



Legal Mechanisms for Removing a Head of State for Incapacity

Argentina • Azerbaijan • Egypt • Estonia • Finland
France • Guyana • Indonesia • Italy • Liberia • Mexico
Nicaragua • Nigeria • Portugal • Russian Federation
United Kingdom • Vietnam

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Comparative Summary

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SUMMARY Rules applicable to the removal of officials who hold real executive powers differ depending on the type of government system applicable in each country. In parliamentary systems, prime ministers are typically elected based on their party's proportional representation in the parliament. They may be removed by internal party proceedings or based on parliamentary decisions of nonconfidence.

In presidential systems, the chief executive is typically elected directly. Challenges exist in such systems regarding the means to ensure that elected officials will not be removed from office based on unsubstantiated claims of mental or physical incapacity driven by political motivations. Such means include the adoption of specific criteria and evidentiary requirements under the laws of several countries for proof of incapacity to fulfill the duties of office. Some countries require a judicial determination of incapacity by their respective constitutional or supreme courts, where others have instituted parliamentary or nonpartisan procedures, as allowable under their laws.

The countries surveyed also differed in regard to the order of succession in the event of a president's incapacity. While some countries allow for succession to take place until the end of the presidential term, others provide for early elections and reduced presidential authority for interim presidents.

I. Introduction

This report analyzes the legal mechanisms for temporary or permanent removal of heads of state on the ground of incapacity. In this context, "head of state" has been interpreted as the person who holds the highest position in a national government and who has real executive powers, excluding ceremonial positions such as those of monarchs. Among others, the report identifies ways by which a determination of incapacity may be made, procedures for removal, and rules of succession in cases where removal is authorized.

Removal proceedings in parliamentary systems appear to differ from those applicable to presidential systems where the government's chief executive is elected by the voters.

II. Parliamentary Systems

In this report, the term "parliamentary systems" will refer to those where members of the executive are typically drawn from the legislature. These include systems "in which the party (or a coalition of parties) with the greatest representation in the parliament (legislature) forms the

government, its leader becoming prime minister or chancellor. Executive functions are exercised by members of the parliament appointed by the prime minister to the cabinet.”¹

In parliamentary systems such as the **United Kingdom**, prime ministers (PMs) lead the government and are typically elected not individually but based on their party gaining the most seats in the parliament. They may be removed by internal party proceedings or based on a parliamentary decision of nonconfidence.

Estonia has a parliamentary type of government system where the president is elected by the *Riigikogu* (parliament). The president serves as the head of state and the supreme commander of national defense of Estonia. Although the procedure for removal of the president based on incapacity involves a determination of incapacity by the Supreme Court, ultimately, the parliament has the power to elect a new president of the republic to replace the one removed.

Similarly, in **Vietnam**, the president is elected by the national assembly and may be removed by that body based on any reason, including incapacity.

Under **Italy**'s parliamentary system, the president of the Council of Ministers holds executive power, while the president of the republic is considered the head of state. Both officials are elected by a parliamentary majority, and their tenure depends on parliamentary confidence, which may be revoked at any time. Similar to a vote of no confidence, permanent incapacity may be determined based on a parliamentary majority vote and will lead to an election.

In **Finland**'s parliamentary system, the PM is formally appointed by the president, who is elected through popular election. The president will appoint a PM based on an agreement reached by the political parties represented in the parliament.

The Finnish PM is the head of the cabinet and the executive government. The PM's tenure must be supported by a majority in parliament, enabling the PM's removal by a vote of nonconfidence in the parliament. The Finnish president's removal is based on the PM's determination that the president is permanently unable to execute the presidential duties, followed by a general presidential election. The president's removal, however, will not affect the tenure of the cabinet or the PM in the absence of a parliamentary vote of no confidence.

III. Presidential Systems

Unlike parliamentary systems of government, where members of the executive are typically drawn from the legislature, presidential systems in this report refers to systems that “maintain a

¹ A parliamentary system refers to a “democratic form of government in which the party (or a coalition of parties) with the greatest representation in the parliament (legislature) forms the government, its leader becoming prime minister or chancellor. Executive functions are exercised by members of the parliament appointed by the prime minister to the cabinet.” *Parliamentary System*, Encyclopedia Britannica, <https://perma.cc/TXR5-RRMU>.

clear division of power between the two branches. In presidential systems, the bulk, if not all the executive power vests in the single person of the president.”²

Removal procedures were identified in a number of countries surveyed, including **Argentina, Azerbaijan, Egypt, France, Guyana, Indonesia, Italy, Liberia, Nicaragua, Nigeria, and Portugal**. In **Russia**, these procedures are not prescribed by law, although they were the subject of a rejected legislative proposal and of judicial interpretation.

A. Criteria and Proof of Incapacity

Physical or mental incapacity, “stable inability because of health reasons,” “complete inability,” or general “impediment” (hereafter incapacity) to carry out presidential duties are some of the terms used as criteria for removal in the countries surveyed. Definitions for such criteria were located in the laws of a number of countries.

Egypt’s law defines mental and psychological disability for the purpose of removal as an imbalance of any of the psychological or mental functions to a degree that limits an individual's adaptation to his or her social environment. While mental disability under general Egyptian law is to be determined by a psychiatrist, neither the Egyptian constitution nor the law on the exercise of political rights provides identification of who has the authority to determine that a president’s condition meets the criteria.

Interpreting **Russia’s** constitutional requirement of “stable inability because of health reasons,” in 2000, the Constitutional Court of the Russian Federation clarified that such inability applies to a “permanent irrevocable physical or psychiatric dysfunction of the body, which does not allow the President to make decisions required for performing his Constitutional duties.”³ Another Constitutional Court ruling explained that this definition should also include the inability of a president to voluntarily delegate the presidential duties to another government official.

A determination of incapacity under the laws of **Azerbaijan, Estonia**,⁴ and **Portugal** requires a decision by the constitutional or Supreme Court, as relevant. Incapacity in **Azerbaijan** and **Estonia** is based on a finding of a “complete inability . . . due to illness” or “an obvious incapacity to perform . . . due to health reasons.” While the laws of these countries do not specify what type of evidence must be considered by the courts, a decision of incapacity by the constitutional court of **Portugal** requires the submission of a medical report by a panel of three medical experts who are appointed by that court.

A medical report is similarly a requirement under **Nigeria’s** law in support of a decision by a two-thirds majority of all the members of the executive council of the federation “that . . . the President . . . is suffering from such infirmity of body or mind as renders him permanently

² See additional information at Kevin YL Tan, *Presidential Systems*, Oxford Constitutional Law, <https://perma.cc/YYT2-DQND>.

³ Citations here and below are from the attached country surveys.

⁴ Estonia has a parliamentary system of government. It is included here because a judicial determination of incapacity was found to be a criterion for parliamentary decision on removal.

incapable of discharging the functions of his office.” The medical panel must include the personal physician of the president as well as four others appointed by the president of the senate who, in the opinion of the president of the senate, have “attained a high degree of eminence in the field of medicine relative to the nature of the examination to be conducted. . . .”

As in Nigeria, the law of **Guyana** requires that removal based on presidential incapacity rely on a report issued by a medical board of at least three qualified medical practitioners. To address concerns about politically motivated grounds for submission of a motion for the establishment of a medical board, it is required that the motion be supported by the majority of the National Assembly’s members whose names appeared on the same candidates’ list with the president’s in the prior election.

B. Removal Procedures

Removal procedures are not always expressly prescribed by law, even in countries where incapacity is recognized. For example, under the Constitution of the **Russian Federation**, a president may be removed based on a determination of “stable inability due to health reasons.” Neither a Constitutional Court decision nor current Russian legislation regulates the procedure under which a president may be forced to stop exercising presidential power. It is not clear, therefore, who can initiate the removal of a president from power or how to determine the condition of a president’s health.

Three types of procedures for removal based on a determination of incapacity were identified in other presidential systems surveyed:

1. Court Determinations of Incapacity

As mentioned above, some countries’ removal procedures involve judicial determinations. Removal of the president in **Azerbaijan**, for example, requires the National Assembly to request a decision by the constitutional court of that country. A determination of presidential incapacity requires at least six of the nine judges of the court to so find. A determination of incapacity results in the president being considered to have left the position before the end of the term, and a new election must be held within 60 days.

France’s law requires the cabinet to ask the *Conseil constitutionnel* (Constitutional Council), France’s high court for constitutional questions, to certify whether a situation of vacancy or impediment exists. The Constitutional Council’s ruling on such a question must be supported by an absolute majority of its members. If the vacancy or impediment is permanent, elections for a new president must generally be organized at least 20 days but no more than 35 days after the start of the vacancy or the declaration of impediment.

In **Portugal**, the attorney general must submit a request to the constitutional court for a declaration of incapacity. The request must be accompanied by relevant evidence. Upon receipt of the request the court will appoint a panel of three medical experts. The panel must present a report on the status of the president within two days of its appointment. The court will make a decision on the president’s incapacity in a plenary meeting the day after the medical report is

presented. The president of the Assembly of the Republic should be notified of the decision and will immediately assume the functions of interim president of the republic.

2. Parliamentary Procedures for Removal

In **Egypt**, the Council of Representatives (parliament) has the authority to announce a presidential vacancy and notify the national elections commission that the president is incapable of resuming presidential powers permanently.

Under the laws in both **Nicaragua** and **Liberia**, a declaration of a president's incapacity requires approval by two thirds of the members of parliament. In Liberia, the issuance of a declaration by the Legislature is in response to an advice by a two-thirds majority of the cabinet that it has "become apparent . . . that the President is unable to discharge the powers and duties of his office."

In **Indonesia**, two thirds of the People's Representative Council must support the submission of a request to the Constitutional Court to declare that a president no longer meets the qualifications for office, which include being "mentally and physically capable" of performing the presidential duties. Upon such a determination by the court, a proposal for removal will be forwarded by the Council to the People's Consultative Assembly (full parliament), which makes a final determination on impeachment.

Although **Argentina's** law does not provide specifics about procedures for involuntary removal due to illness, constitutional scholars have opined that in case of illness, if a president refuses to step down, Congress could declare the incapacity of the president, a decision that may be appealable to the Supreme Court.

3. Certification by Country's Chancellor

In **Guyana**, a president's term is suspended when the prime minister informs the chancellor of a motion to investigate the president's capacity to fulfill the official duties. Removal of the president from office requires certification by the chancellor based on a report by a medical board. The chancellor may be viewed as impartial, as he or she is appointed by the president with the agreement of the leader of the opposition.

IV. Order of Succession

The countries surveyed have varied orders of succession in the event of the president's incapacity. While some countries allow for succession to take place until the end of the presidential term, others provide for early elections and provide for reduced presidential authorities to interim presidents. The following are examples of the different rules that apply to succession.

A. Temporary Succession Until Elections

Under **Argentina's** law, in the event of the incapacitation of a president, the Congress will determine which public official is to hold the presidency, until the cause of the incapacitation ceases or a new president is elected. Authorities will generally be transferred in accordance with

the following order of succession: the vice president, the president of the Senate, the president of the Chamber of Deputies, or the president of the Supreme Court.

In **Azerbaijan**, until an election of a new president is held, executive power will be transferred in this order: first to the “first vice president,” then to the vice president, next to the PM, and then to the speaker of the National Assembly. If all these individuals are unable to fulfill their duties, the National Assembly will, by resolution, appoint a state official who will assume the duties of acting president.

In **France**, elections for a new president generally must be organized within 20 days to 35 days after the start of a presidential vacancy or the declaration of an impediment. Presidential authority is transferred temporarily to the president of the Senate, and in his or her absence, to the cabinet as a whole. As in similar countries, the interim president’s powers are reduced, and he or she is not allowed to organize a referendum, to dissolve the National Assembly, or to amend the Constitution.

Similarly, in **Egypt**, incapacity will lead to elections. Under such circumstances, the chairman of the Council of Representatives assumes presidential powers until a new president is elected. A new president must be elected during a period not exceeding 90 days from the date the office of the president becomes vacant.

Under **Portugal**’s law, when the president of the republic is temporarily unable to perform the functions of the office, or while the office is vacant and until the new president-elect is installed, presidential functions are performed by the president of the Assembly of the Republic or by a substitute in his or her absence.

In **Russia**, presidential incapacity will result in the scheduling of a new presidential election within three months following a vacancy in the presidential office. During this period, the president’s duties will generally be performed by the chairman of the government (PM).

B. Succession Until End of Term of Office

Under **Nicaragua**’s law, presidential authorities will be transferred to a vice president, and in his or her absence to the president of the National Assembly.

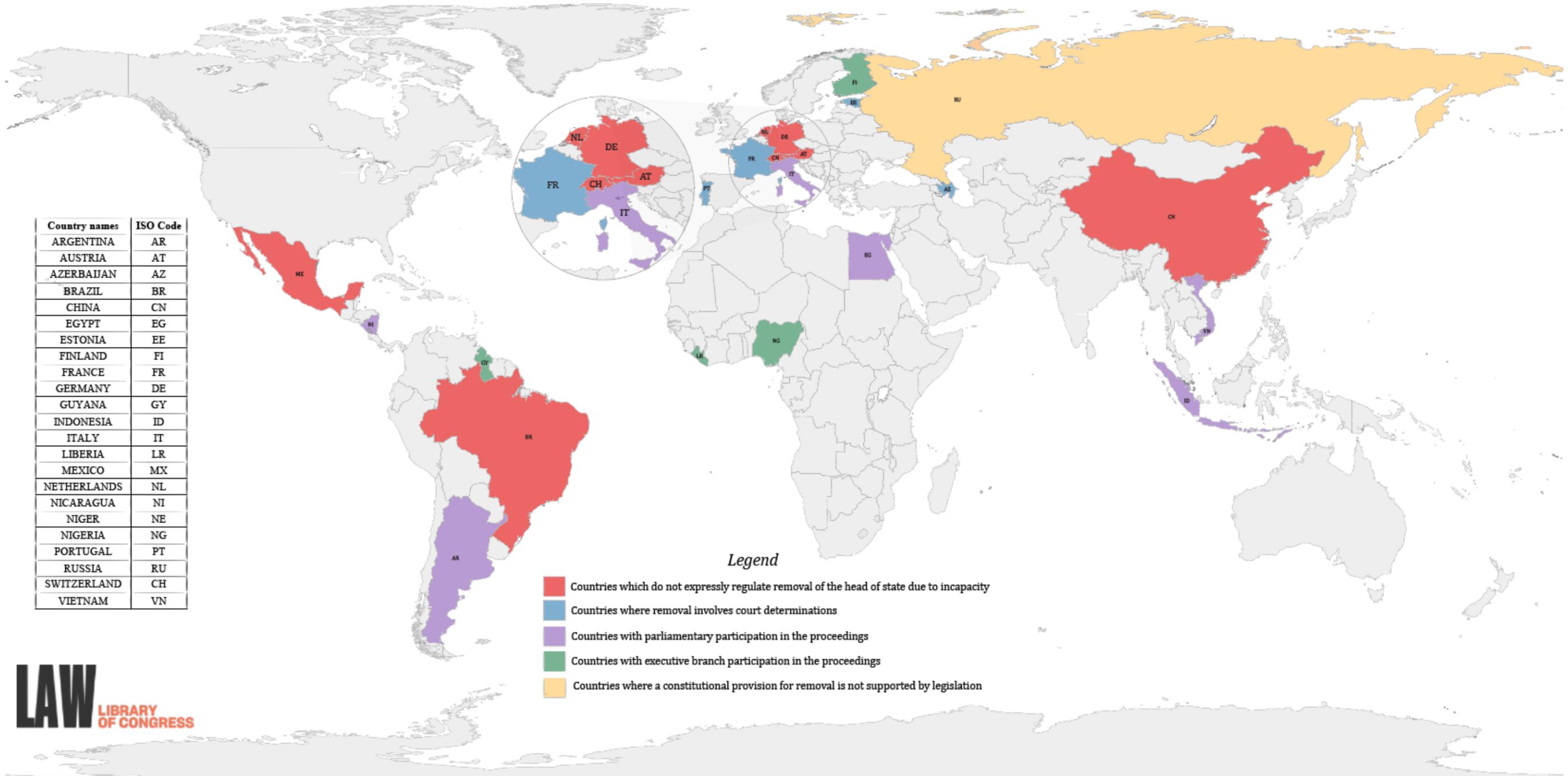
Under the law of **Liberia**, the vice president will complete the rest of the term in the event of the president’s incapacity. If the vice president’s office becomes vacant, the executive powers will be transferred according to the following line of succession: the speaker of the House of Representatives, the president pro tempore of the Senate, the deputy speaker or members of the cabinet in the order of precedence as established by law.

In **Guyana**, if the president is unable to hold office due to physical or mental infirmity, the line of succession goes to the PM, and in the PM’s absence or inability to assume responsibilities, to a minister elected by the cabinet for this purpose. If neither the PM nor the minister is available, the chancellor becomes president.

While **Indonesia**'s Constitution first lists the vice president as a replacement for a president in a case of incapacity, if that position is vacant, presidential powers will be transferred temporarily to "a joint administration of the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defence." Within 30 days following such transfer, both houses of parliament will hold a session to elect a new president and vice president, who will serve for the remainder of the term of office. The positions will be filled from the tickets nominated by the political parties or coalitions of political parties whose tickets won first and second place in the last presidential election.

Specific information on each country's laws is provided in the attached country surveys.

Legal Mechanisms for Removing a Head of State for Incapacity



Source & Note: Susan Taylor, Law Library of Congress. Map reflects results for 23 jurisdictions reviewed in this report.

Argentina

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SUMMARY Argentina has a presidential form of government organized as a federal constitutional republic and representative democracy. In case of the incapacitation of the President, the Vice President assumes the presidency. If the President is unable or unwilling to declare his or her incapacitation and transfer power, Congress has the authority to declare the incapacitation.

I. Type of Government

Argentina is a federal constitutional republic and representative democracy.¹ The federal government is composed of three branches.

The legislative branch consists of the bicameral Congress, made up of the Senate and the Chamber of Deputies.² Argentina has a presidential form of government, with an executive branch headed by the President.³ There is a Vice President who assumes the presidency in case of the absence or incapacity of the President.⁴

The judicial branch includes the Supreme Court and the lower court system.⁵

II. Procedure Governing Removal from Office

The National Constitution (CN) provides that in case of the illness, absence, death, resignation or removal of the President, executive power will be held by the Vice President.⁶ In the event of the removal, death, resignation or incapacitation of the President and Vice President of the Nation, Congress will determine which public official is to hold the Presidency, until the cause of the incapacitation has ceased or a new President is elected.⁷

¹ Constitución Nacional, Boletín Oficial [B.O.] Dec. 15, 1994, art. 1, <https://perma.cc/9BVL-HPBH>.

² Id. art. 44.

³ Id. arts. 87-88.

⁴ Id. 88.

⁵ Id. art. 108.

⁶ Id. art. 88.

⁷ Id.

The incapacitation of the President due to physical or mental illness may be temporary or permanent.⁸ If temporary, the Vice President will assume the presidency. In principle, the President will delegate the presidency to the Vice President, informing Congress and similarly, will resume the presidency once recovered from the illness.⁹

In case the physical or mental illness is permanent, the Vice President will assume the presidency.¹⁰ However, there is the possibility that the President may not want to voluntarily resign or transfer power indefinitely or may be unable to do so, due to the illness.¹¹ Although the law does not provide specifics about this situation, constitutional scholars, such as Professor Angélica Gelli, have stated that, in this case, Congress would declare the incapacity of the President.¹² It is an extension of the interpretation of art. 88 of the CN, as it is Congress that is assigned the authority to appoint a President in charge of the executive in case the President and Vice President are absent or unable to perform their duties.¹³ The declaration of incapacitation by Congress could be subject to a judicial challenge before the Supreme Court, if such declaration has been adopted by an opposition Congress, and could be overturned if the Court finds it was done in an arbitrary manner.¹⁴

III. Order of Succession

Law 20972 on the Official Who Would Assume the Presidency in the Event of Incapacity (of the President and Vice President) provides that executive power will be held temporarily in this order of succession: by the President of the Senate, in that official's absence, by the President of the Chamber of Deputies, and in that official's absence, by the President of the Supreme Court, until Congress appoints an acting President under art. 88 of the CN.¹⁵

The congressional appointment will be made by the vote of an assembly called and presided over by the President of the Senate.¹⁶ The assembly will meet within 48 hours following the actual permanent absence of the President and Vice President, with a quorum of two thirds of the members of each Chamber.¹⁷ If that quorum is not reached in the first call, it will meet again within 48 hours, with a simple majority of the members of each Chamber.¹⁸

⁸ María Angélica Gelli, *Constitución de la Nación Argentina: Comentada y Concordada* 666 (Buenos Aires 2004), <https://perma.cc/A39W-PK7G>.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id. at 667.

¹⁵ Ley 20972 Funcionario que Desempeñará la Presidencia de la Nación en Caso de Acefalía, B.O. July 22, 1975, art. 1, <https://perma.cc/RUE7-DK5D>.

¹⁶ Id. art. 2.

¹⁷ Id.

¹⁸ Id.

Azerbaijan

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SUMMARY In Azerbaijan, executive power is held by the president of the Republic. The president may be removed from office if his/her poor health results in a complete inability to perform the powers vested in the office of the presidency. Removal on this basis requires an application by the national legislature to the Constitutional Court, which in turn may decide that the president is incapacitated by a majority vote of six justices out of nine. Upon a finding of incapacity by the Court, the president will be considered to have left office and the first vice president will assume responsibilities as acting president. The first vice president is followed in order of succession by the vice president, the prime minister, and the speaker of the legislature. Presidential elections must be held within 60 days of the removal of a president.

I. Type of Government System

Azerbaijan is a semipresidential republic.¹ The president of the Republic holds the executive power, and is the head of state and the supreme commander-in-chief of the military forces.² The president is elected for a seven-year term with no term limits.³ The president appoints a cabinet of ministers to administer the executive function and a prime minister to chair the cabinet.⁴ The prime minister and the cabinet of ministers are responsible to the legislature.⁵ The president's candidate for prime minister must obtain the approval of the legislature to be appointed; however, the president may appoint a candidate directly without the legislature's approval if the

¹ Jody LaPorte, *Semi-Presidentialism in Azerbaijan*, in *Semi-Presidentialism in the Caucasus and Central Asia* 91, 92 (Robert Elgie & Sophia Moestrup eds., 2016).

² Constitution of the Republic of Azerbaijan, adopted by referendum on Nov. 12, 1995, as amended, arts. 99 & 9(III), <https://perma.cc/AEM6-LXFB> (official English translation).

³ Id. art. 101(I).

⁴ Id. arts. 114(I) & 118(I). LaPorte distinguishes Azerbaijan's formal constitutional system from other semipresidential systems where the prime minister originates from the legislature, and suggests that in light of the preeminence and complete control over the operation and composition of the president, the system may be described as "super-presidential." LaPorte, *supra* note 1, at 99 (citing M. Steven Fish, *The Impact of the 1999-2000 Parliamentary and Presidential Elections on Political Party development*, in *The 1999-2000 Elections in Russia: Their Impact and Legacy* 186 (Vicki L. Hesli & William M. Reisinger eds., 2003)). LaPorte characterizes the system in the Constitution of Azerbaijan as being "a semi-presidential regime with a strong presidency, a weak prime minister, and some autonomy for the legislature." LaPorte, *supra* note 1, at 102. Note that the amendments of the 2016 referendums created the additional offices of the first vice president and vice presidents that are all directly appointed by the president, and are higher in the order of succession than the prime minister. See *infra* note 8 and accompanying text & *infra* Part IV.

⁵ LaPorte, *supra* note 1, at 92.

latter fails to approve three candidates in a row.⁶ The president may dismiss the prime minister at will.⁷

The constitutional amendments of 2016 established the office of the first vice president.⁸ The first vice president is appointed and dismissed by the president and is first in the line of succession if the president resigns or is removed, serving until a new president is elected.⁹

Legislative power is vested in the National Assembly (Milli Məclis), which is a unicameral legislative body consisting of 125 deputies elected in general elections.¹⁰ The terms of deputies are limited by the legislative term, which is five years unless the National Assembly is dissolved earlier by the president, who is authorized to dissolve the Assembly and call extraordinary elections if the Assembly holds a vote of no confidence in the cabinet of ministers twice in a year, or if the Assembly fails to appoint certain high-level officials in the period prescribed by statute or to otherwise fulfill certain legislative functions established in the Constitution due to “unavoidable reasons.”¹¹

II. Definition of Presidential Incapacity

The president will be considered to have “left his/her position ahead of time” when his or her “complete inability” to fulfill presidential powers due to illness is established.¹²

III. Authority and Procedures for Suspension and Removal from Office

Upon receiving notification that the president’s poor health is causing the president’s complete inability to fulfill the functions of office, the National Assembly will apply to the Constitutional Court requesting that the Court verify the fact and issue a decision.¹³ Upon the National Assembly’s request, the Constitutional Court, with the votes of six judges out of nine, may declare that the president is incapacitated, whereupon the president will be considered to have left his or her position before the end of the term.¹⁴ If the Constitutional Court makes a finding of incapacity, new elections must be held within 60 days from the day on which the president has left his or her position.¹⁵

⁶ Constitution art. 118(III).

⁷ Id. art. 109(4).

⁸ Id. art. 103¹. Introduced by constitutional amendments adopted by the referendum of September 26, 2016.

⁹ Constitution arts. 103¹(I) & 105(I).

¹⁰ Id. arts. 81-83.

¹¹ Id. art. 98¹.

¹² Id. art. 104(I).

¹³ Id. art. 104(III).

¹⁴ Id.

¹⁵ Id. art. 105(I).

If the Constitutional Court declines to make the finding that the president is incapacitated, the decision is final and the matter will be closed.¹⁶

IV. Order of Succession

In the case of presidential incapacity the first vice president will carry out the functions of the president until the election of the new president.¹⁷ If the first vice president resigns or completely loses the ability to fulfill his or her duties during this interim period, the vice president will automatically gain the status of first vice president and assume the role of acting president. The prime minister and then the speaker of the National Assembly follow the vice president in the line of succession.¹⁸ If all these individuals are unable to fulfill their duties due to resignation or incapacity, the National Assembly will, by resolution, appoint a state official who will assume the duties of acting president.¹⁹

¹⁶ Id. 104(III).

¹⁷ Id. art. 105(I).

¹⁸ Id. arts. 105(II)-(IV).

¹⁹ Id. art. 105(IV).

Egypt

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SUMMARY Egypt is a republic. The President of the republic is the head of state, the head of the executive branch of government, and the supreme commander of the armed forces. Individuals who are mentally and physiologically disabled are barred from holding the office of the president. If the presidential office becomes vacant due to the President's permanent disability, the Chairperson of the Council of Representatives assumes the presidential powers until a new President is elected.

I. Government System

Egypt is a republic. The President of the republic is the head of state and head of the executive branch of government.¹ Furthermore, the President is the supreme commander of the armed forces.² The President is elected for a period of four calendar years.³

The President has the power to elect the Prime Minister.⁴ In addition to the Prime Minister, the President has the power to appoint the Ministers of Defense, Homeland Security, and Justice.⁵ Jointly with the Cabinet, the President sets the general policy of the state and oversees its implementation.⁶

II. Incapacity to Hold Office

Law No. 45 of 2014 on the exercise of political rights prohibits individuals who are mentally and psychologically disabled from holding the office of president of the republic.⁷

Law No. 71 of 2009 on psychological care defines mental and physiological disability as an imbalance of any of the psychological or mental functions to a degree that limits an individual's adaptation to his or her social environment.⁸

¹ Constitution of the Arab Republic of Egypt of 2014, as amended in 2019 (Const.), art. 139, <https://perma.cc/3V42-9CH8> (in Arabic).

² Id. art. 152.

³ Id. art. 140.

⁴ Id. art. 146, para. 1.

⁵ Id. art. 146, para.4.

⁶ Id. art. 150.

⁷ Law No. 45 of 2014, art. 3(2), *al-Jarīdah al-Rasmīyah*, vol. 23 (bis), 5 June 2014, <https://perma.cc/FWG7-2G5N> (in Arabic).

⁸ Law No. 71 of 2009, art. 1(c), *al-Jarīdah al-Rasmīyah*, vol. 20 (bis), 14 May 2009, <https://perma.cc/3YEZ-MPHY> (in Arabic).

III. Authority to Determine Incapacity of Head of State

Neither the Constitution nor Law No. 45 of 2014 on the exercise of political rights identify the authority that has the power to determine whether the President is able to resume the functions of the presidential office. However, Law No. 71 of 2009 on physiological care stipulates that a psychiatrist must determine whether a person suffers from physiological or mental disability.⁹

IV. Transfer of Power in the Event of Temporary Incapacitation

If the President is unable to carry out the presidential functions temporarily, the Vice President replaces the President. In the event that there is no Vice President, the Prime Minister acts as the President.¹⁰

V. Transfer of Power in the Event of Permanent Incapacitation

If the presidential office becomes vacant due to the permanent disability of the President, the Council of Representatives (Parliament) announces the vacancy of the office. The Council also notifies the National Elections Commission that the President is incapable of resuming the presidential powers permanently. Accordingly, the Chairman of the Council of Representatives assumes the presidential powers until a new President is elected.¹¹

The interim President is not allowed to run for the presidency of the republic, request any amendment to the Constitution, dissolve the House of Representatives, or dismiss the Cabinet.¹²

VI. Election Process Following the Permanent Incapacitation of the President

A new President must be elected during a period not exceeding 90 days from the date the office of the president becomes vacant.¹³

⁹ Id. art. 11.

¹⁰ Const., art. 160, para. 1.

¹¹ Id. art. 160, para. 2.

¹² Id. art. 160, para. 5.

¹³ Id. art. 160, para. 4.

Estonia

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SUMMARY The mandate of the president of the Republic of Estonia can be suspended in the event that the president is temporarily incapable of performing his or her duties, or declared incapable of performing his or her duties for an indeterminate period of time. Incapacity may be determined voluntarily upon the president's special request to the chancellor of justice, or the chancellor may submit a request to the Supreme Court for suspension of the presidential mandate. When suspension of the mandate occurs the presidency is temporarily vested in the chairman of the Riigikogu (parliament).

I. Type of Government System

Estonia is "an independent and sovereign democratic republic" with a parliamentary type of government system.¹ The president is elected by the Riigikogu (parliament)² and according to the Estonian Constitution is the head of state and the supreme commander of national defense of Estonia.³ The president is elected for a term of five years by a two-thirds majority of the Riigikogu.⁴ The president nominates a prime minister, who must receive a vote of confidence from the Riigikogu.⁵

The laws passed by the parliament are presented to the president for proclamation. The president has a right to veto such laws and return them to the parliament. The Constitution also grants the president the right to dissolve the parliament under specific circumstances.⁶

II. Definition of Presidential Incapacity

The President of the Republic Work Procedure Act governs commencement and termination of the mandate of the president, and determines the procedure for performing official duties.⁷ Under this Act presidential incapacity is established "[w]hen the President is temporarily incapable of performing his or her duties due to illness or other impediment, [and] he or she

¹ Constitution of the Republic of Estonia, adopted June 28, 1992, last amended May 6, 2015, ch. I, § 1, <https://perma.cc/8AXT-QZCR>.

² Id. ch. V, § 79.

³ Id. ch. V, § 77(16).

⁴ Id. § 80.

⁵ Id. ch. VI, § 89.

⁶ Id., ch. VII, § 107.

⁷ President of the Republic Work Procedure Act, adopted Apr. 17, 2001, last amended June 14, 2017, officially published in the *Riigi Teataja* of the Republic of Estonia, <https://perma.cc/8LDG-4PGH>.

addresses a written communication regarding the fact to the Speaker of the Riigikogu, in which he or she states the reason for the temporary incapacity.”⁸

III. Authority and the Procedures for Suspension and Removal from Office

If the president is incapable of performing his or her duties for an indeterminate period of time, the following procedures are envisaged for his or her suspension and removal from office:

- 1) The President’s incapacity to perform his or her duties for an indeterminate period of time is an obvious incapacity to perform his or her duties due to health reasons;
- 2) When the reasons specified in subsection 1 of this section become operative, the Chancellor of Justice submits to the Supreme Court a request, which includes a statement of reasons, to declare the President incapable of performing his or her duties for an indeterminate period;
- 3) The request is considered by the Supreme Court *en banc* and the court makes its decision without delay;
- 4) The decision of the Supreme Court which declares the President incapable of performing his or her duties for an indeterminate period takes effect on the day it is proclaimed;
- 5) The mandate of the President is suspended as of the time that the decision of the Supreme Court takes effect and the mandate of the President temporarily vests in the President of the *Riigikogu* until the new President is inaugurated.⁹

IV. Order of Succession

After the removal of the president from the office, his or her duties are temporarily performed by the chairman of the Riigikogu. During the time that the chairman is performing the duties of the president, his or her powers as a member of the Riigikogu must be suspended. When acting as president the chairman’s powers are more restricted, as he or she does not have the right to declare extraordinary elections to the Riigikogu or refuse to proclaim the laws without the consent of the Supreme Court.¹⁰

Also, if the president is unable to perform his or her official duties for longer than three consecutive months, or if his or her powers are terminated prematurely, the Riigikogu must elect a new president of the Republic within fourteen days.¹¹

⁸ Id. § 5.

⁹ Id. § 11.

¹⁰ *Powers and Responsibilities*, Office of the President of Estonia, <https://perma.cc/Q4R6-QJGJ>.

¹¹ Constitution of the Republic of Estonia, ch. V, § 83.

Finland

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SUMMARY Finland is a parliamentary republic with a president as head of state. The president may be temporarily or permanently relieved of his or her duties based on physical, mental, or other incapacity. Determination of the president's capacity is made by the prime minister. Involuntary removal of a president from office requires "overwhelming evidence" that the president is permanently unable to perform his or her duties, including a determination to that effect by a physician. The president is not succeeded in office, but the prime minister, or the vice prime minister if the prime minister is unavailable, will assume the president's duties until a new president has been elected. In 1981 then President Kekkonen resigned early due to his permanent incapacity to serve because of health issues. No president has been involuntarily removed from office.

I. Type of Government System

Finland is a parliamentary republic with a president as head of state.¹ The president is elected through popular election and must receive at least 50% of the votes either in the first round of elections, or in a subsequent round.² The presidential term is six years, and no president may serve more than two consecutive terms.³ There is no position of vice president. The role of the president includes leading foreign policy together with the Finnish government, and signing laws enacted by Parliament.⁴ The prime minister (PM) of Finland is the head of the cabinet and the executive government.⁵

II. Definition of Presidential Incapacity

The Finnish Constitution addresses the circumstance where a president may suffer temporary⁶ or permanent incapacity to fulfill his or her duties.⁷ Examples of situations that qualify as temporary incapacity include sickness or other similar situations, as well as extended travel, but

¹ 1-3 §§ Finlands grundlag (FFS 11.6.1999/731), <https://perma.cc/NJE2-96SV>.

² Id. 54 §; 1 § Vallag (FFS 2.10.1998/714), <https://perma.cc/8C6J-GVDA>.

³ 45 § Finlands grundlag.

⁴ Id. 57-58 §§. See also *Duties*, President of the Republic of Finland, <https://perma.cc/433F-RQ8G>.

⁵ 65-66 §§ Finlands grundlag. See also *Role of the Prime Minister*, Finnish Government, <https://perma.cc/36WR-E9T9>.

⁶ 59 § Finlands grundlag.

⁷ Id. 55 §.

not disqualification (*jäv*).⁸ Until 1992, any foreign travel by the president was considered to warrant a temporary reassignment of duties from the president to the PM.⁹ Today, foreign travel alone does not warrant a reassignment of duties.¹⁰ When a president only suffers temporary incapacity, the PM acts in place of the president.¹¹ Permanent incapacity is defined as either when the president dies or when the PM determines that the president suffers permanent incapacity (such as a serious illness) that makes him or her unable to fulfill the duties of the presidency.¹²

III. Authority and Procedures for Suspension and Removal from Office

A president can only be removed from office in the following circumstances: following the loss of an election, upon death, or if the PM finds the president unable to discharge his or her duties (permanent incapacity).¹³ In addition, a president may be temporarily relieved of his or her duties during court proceedings against him or her.¹⁴ Such proceedings can only be brought with the support of three-quarters of the members of Parliament.¹⁵

The legislative history to the Finnish Constitution provides how a sitting president may be declared permanently incapacitated from serving as president.¹⁶ Following the determination by the PM that the president is permanently unable to execute his duties, the PM must schedule a general election for president, to be held as soon as possible.¹⁷ When a president only suffers temporary incapacity, the PM acts in place of the president.¹⁸ If the PM is unavailable to perform the duties of the president, the acting vice PM will discharge the presidential duties.¹⁹

No Finnish president has been removed from office against his or her will. Such removal is discussed in the legislative history, however, which indicates it would require an evaluation by a physician, a note from the physician, and “overwhelming evidence” that the president’s incapacity to serve is indeed permanent.²⁰ Because temporarily relieving a president of his or her presidential duties is an option available under Finnish law it is more likely that this option would be used before permanently removing an elected president.

⁸ RP 1/1998 rd Regeringens Proposition till Riksdagen med Förslag till Ny Regeringsform för Finland, 111, <https://perma.cc/LRW7-L3KT>.

⁹ *Decision Making*, President of the Republic of Finland, <https://perma.cc/WX32-9W6K>.

¹⁰ *Id.*

¹¹ 59 § Finlands grundlag.

¹² *Id.* 55 §; RP 1/1998 rd, *supra* note 8, at 104.

¹³ 54 & 59 §§ Finlands grundlag.

¹⁴ *Id.* 113 §.

¹⁵ *Id.*

¹⁶ RP 1/1998 rd, *supra* note 8, at 104.

¹⁷ 55 § Finlands grundlag; RP 1/1998 rd, *supra* note 8, at 104.

¹⁸ 59 § Finlands grundlag.

¹⁹ *Id.*

²⁰ RP 1/1998, *supra* note 8, at 104.

IV. Order of Succession

The president is not automatically succeeded; a general election must be held. The PM, or the vice PM if the PM is unavailable, assumes the president's duties until the election takes place.²¹ The presidential office must continue to support the acting president until an election is held.²²

V. Historical Example

The most recent time that a sitting president was declared permanently incapacitated was in 1981 when then President Urho Kekkonen sent a message of resignation to PM Mauno Koivisto accompanied by a doctor's note detailing his permanent inability to perform his presidential duties.²³ President Kekkonen had at that time been temporarily relieved of his duties as president for months because of his poor health.²⁴ The PM proceeded to issue a government resolution (*Statsrådsbeslut*), which included details for a new general election.²⁵ In the 1982 election that followed, PM Mauno Koivisto was elected president by electors and replaced Kekkonen.²⁶

²¹ 55, 59 §§ Finlands grundlag.

²² 2-3 §§ Lag om presidentens kansli (FFS 24.2.2012/100), <https://perma.cc/65HU-MAZK>.

²³ The doctor's note specifically stated that the president was "permanently unable to take care of his duties" and the cause for resignation was specified as "insufficiency of the circulatory system (Diagnosis: Arteriosclerosis universal)," but it has since been generally accepted that the true reason for his incapacity was that the president suffered from early stages of dementia. Jorma Palo, *The Cover-up of President Urho Kekkonen's Dementia and Its Impact on the Political Life of Finland—A Personal account*, 6 Eur. J. Neurology 137-40 (1999) (on file with author).

²⁴ Id. President Kekkonen's dementia became apparent during an official trip to Iceland in August of 1981.

²⁵ Statsrådsbeslut 717/1981.

²⁶ *Presidential Election*, Vaalit/Val, <https://perma.cc/N5ME-HF32>. For more information about the Kekkonen presidency see David Arter, *Kekkonen and the 'Dark Age' of Finlandised Politics?*, 9 Irish Stud. in Int'l. Aff. 39-49 (1998), <https://perma.cc/C9FW-PD9U>; see also Palo, supra note 23.

France

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SUMMARY France is considered a semipresidential system, where the president has substantial powers. Article 7 of the French Constitution provides that, in case of a “vacancy” or “impediment” of the presidency, the cabinet should ask the Conseil constitutionnel (Constitutional Council), France’s high court for constitutional questions, to certify the situation of vacancy or impediment. The president of the Senate becomes the interim president. If the president of the Senate is unable to assume the presidency, then the cabinet assumes the powers of the presidency. If the situation of vacancy or impediment is permanent, presidential elections must be organized between 20 and 35 days after the permanent vacancy or impediment was certified. This time frame may be extended, within limits, only in the case of a *force majeure*. The interim president does not possess all presidential powers. For example, the interim president may not organize a referendum or dissolve the National Assembly. Two cases of vacancy or impediment have occurred under the current French Constitution: once in 1969 when President Charles de Gaulle resigned, and again in 1974 when President George Pompidou died in office.

I. Type of Government

The French Republic is often characterized as a semipresidential system, where the president has substantial powers.¹ The president is elected by direct universal suffrage for a term of five years, and may not serve for more than two consecutive terms.² The president appoints the prime minister and other members of the cabinet³ and presides over the council of ministers, which is the formal name of the cabinet’s weekly plenary meetings.⁴ The cabinet (referred to as *le gouvernement* in French) is responsible for setting and implementing the nation’s policies.⁵

II. Definition of Presidential Incapacity

Article 7 of the French Constitution governs what is supposed to happen in the case of “vacancy” of or an “impediment” to the presidency.⁶ There does not appear to be any formal legal definition

¹ *Comment caractériser le régime politique de la Ve République?*, Vie Publique (July 7, 2018), <https://perma.cc/WZZ3-YB6J>.

² Constitution art. 6, <https://perma.cc/VQP6-8TW4>.

³ Id. art. 8.

⁴ Id. art. 9; *Qu’est-ce qu’un Conseil des ministres?*, Vie Publique (July 7, 2018), <https://perma.cc/Z6EK-P8AD>.

⁵ Constitution art. 20.

⁶ Id. art. 7.

of the term “impediment” (*empêchement* in French), but it is generally understood as referring to situations where the president is physically or mentally unable to fulfill his or her duties.⁷

III. Authority and Procedures for Suspension and Removal from Office

Article 7 provides that the cabinet should ask the Conseil constitutionnel (Constitutional Council), France’s high court for constitutional questions, to certify whether a situation of vacancy or impediment exists.⁸ The Conseil constitutionnel’s ruling on such a question must be supported by an absolute majority of its members.⁹

If the vacancy or impediment is permanent, elections for a new president must be organized at least 20 days but no more than 35 days after the start of the vacancy or the declaration of impediment.¹⁰ This period may be extended if the Conseil constitutionnel finds that a *force majeure* exists. In such a scenario, the election must occur no more than 35 days after the Conseil constitutionnel’s decision.¹¹

IV. Order of Succession

In both situations of presidential vacancy or impediment, the president of the Senate becomes the interim president of the Republic.¹² If the president of the Senate is not able to fulfill that role, then the powers of the presidency fall to the cabinet as a whole.¹³ In any case, the interim president’s powers are reduced: he or she is not allowed to organize a referendum, to dissolve the National Assembly, or to amend the Constitution.¹⁴

V. Historical Examples

Since the current French Constitution was adopted in 1958, the provisions of article 7 regarding presidential vacancy and impediment have been applied twice.¹⁵ The first time was in April 1969, when Charles de Gaulle resigned from the presidency. The Conseil constitutionnel “duly noted” de Gaulle’s decision to resign, and declared Alain Poher, who was the president of the Senate at

⁷ Valérie de Senneville, *Anne Levade: «Derrière la procédure d'empêchement, il y a un enjeu politique fort,»* Les Echos (Sept. 5, 2005), <https://perma.cc/4ZFC-VCF9>.

⁸ Constitution art. 7.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.; *Que se passe-t-il en cas de décès ou de démission du président de la République?*, Vie Publique (July 1, 2020), <https://perma.cc/EYJ6-JN6C>.

¹⁵ *Que se passe-t-il en cas de décès ou de démission du président de la République?*, supra note 14.

the time, the interim president.¹⁶ The second time was in April 1974, when President George Pompidou died while in office.¹⁷ Alain Poher, who was still president of the Senate, became the interim president once more.¹⁸

¹⁶ Conseil constitutionnel, Décision n° 69-12 PDR du 28 avril 1969 (Apr. 28, 1969), <https://perma.cc/P2AV-DFXA>; François Luchaire, *La démission du Général de Gaulle devant le Conseil constitutionnel*, Cahiers du Conseil Constitutionnel No. 25 (Nov. 2008), <https://perma.cc/8DYE-AWB8>.

¹⁷ Conseil constitutionnel, Décision n° 74-23 PDR du 3 avril 1974 (Apr. 3, 1974), <https://perma.cc/MN66-CG8Y>.

¹⁸ *Que se passe-t-il en cas de décès ou de démission du président de la République?*, supra note 14.

Guyana

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SUMMARY The president of Guyana may be suspended or removed from office either voluntarily or involuntarily based on physical or mental incapacity. Involuntary removal requires certification based on a report by a medical board appointed by a majority of national assembly members from the same candidates' list that designated the president as its presidential candidate in the prior election. The order of succession proceeds to the prime minister and in his or her absence or inability to assume responsibilities to a minister elected by the cabinet. In the cabinet's absence or inability the chancellor becomes president.

I. Type of Government System

Guyana is a parliamentary republic headed by a president who serves as "the supreme executive authority and the Commander-in-Chief of the armed forces of the Republic."¹ The president is generally elected based on his or her designation as a presidential candidate on the candidates' list that gained the most votes in the election.²

According to the Guyanese Constitution, the president should appoint a member of the national assembly as prime minister (PM). The PM serves as "the principle assistant of the President in the discharge of his or her executive functions and leader of the government business in the National Assembly."³

II. Definition of Presidential Incapacity

The president may be suspended or removed from office either voluntarily or involuntarily if he or she "becomes physically or mentally incapable of discharging the functions of his or her office."⁴

III. Authority and Procedures for Suspension and Removal from Office

Voluntary suspension of presidential tenure may take place when the president designates in writing a member of the cabinet who is an elected member of the national assembly to perform

¹ Constitution of the Co-Operative Republic of Guyana, Act 2 of 1980, art. 89, Laws of Guyana, ch. 1.01, <https://perma.cc/74QR-DNQZ>.

² Id. art. 177.

³ Id. art. 101(2).

⁴ Id. art. 93.

the functions of office during the president's absence or as the president desires based on the president's illness or for any other reason.⁵

Involuntary removal of the president from office requires certification by the chancellor,⁶ based on a report issued by a medical board of at least three qualified medical practitioners, that the president is unable to discharge the functions of office due to mental or physical incapacity. Appointment to the board requires a motion by the majority of the national assembly's members whose names appeared on the same candidates' list with the president in the prior election.⁷

The president's term is suspended when the PM informs the chancellor of the motion to investigate the president's capacity to fulfill his or her official duties. The suspension terminates upon the issuance of a report by the board to the chancellor that the president is not incapable of performing official duties, or upon the assumption of office by another person, whichever is earlier.⁸

IV. Order of Succession

If the president is unable to hold office due to his/her physical or mental infirmity, succession will proceed to the PM, and in the PMs' absence or inability to assume responsibilities to a minister elected by the cabinet for this purpose. If neither the PM nor the cabinet is available the chancellor becomes president.⁹

⁵ Id. art. 96(1).

⁶ For rules governing the appointment of the chancellor see id. art. 127.

⁷ Id. art. 179(1)-(2).

⁸ Id. art. 179(3).

⁹ Id. arts. 95, 96 & 179.

Indonesia

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SUMMARY The Indonesian Constitution requires that candidates for president and vice-president be “mentally and physically capable” of performing their duties. This requirement is also contained in the list of qualifications for such candidates in a 2017 election law, although there does not appear to be any further clarification of what it means in practice. Under the Constitution, the People’s Consultative Assembly may dismiss the president for several reasons, including that he or she “no longer meets the qualifications to serve” as president. The constitutional process requires that two-thirds of the People’s Representative Council support the submission of a request to the Constitutional Court, which must consider the opinion of the Council within 90 days. If the Court determines that the president no longer meets the qualifications, the Council must hold a session within 30 days to submit the impeachment proposal to the full Assembly. The Assembly must give the president an opportunity to be heard and impeachment requires the approval of two-thirds of the members present at a plenary session attended by at least three-quarters of the total members of the Assembly. If a president is impeached or no longer capable of performing his or her duties, he or she will be replaced by the vice-president. If both the president and vice-president are impeached, certain ministers take on the duties of the president until the Assembly elects a new president and vice-president, with a vote to be taken within 30 days.

I. Indonesian System of Government

The Republic of Indonesia is a unitary state¹ with a presidential system of government. The president is the head of state and the head of government.² He or she leads the executive branch and is the supreme commander of the armed forces.³ The president is assisted by a vice-president.⁴ Both the president and vice-president hold office for a term of five years and may be re-elected to the same office for only one additional term.⁵

* At present there are no Law Library of Congress research staff members versed in Indonesian. This report has been prepared by the author’s reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

¹ Constitution of the Republic of Indonesia, 1945, art. 1(1), <https://perma.cc/UD7W-LXLM> (unofficial English translation), <https://perma.cc/C4GZ-5TFY> (in Indonesian).

² International Foundation for Electoral Systems, *Elections in Indonesia: 2019 Concurrent Presidential and Legislative Elections – Frequently Asked Questions* 1 (Apr. 2019), <https://perma.cc/SD75-7TK8>.

³ Constitution art. 10.

⁴ Id. art. 4(2).

⁵ Id. art. 7.

Legislative authority in Indonesia is exercised by the People's Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR), which consists of the People's Representative Council (Dewan Perwakilan Rakyat, DPR) (also often referred to as the House of Representatives) and the Regional Representative Council (Dewan Perwakilan Daerah, DPD).⁶

II. Removal of the President for Incapacity to Hold Office

A. Definition of Incapacity to Hold Office

Article 6 of the Constitution provides that

(1) Any candidate for President or Vice-President shall be a citizen of Indonesia since birth, shall never have acquired another citizenship by his/her own will, shall never have committed an act of treason against the State, and shall be *mentally and physically capable of implementing the duties and obligations of President or Vice-President*. [Indonesian: *mampu secara rohani dan jasmani untuk melaksanakan tugas dan kewajiban sebagai Presiden dan Wakil Presiden*.]

(2) The requirements to become President or Vice-President shall be further regulated by law.⁷

Law Number 7 of 2017 concerning Elections, which establishes the detailed electoral rules that apply in addition to the overarching rules in the Constitution, sets out a list of twenty requirements that must be fulfilled by candidates for president and vice-president. These include, for example, being "(a) pious in service to the Lord Almighty"; "(e) physically and mentally able to conduct their tasks and responsibilities as a president or vice president, and free from the abuse of narcotics or other illegal substances" (Indonesian: *mampu secara rohani dan jasmani untuk melaksanakan tugas dan kewajiban sebagai presiden dan wakil presiden serta bebas dari penyalahgunaan narkoba*); and "(j) free from the conduct of any despicable deeds."⁸

Indonesian laws are accompanied by "explanations" or "elucidations" that provide additional explanations of individual articles as needed. The explanation for the above provision on the requirements for presidential and vice-presidential candidates includes further information with respect to letters (a) and (j) (" 'Free from the conduct of any despicable deeds' means having never committed any acts that violated the norms of religion, public decency, and traditions, such as gambling, being publicly drunk, consume narcotics or illicit substances, and sex outside of marriage"), among others, but states only that letter (e) is "sufficiently clear."

Other explanations of provisions in the elections law that contain a requirement for a person to generally be "physically and mentally able" (without reference to the tasks and responsibilities of the particular role) state that this term means

⁶ Id. art. 2(1). See also Constitution chs. VII (regarding the DPR) & VIIA (regarding the DPD).

⁷ Id. art. 6 (emphasis added).

⁸ Law No. 7 of 2017 concerning Elections, art. 169(a), (e), (j), <https://perma.cc/PW57-GMVU> (unofficial English translation), <https://perma.cc/NB7X-LRPF> (in Indonesian).

a status of sufficient health, proven by a statement by a doctor, community health center (Puskemas), or state hospital with sufficient credentials, along with a statement of being free from the influence of narcotics and other illegal substances.

Physical disability shall not invalidate someone from being cleared as physically able.⁹

Given that such an explanation is absent with respect to the relevant requirement for presidential and vice-presidential candidates, and the fact that there is the addition of a reference to the duties and responsibilities of the roles (reflecting the same wording as in the Constitution), it is unclear whether a similar definition would apply, or some other meaning.

B. Constitutional Procedures for Removal from Office

The Constitution provides that “[t]he MPR may only dismiss the President and/or Vice-President during his/her term of office in accordance with the Constitution.”¹⁰ The procedures for such a dismissal are set out in articles 7A and 7B of the Constitution:

Article 7A

The President and/or the Vice-President may be dismissed from his/her position during his/her term of office by the MPR on the proposal of the House of Representatives (Dewan Perwakilan Rakyat or DPR), both if it is proven that he/she has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice-President.

Article 7B

(1) Any proposal for the dismissal of the President and/or the Vice-President may be submitted by the DPR to the MPR only by first submitting a request to the Constitutional Court to investigate, bring to trial, and issue a decision on the opinion of the DPR either that the President and/or Vice-President has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice-President.

(2) The opinion of the DPR that the President and/or Vice-President has violated the law or no longer meets the qualifications to serve as President and/or Vice-President is undertaken in the course of implementation of the supervision function of the DPR.

(3) The submission of the request of the DPR to the Constitutional Court shall only be made with the support of at least 2/3 of the total members of the DPR who are present in a plenary session that is attended by at least 2/3 of the total membership of the DPR.

(4) The Constitutional Court has the obligation to investigate, bring to trial, and reach the most just decision on the opinion of the DPR at the latest ninety days after the request of the DPR was received by the Constitutional Court.

(5) If the Constitutional Court decides that the President and/or Vice-President is proved to have violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude; and/or the President and/or Vice-President is proved no longer to meet the qualifications to serve as President and/or Vice-

⁹ Id. Explanations of arts. 21(1)(h), 117(1)(h), 182(1)(h) & 240(1)(h).

¹⁰ Constitution art. 3(3).

President, the DPR shall hold a plenary session to submit the proposal to impeach the President and/or Vice-President to the MPR.

(6) The MPR shall hold a session to decide on the proposal of the DPR at the latest thirty days after its receipt of the proposal.

(7) The decision of the MPR over the proposal to impeach the President and/or Vice-President shall be taken during a plenary session of the MPR which is attended by at least 3/4 of the total membership and shall require the approval of at least 2/3 of the total of members who are present, after the President and/or Vice-President have been given the opportunity to present his/her explanation to the plenary session of the MPR.¹¹

C. Succession Rules

Article 8 of the Constitution sets out the following rules for succession:

(1) In the event that the President dies, resigns, is impeached, or is not capable of implementing his/her obligations during his/her term, he/she will be replaced by the Vice-President until the end of his/her term.

(2) In the event that the position of Vice-President is vacant, the MPR should hold a session within sixty days at the latest to elect a Vice-President from two candidates nominated by the President.

(3) In the event that the President and the Vice President die, resign, are impeached, or are permanently incapable of performing their tasks and duties within their term of office simultaneously, the tasks and duties of the presidency shall be undertaken by a joint administration of the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defence. At the latest thirty days after that, the MPR shall hold a session to elect a new President and Vice President from the tickets nominated by the political parties or coalitions of political parties whose tickets won first and second place in the last presidential election, who will serve for the remainder of the term of office.¹²

¹¹ Id. arts. 7A & 7B.

¹² Id. art. 8.

Italy

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SUMMARY Italy is a parliamentary democracy in which the executive power is exercised by the president of the Council of Ministers and the Council itself. In addition, the president of the Republic is the head of state. Both authorities are elected by a parliamentary majority. The Constitution does not define what constitutes incapacitation of either authority, but establishes a system of substitution for the president of the Republic. The president of the Council of Ministers may be substituted by the vice president of the Council of Ministers pursuant to legislation enacted in 1988.

I. Type of Government System

The Italian Constitution states that Italy is a “democratic Republic founded on labor.”¹ The Italian system of government is that of a parliamentary republic² based on a representative and pluralistic democracy, with the presence of numerous autonomous territorial units.³

The national Parliament—which exercises the legislative power—generates the national government through a decision of the parliamentary majority.⁴ The government acquires full executive powers only after receiving a vote of confidence from both chambers of the Parliament.⁵ This vote of confidence may be revoked at any time,⁶ in which case the president of the Council of Ministers and the whole government must present their resignation to the president of the Republic.⁷

The President of the Republic is the “Head of the State and represents national unity,”⁸ and his role of that of guarantor of the democratic system of government.⁹ He is elected by the Parliament in joint session.¹⁰ In that role, he appoints the president of the Council of Ministers and, on the

¹ Constitution of the Italian Republic [Const.] art. 1, Dec. 27, 1947, as amended, <https://perma.cc/K4P3-NX8V> (in Italian), <https://perma.cc/7JZW-2CHL> (English translation).

² *Forma di Stato e Forma di Governo in Italia*, Politica Semplice, <https://perma.cc/83KE-S2XM>.

³ *Il Governo*, Governo Italiano, Presidenza del Consiglio dei Ministri, <https://perma.cc/P4SG-X49S>.

⁴ Id.

⁵ Const. art. 94, para. 1.

⁶ *Il Governo*, supra note 3.

⁷ Id.

⁸ Const. art. 87, para. 1.

⁹ *Il Governo*, supra note 3.

¹⁰ Const. art. 83, para. 1.

latter's proposal, appoints the Council ministers.¹¹ Each of the members of the Council of Ministers is individually responsible of their own area and, collectively, for the decisions made by the whole Council.¹² The president of the Council has responsibility for the overall conduct of the government.¹³

II. Definition of Presidential Incapacity

The Constitution does not define what constitutes incapacity to hold the office of president of the Republic or president of the Council of Ministers. According to article 86 of the Constitution,

[t]he functions of the President of the Republic, in all cases in which the President cannot perform them, shall be performed by the President of the Senate.

In case of permanent incapacity or death or resignation of the President of the Republic, the President of the Chamber of Deputies shall call an election of a new President of the Republic within fifteen days, notwithstanding the longer term envisaged during dissolution of Parliament or in the three months preceding dissolution.

Thus, in the case of temporary incapacitation of the president of the Republic, this role is substituted by the president of the Senate; if the incapacitation is permanent, the president of the Chamber of Deputies must call for a new election for president of the Republic.

A historic precedent shows the complicated constitutional conundrum surrounding the determination of whether an impediment is permanent or temporary. In 1964 then President Segni suffered a serious illness, but he denied that such illness constituted an impediment to performing his constitutional functions. As the Italian Constitution is silent on this situation, a decision was made to determine the nature and scope of the impediment through a joint meeting of the president of the Council of Ministers, the president of the Chamber of Deputies, and the president of the Senate. The meeting resulted in a decision to substitute the president of the Republic with the president of the Senate, and the president of the Republic then resigned from his position a few months later.¹⁴

In sum, in Italy's parliamentary system of government only a decision of the parliamentary majority—as reflected in the Segni case—may determine the incapacity of the president of the Republic.

III. Order of Succession

The Italian Constitution does not contemplate a permanent and definite line of succession for the president of the Council of Ministers in case of his or her incapacitation. The only constitutional remedy in this case is the calling of an election. However, Law No. 400 of 1988 provides that the

¹¹ Id. art. 92.

¹² *Il Governo*, supra note 3.

¹³ Const. art. 95, para. 1.

¹⁴ *Antonio Segni*, Presidenza della Repubblica, <https://perma.cc/TD3G-E7HM>.

president of the Council of Ministers may propose that the Council designate one or more of its ministers to perform the functions of vice president of the Council of Minister. If that is the case, when there is an absence or temporary impediment of the president of the Council of Ministers, the vice president takes office, or if one or more vice presidents have been appointed, the most senior in age takes office.¹⁵ If the vice president of the Council of Ministers has not been appointed, the aforementioned substitution – unless the president of the Council of Ministers has decided otherwise – corresponds to the minister most senior in age.¹⁶

In 2019 the president of the Council of Ministers failed to appoint a deputy upon the formation of his cabinet, so his oldest minister technically became the vice president of the Council of Ministers.¹⁷

¹⁵ Legge 23 agosto 1988, n. 400 Disciplina dell' Attivita' di Governo e ordinamento della Presidenza del Consiglio dei Ministri, art. 8(1), <https://perma.cc/NP7Y-CYJZ>.

¹⁶ Id. art. 8(2).

¹⁷ Annabelle Timsit et al., *How Different Countries Handle their Leadership's Line of Succession*, Quartz (Apr. 7, 2020), <https://perma.cc/PD8J-RUDZ>.

Liberia

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SUMMARY The president of Liberia may be removed from office for inability to discharge the powers and duties of the office if a determination to that effect is made by two-thirds of the members of the Cabinet and, on the advice of the Cabinet, the bicameral legislature declares the president unfit to continue to hold office with the support of at least two-thirds of its members.

Upon removal of the president, the vice president is elevated to the presidency for the remainder of the term. If the disability of the president occurs at a time of a vacancy in the office of the vice president, the speaker of the House of Representative and the president pro tempore of the Senate, in that order, are in line to succeed the president.

I. Type of Government System

Liberia is a unitary state¹ with a presidential system of government. The executive power of the country is vested in the president, who is the head of state, head of government, and commander-in-chief of the armed forces.² The president is elected for a six-year term and a maximum of two terms.³ The vice president, who is elected on the same political ticket with and subject to the same term limits as the president, assists the president in discharging the functions of the presidency.⁴

Lawmaking power is vested in the country's bicameral legislature, consisting of the Senate and the House of Representatives.⁵

II. Removal of the President for Incapacity to Hold Office

The Constitution mandates that the legislature "prescribe the guidelines and determine the procedure under which the president, by reason of illness, shall be declared incapable of carrying out the functions of his office."⁶ The legislature has done so under the Executive Law, which provides as follows:

Whenever it shall become apparent to two-thirds of the Cabinet that the President is unable to discharge the powers and duties of his office, they shall so advise the Legislature by a Special Message to that effect as signed by each of them; thereupon should the Legislature

¹ Constitution of Liberia, 1986, § 3, <https://perma.cc/24RK-8YJ4>.

² Id. § 50.

³ Id.

⁴ Id. § 51.

⁵ Id. § 29.

⁶ Id. § 63(c).

by a two-thirds vote declare that the President is unfit to continue to hold office the Legislature shall instruct the Minister of Foreign Affairs to publish such declaration in a Special Edition of the Liberian Official Gazette whereupon the Vice President shall immediately assume the powers and duties of the President.⁷

III. Order of Succession

The Constitution provides that in the event of a vacancy in the presidency for any number of reasons, including as the result of the president being declared unable to perform the duties and functions of the office, the vice president is to complete the rest of the term.⁸ The Executive Law provides the same.⁹

If the office of the vice president becomes vacant, including as a result of incapacity, according to the Constitution, the president must quickly nominate a candidate who, upon the approval of both houses of the legislature, will fill the position “until the next general election [sic] are held.”¹⁰ However, the Executive Law states that “[w]hen a vacancy occurs in the office of the vice-president, the president shall immediately call a special election to fill such vacancy.”¹¹

If both the office of the president and the vice president become vacant at the same time, the Constitution puts in place the following succession order:

[T]he Speaker of the House of Representatives shall be sworn in as Acting President until the holding of elections to fill the vacancies so created. Should the Speaker be legally incapable or otherwise unable to assume the office of Acting President, then the same shall devolve upon the President Pro Tempore of the Senate. In any further line of descent, the office shall devolve in order upon the Deputy Speaker and members of the Cabinet in the order of precedence as established by law.¹²

According to the Constitution, the Election Commission must conduct elections for a new president and vice president within 90 days.¹³

⁷ Executive Law § 4.4. (May 11, 1972) (as amended), <https://perma.cc/2FB7-Q2CT>.

⁸ Const. § 63 (b).

⁹ Executive Law § 4.1.

¹⁰ Const. § 63.

¹¹ Executive Law § 4.2.

¹² Const. § 64; see also Executive Law §§ 4.3 & 4.5.

¹³ Const. §§ 64.

Mexico

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SUMMARY In the event of an absolute absence of the Mexican president, Congress has the authority to either appoint an interim president to hold office until a new president is elected or to appoint a substitute president. Specifically, if the absolute absence of the president occurs within the first two years of a six-year presidential administration, Congress appoints an interim president and calls for the election of a president to complete the six-year term. When the absolute incapacity of the president occurs during the last four years of the six-year term, Congress must designate a substitute president to complete the term.

I. Type of Government System

Mexico is a representative, democratic, and federal republic comprising 31 states and Mexico City, which are sovereign in internal matters but are united in a federation.¹ It has a presidential system, with the president serving as both head of state and head of government, and in charge of the federal executive branch.²

II. Definition of Incapacity to Hold Office and Authority to Declare It

Mexico's Constitution provides that in the event of an absolute absence of the president, Congress has the authority to either appoint an interim president to hold office until a new president is elected or to appoint a substitute president,³ as explained below.

As the Constitution does not define "absence" and other legal sources do not seem to specifically address this matter either, legal scholars have interpreted it as an inability to hold office due to circumstances such as death or total incapacity of the president.⁴

¹ Constitución Política de los Estados Unidos Mexicanos arts. 40, 43, as amended, Diario Oficial de la Federación [DOF], Feb. 5, 1917, <https://perma.cc/9BP5-LLL5>.

² Manuel Martínez Pérez, *Legal System in Mexico: Overview*, Thomson Reuters Practical Law (Jan. 2020), available on Westlaw. See also Constitución Política de los Estados Unidos Mexicanos art. 80, DOF, Feb. 5, 1917, <https://perma.cc/9BP5-LLL5>.

³ Constitución Política de los Estados Unidos Mexicanos, arts. 73-XXVI, 84, as amended, DOF, Feb. 5, 1917, <https://perma.cc/9BP5-LLL5>.

⁴ Jose Cossio et al., *Constitución Política de los Estados Unidos Mexicanos Comentada* 1301-02 (2017), <https://perma.cc/T9RR-SRE5>; Mario Melgar Adalid, *Nuevas reglas para la suplencia presidencial* 372-73 (2015), <https://perma.cc/2DJT-BN6C>.

III. Procedure for Addressing Absolute Absence of the President

If the absolute absence of the president occurs within the first two years of a six-year presidential administration, Congress must constitute itself immediately as an electoral college and appoint, by secret ballot and by an absolute majority of the votes cast, an interim president.⁵ Within 10 days following the appointment of the interim president, Congress will call for the election of a president to complete the six-year term.⁶ When the absolute incapacity of the president occurs during the last four years of the six-year term, Congress must designate a substitute president to complete the term.⁷

IV. Order of Succession

In the event of an absolute absence of the president, the Secretary of the Interior must provisionally assume the presidency while Congress appoints an interim or substitute president, as explained above.⁸

⁵ Constitución Política de los Estados Unidos Mexicanos arts. 83, 84, as amended, DOF, Feb. 5, 1917, <https://perma.cc/9BP5-LLL5>.

⁶ Id.

⁷ Id.

⁸ Id.

Nicaragua

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SUMMARY The president of Nicaragua may be declared temporarily or permanently incapacitated to hold office by two-thirds of the members of the National Assembly. In such a case, the vice president will assume the office of president. If the president and vice president simultaneously experience a temporary incapacity, the president of the National Assembly will hold the office of president on an interim basis. If the president and vice president both have a permanent incapacity, the president of the National Assembly will hold the office of president and the National Assembly must elect their replacements from among its members.

I. Type of Government System

Nicaragua is a unitary and indivisible democratic republic. Democracy is exercised in a direct, participative, and representative form.¹ The country is headed by the President who is the head of state, the head of government, and supreme head of the Nicaraguan army.²

II. Definition of Presidential Incapacity and Removal Procedure

The Constitution defines as one of the temporary inabilities of the president the manifest temporary impossibility or incapacity to exercise the office, as declared by the National Assembly and approved by two-thirds of its members (*Diputados*).³ Similarly, the Constitution defines as one of the definitive inabilities of the president his or her total permanent incapacity, as declared by the National Assembly and approved by two-thirds of its members.⁴ The Constitution does not specify the criteria the National Assembly would use in determining such incapacity.

III. Order of Succession

If the president is temporarily unable to hold office, the vice president will assume his/her functions. In the case of a temporary and simultaneous impossibility or incapacity of both of them, the president of the National Assembly will hold the office of the presidency, and the first vice president of the National Assembly will fill the National Assembly president role, on an interim basis.⁵

¹ Constitución Política de la República de Nicaragua arts. 6,7, originally published in La Gaceta, Jan. 9, 1987, published with all amendments in La Gaceta, Feb. 18, 2014, <https://perma.cc/65N3-ARHK>.

² Id. art. 144.

³ Id. art. 149.

⁴ Id.

⁵ Id.

If the president has a total and permanent incapacity preventing him or her from holding office, the vice president will assume the office for the rest of the term, and the National Assembly must then elect a new vice president.⁶ If the vice president has a definitive inability to hold office, the National Assembly must appoint his or her replacement.⁷

If both the president and the vice president of the Republic have a total and permanent inability to hold office, the president of the National Assembly or his or her substitute will assume the office of president of the Republic. The National Assembly must then appoint substitutes for both positions within the first 72 hours from the start of the vacancy. Those who have been appointed will exercise their functions for the rest of the term. In all the above cases, the National Assembly will elect substitutes from among its members.⁸

⁶ Id.

⁷ Id.

⁸ Id.

Nigeria

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SUMMARY The Constitution permits the removal of a President or Vice President for incapacity by a decision of the Cabinet and a medical panel established for the purpose by the President of the Senate. Removal requires passage of a resolution by at least two thirds of all the members of the Cabinet declaring that the President is incapable of discharging the duties of the presidency, issuance of a medical report to the President of the Senate and the Speaker of the House of Representatives by a medical panel corroborating the Cabinet's declaration, and the publication of the medical report, signed by the President of the Senate and the Speaker of the House, in the Official Gazette of the Federation.

When the President is removed, the Vice President assumes the presidency. If the office of the vice president is vacant at the time of the removal of the President, the President of the Senate holds the office of the president for a period not exceeding three months, during which time an election to fill the presidency must be held.

I. Type of Government System

Nigeria is a federation of 36 states and a federal capital territory.¹ Although Nigeria now has a presidential system of government, that was not always the case. At independence in 1960, Nigeria adopted a parliamentary system akin to that of the United Kingdom.² The Governor-General, who served as the representative of the Queen and the head of state, appointed the Prime Minister as the head of government, and the Cabinet from among members of the legislature.³ In 1963, Nigeria severed ties with the British monarchy and created the position of President as the head of state.⁴ In 1979, Nigeria abolished the parliamentary system of government in favor of a presidential system of government, in large part for the purpose of achieving a sharper separation of powers between the legislative and executive branches.⁵ Although Nigeria was a dictatorship from 1983 through 1998, the presidential system of government was reinstated in 1999 (when Nigeria returned to a democratic system of government) and endures to this day.⁶

¹ Constitution of Nigeria (1999) (Const.), § 2, <https://perma.cc/87KS-D8VC>.

² Timothy I. Ojo, 1 *Nigerian Legislature: Historical Survey of Colonial Administration in Nigeria Before Independence* 150 (1997).

³ Nigeria (Constitution) Order in Council, 1960, Second Schedule, §§ 33, 81 (Oct. 1, 1960), *Annual Volume of the Laws of the Federation of Nigeria* (1960).

⁴ S.G. Ehindero, *The Constitutional Development of Nigeria: 1849-1989* 26 (1991).

⁵ *Id.* at 37-41.

⁶ Chiedozie Alex Ogonnia, *Banana Peel: The Burden of Legislature in Nigeria* 48-50 (2009).

Under the current Nigerian Constitution, the country's President is the head of state, the chief executive of the Federation, and commander in chief of the armed forces of the Federation.⁷ The President is elected for a four-year term and a maximum of two terms.⁸

Legislative authority at the federal level is vested in the National Assembly for the Federation, consisting of the House of Representatives and the Senate.⁹

II. Removal of the President for Incapacity to Hold Office

A. Voluntary Abdication

The President may voluntarily remove himself or herself from office. According to the Constitution:

Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives a written declaration that he is proceeding on vacation or that he is otherwise unable to discharge the functions of his office, until he transmits to them a written declaration to the contrary such functions shall be discharged by the Vice-President as Acting President.¹⁰

B. Involuntary Removal

The President or the Vice President may be removed from office for incapacity by decisions of unelected persons: the Cabinet and a medical panel constituted by the President of the Senate. Under the Constitution, the President or the Vice President must immediately cease to hold office if his or her permanent incapacity is established:

- a. by a resolution passed by two-thirds majority of all the members of the executive council of the Federation it is declared that the President or Vice-President is incapable of discharging the functions of his office; and
- b. the declaration is verified, after such medical examination as may be necessary, by a medical panel . . . in its report to the President of the Senate and the Speaker of the House of Representatives.¹¹

When the medical panel certifies in the report "that in its opinion the President or Vice-President is suffering from such infirmity of body or mind as renders him permanently incapable of discharging the functions of his office," notice of the medical report signed by both leaders of the bicameral Nigerian Parliament must be published in the Official Gazette.¹² The publication of the medical report ends the tenure of the President or the Vice President.¹³

⁷ Const. § 130.

⁸ Id. §§ 135(2), 137(1)(b).

⁹ Id. § 4.

¹⁰ Id. § 145.

¹¹ Id. § 144.

¹² Id.

¹³ Id.

Five medical practitioners comprise the medical panel, which is appointed by the President of the Senate.¹⁴ While the Constitution requires that one of the five members of the panel be the personal physician of the President or the Vice President, the President of the Senate appoints the rest of the members of the panel that in his opinion have “attained a high degree of eminence in the field of medicine relative to the nature of the examination to be conducted. . . .”¹⁵ The executive council of the Federation is “the body of Ministers of the Government of the Federation, howsoever called, established by the President and charged with such responsibilities for the functions of government as the President may direct.”¹⁶

III. Order of Succession

If the office of the president becomes vacant “by reason of death or resignation, impeachment, permanent incapacity or the removal of the President from office for any other reason in accordance with section 143 of this Constitution,” the Vice President is to hold the office of the president.¹⁷ If the office of the vice-president is also vacant at the same time, “the President of the Senate shall hold the office of President for a period of not more than three months, during which there shall be an election of a new President, who shall hold office for the unexpired term of office of the last holder of the office.”¹⁸

If the office of the vice-president becomes vacant for any reason, “the President shall nominate and, with the approval of each House of the National Assembly, appoint a new Vice-President.”¹⁹

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. § 146.

¹⁸ Id.

¹⁹ Id.

Portugal

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SUMMARY Portugal has a semi-presidential form of government. The Constitutional Court is the body responsible for verifying and declaring the death or incapacity of a president of the republic at the request of the attorney general of the republic. In case of a permanent or temporary vacancy, the president of the Assembly of the Republic is invested with the functions of interim president of the republic.

I. Type of Government System

Portugal has a semi-presidential form of government; the president, who is elected for a five-year term,¹ is the head of state,² while the prime minister, appointed by the president based on election results,³ is the head of government.⁴ Portugal is a sovereign republic based on the dignity of the human person and the will of the people and committed to building a free, just, and indivisible society.⁵ The Portuguese Republic is a democratic state based on the rule of law, the sovereignty of the people, plural democratic expression and political organization, respect for and the guarantee of the effective implementation of the fundamental rights and freedoms, and the separation and interdependence of powers, with a view to achieving economic, social, and cultural democracy and deepening participatory democracy.⁶ The president of the republic, the Assembly of the Republic (parliament), the government and the courts are entities that exercise sovereignty.⁷ The formation, composition, competencies, and modus operandi of the entities that exercise sovereignty are those defined in the Constitution.⁸

II. Definition of Presidential Incapacity

Portuguese law does not define presidential incapacity due to mental or physical disability.

¹ Constituição da República Portuguesa, VII Revisão Constitucional [2005] art. 128, <https://perma.cc/5P3S-RUCE>

² Funções do Presidente 1, Presidência da República Portuguesa, <https://perma.cc/FA5R-MNE2>.

³ Constituição da República Portuguesa, VII Revisão Constitucional [2005] art. 187(1).

⁴ Id. arts. 187(2), 188, 189.

⁵ Id. art. 1.

⁶ Id. art. 2.

⁷ Id. art. 110(1).

⁸ Id. art. 110(2).

III. Authority and Procedures for Suspension and Removal from Office

A. Constitution

The Constitutional Court has the competence, among other things, to verify the death and declare the permanent physical incapacity of a president of the republic, and to verify cases in which the president is temporarily prevented from exercising presidential functions.⁹

B. Law No. 28 of November 15, 1982

Law No. 28 of November 15, 1982, provides for the organization, functioning, and procedures of the Constitutional Court.¹⁰ According to article 86(1), it is the responsibility of the attorney general of the republic to promote before the Constitutional Court the verification and declaration of the death or permanent physical incapacity of the president of the republic.¹¹

In the event of the death of a president of the republic, the attorney general of the republic immediately requires verification by the Constitutional Court, presenting proof of death.¹² The Constitutional Court, in a plenary meeting, immediately verifies the death and declares the vacancy of the office of president of the republic.¹³

Article 87(3) states that the declaration of vacancy by the death of the president of the republic is immediately notified to the president of the Assembly of the Republic, who is automatically invested in the functions of an interim president of the republic.¹⁴

In the event of the permanent physical incapacity of a president of the republic, the attorney general of the republic requires the Constitutional Court to verify it, and must then present all the evidence at the attorney general's disposal.¹⁵ Having received the request, the Constitutional Court, in a plenary meeting, proceeds immediately to the appointment of three medical experts, who must present a report within two days.¹⁶ The Constitutional Court must make a decision, in a plenary meeting, the day after the presentation of the report, hearing, whenever possible, the

⁹ Id. art. 223(2)(a). The Constitutional Court is the court with the specific competence to administer justice in matters of a constitutional-law nature. (Id. art. 221.)

¹⁰ Lei Orgânica do Tribunal Constitucional, Lei No. 28/82, de 15 de Novembro, updated by Lei Orgânica No. 4/2019, de 13 de Setembro, <https://perma.cc/5F4D-SBU9>.

¹¹ Id. art. 86(1).

¹² Id. art. 87(1).

¹³ Id. art. 87(2).

¹⁴ Id. art. 87(3).

¹⁵ Id. art. 88(1).

¹⁶ Id. art. 88(2).

president of the republic.¹⁷ The provisions of article 87(3) are applicable to the declaration of vacancy of office due to the permanent physical incapacity of the president of the republic.¹⁸

IV. Order of Succession

While a president of the republic is temporarily unable to perform the presidential functions, or while the office is vacant and until the new president-elect is installed, the functions are performed by the president of the Assembly of the Republic, or, in the event that the latter is unable to do so, by a substitute.¹⁹ The mandate of a president of the Assembly of the Republic or a substitute as a member of the Assembly is automatically suspended while that person exercises the functions of the president of the Republic in an acting capacity.²⁰ The president of the republic retains the rights and privileges inherent to the office while temporarily unable to perform the presidential functions.²¹

¹⁷ Id. art. 88(3).

¹⁸ Id. art. 88(4).

¹⁹ Id. art. 132(1).

²⁰ Id. art. 132(2).

²¹ Id. art. 132(3).

Russian Federation

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SUMMARY The Russian Constitution allows for the removal of a president from the office if the president demonstrates permanent inability to perform the office's duties due to health reasons. However, no legislative procedure has been formulated, and it is not clear what exactly constitutes an "inability," how long it should be demonstrated, and what government body can initiate the procedure. Relevant legislation was considered and rejected by the legislature in the 1990s. Later, the Constitutional Court ruled on the interpretation of this constitutional provision, however, its rulings focused mainly on the mechanism for the succession of power and did not address the removal procedure. Some Russian scholars advocate that the existing procedure for the removal of Constitutional Court Justices should be used by analogy.

I. Type of Government System

A president of the Russian Federation is elected by popular vote for a six-year term and is the head of state.¹ According to the Constitution, the president is the "guarantor of the Constitution and of civil and human rights and liberties." In addition to representational duties and the right to make all major government appointments, including judicial, the president defines domestic and foreign policies, oversees the work of the Cabinet of Ministers, ensures the functioning of all other bodies of state power, and serves as the commander in chief of the nation's armed forces.² A president rules through decrees and orders, which are next to federal laws in the Russian legislative hierarchy.

II. Definition of Presidential Incapacity

Article 92 of the Constitution states that "[t]he President of the Russian Federation shall cease to exercise his powers short of the term in case of stable inability because of health reasons to exercise the powers vested in him." However, the Constitution does not define what would constitute the "stable inability." In 2000, the Constitutional Court of the Russian Federation issued a ruling interpreting article 92 of the Constitution concerning the termination of a president's powers due to stable inability to perform functions because of health reasons. The Court clarified that the "stable inability due to health reasons" shall be understood as "permanent irrevocable physical or psychiatric dysfunction of the body, which does not allow the President to make decisions required for performing his Constitutional duties."³ Another Constitutional Court

¹ Constitution of the Russian Federation (Const.) art. 80, <https://perma.cc/NL8H-NW3P>.

² Id. ch. 4, arts. 80-90.

³ Ruling of the Constitutional Court of the Russian Federation No. 12-P of July 11, 2000, ¶ 4, *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [Russian Federation Collection of Legislation] 2000, No. 29, Item 3118 (official gazette), <https://perma.cc/SBN2-YAB4> (in Russian).

ruling explained that this definition should also include the inability of a president to voluntarily delegate duties to another government official.⁴

III. Authority and Procedures for Suspension and Removal from Office

A. Proposed Legislation

In 1996, a bill defining the procedure for removal of a president from power due to health reasons was introduced in the State Duma of the Russian Federation (the lower chamber of the legislature). The bill stated that this issue should be included in the jurisdiction of the Supreme Court of Russia. According to the proposed procedure, any chamber of the legislature could raise the question of a president's incapacity if it suspected that the president is sick and cannot work. In this case, the Supreme Court was supposed to appoint an independent medical commission to evaluate the president within the following two weeks. The Supreme Court was required to make a decision whether the president could continue to stay in the office or not based on the commission's conclusions. The bill was passed by the Duma in 1998 but was later rejected by the upper chamber of the legislature, the Federation Council.⁵

B. Position of the Constitutional Court

In 2000, the Constitutional Court stated that a "special procedure is needed for making an objective determination of actual inability of the President to perform his functions" and "this procedure cannot be simplified or be easy to use."⁶ The Court emphasized the need to establish special mechanisms that would prevent the usage of this procedure for unjustified removal of a president from power and prevent the use of this procedure for unconstitutional acquisition of presidential powers by any government body or person. It confirmed that keeping the balance and cooperation of all branches of power should be the guiding principle in developing such a mechanism.⁷

Neither the Constitutional Court's ruling nor current Russian legislation regulate the procedure under which a president must stop exercising presidential power. It is not clear who can initiate the removal of a president from power or how to determine the condition of a president's health. One justice of the Constitutional Court proposed the following procedure in his dissenting opinion in the 12-P ruling of July 11, 2000,

In the case of finding stable, irrevocable signs of physical or mental dysfunction of the Russian Federation President, the heads of the facility that conducts medical treatment of the President must immediately inform the Chairman of the Russian Federation

⁴ Ruling of the Constitutional Court of the Russian Federation No. 10-P of July 6, 1999, ¶ 3, *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* 1999, No. 29, Item 3773 (official gazette), <https://perma.cc/MPE3-M9EM> (in Russian).

⁵ *What Would Happen if the President Would Fall Ill*, Mediza.io (Mar. 16, 2015), <https://perma.cc/LPH6-ZZZ3> (in Russian).

⁶ Ruling of the Constitutional Court No. 12-P, *supra* note 3.

⁷ *Id.*

Government, and authorized government bodies are entitled to receive information about the health conditions of the President.⁸

Russian law does not provide for the procedure of medical evaluation of a president, and illnesses that may require initiation of a president's removal are not listed. A Russian constitutional law scholar wrote that it is not clear how long the duration of the incapacity period can be after which the removal procedure should start. She cites the only similar provision in the Federal Constitutional Law on the Constitutional Court, which says that power of Constitutional Court justices must be terminated if they cannot perform their duties due to health reasons for a period of no less than 10 consecutive months.⁹

IV. Order of Succession

If a president leaves office, the next presidential election shall be scheduled within the next three months. During this three-month period, the president's duties are performed by the chair of the government (prime minister); however, during this period the prime minister cannot dismiss the legislature, call a referendum, or propose constitutional amendments.¹⁰

⁸ Ruling of the Constitutional Court of the Russian Federation No. 12-P of July 11, 2000 (opinion of the Constitutional Court Justice Nikolai V. Vitruk), <https://perma.cc/LG3R-G6JU> (in Russian).

⁹ Elena Bykova, *The Consistent Inability to Discharge the Powers of the President as the Reason for Early Termination of Power*, *Gumanitarnye, Sotsialno-Ekonomicheskie I Obshchestvennye Nauki* (Dec. 26, 2013), <https://perma.cc/Z7Z3-KQ2M> (in Russian).

¹⁰ Const. art. 92.3.

United Kingdom

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SUMMARY As the United Kingdom has an unwritten constitution, there are no specific provisions, legislation, or conventions that set out any criteria as to when the prime minister is considered incapacitated. It appears that the Cabinet would establish a successor for the prime minister, who would act in his or her place until either the prime minister recovered, or a new prime minister could be appointed. The Fixed Term Parliaments Act 2011 provides a procedure for a vote of no confidence in the government, but this may only be used against the government as a whole and not the prime minister individually. This Act provides that if a simple majority in the House of Commons vote that the government does not have its confidence and an alternative government cannot be found, or the existing government survives a second vote of no confidence two weeks after the first, then a general election must be held.

I. Introduction

The United Kingdom of Great Britain and Northern Ireland (UK) is the collective name of four countries—England, Wales, Scotland, and Northern Ireland. The four separate countries were united under a single Parliament in London through a series of Acts of Union.¹ The UK has undergone a period of devolution over the past few decades with the creation of a Scottish Parliament, a National Assembly in Wales, and an Assembly in Northern Ireland. There are three constituent parts of Parliament: the Sovereign, the House of Lords, and the House of Commons.² The UK has a bicameral Parliament consisting of the House of Lords (the upper house composed of both hereditary and life peers³) and the House of Commons (the elected lower house).

The UK does not have a formal written constitution; thus, there is no provision that specifically allocates responsibilities and powers to the legislative or executive branches. Instead, the distribution of responsibilities is governed by long-established custom and conventions. The prime minister is not a publicly elected position. It is customary law that the Crown, as the head of state, appoints the prime minister, who is typically the head of the political party that wins a majority in the House of Commons. The Crown must act upon the advice of the relevant ministers.

¹ Stat Wallie 1284, 12 Edw. 1 (repealed); Union with Scotland Act 1706, 6 Ann c. 11, as amended; Union with Ireland Act 1800, 38 & 40 Geo. 3 c. 67; Government of Ireland Act 1920, 10 & 11 Geo. 5 c. 67 (repealed), <https://perma.cc/F2S6-ZX5S>.

² House of Lords, *Library Note: The Sovereign and Parliament* (Mar. 2016), <https://perma.cc/DN3Y-9KT5>.

³ See House of Lords Act 1999, c. 34, <https://perma.cc/485K-VQLR>. This Act provided for the gradual abolishment of hereditary peers.

National elections are known as general parliamentary elections.⁴ The Fixed Term Parliaments Act 2011 established five-year, fixed-term Parliaments, with the election occurring on the first Thursday of May, five years after the last election was held.⁵ The government is formed by the party that wins the majority of seats during the general election.⁶ As there are 650 seats in Parliament, 326 seats are needed to obtain a majority of the House.

II. Definition of Incapacity to Hold Office

As the UK has an unwritten constitution, there is no definition of incapacity to hold office.

III. Determining Incapacity of Head of Government

If the prime minister suffers an incapacity that renders him or her unable to continue to work in office, it appears that it would be the prime minister, or his or her own political party, that would initially determine this.

A principle of the British system of government is that the government of the day must have the confidence of the House of Commons. Constitutional convention dictates that a government, or prime minister, who cannot command the confidence of the House of Commons must resign.⁷ This was recently enshrined in statute by the Fixed Term Parliaments Act 2011, which provides that after two votes of no confidence Parliament is dissolved and a general election must be held.

IV. Procedure Governing Removal from Office

The unwritten constitution is not clear as to the procedure for removal from office, or the line of succession in cases where the prime minister is ill or dies, although convention and history indicate that the Cabinet should agree upon a successor, who is then appointed by the Queen to take over. Convention dictates that the Queen must appoint the person who can best command the confidence of the House.⁸ It appears the successor would hold this position temporarily until the party with the majority in the House has an election to determine their leader.⁹ This election would occur in accordance with the rules of the political party.¹⁰ The winner of this election from within the political party would then be appointed by the Queen as the prime minister.¹¹

⁴ “Parliamentary Election” is defined as “the election of a Member to serve in Parliament for a constituency.” Interpretation Act 1978, c. 30, § 5 sched. 1, <https://perma.cc/BC4D-EK57>.

⁵ Fixed Term Parliaments Act 2011, c. 14, § 1, <http://perma.cc/2ERZ-8KFS>.

⁶ *Id.* § 3.

⁷ *Acting Prime Minister*, Institute for Government (updated Mar. 27, 2020), <https://perma.cc/M27V-SSGW>.

⁸ Gavin Phillipson, *A Prime Minister in Hospital: The Constitutional Implications*, University of Bristol Law School Blog (Apr. 15, 2020), <https://perma.cc/ZES9-B994>.

⁹ *Id.*

¹⁰ See, for example, House of Commons Library, *Leadership Elections: Conservative Party*, Briefing Paper 01366 (Aug. 8, 2019), <https://perma.cc/RAG2-Z5YS>.

¹¹ *Conservative Party Leadership Contests*, Institute for Government (updated Aug. 11, 2019), <https://perma.cc/6XE3-HQZB>.

In cases of incapacity, the Institute for Government suggests that if the political party appointed another person due to the incapacity of the prime minister, this person would only serve as an acting leader, rather than as an acting prime minister, as it believes the prime minister continues in that role unless he or she resigns or dies.¹²

In cases where the incapacity causes the House to lose confidence in the government, and thus the prime minister, the Fixed Term Parliaments Act 2011 provides that any member of Parliament (MP) may call for a vote of no confidence in the government. This motion only applies to the entire government; motions that are critical of individual ministers do not fall within this rule.¹³ The vote of no confidence requires a simple majority to pass, meaning only one more MP needs to vote in favor than the number voting against. If a simple majority of MPs vote in favor of the motion, the government has a 14-day period during which it may attempt to resolve the issue and win the confidence of MPs prior to another vote being held, or consider whether there is an alternative government that can command a majority of the House.¹⁴

The existing or alternative government must win a vote of confidence within 14 days of the first vote of no confidence; if it cannot, then Parliament is dissolved and the Fixed Term Parliaments Act 2011 provides that a general election must occur 25 working days after the dissolution.¹⁵ Although there is no legal obligation contained in the Act for the prime minister to resign at this point, the Cabinet Manual states “[t]he Prime Minister is expected to resign where it is clear that he or she does not have the confidence of the House of Commons and that an alternative government does have the confidence.”¹⁶ This indicates that the prime minister should resign when another government that has the confidence of the House is formed.

This process has been described as “both flexible and commonplace: since 1945, more than half of British prime ministers have taken office mid-term.”¹⁷

¹² *Acting Prime Minister*, Institute for Government, *supra* note 7.

¹³ UK Parliament, *Erskine May* ¶ 18.44, <https://perma.cc/8GGB-SVCD>.

¹⁴ House of Commons Library, *No Confidence Motions and Early General Elections*, Insight (Dec. 18, 2018) <https://perma.cc/6VD7-PRWS>.

¹⁵ Fixed Term Parliaments Act 2011 § 2.

¹⁶ *The Cabinet Manual* ¶ 2.19 (1st ed. Oct. 2011), <https://perma.cc/FBH5-4TTX>.

¹⁷ Dr. Robert Saunders, *What Happens if a Prime Minister Dies in Office?*, Queen Mary University of London (May 6, 2020), <https://perma.cc/4HVD-EL8J>.

Vietnam

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SUMMARY Vietnam’s Constitution states that, when a president is incapacitated from work over a long period of time, the vice president becomes the acting president. There is no definition of the “incapacity” of a president to hold office in the Constitution. The National Assembly has the authority to remove a president from office.

I. Government System

Vietnam is a socialist state.¹ The National Assembly is the highest state body of Vietnam.² The Standing Committee of the National Assembly is its highest standing body.³ The president, who is the head of state,⁴ is elected by the National Assembly from among its deputies.⁵ The vice president is nominated by the president from among National Assembly deputies and elected by the National Assembly.⁶ The government is the highest body of the state administration.⁷ The government consists of the prime minister, who is nominated by the president and elected by the National Assembly,⁸ and deputy prime ministers and the heads of government ministries and various state organizations.

II. Lack of Definition of Incapacity to Hold Office

The first paragraph of article 93 of the Constitution states “When the President is incapacitated from work over a long period of time, the Vice President shall succeed as acting President.”⁹

There is no definition of “incapacity” in the Constitution.

* At present, there are no Law Library of Congress research staff members versed in Vietnamese. This report has been prepared by the author’s reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

¹ Constitution of the Socialist Republic of Vietnam (Nov. 28, 2013) (Const.) art. 2, <https://perma.cc/KD75-8V8P>.

² Id. art. 69.

³ Id. arts 73, 74.

⁴ Id. art. 86.

⁵ Id. art. 70, item 7 & art. 87.

⁶ Id. art. 70, item 7, art. 88, item 2 & art. 92.

⁷ Id. art. 94.

⁸ Id. art. 70, item 7 & art. 88, item 2.

⁹ Id. art. 93.

III. Determination of Incapacity and Procedure Governing Removal from Office

We were unable to locate any special procedure to determine the incapacity of a president and to remove an incapacitated president. If a president fails to perform his or her tasks for health or other reasons, he or she may resign.¹⁰ The National Assembly has authority to relieve presidents or other officials whom it elected from their duties or remove them from office.¹¹ The Standing Committee of the National Assembly has authority to propose that the National Assembly make such a resolution.¹² In addition, the National Assembly casts a vote on confidence in the president at the request of the Standing Committee, 20% of the total number of the National Assembly deputies, or the Nationality Council or commissions of the National Assembly. If more than half the National Assembly deputies vote “no confidence,” the president may offer to resign, or the National Assembly may consider removing the president.¹³

IV. Succession

When a president is incapacitated from work over a long period of time, the vice president succeeds as acting president.¹⁴ When a president is removed from office by the National Assembly, the vice president continues to serve as acting president until a new president is elected by the National Assembly.¹⁵ The National Assembly elects the president recommended by its Standing Committee among the National Assembly deputies.¹⁶

¹⁰ Law on Organization of the National Assembly (No. 57/2014/QH13, Nov. 20, 2014) art. 10, <https://perma.cc/8A4Z-K8CP> (in Vietnamese).

¹¹ Const. art. 70, item 7.

¹² Id. art. 74, item 6; Law on Organization of the National Assembly art. 11, art. 53, para. 1.

¹³ Law on Organization of the National Assembly art. 13.

¹⁴ Const. art. 93.

¹⁵ Id.

¹⁶ Law on Organization of the National Assembly arts. 8 & 53, para. 1.