The constitution states that these issues cannot be used for electoral gain and sets a two-tiered election system to limit their influence. The first round of elections would be open to all political parties, with the top two vote getters squaring off in a second round. Dr. Parmanand commented that this system would successfully limit the influence of numerous regional parties and ensure that the two parties elected to parliament have a wider support base. -- Article 16 (Public Campaign Financing) attempts to limit monetary inequities by creating an Election Commission to allocate resources evenly to all political parties and fix campaign expenditures. -- Article 17 (Formation of Government) states that the majority party would chose the Prime Minister and sets a two-term limit for him or her, states that ministers must be members of the National Assembly and that only two ministers may be chosen from any given dzongkhag. The DNC warned that Article 17 gives the King the authority to appoint ministers only on the "recommendation" of the Prime Minister, therefore giving him full control over executive branch appointments. -- Article 18 (The Opposition Party) specifies that the party in opposition act as a check against the ruling party and "shall promote national integrity, unity and harmony and co-operation among all sections of society." It also states "the opposition party shall not allow party interests to prevail over the national interest. Its aim must be to make the Government responsible, accountable and transparent." DNC's Dupthop questioned who would decide whether the opposition was performing this role and the penalties for failure. -- Article 19 (Interim Government) was not seen as problematic by our interlocutors. -- Article 20 (The Executive) determines the powers of the executive branch and creates the Council of Ministers, headed by the Prime Minister. Pundits noted that this article clearly confers last word on many issues to the monarchy in that it states that the Prime Minister shall advise the king in the exercise of his functions, but that the king my "require the Council of Ministers to reconsider such advice." The Article continues that the council "shall be collectively responsible to the king and Parliament," and the DNC argued this indicates the king can dismiss the body. -- Article 21 (The Judiciary) creates the court system and sets term limits for judges. Terms for Supreme Court judges are 10 years, or the age of 65 and the Chief Justice must step down after five years. This section also calls for a High Court and a National Judicial Committee consisting of the Chief Justice, the senior-most Supreme Court judge, the chairperson of the legislative committee of the National Assembly and the Attorney General. Local pundits expressed concern over royal control over the judiciary, because the article states the king can appoint the Chief Justice upon "consultation" with the National Judicial Committee. Dupthop noted that while the King must discuss his choice with the legal body, he does not need its approval. -- Article 22 (Local Governments) sets rules for formation of district, town and village administration. SAHRDC's Nair commented that this section does not adequately specify the power of local governments. -- Article 23 (Elections) determines voter and candidate qualifications, as well as election regulations. This section states that no person under "foreign protection" can run for office. The DNC noted that this statement ensures that no refugees can be elected. This article also disqualifies candidates who have been terminated from public office or convicted of any criminal offense that included a prison sentence. (Comment: The RGOB forced many Bhutanese of Nepali origin into "compulsory retirement" during the mid-1990's. It is possible that these people would be considered "terminated from government service" and unable to run for public office. End Comment.) -- Article 24 (The Royal Audit Authority), Article 25 (The Royal Civil Service Commission), and Article 26 (The Anti-Corruption Commission) were viewed by our interlocutors as beneficial and would facilitate the development of an accountable and transparent bureaucracy. -- Article 27 (Defense) stipulates that the King is the supreme commander of the armed forces. It allows for a draft in times of crisis and states that the military may only be used for self-defense. -- Article 28 (The Attorney General), Article 29 (The Pay Commission) and Article 30 (Holders of Constitutional Offices), Article 31 (Impeachment) were not commented on by our interlocutors. -- Article 32 (National Referendum) allows the electorate to pass a referendum by a simple majority. However, it stipulates that a referendum cannot be held on questions relating to taxation. -- Article 33 (Emergency) allows the king to call a national emergency in times of crises. The National Assembly, with only 1/4th of the members voting against the measure, can overturn the state of emergency. Dupthop praised this provision, arguing it will prevent abuse. -- Article 34 (Amendment and Authoritative Text) states an amendment to the constitution may initiated by simple majority and passed by no less than 3/4th of the vote, and must be approved by the king. Comment: A Constitutional Monarchy with a Capital "M" --------------------------------------------- -------- [¶](http://www.bhutan-research.org/us-diplomatic-cables-on-bhutan/05newdelhi5912#par13) 13. (C) Although it reserves numerous and extensive powers for the King, the draft constitution is an important step towards democracy. Should it be implemented in its present form, the constitution would allow the Monarchy to maintain effective control over the government, while appearing to be uninvolved. The Constitution also contains loopholes the could inhibit fundamental and political rights. However, most Bhutanese will favor a constitution allowing the monarchy to remain a central player and will likely endorse the charter with few changes. Many Bhutanese are still not convinced that democracy is the best form of government, but will agree to the transformation due to the King's support for the constitution and his assertion that "a country cannot rely on a bloodline to provide the best leaders." Despite the constitution's many shortcomings, it is a step forward by King Wangchuck is clearly acting to preserve Bhutan's sovereignty, but also is committed to granting his people more prerogatives. Although, the constitution would not instantly create a modern liberal democracy, it shows the King is willing to relinquish power in a way that few politicians are inclined to do. BLAKE