



## POLICY OPTIONS ON DEMOCRATIC REFORM

# DEMOCRACY IN THE MAKING: KEY OPTIONS IN IRAQ'S DEMOCRATIZATION PROCESS

### **About IDEA:**

Founded in 1995, the International Institute for Democracy and Electoral Assistance (IDEA) is an intergovernmental organization that seeks to promote and develop sustainable democracy world-wide. IDEA's current areas of activity include:

- Electoral systems and management.
- Political participation, including women in politics.
- Political parties, management and financing.
- Post-conflict democracy building and dialogue.
- Democracy indicators and assessment.

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### OVERVIEW

The process of building democracy in complex transitions is a daunting but necessary task. The design of political, institutional and legal systems can play a critical role in ensuring the sustainability and the advancement of democratic systems, by providing adequate mechanisms to manage conflicts within limits of peaceful coexistence and by promoting consensus around a set of core principles. As International IDEA has been advocating for the past several years (see particularly the handbook *Democracy and Deep-Rooted Conflict: Options for Negotiators* published in 1998), democratization can be an effective method of structural conflict prevention.

Constitutions are the core of the institutional structure/legal system of a country and define the relationship among citizens, between citizens and the State, and between the State and the international legal system. New constitutions are both the result of historical processes and important factors that contribute to shaping the future of a country, often containing the seeds for future conflict or for long-term stability. Depending on their contents as well as on the process through which they are made, constitutions can play a critical role in ensuring the sustainability of democratic systems. Traditionally, constitutions and constitutional reforms were mainly designed by political elites and legal experts; in the case of post-colonial countries the departing colonial power had either direct or indirect influence in shaping constitutional texts, often affirming principles and values grounded on exogenous legal frameworks and political traditions. The trend marked by the hegemonic role of politicians and “expert knowledge” has been shifting during the past decade or so. Citizens increasingly demand involvement and in recent years a number of reform processes appear to have been more inclusive and participatory, particularly in the framework of

peace-making initiatives in the aftermath of violent conflicts.

The design of political and institutional reform processes is equally fundamental for democracy. A fair system of political representation based on representative, inclusive, democratic and transparent political parties is crucial to the advancement of democracy and the prevention and transformation of violent conflicts. In multi-ethnic societies the way political parties are designed and function plays a greater role in contributing to stability or to confrontation and conflict.

Free and fair elections represent one of the essential elements of democratic systems. Through elections, citizens express their will at the same time as they develop a sense of ownership of the outcome and commit themselves to support a system of governance. However, the decision of a particular electoral system is of crucial importance. Electoral systems, as much as voter intentions, determine the outcome of the elections. Different options of electoral systems combined with different political, social and economic contexts can produce very different results. They can contribute to a sense of common citizenship or to deepening conflicting interests and agendas.

All these elements are deeply intertwined. The institutional reform/constitution-building process cannot be seen in isolation as it is (and must be) deeply inter-linked to the design of political and electoral systems; it is to be essentially seen as a political process, not a legalistic or technical one, in which particular (often conflicting) short-term interests of different constituencies are to be harmonized into/subjected to the common interest. The way constitutions are designed ends up creating incentives (or disincentives) for political parties to manipulate and represent interests constructed around ethnic or religious identities or to look for regional autonomy.

The present document is made available to the Iraqi political and social leadership representing different and conflicting visions, but could also be relevant to those sectors of the international community called to provide technical, financial and political support to the transition process in Iraq. It might also be used as reference material by policy practitioners of other Arab countries.

It consists of three different policy briefings on constitution-building processes, electoral system design and political parties in divided societies. They are essentially based on a comparative analysis at global scale and are the result of the three main areas of thematic work International IDEA has been doing in the past years. They are meant not to be prescriptive but rather to offer practical options of how to strengthen democratic institutions and processes. The intention of this work is not to tell Iraqis and other Arab users what to do, but to provide them with the learning from past experiences by presenting different options and their likely impact.

International IDEA believes that, particularly in complex transitions, society is to be fully and effectively involved in the adoption of a constitution, which will also have to determine the basic elements of an electoral system and a system of political representation adequate to the context, so that the current process can be legitimate and serve the cause of peace and democracy.”

## CONSTITUTION BUILDING PROCESS IN TRANSITIONS

### Introduction

The paper identifies key components of a constitution building process (CBP) and positive approaches to facilitate a good result by reviewing recent experiences of constitution making. It is the result of a preliminary and ongoing comparative analysis of several cases that International IDEA has been doing in the framework of its project on “The Role of Constitution-building processes in democratization”.

The text in regular format refers to comparative experiences<sup>1</sup> and that in italics contains suggestions for Iraqi CBP.<sup>2</sup>

### Importance of constitutions

CBPs have been influenced by the contemporary purposes and importance of constitutions.

- A number of internal national conflicts have been settled since the end of the cold war, necessitating new constitutional orders.
- There has been a widespread commitment to democracy and demands for public institutions to reflect democratic values, institutions and procedures.
- Many constitutions now reflect new ideas about the organisation and structure of the state in multi-ethnic countries which emphasis the constitutional recognition of ethnic groups and their participation in state institutions and public affairs.
- Serious conflicts or operation in a state sometimes leads to regional or international intervention or facilitation. A consti-

tutional settlement is often seen as the end product of intervention and facilitation, and the point of exit.

- The increase in the role of the constitution for internal political order is matched by its importance externally as the intercourse between states, corporations, markets and consumers has extended and deepened. This intercourse takes place in large measure through laws and constitutions. Therefore external actors too may have an interest in constitutions of other states in which they conduct business or carry out other forms or exchange and cooperation.

*Until the overthrow of Saddam, constitutions in Iraq excluded individuals, communities and regions from public affairs and centralised power for domination and coercion. It is critical for Iraq's future that the constitution is used to foster a common identity, recognise the diversity of cultures and religions to promote national unity, distribute state power fairly, protect human and group rights, and ensure social and economic justice. A fair and broadly acceptable constitution is critical to Iraq's future.*

### Context of CBP

Another influence on CBP is the context. If the constitution is made in settled times, there are many options, including a high degree of public participation. If the country is coming out of internal or external conflict, there may be an inclination for a more controlled process, with limited or no public consultation. Increasingly, the negotiations of an ongoing conflict take the form of a constitutional settlement. In this case the process is confidential and often secret, and almost completely dominated by leaders of ‘warring factions’.

An agreement may be easier if the parties to the process are limited and the talks are confidential. However, even when successful, these agreements and the ensuing constitution depend excessively on the goodwill of the negotiators and may fail to respond to the concerns of the people. It may lack firm social foundations. On the other hand, a highly participatory process may raise high expectations, empower groups and interests that lack power or status in the political and economic system, elaborate an ambitious social and economic agenda, and may make decision making hard.

<sup>1</sup> The reference to the countries taken into account in the comparative analysis has been omitted to reduce the length of this briefing. A complete comparative analysis will be produced by International IDEA in the future.

<sup>2</sup> These suggestions are based on the principal features of the CBP process in Iraq as set out in the Law of Administration for the State of Iraq for the Transitional Period (2004) (TAL) and refer on how that framework might be developed constructively.

The context in Iraq is extremely complex and requires an inclusive and participatory process. Although there is no need to negotiate with the previous regime, it is crucial that all groups be brought in, including those who have serious problems with the current state of affairs. In taking up this challenge, it seems possible to build upon some positive elements. All the key groups are officially committed to democracy, the sharing, and fair exercise, of powers, the recognition of diversity, and the protection of human rights. Notwithstanding its controversial 'origin' the TAL can provide a reasonable framework for the CBP and encourages negotiations and compromises. The National Assembly, which has a principal responsibility for the CBP, represent a step forward even in such a complex and difficult political process like the Iraqi one. However, it does not include fair representation of the Sunni community due to intimidation, the exclusion of members of the Ba'ath party, and electoral rules which treated the whole country as one constituency and therefore disadvantaged those regions (and groups) where it was not easy to vote. Therefore a major challenge is to ensure that opportunities for adequate participation are given to these regions and groups (as discussed below).

### Goals of the CPB

There is now a consensus that certain norms, drawn from the principle of self-determination and political rights, should be incorporated in the design of the CBP. The emphasis is on inclusiveness and active public participation.

The constitution should be the end product of a process which meets several goals, including:

- Reconciliation among conflicting groups
- Strengthening national unity through an inclusive process, reflecting religious and linguistic diversity, and inducing a sense of common, national identity
- Empowering the people by acknowledging their sovereignty and by increasing their knowledge and capacity; and preparing them for participation in public affairs and the exercise and protection of their rights
- Elaborating national goals and values through nation wide debates and discussions
- Broadening the agenda for change by discovering the concerns of the people, not limited to that of the elites or urban populations, etc.
- Promoting knowledge and respect for principles of constitutionalism.

Underlying these goals is the objective of legitimacy, which is achieved in substantial measure

when people have been involved in the process and are able to feel and claim ownership of the product.

*All these goals of the CBP apply in Iraq. There is wide commitment to transition to democracy and human rights, active involvement of citizens in public affairs, reconciliation of communities and regions, new vision of Iraq as a multi-ethnic and multi-religious community, dealing with the past constructively. The making of the new constitution is seen not merely as a necessity, but also as an opportunity. The TAL requires the National Assembly to encourage public debate on the constitution and receive constitutional proposals from citizens.*

### Specific tasks in CBP

Some critical tasks in a CBP are:

- Agreeing on a broad set of principles and goals
- Agreeing on institutions and procedures for making the constitution (including deadlines and sequencing, making rules for decision making, and a formal or informal mechanism for dispute or conflict resolution)
- Consulting and gathering of opinions
  - a. preparing people for consultation
  - b. consulting people (including diaspora)
  - c. consulting experts
  - d. informing the process of comparative experiences
  - e. analysis of opinions
- Preparing a draft constitution
- Public discussions of draft
- Enactment of the draft by the adopting body
- Public discussion of the draft constitution
- The referendum (or any other mechanism of ratification)
- Bringing the constitution into force
- Implementing the constitution

*The TAL provides only a brief and skeletal framework for the CBP. The National Assembly has to prepare the draft constitution after appropriate consultations with the people but there are no rules on voting by the Assembly. The Draft has to be approved in a referendum, after public debate, through a prescribed voting procedure. Deadlines for the adoption of the Draft and the referendum are set out. If the process does not lead to a constitution, the Assembly is dissolved and a freshly elected assembly will resume the responsibility for making the constitution. Thus only some*

of the tasks listed above are dealt with expressly. The responsibility for deciding on them will therefore fall on the Assembly. This is not a defect in TAL as it gives the Assembly the flexibility to decide on outstanding issues in the context of the situation after the elections. The Assembly has authority to determine rules of its own procedure (art. 32(A)).

However the flexibility is limited since TAL can only be amended by a 3/4<sup>th</sup> vote of the members of the Assembly and the approval of the Presidency Council, and some provisions regarding the CBP (the extension of the transitional period and the holding of the elections, which govern the deadlines in the CBP) cannot be amended at all. As explained later, the deadlines are short and may prove unrealistic, and since the consequence of failing to meet them entails the dissolution of the Assembly and the election of its successor, it may be necessary to address the issue of the procedure to extend the deadlines.

### Setting of goals

Since constitution making can be a difficult, complex, expensive and sometimes a divisive process, rarely does a country embark upon the making of a new constitution without very good reason. Governments, political parties, ethnic or religious groups, or others are reluctant to start or engage in the process unless the goals and procedures of review suit them, and are predetermined. Therefore considerable negotiations and compromises precede the formal establishment of the process.

A prior agreement on goals has many advantages. By identifying priorities, it helps to give direction to the process. It assists in balancing different aims and interests. For example national unity and identity may require both effective state institutions and forms of self-government for regions and communities, and thus the balance between individual and community rights. Increasingly goals are defined by reference both to local traditions and culture and international norms (such as democracy, national unity, human rights, social justice, and gender equity).

If the original goals are too numerous and are specific and detailed, they may clash with ideas generated in the review process itself, or it may lead to a feeling that key interests groups have already made their mind. It is important that the CBP should leave room for ideas and recommendation to emerge from the consultation with the people, particularly sectors of society, such as rural people, or particularly marginalised women, or minorities,

who may have little influence on the initial choosing of goals.

The TAL sets out explicitly only one goal for the new constitution: 'guarantees to ensure that the Iraqi Armed Forces are never again used to terrorise or oppress the people of Iraq' (art. 59(A)). However, TAL itself is based on several values: freedom from tyranny and oppression, the rule of law, unity of the motherland in a spirit of fraternity and solidarity, full democracy, and the erasure of the effects of racist and sectarian policies and practices (in the Preamble). Other values are democracy, pluralism, the separation of powers, power sharing on a territorial basis, Islam and human right (including gender equity). These values do not automatically bind the Assembly in the preparation of the permanent constitution.

Since it is proposed here that the responsibility for the initial draft of the constitution should be delegated to an expert and independent constitutional commission, it would be both desirable and necessary that the Assembly decide on further goals, and that would constitute the mandate of the commission. Such a procedure would also save time by establishing at an early stage the basis of a consensus and by focusing attention during the research and consultation processes on critical issues. The Assembly could set up a Committee on the Constitution that would recommend to the full Assembly the goals of the process and values to be included in the constitution.

Perhaps given the constraints of time and the political nature of the CBP in Iraq, there may be no need for a formal verification that the goals of the CBP have been met in the constitution. Ultimately the people will make the assessment on the appropriateness of the constitution through the referendum.

### Institutions and procedures for making the constitution

In addition to goals, it is usual to agree on the institutions and procedures for CBP. This is normally the responsibility of the legislature or the executive (although normally after prior consultations). The framework can be detailed or skeletal. The advantage of detail is that it acts as a clear road map; that of brevity is that it gives flexibility.

In Iraq the decision on the process was made by the Governing Council, itself not elected, although its membership, appointed after protracted negotiations, was intended to represent all major communities and groups. But the emphasis was on ethnic and religious divisions and the Governing Council seems not to have enjoyed universal support. Some think that this may affect the legitimacy of the legislative framework of the CBP. Even though it may be argued

*that the composition of the Governing Council and the framework in TAL were as acceptable as could be devices in the difficult circumstances of that period, it would be desirable that the way in which the CBP is conducted is mindful of a possible deficit in the legislative framework.*

The important points in the framework, apart from the goals, are: tasks and their sequencing and deadlines, the division of responsibilities, rules for decision making, and institutions. The ultimate responsibility may lie with the legislature or with a specially appointed constituent assembly, which may also be free to establish its own procedure, including for consultation and preparation of the draft constitution. Frequently the same body performs both functions.

However, there are considerable advantages in having a separate constituent assembly, whose composition can reflect diversity and special interests, while there may be conflicts of interests when members of a legislature perform both task.

*TAL combines in the Assembly both the ordinary tasks of a legislature and those of a constituent assembly. In the circumstances this was probably inevitable but there could be some problems. The first problem is time, if the Assembly has to perform both its responsibilities as a legislature (making laws, approving the budget, electing and supervising the government) and as a constituent assembly (defining an agenda, consulting the people, employing experts, debating and agreeing on constitutional proposals), especially as the deadlines in the CBP are very tight. The second problem is that the period of transition could be difficult and complex, requiring a great deal of the time of the Assembly. This may be particularly grave if election of the government is controversial and it has to manage conflicting interests. The third problem is that the politics of government and administration may spill over into the Assembly and make it difficult for the members to reach a consensus.*

*It could therefore be useful to consider ways of insulating the CBP from the general legislative and administrative functions of the Assembly. Some suggestions are made later.*

### **Constitutional Commission**

It is very common today, whether the ultimate decision making body is the legislature or the assembly, to set up an expert, independent and representative commission to undertake tasks up to point of the preparation of the draft constitution. These tasks include providing or facilitating education about the process and constitutional issues to the public, promoting national debates, receiving and analysing the views of the public, and preparing and submitting a draft for consideration by the

decision making body (after a suitable interval for public discussion of the draft. The advantage of such a commission is that this part of the process can to some extent be distanced from political parties, tap expert knowledge, promote participation and formulate proposals oriented towards the national rather than sectarian interests and which can consequently provide a fair basis for negotiations, facilitating a compromise.

*The Assembly should consider setting up an independent, expert and representative commission to provide civic education, collect and analyse public views, and on the basis of the goals and values determined by the Assembly as well as the views of the public and of experts, to draw up a report and a draft constitution for debate by the Assembly (possibly after a suitable interval so that the public have an opportunity to examine it and convey its views to the Assembly). The Assembly should determine the terms of reference of the commission and ensure that its members enjoy great prestige and support in the country. It should travel throughout the country to meet the people.*

*An additional advantage of the commission in Iraq would be that its membership would cover all groups and communities (even if they were not represented in the Assembly). In this way the democratic deficit of the Assembly (due to the inability of many Sunnis to vote) could be mitigated, and all communities would be able to participate in the process.*

*However, it is also important that the members of the Assembly are given some briefings on constitutional processes and issues so that not only can they contribute to the debate on reforms but are also ready to debate the draft constitution. The Committee on the Constitution to be set up by the Assembly should devise a programme of briefings and workshops. The workshops should be organized in conjunction with the constitution commission with the participation of local and overseas experts.*

*It is important that the commission should not be kept in existence beyond the completion of its mandated task, otherwise it would seek a continued role for itself adding to complexity and confusion.*

It is useful to have deadlines for the different stages of the process. But the deadlines have to be carefully considered, for too short deadlines may limit public participation and may give the impression of the process being manipulated, while long deadlines may stretch the process unduly when the need is to bring a closure to it and establish a new order.

TAL provides that the Assembly must complete the draft by 15 August 2005. A referendum must be held by 15 October. If all goes well, elections for a permanent government must be held by 15 December 2005. This is clearly a breathless timetable. The assumption was that the Assembly would meet and elect the Presidency Council and approve a government at the latest in the first week of January 2005, when it would also commence work on the constitution. That would have given it about 8 months to prepare and approve a draft. Even that period might have been insufficient. Now the Assembly will at best have about five months. There is grave danger that this period is too short: it will result either in a very rushed process where there will no possibility of proper consultation with the people and the negotiation of sufficient consensus among Assembly members, or the deadline will not be met and the Assembly will be dissolved. Neither is a satisfactory outcome. There is a possibility of a one-time extension of six months, if the President of the Assembly, with the support of a majority of the members, so requests the Presidency Council. If the Assembly can start its work in April 2005, it will have eleven months, which might just be enough. Presumably then the referendum would be postponed accordingly.

*This extended time might just be sufficient. But only if there is very careful planning and determination to stick to the plans. There would also be need to develop consensus as the CBP proceeds so that the Draft is in fact adopted by the Assembly in good time.*

### **Consulting and gathering of opinions**

Education should be provided at the start of the process. This task requires special materials and methodologies. It is useful to engage civil society institutions, particularly those specialising in gender, minority, cultural issues, as well as professional associations. The constitution commission should travel throughout the country for this purpose. It should also set up offices in all the regions and districts, making available relevant materials, and encouraging the formation of discussion groups. Public opinion can be obtained through public hearings (separately organised for certain groups, like women or minorities, where appropriate), written submissions or responses to a specially prepared questionnaire. Experience shows that some groups may try to manipulate public opinion, even with the use of threats. The commission would have to establish codes and procedure (and supervision) to ensure that views are freely and honestly expressed.

If there are many submissions, a special compute programme to analyse them might be necessary. It is important to give people opportunities at differ-

ent points to participate in and contribute to the process, and to assure them that their views are valued and demonstrate how their recommendations have influenced decisions.

*TAL emphasises public consultations and opportunities for debates on the draft constitution. The Assembly should consider some of the methods for this outlined above. However, given time constraints, it may not be possible to include them all or employ them extensively. So consideration could be given to use of the media, broadcasting technologies, interactive programmes, tapes and CD ROMs, decentralization through local administrative structures and discussion groups, involvement of NGOs, etc. A website on the constitutional process, with links to other sites, and facilities for submission of and debate on views should be established at an early stage by the constitutional commission and the Committee on the Constitution.*

### **Role of experts**

The commission will have to consider how best to use experts and inform the process of relevant foreign experiences. The former can be done through expert consultations and workshops, specially commissioned studies, appointment of an expert secretariat, and through membership of the commission and the constituent assembly. There are two distinct ways of learning about foreign experiences. One is for the commission or political leaders (if the process is largely negotiative) to travel to the countries concerned; the other is to invite foreign experts for visits. The former is less useful (although more attractive to commissioners) than the latter, for if foreign experts visit, they can be exposed to a larger number of people, take part in public meetings and discussions, develop some understanding of the local context and issues.

*Maintaining balance between popular participation and the contribution of experts is seldom easy. There is the danger in a highly participatory process, in broadening the agenda beyond what is sensible to deal with in a constitution, straying beyond principles to incorporation of excessive detail, and the distrust and denigration of experts which can lead to low quality of drafting and the lack of cohesion of the constitution as a whole, and difficulties of establishing a consensus. On the other hand, giving too much leeway to experts can result in an emphasis on technical aspects of the document at the expense of popular expectations. To some extent the problem can be minimised by clear definition of roles and sequencing of stages (people's role is important at the time of consultation and perhaps at the final ratification, experts' when it comes legal policy issues, learning from foreign experience, choice of detail, precise drafting and cohesion of the document).*

### **Draft or consultation first?**

There is a division of opinion on whether consultation with the people should precede or follow the preparation of the draft. The latter procedure gives the public a chance to comment on concrete proposals but prior consultation provides greater scope for the expression of public views and the enhancement of people's initiatives. In fact it is possible to have consultations both before and after the draft is prepared and is becoming the common practice.

*In the circumstances of Iraq, when some important decisions have already been made by un-elected bodies, it would be better to consult the people before preparing a draft. This would avoid the criticism that the decision on the constitution has already been made in small circles. However, it is important to provide people and organisations with a basis for consultation. The Committee on the Constitution should already commission short papers on Iraq's constitutional history which would identify the strengths and weaknesses of past constitutions, a comparative analysis of constitutions of other multi-ethnic states, options in systems of government, electoral systems, public security organisations, and so on. It should also distribute a short questionnaire on key elements of a constitution to solicit public opinion in a more structured way. People would also have opportunity to comment on constitutional goals and principles enunciated by the Assembly.*

*The advantage of this process would be that all options and recommendations would be available when policy decisions are made. The disadvantage is that it would require more time than if a draft were prepared by a small political-cum-expert group for people to comment on. Since this paper favours the first approach, it is critical that the constitution commission should be highly professional and well organised so that in a short time it can absorb all this material and draft its recommendations for the Assembly.*

### **Length of the constitution**

How long should the constitution be? On the one hand, it is desirable that the constitution should be brief, and restrict itself to principles, both to retain flexibility and responsiveness to changing circumstances, and to make it easier for ordinary persons to understand it. On the other hand, people expect more and more issues to be dealt with in the constitution (such as integrity of office holders, the participation by ethnic and other groups in affairs of the state, protection of the environment, a broadened scope of human rights, regulation of

political parties and the independence of the electoral process) which inevitably increases the length—and may deter ordinary persons from studying it.

*A compromise that Iraq may wish to consider is to adopt an expanded view of the constitution, but to restrict it to essential principles and only the most necessary detail. To meet the (quite legitimate) concerns of those who do not trust the legislature or government to give effect to the principles, the details could be contained in schedules to the constitution which would have to be incorporated in implementing legislation. Once the requisite legislation has been enacted, the schedule would more or less fall away (although there could be a provision that subsequent amendments to the law would have to be consistent with the schedule).*

### **Preparing a draft constitution**

Decisions on broad principles, goals and institutions must be made by a body which has the political mandate. The actual drafting must be left to legal draftspersons who should decide on the structure of the constitution and be encouraged to write in simple and clear language so that the document is accessible to ordinary people. It is important that decisions on policy should reflect as much as possible the recommendations of the people.

*It is desirable that the actual drafting should begin only when policy decisions have largely been made. Consultation with the people is best conducted with the help of short papers focusing on policy issues and formulated in relatively general terms. Moving too early to legal drafts may lead to unnecessary attention to linguistic points and detract from principles. However, it is desirable to recruit a team of drafters at an early stage so that they become fully aware of the issues and public debates, and can begin research and agree on a drafting protocol. Once policy decisions have been made, the Committee on the Constitution should set up a sub-committee to liaise with the drafting team and ensure that the draft reflects accurately the policy decisions.*

### **Rules for decision making**

What should be the majority for adopting the constitution? Sometimes a very high majority is required in order to force the parties to reach a consensus or near consensus. In some cases, the adopting body is required to strive for consensus, and the majority rule only applies if that fails. A high majority is desirable if the country is deeply divided, especially on regional or ethnic lines. But

it increases the risk that no constitution may be adopted.

*TAL does not specify the majority required for the adoption of the constitution. Presumably the National Assembly will itself decide on the necessary majority, as part of its powers to determine its 'internal procedures' (art. 32(A)). Assuming that the way the Assembly 'writes' the constitution (to use the language of art. 60 of TAL) is the same as it enacts legislation (art. 32(C)), there will be short intervals between different stages of the enactment procedure. Other than that the Assembly is free to determine the procedure for the adoption of the draft constitution (and to provide additional rules for the adoption of the constitution to those for ordinary legislation). This could be one of the most important decisions that the Assembly would have to make.*

*Since all the members of the Assembly were elected on the basis of a single, national constituency, there will be regional and ethnic disparities in membership, and some exclusions. It is therefore important that the rules of voting should encourage a broad consensus. Another reason for developing a consensus is to do with the method of voting in the referendum which gives a veto to the majority community as well as some minorities. A draft adopted by a narrow majority in the Assembly will have little prospect of adoption in the referendum. Thirdly, consensus is important to lay the foundations of a united and stable Iraq.*

*A qualified majority gives incentives for reaching consensus or broad agreement. Therefore a simple majority of all the members, and in particular the majority of those present and voting, should be avoided. Quite what majority should be specified depends on the distribution of regional and ethnic membership of the Assembly. A very high majority would no doubt be welcomed by minorities or under-represented groups, but this may increase the probability that the Assembly will be deadlocked. It is not possible in this paper to make a firm recommendation on this point—it will in large part be a matter of negotiations.*

### **The referendum**

The referendum carries great symbolic value, and, if successful, adds to the legitimacy of a constitution. But the referendum as method of people's participation is less effective than prior participation by them in the CBP. When the referendum is the only method of people's participation, it comes too late: key decisions may have been made in small circles, and the real public debate takes place after these decisions; the debate is therefore on the merits and demerits of the draft, not of alternatives and the only choice is rejection and approval. But of course the knowledge that the draft will be ratified through a referendum may serve to influence

negotiators to seek the common or moderate ground.

Its value in a multi-ethnic state can be questioned. A consensus on the constitution put together patiently and carefully can be upset in a referendum. Depending on the majority required, it gives the largest community the means to impose its will on others. The problem can be met if the majority is higher overall or has to be expressed in a specified number of regions; it gives a minority a veto which may be deeply resented by the majority.

*It is clear that the Governing Council gave much thought to this issue. The rule is set out in article 61(C): the draft is ratified if 'a majority of the voters in Iraq approve and if two-thirds of the voters in three or more governorates do not reject it'. This means that the draft can be defeated by the majority community (if such an entity can be said to exist) or by three or more governorates if they can muster a two-thirds negative votes. Thus a minority community can veto the draft only if there is very substantial opposition to it. This paper does not assess whether this is a fair system of voting—except to comment that the aim was to ensure a considerable measure of consensus, which in itself is a proper approach.*

*The English translation of TAL does not make clear beyond doubt if the prescribed majorities are those of all registered voters or only of those who actually vote. A great deal can turn on this issue, and it would be desirable that the Assembly clarifies this point as soon as possible.*

*A concluding observation on the systems of voting in the Assembly and the referendum is that if at either stage the draft bill is defeated, the Assembly would be dissolved and the process would start afresh after elections to the Assembly. This would put the members of the Assembly and the leaders of political parties and religious and ethnic groups under great pressure to agree, i.e. to build a consensus. Here it is important that every one acts with the greatest propriety and not use any blackmail. Consideration should be given to formal and informal methods of consensus building.*

### **Implementation mechanisms**

Constitutions which are the product of long negotiations in which different interests are carefully balanced, or which seek to make fundamental changes in the organisation of the state and society, or are agreed under external pressure are not easy to implement. Therefore special attention needs to be paid to the mechanism for its implementation and enforcement. Following are some possible ways to facilitate implementation

- A schedule containing a list of legislative and other steps necessary for implementation and the deadlines for action
- An independent commission with responsibility for supervision and action
- A constitutional provision that principles should be implemented by executive authorities so far as possible even if no legislation has been passed
- Courts to be able to make orders within the same framework.
- Empowering civil society to participate in the implementation and mobilisation of the constitution
- Making the implementation of certain principles as a kind of conditionality, e.g. for the assumption of specified powers by the executive or the legislature.

*This paper suggests that the Assembly consider all these options when drafting the constitution.*

*4. The Committee on the Constitution should draw up, and the Assembly should approve, a Plan of Action which would determine how the different tasks are to be performed and by whom, with a time line. This is critical to ensure the best and proportionate use of the limited time for the CBP.*

*5. The ultimate authority to settle disputes that may arise during the CBP is the Federal Supreme Court (art. 44). The Supreme Court should establish regulations to govern the procedure for filing and disposing of complaints to it in respect of the CBP, to guard against the possibility that the legal process is used to delay or subvert the drafting of the constitution.*

*6. The Assembly should facilitate an informal method of dispute settlement, as a sort of deadlock-breaking mechanism (perhaps by a panel of eminent Iraqis enjoying wide support.*

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### **General Recommendations**

*Specific recommendations made above are not repeated here. The general recommendations are:*

*1. The Assembly should as a matter of urgency produce regulations to govern those aspects of the CBP that are not dealt with in the TAL (or not dealt with in detail). The regulations would include many specific recommendations made above—e.g., the goals of CBP, the values and principles of the constitution, the appointment and mandate of a constitution commission, the appointment and mandate of the Committee on the Constitution of the Assembly, the systems of voting in the Assembly, etc. This would act as a road map, so that all can understand what the overall procedure is.*

*2. The Assembly should establish the rules of procedure for the consideration and adoption of the draft constitution, giving careful thought to allowing free debate but mindful of the time constraints. It may need to set up several committees to deliberate on the different chapters of the draft and a harmonisation committee (which could be the Committee on the Constitution) to co-ordinate and harmonise different chapters. The rules should give priority to the business of CBP.*

*3. The Assembly should now vote sufficient funds for all stages of the CBP. This is both to ensure the viability and integrity of the process as well as its efficiency, so that there are no hold ups at any stage due to lack of funds.*

## POLITICAL PARTIES IN MULTI-ETHNIC AND DIVIDED SOCIETIES

### **Statement of the Problem**

The introduction of a new multi-party system in states which have been subjected to one-party rule or dictatorship, means that citizens are suddenly exposed to many new parties, faces, ideas all competing for their attention. Without a level playing field, well-known celebrities or political parties endowed with resources will rise to the top. But the limelight on charismatic politicians is not sustainable. Sustainable democracies require sustainable political parties.

If these new parties are also emerging in post-conflict or divided societies, they are inclined to be organised around the specific divided groups (examples: Bosnia & Herzegovina, Fiji?). The challenge in building a sustainable democracy which is representative and inclusive is to ensure that these parties cooperate with other parties for the better good of the country and that political parties which are genuinely multi-ethnic or represent a diverse range of interests have every opportunity to succeed.

Additionally, there is the temptation of new and powerful political forces which represent historically oppressed groups to redress historical repression and maltreatment. The challenge to democracy-building in societies where long-held animosities are deep is developing a party system which tolerates minority representation and interests.

Political parties are essential to a well-functioning democracy. Parties play a crucial role not just in representing interests, aggregating preferences, and forming governments, but also in managing conflict and promoting stable politics. They also play the broader role of recruiting and socializing new candidates for office, organizing the electoral competition for power, crafting policy alternatives, setting the policy-making agenda, forming effective governments, and integrating groups and individuals into the democratic process. In fact, political parties are entrusted with what is perhaps the most strategic responsibility of modern democracy building – to prepare and select candidates for parliamentary and presidential elections and then to

support them in positions of leadership and government where the implementation of democratic reforms takes place.

However, not all parties are equally beneficial to the task of democratic consolidation. Organisationally-strong, broad-based, programmatic parties with real links to the community are often held up as the most appropriate kind of party for new democracies, especially those making the transition from conflict to peace. By contrast, fragmented, personalized and ethnically- or regionally-exclusive political parties which are dominated by elites and only weakly linked to society at large are often considered damaging for democratic prospects -- and are found widely in the failed democracies of the developing world. 'Strong' parties are thus considered to be a prerequisite for political stability in modernizing countries. In practice, this means parties with a broad base of support within the community, with strong ties to the electorate, and with a clear policy dimension which enables them to be *programmatic* in orientation.

Because they are the key vehicle for translating diverse public opinion into coherent public policy, political parties are a vital component of efficient governance. However, the role that parties play varies depending on the nature of the party *system* and the external regulations governing the way political parties operate and relate to each other.

While there is no, one, correct model for the regulation of political parties, there are generally accepted standards by which legal frameworks can be measured. Political parties must be allowed to compete in an environment which is fair, equitable and free. In democratic societies, citizens must have the ability to articulate their demands, make genuine choices and hold their leaders accountable. These basic rights are only possible in a system where political parties are treated equally under the law regardless of their ideologies or constituency,

The degree to which political parties are regulated and the mechanisms used vary greatly from country to country and depends, to some extent, on local traditions and cultures. The design of the election system is, however, generally understood to be of greatest influence and is the mostly widely used tool in the regulation of political parties. Other instruments include political party laws, rules governing access to media, financing regulations and, constitutional provisions. At a minimum – and most benign level – regulations gov-

erning political parties are mechanical tools to level the playing field and provide political actors with “rules of the game”. At a maximum – and perhaps more menacing level – regulations are designed to engineer specific political outcomes. Sometimes these specific outcomes are prescribed by constitutional arrangements or agreed-to bargains negotiated during times of transition.

### **Political Party Laws –**

Not all countries have specific legislation governing political parties and those that do, regulate the activity of parties in different ways. It is generally agreed that the more restrictions are placed on political parties to operate, the less level the playing field or fair the competition. Requirements to establish a minimum number of local party branches or party offices, the need to obtain a large number of signatures from supporting citizens or the imposition of a monetary fee to register a political party can be, for many small parties, prohibitive barriers to function.

### **Media laws –**

While “freedom of speech” is widely understood as a fundamental right in a democracy, extending – and honouring – this right to political parties is often thwarted by policies or practices which limit parties’ equitable access to media and, therefore, exposure to citizens. Although many countries with comprehensive election laws have regulations governing political parties’ communications in the media during election campaigns, access to media in between elections can be non-existent for many non-governing parties.

### **Political party financing –**

Political parties need to generate income to finance election campaigns as well as operating costs as political organisations in between elections. Parties, all over the world, are facing increasing public mistrust about the thorny and complex issue of money in politics. As income from memberships and fundraising declines and the costs of election campaigns increases, the issue of party financing is becoming one of the key challenges to the future of democracy.

In its 2003 Handbook, Funding of Political Parties and election Campaigns, International IDEA documents five key points for the funding of political parties<sup>3</sup>:

1. **Political parties and their competition for political power are essential for sustainable democracy and good governance.** Viable party competition requires well-entrenched political parties. They need to be encouraged to develop, strengthen and consolidate. Competing parties need adequate resources for necessary activities.
2. **Money is an essential part of this process and should be treated as an essential resource for good political practice.** Thus in new democracies it should not be treated solely as a problem but as a means to create a basis for democratic government. The challenge is to find the best ways of matching the need for a sustainable financial base for parties with a wider public interest of curbing or curtailing corruption and avoiding undue influence in politics.
3. **Unfortunately some activities of political parties are purely partisan.** Such activities will do no good either to civil society or to the political system. Which activities of political parties are deemed necessary to run a democracy and how much money is enough for these activities? Which sources of political funds are acceptable to pay for such activities?
4. **The funding of political activity by political parties and candidates should be made an issue of public debate.** Disclosure and reporting rules and their implementation can provide for adequate transparency of political funds. Transparency allows voters to make better decisions about which party or candidate they want to support.
5. **Too much reliance on funding from either the private or the public sector of society is unwise.** Democracy involves pluralism in all things, including sources of funds for political activity. New democracies should try to encourage a mixture of public and private funding when designing laws to regulate political finance.

Another important factor affecting parties is level of *institutionalization* of political parties in the broader democratic system. Party system institutionalization depends on several factors:

- the regularity of party competition,
- the extent to which parties have stable roots in society,

<sup>3</sup> Reference Handbook  
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- the extent to which parties and elections are widely accepted as the means of determining who governs, and
- the extent to which parties are organized internally.

This final area – the extent to which parties are organized internally – can itself be broken down into other sub-topics. These could include party membership rules, internal party democracy, the need for party constitutions and other foundational documents, the presence of gender balance within parties, and funding mechanisms within parties.

Ideally, the internal organisation of political parties will reflect democratic values and principles of the wider democratic state. However, in many new democracies there is little understanding or expectations for internal democracy within political parties. Reform of political parties should not be the responsibilities of parties alone. There must be demands and expectations from the public or party membership to drive reform.

Given the crucial responsibilities of political parties in democratic society, strategies to strengthen their internal capacity to execute these responsibilities have been conspicuously absent. In many older, established democracies, the regulation of the internal operations of political parties has been seen as interfering in private associations. In newer democracies, the internal regulation of political parties has either not been a priority or been viewed as too politically sensitive a task. Democratic deficits within political parties do, however, have serious consequences of parties' abilities to cultivate trust and respect of electors and to be seen as truly representative and inclusive advocates of citizens' interests.

Representative democracy, by its very nature, requires that political delegates *represent* a certain interest or constituency. An organisation which does not consult or listen to its members can hardly claim to represent them. As suggested earlier, parties built around charismatic personalities are not sustainable. Although political parties can be vigorous advocates for democratic reforms within institutions, there is often a gap between the rhetoric and the reality, particularly when it comes to democratic practices within political parties.

## Options

### Party building in ethnically-plural societies: issues and examples

By moderating and channelling political participation, well-institutionalized parties are thus widely seen as key components in managing incipient conflicts and building a functioning democracy. New democracies like Iraq face many challenges to building an institutionalised party system. One of these is the many deep religious and ethnic cleavages that afflict Iraqi society.

The political impact of such cleavages depends in large part on the way in which social cleavages are expressed by the party system. *Ethnically-based parties*, for example, typically claim to represent the interests of one group alone. By making communal appeals to mobilize voters, the emergence of such parties often has a centrifugal effect on politics, heightening ethnic tensions. The role of ethnic Serb, Croat and Bosniac parties in undermining the consolidation of democracy in post-war Bosnia & Herzegovina is a case in point.

By contrast, *aggregative, catch-all parties* need to appeal to a broader support base, and thus tend to have a more centrist impact, aggregating diverse interests and de-emphasising mono-ethnic demands. India's Congress Party is often held up as a classic example of the advantages for social integration and conflict management of a broad-based governing party committed to national cohesion and stability.

Some countries attempt to mandate such parties into existence. Many countries in Africa, Asia and elsewhere have constitutional or legislative requirements which explicitly ban 'ethnic' parties from competing in elections, or which require parties to be 'nationally-focussed' or similar. For example, in Tanzania the *Political Parties Act 1992* requires that parties be 'national' in character. The electoral act in Ghana requires parties to demonstrate a 'national character' before they can be registered by having branches in all 10 regions of the country, and precludes names or symbols which have an ethnic, religious or regional connotation. Other countries such as Togo, Senegal and a range of other African states have similar rules on their statute books.

An alternative – and in many ways undesirable – approach is to ban some parties seen as undesir-

able outright. In Germany, for example, parties associated with Nazi symbols, names and ideologies are banned from competing in elections. Countries like Turkey have long banned overtly religious parties, such as Islamic parties. Other countries ban "ethnic" parties. These kinds of provision are, however, difficult to enforce effectively. What ultimately makes a party 'ethnic' is not the nature of its composition or even the fact that most of its votes come from one group, but the fact that it makes no attempt to appeal to members of other groups. This is not something that can be legislated away.

### **Comparative approaches**

Iraq's new political system is based on proportional representation elections which in theory represents all interests fairly. However, this is not an unmitigated good. For one thing, Iraq is also socially and religiously diverse, and many political parties have formed around issues of Kurdish or Sunni identity, or around the secular/religious divide. The danger is that such parties may appeal for votes only from their own ethnic group, rather than across cleavage boundaries to achieve electoral success.

Consider the example of post-war Bosnia and Herzegovina. There, major social groups are represented in parliament in proportion to their numbers in the community as a whole, but because the major parties are ethnically-based and can rely exclusively on their own community for their electoral success, they have little incentive to act moderately on ethnic issues, and every incentive to emphasize sectarian appeals. The result at successive elections between 1996 – 2002 in Bosnia & Herzegovina was effectively an institutionalisation of ethnic politics, with electors voting along ethnic lines and each of the major nationalist parties gaining support almost exclusively from their own ethnic group. Similarly in Guyana, a society polarised between citizens of African and Indian descent, democracy has been undermined by 'ethnic census' style voting, despite the use of a highly proportional electoral system.

However, despite this weight of empirical evidence in favour of aggregative party systems, and the bleak assessment of ethnic parties, it is also important – particularly in the transition from dictatorial rule – that all groups in society be allowed to mobilize and campaign freely. For this reason, various approaches to conflict prevention assume and even foster the presence of minority parties. For exam-

ple, the guidelines of the Organization for Security and Cooperation in Europe (OSCE) explicitly affirm the right of ethnic minorities to form their own parties and compete for office on an ethnic basis.

Other countries and regions of the world place regulations which govern the formation, registration and behaviour of political parties. Such regulations can ban ethnic parties outright, or make it difficult for small or regionally-based parties to be registered, or require parties to demonstrate a cross-regional or cross-ethnic composition as a pre-condition for competing in elections. In Turkey, for example, parties must establish regional branches, hold regular conventions and field candidates in at least half of Turkey's 80 provinces to be eligible to contest national elections. Nigeria requires parties to display a 'federal character' by including members from two-thirds of all states on their executive council, and by providing that the name, motto or emblem of the party must not have ethnic or regional connotations. Indonesia, another large and ethnically-diverse country, has probably gone furthest in this regard.

### **Case study: Indonesia**

When Indonesia returned to democracy in 1999, there were two main concerns about the party system: that there would be too many new parties, which would thus lead to fragmented and unstable government, and that there would be regionally-based parties which would then push for secession from the rest of the country. Many blamed the weak and polarized party system of the 1950s for the failure of Indonesia's nascent democracy then, and were determined not to see it happen again.

At the same time, there was an overriding concern, particularly since the breakaway of East Timor in 1999, about the threat of secessionism to the territorial integrity of Indonesia, and the concomitant dangers of regional parties providing a springboard for separatism. Building a consolidated party system was thus seen as an essential step in countering secessionism and building a consolidated democracy. Both of these are also, of course, critical issues for Iraq.

To achieve these twin goals – building national parties while resisting separatist ones – Indonesia introduced a complex package of incentives and restraints on party system development: All political parties were required to demonstrate a national

support base as a precondition to compete in the elections. To do this, intending parties had to demonstrate that they had an established branch structure in more than half of Indonesia's (then) 27 provinces, and within each of these provinces also had to have established branches within over half of all regions and municipalities. These rules were ultimately interpreted relatively liberally, and 48 parties competed at the 1999 elections.

In addition to the provisions encouraging cross-regional membership, Indonesia also introduced systemic pressures for party amalgamation: parties which failed to gain more than 2% of seats in the lower house of parliament, or at least 3% of all seats in both houses combined, would have to merge with other parties to surmount these thresholds if they wanted to contest future elections. To the surprise of some observers, these merger provisions have been enforced in the lead-up to the 2004 elections, meaning that many small parties have had to amalgamate with others.

The effect of these laws was to dramatically reduce the number of parties competing for office, and ensure that of those that did, most had some claim to national leadership. These measures appear to have succeeded in these aims. By the time of Indonesia's second democratic elections, in 2004, the number of eligible parties in Indonesia had fallen by 50%, to 24 parties, most of which were broad-based and nationally focussed. Despite having many deep social cleavages, the contest for government in Indonesia is now seen as a contest between broad-based, centrist parties with national appeal. This has helped to promote the consolidation of democracy in Indonesia.

### **Post-conflict party building**

*Building coherent party systems in such 'post-conflict' societies is particularly difficult, as parties often form around the very same cleavages which spurred the original fighting, leading to a polarized political system and the continuation of the former conflict through the new democratic process.*

*Increasing awareness of the problems caused by such polarized or otherwise dysfunctional party systems has lately spurred multilateral bodies such as the United Nations – which have traditionally been wary of direct involvement in politics, preferring more traditional kinds of development assistance – to take a more active role in assisting political party development in some countries.*

*The most ambitious actors in this field have been the international democracy promotion organizations which have proliferated over the past decade. In Bosnia and Herzegovina, for example, the U.S.-based National Democratic Institute openly and actively promoted and assisted putatively multi-ethnic parties such as the Unified List coalition in preference to nationalist parties such as the Bosnian-Serb SDS or the Bosnian-Croat HDZ at the 1996 elections. Also in Bosnia, a range of related reforms to the electoral system and other areas introduced in recent years by the OSCE have attempted to undercut nationalist parties by changing voting procedures and, in some cases, barring individual candidates from election. However the success of such interventions so far has been modest, and ethnic parties continue to dominate the political landscape.*

The vexed problem of transforming armies into parties after a protracted period of conflict continues to trouble international interventions in this field. As one survey of post-conflict elections concluded, "Democratic party building is proving to be a slow process. In all the [post-conflict] countries, political parties are organized around personalities, narrow political interests, and tribal and ethnic loyalties" (Kumar 1998, 218).

In Kosovo, for example, the ongoing worry that previous ethnic conflicts fought by armed forces would be replicated in the form of new ethnically-exclusive and violence-prone political parties prompted the OSCE to introduce a network of 'political party service centres', intended to support the territory's nascent political groupings and help move them towards becoming functioning, policy-oriented political parties. Whether such an approach to external party building is actually feasible, however, remains to be seen.

Historically, the most successful example of such a transition is probably the armies-to-parties transformation wrought by the United Nations in Mozambique, where a special-purpose trust fund and some creative international leadership succeeded in bringing the previous fighting forces of Frelimo and Renamo into the political fold (Synge 1997). Recent proposals for political party assistance in Afghanistan have also focussed on this kind of approach.

### **Conclusions**

Ideally, a small number of aggregative, programmatic parties, capable of translating public preferences into coherent government policy, is probably the optimum party system model. Several comparative studies have emphasized the benefits

this kind of party system for new democracies. For example, Haggard and Kaufman found that a two-party system or stable coalition organized on a left-right basis is the most propitious arrangement for democratic durability.

Diamond, Linz and Lipset's 26-nation study of democracy in developing countries concluded that "a system of two or a few parties, with broad social and ideological bases, may be conducive to stable democracy". Similarly, Weiner and Özbudun found that the standout common factor amongst the small number of continuous Third World democracies was the presence of an aggregative party system featuring a small number of broad-based political parties.

Approaches to party building should thus focus not just on issues of fairness and representation in the short-term, but also the longer-term challenge of building an aggregative party system which can adequately represent conflicting interests while still providing for stable government and opposition, and alternation of power over time.

## PRINCIPLES OF ELECTORAL SYSTEM CHOICE

1. THE CHOICE OF ELECTORAL SYSTEM IS ONE OF THE MOST IMPORTANT institutional decisions for any democracy. In almost all cases the choice of a particular electoral system has a profound effect on the future political life of the country concerned, and electoral systems, once chosen, often remain fairly constant as political interests solidify around and respond to the incentives presented by them. The choices that are made may have consequences that were unforeseen as well as predicted effects.
2. Electoral system choice is a fundamentally political process, rather than a question to which independent technical experts can produce a single 'correct answer'. The consideration of political advantage is almost always a factor in the choice of electoral systems. Calculations of short-term political interest can often obscure the longer-term consequences of a particular electoral system.
3. The choice of electoral system can have a significant impact on the wider political and institutional framework: it is important not to see electoral systems in isolation. Their design and effects are heavily contingent upon other structures within and outside the constitution. Successful electoral system design comes from looking at the framework of political institutions as a whole: changing one part of this framework is likely to cause adjustments in the way other institutions within it work.
4. For example, how does the chosen electoral system facilitate or encourage conflict resolution between party leaders and activists on the ground? How much control do party leaders have over the party's elected representatives? Are there constitutional provisions for referendums, citizens' initiatives or 'direct democracy' which may complement the institutions of representative democracy? And are the details of the electoral system specified in the constitution, as an attached schedule to the constitution or in regular legislation? This will determine how entrenched the system is, or how open it may be to change by elected majorities.
5. Two particularly important structural issues are the degree of centralization, and the choice between parliamentarism and presidentialism. Will the country be federal or unitary, and, if federal, are the units symmetrical in their power or asymmetrical? The relationship between legislative and executive institutions has important implications for electoral system design for both. A directly elected president without a substantial block of support in the legislature will find successful government difficult.
6. In presidential and semi-presidential democracies, the electoral systems for the presidency and the legislature therefore need to be considered together, although the different roles of the president and the legislature bring different factors into play in making the two choices of system. The synchronization or otherwise of the elections and the provisions which may encourage or discourage fragmentation of parties and the relationship between parties and elected members should be considered at the same time.
7. Electoral systems are today viewed as one of the most influential of all political institutions, and of crucial importance to broader issues of governance. For example, it is increasingly being recognized that an electoral system can be designed both to provide local geographic representation and to promote proportionality; can promote the development of strong and viable national political parties, and ensure the representation of women and regional minorities; and can help to 'engineer' cooperation and accommodation in a divided society by the creative use of particular incentives and constraints.

### **What Electoral Systems Are**

8. At the most basic level, electoral systems translate the votes cast in a general election into seats won by parties and candidates.

The three key variables are the electoral formula used (whether a plurality/ majority, proportional, mixed or other system is used, and what mathematical formula is used to calculate the seat allocation), the ballot structure (whether the voter votes for a candidate or a party and whether the voter makes a single choice or expresses a series of preferences) and the district magnitude (not how many voters live in a district, but how many representatives to the legislature that district elects). Although this paper does not focus on the administrative aspects of elections (such as the distribution of polling places, the nomination of candidates, the registration of voters, who runs the elections and so on), these issues are also of critical importance, and the possible advantages of any given electoral system choice may be undermined unless due attention is paid to them. Electoral system design affects other areas of electoral laws: the choice of electoral system has an influence on the way in which district boundaries are drawn, how voters are registered, the design of ballot papers, how votes are counted, and numerous other aspects of the electoral process.

9. Even with each voter casting exactly the same vote and with exactly the same number of votes for each party, the results of elections may be very different depending on the system chosen: one system may lead to a coalition government or a minority government while another may allow a single party to assume majority control.

### ***Electoral Systems and Party Systems***

10. Some systems encourage, or even enforce, the formation of political parties; others recognize only individual candidates. The type of party system which develops, in particular the number and the relative sizes of political parties in the legislature, is heavily influenced by the electoral system. So is the internal cohesion and discipline of parties: some systems may encourage factionalism, where different wings of one party are constantly at odds with each other, while another system might encourage parties to speak with one voice and suppress dissent. Electoral systems can also influence the way parties campaign and the way political elites behave,

thus helping to determine the broader political climate; they may encourage, or retard, the forging of alliances between parties; and they can provide incentives for parties and groups to be broadly-based and accommodating, or to base themselves on narrow appeals to ethnicity or kinship ties.

11. Those negotiating a new institutional framework or electoral law may wish to be as inclusive as possible and therefore to make entry to elections easy. Conversely, there are often concerns about the fragmentation of the party system driven by the politics of personality and ethnicity, and the negotiators and designers may thus want to set the bar for representation higher. The flowering of a multiplicity of parties is, however, a feature of elections in countries emerging from authoritarianism, and unsuccessful parties usually disappear of their own accord.

### ***Electoral Systems and Conflict Management***

12. Different electoral systems can aggravate or moderate tension and conflict in a society. At one level, a tension exists between systems which put a premium on representation of minority groups and those which encourage strong single-party government. At another level, if an electoral system is not considered fair and the political framework does not allow the opposition to feel that they have the chance to win next time around, losers may feel compelled to work outside the system, using non-democratic, confrontationalist and even violent tactics. And finally, because the choice of electoral system will determine the ease or complexity of the act of voting, it inevitably impacts on minorities and underprivileged groups.

### ***Criteria for Electoral System Design***

13. When designing an electoral system, it is best to start with a list of criteria which sum up what you want to achieve, what you want to avoid and, in a broad sense, what you want your legislature and executive government to look like. Some of the desirable criteria may overlap or be contradictory: it is the nature of institutional design that trade-offs have to be made between a

- number of competing desires and objectives.
14. For example, one may want to provide the opportunity for independent candidates to be elected, and at the same time to encourage the growth of strong political parties. A system which gives voters a wide degree of choice between candidates and parties may make for a complicated ballot paper which causes difficulties for less-educated voters. The task in choosing (or reforming) an electoral system is to prioritize the criteria that are most important and then assess which electoral system, or combination of systems, best maximizes the attainment of these objectives.
  15. The ten criteria which follow are at times in conflict with each other or even mutually exclusive. Establishing the priorities among such competing criteria is the most challenging task for the actors involved in the institutional design process.

### **Providing Representation**

16. Representation may take at least four forms. First, *geographical* representation implies that each region, be it a town or a city, a province or an electoral district, has members of the legislature whom it chooses and who are ultimately accountable to their area. Second, the *ideological* divisions within society may be represented in the legislature, whether through representatives from political parties or independent representatives or a combination of both. Third, a legislature may be representative of the *party-political* situation that exists within the country even if political parties do not have an ideological base. If half the voters vote for one political party but that party wins no, or hardly any, seats in the legislature, then that system cannot be said to adequately represent the will of the people. Fourth, the concept of *descriptive* representation considers that the legislature should be to some degree a 'mirror of the nation' which should look, feel, think and act in a way which reflects the people as a whole. An adequately descriptive legislature would include both men and women, the young and the old, the wealthy and the poor, and reflect the different religious af-

filiations, linguistic communities and ethnic groups within a society.

### **Making Elections Accessible and Meaningful**

17. Elections are all well and good, but they may mean little to people if it is difficult to vote or if at the end of the day their vote makes no difference to the way the country is governed. The 'ease of voting' is determined by factors such as how complex the ballot paper is, how easy it is for the voter to get to a polling place, how up-to-date the electoral register is, and how confident the voter will be that his or her ballot is secret.
18. Electoral participation is thought to increase when the outcome of elections, either at a national level or in the voter's particular district, is likely to make a significant difference to the future direction of government. If you know that your preferred candidate has no chance of winning a seat in your particular district, what is the incentive to vote? In some electoral systems the 'wasted votes' (i.e. valid votes which do not go towards the election of any candidate) can amount to a substantial proportion of the total national vote.

### **Providing Incentives for Conciliation**

19. Electoral systems can be seen not only as ways to constitute governing bodies but also as a tool of conflict management within a society. Some systems, in some circumstances, will encourage parties to make inclusive appeals for electoral support outside their own core vote base; for instance, even if a party draws its support primarily from black voters, a particular electoral system may give it the incentive to appeal also to white, or other, voters. Thus, the party's policy platform would become less divisive and exclusionary, and more unifying and inclusive. Similar electoral system incentives might make parties less ethnically, regionally, linguistically or ideologically exclusive.
20. On the other side of the coin, electoral systems can encourage voters to look outside their own group and think of voting for parties which traditionally have represented a different group. Such voting behaviour breeds accommodation and com-

munity building. Systems which give the voter more than one vote or allow the voter to order candidates preferentially have the potential to enable voters to cut across pre-conceived social boundaries.

#### **Facilitating Stable and Efficient Government**

21. The prospects for a stable and efficient government are not determined by the electoral system alone, but the results a system produces can contribute to stability in a number of important respects. The key questions are whether voters perceive the system to be fair, whether government can efficiently enact legislation and govern, and whether the system avoids discriminating against particular parties or interest groups.
22. The question whether the government of the day can enact legislation efficiently is partly linked to whether it can assemble a working majority in the legislature, and this in turn is linked to the electoral system. As a general – but not universal - rule of thumb, plurality/majority electoral systems are more likely to produce legislatures where one party can outvote the combined opposition, while PR systems are more likely to give rise to coalition governments.
23. The system should, as far as possible, act in an electorally neutral manner towards all parties and candidates; it should not openly discriminate against any political grouping. The perception that electoral politics in a democracy is an uneven playing field is a sign that the political order is weak and that instability may not be far around the corner.

#### **Holding the Government Accountable**

24. Accountability is one of the bedrocks of representative government, whose absence may lead to long-term instability. Voters should be able to influence the shape of the government, either by altering the coalition of parties in power or by throwing out of office a single party which has failed to deliver. Suitably designed electoral systems facilitate this objective.

#### **Holding Individual Representatives Accountable**

25. Accountability at the individual level is the ability of the electorate to effectively check on those who, once elected, betray the promises they made during the campaign or demonstrate incompetence or idleness in office and ‘throw the rascals out’. Some systems emphasize the role of locally popular candidates, rather than on candidates nominated by a strong central party. While plurality/majority systems have traditionally been seen as maximizing the ability of voters to throw out unsatisfactory individual representatives, this connection becomes tenuous where voters identify primarily with parties rather than candidates. At the same time, open list systems are designed to allow voters to exercise candidate choice in the context of a proportional system.

#### **Encouraging Political Parties**

26. The weight of evidence from both established and new democracies suggests that longer-term democratic consolidation—that is, the extent to which a democratic regime is insulated from domestic challenges to the stability of the political order—requires the growth and maintenance of strong and effective political parties, and thus the electoral system should encourage this rather than entrench or promote party fragmentation. Electoral systems can be framed specifically to exclude parties with a small or minimal level of support. The development of the role of parties as a vehicle for individual political leaders is another trend which can be facilitated or retarded by electoral system design decisions.

#### **Promoting Legislative Opposition and Oversight**

27. Effective governance relies not only on those in power but, almost as much, on those who oppose and oversee them. The electoral system should help ensure the presence of a viable opposition grouping which can critically assess legislation, question the performance of the executive, safeguard minority rights, and represent its constituents effectively. Opposition groupings should have enough representatives to be

effective (assuming that their performance at the ballot box warrants it) and in a parliamentary system should be able to present a realistic alternative to the current government. While the strength of the opposition depends on many other factors besides the choice of electoral system, if the system itself makes the opposition impotent, democratic governance is inherently weakened. The electoral system should hinder the development of a 'winner takes all' attitude which leaves rulers blind to other views and the needs and desires of opposition voters, and sees both elections and government itself as zero-sum contests.

28. In a presidential system, the president needs the reliable support of a substantial group of legislators: however, the role of others in opposing and scrutinizing government legislative proposals is equally important. The separation of powers between legislature and executive effectively gives the task of executive oversight to all legislators, not only the opposition members. This makes it important to give particular thought to the elements of the electoral system which concern the relative importance of political parties and candidates, alongside the relationship between parties and their elected members.

#### ***Making the Election Process Sustainable***

29. The choice of any electoral system is, to some degree, dependent on cost and administrative capacities. A sustainable political framework takes into account the resources of a country both in terms of the availability of people with the skills to be election administrators and in terms of the financial demands on the national budget. However, simplicity in the short term may not always make for cost-effectiveness in the longer run. A system which appears at the outset to be a little more expensive to administer and more complex to understand may in the long run help to ensure the stability of the country and the positive direction of democratic consolidation.

#### ***Taking into Account 'International Standards'***

30. Finally, the design of electoral systems today takes place in the context of a number of international covenants, treaties and other

kinds of legal instruments affecting political issues. While there is no single complete set of universally agreed international standards for elections, there is consensus that such standards include the principles of free, fair and periodic elections that guarantee universal adult suffrage, the secrecy of the ballot and freedom from coercion, and a commitment to the principle of one person, one vote. There is also an increasing recognition of the importance of issues that are affected by electoral systems, such as the fair representation of all citizens, the equality of women and men, the rights of minorities, special considerations for the disabled, and so on. These are formalized in international legal instruments such as the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights.

#### ***The Process of Debate and Future Change***

31. The process through which an electoral system is designed has a great effect on the type of the system which results, its appropriateness for the political situation, and the degree of legitimacy and popular support it will ultimately enjoy. Some key questions of electoral system design are: What are the mechanisms built into the political and legal framework for reform and amendment? What process of discussion and dialogue is necessary to ensure that a proposed new or amended system is accepted as legitimate? Once change has been decided upon, how is it implemented?

#### ***What are the Mechanisms for Future Reform and Amendment?***

32. While electoral systems are an extremely important institution affecting the way in which a country's system of government works, traditionally they have not been formally specified in constitutions, the highest source of law. In recent years, however, this has started to change. Constitutional provisions are usually much harder to change than ordinary laws, usually requiring a special majority in the legislature, a national referendum or some other confirmatory mechanism, which shields such systems from easy alteration.

33. However, the details of the electoral system are still more often to be found in regular law and thus can be changed by a simple majority in the legislature. This may have the advantage of making the system more responsive to changes in public opinion and political needs, but it also contains the danger of majorities in a legislature unilaterally altering systems to give them political advantage.
34. Electoral systems will inevitably need to adapt over time if they are to respond adequately to new political, demographic and legislative trends and needs. However, once a system is in place, those who benefit from it are likely to resist change. Without a major political crisis as catalyst, change at the margins may well be more likely in the future than fundamental reform. It is therefore worth getting the system as near as possible right first time.
35. The number of people, both in elite circles and in society generally, who understand the likely impact of a particular electoral system may be very limited. This is further complicated by the fact that the operation of electoral systems in practice may be heavily dependent on apparently minor points of detail. It is helpful to fully work through and explain the legal detail, and to make technical projections and simulations to show, for example, the shape and implications of proposals on electoral districts or the potential impact on the representation of political parties. Technical simulations can also be used to ensure that all contingencies are covered and to evaluate apparently unlikely outcomes: it is better to answer questions while change is being promoted than in the middle of a crisis later!
36. Voter involvement programmes, for example, inviting members of the public to participate in mock elections under a potential new system, may attract media attention and increase familiarity with new proposals. They may also help to identify the problems—for example, voter difficulty with ballot papers—which a new system may generate.
37. A process of change is complete only with intensive voter education programmes to explain to all participants how the new system works and with the design and agreement of user-friendly implementing regulations. The most effective voter education—and election administrator education—takes time. However, time is often in short supply to an electoral commission organizing an election under a new system. All good negotiators use time pressure before a final agreement is reached, and this can be particularly true when a new electoral system is the product of hard negotiation between political actors. A wise Election Commission nonetheless needs to prepare as much as possible as early as possible.

### **Electoral System Choices**

38. Once a decision has been made about the important goals to be achieved—and the important pitfalls to be avoided—in a new electoral system, there are a group of electoral system design tools which can be used to help achieve these goals. They include, among others, electoral system family and type, district magnitude, the relative role of political parties and candidates, the form of the ballot paper, the procedures for drawing electoral boundaries, the electoral registration mechanisms, the timing and synchronization of elections, and quotas and other special provisions. These tools will work differently in different combinations. It is worth emphasizing again that there is never a single ‘correct solution’ that can be imposed in a vacuum.
39. There are a multitude of detailed variations in electoral systems, but they can be divided into twelve main systems. Most of these systems fall into three broad families – plurality/majority systems, proportional systems, and mixed systems. All of these systems are discussed in depth in *Electoral System Design – The New International IDEA Handbook*, to be published in May 2005.
40. Five systems are in much more commonly used than the others. These are First Past the Post (FPTP) and the Two Round System (TRS), which fall within the plural-

ity/majority system family; List Proportional Representation (PR), which falls within the proportional system family; and Mixed Member Proportional (MMP) and Parallel, which fall within the mixed system family.

### **Plurality/Majority Systems**

41. The principle of plurality/majority systems is simple. After votes have been cast and tallied, those candidates or parties with the most votes are declared the winners (there may also be additional conditions). However, the way this is achieved in practice varies widely.
42. First Past The Post (FPTP) is the simplest form of plurality/majority electoral system. The winning candidate is the one who gains more votes than any other candidate, even if this is not an absolute majority of valid votes. The system uses single-member districts and the voters vote for candidates rather than political parties.
43. The Two-Round System (TRS) is a plurality/majority system in which a second election is held if no candidate achieves a given level of votes, most commonly an absolute majority (50 per cent plus one), in the first election round. A Two-Round System may take a majority-plurality form, in which more than two candidates contest the second round and the one wins the highest number of votes in the second round is elected, regardless of whether they have won an absolute majority; or a majority run-off form, in which only the top two candidates in the first round contest the second round.

### **Proportional Representation (PR) Systems**

44. PR systems are consciously designed to translate a party's share of the votes into a corresponding proportion of seats in the legislature. PR requires the use of electoral districts with more than one member: it is not possible to divide a single seat elected on a single occasion proportionally. In some countries, the entire country forms one multi-member district. In other countries, electoral districts are based on provinces, or a range of permissible sizes for electoral dis-

tricts is laid down and the election commission is given the task of defining them.

43. The greater the number of representatives to be elected from a district and the lower the required threshold for representation in the legislature, the more proportional the electoral system will be and the greater the chance small minority parties will have of gaining representation.
45. Under a List Proportional Representation (List PR) system, each party or grouping presents a list of candidates for a multi-member electoral district, the voters vote for a party, and parties receive seats in proportion to their overall share of the vote. In 'closed list' systems, the winning candidates are taken from the lists in order of their position on the lists. In 'open list' systems, the voters can influence the order of the candidates by marking individual preferences.
46. While open list PR gives voters much greater freedom over their choice of candidate, it can also have less desirable side effects. Because candidates from within the same party are effectively competing with each other for votes, open list PR can lead to internal party conflict and fragmentation. It may also mean that the potential benefits to a party of having lists which feature a diverse slate of candidates can be overturned.
47. District magnitude is in many ways the key factor in determining how a PR system will operate in practice, especially in the strength of the link between voters and elected members, and the overall proportionality of election results.
48. In many countries, the electoral districts follow pre-existing administrative divisions, perhaps state or provincial boundaries, which means that there may be wide variations in their size. However, this approach both eliminates the need to draw additional boundaries for elections and may make it possible to relate electoral districts to existing identified and accepted communities.

49. If only one candidate from a party is elected in a district, that candidate may well be male and a member of the majority ethnic or social groups in the district. If two or more are elected, balanced tickets put forward by political parties may have more effect, making it likely that more women and more candidates from minorities will be successful. Larger districts (seven or more seats in size) and a relatively small number of parties will assist this process.
50. All electoral systems have *thresholds* of representation: that is, the minimum level of support which a party needs to gain representation. Thresholds can be legally imposed (*formal thresholds*) or exist as a mathematical property of the electoral system (*effective* or *natural thresholds*). A formal threshold is written into the constitutional or legal provisions which define the PR system. An effective or natural threshold is created as a mathematical by-product of features of the system, of which district magnitude is the most important. For example, in a district with four seats using a PR system, any candidate with more than over 20 per cent of the vote will be elected, and any candidate with less than about 10 per cent (the exact figure will vary depending on the configuration of parties, candidates and votes) is unlikely to be elected.

### **Mixed Systems**

51. Mixed electoral systems attempt to combine the positive attributes of both plurality/majority and PR electoral systems. In a mixed system, there are two electoral systems using different formulae running alongside each other. The votes are cast by the same voters and contribute to the election of representatives under both systems. One of those systems is a plurality/majority system, usually FPTP, and the other a List PR system. There are two forms of mixed system.
52. Mixed Member Proportional (MMP) is a mixed system in which the choices expressed by the voters are used to elect representatives through two different systems—one List PR system and (usually) one plurality/majority system—where the List PR system compensates for the disproportionality in the results from the plurality/majority system.
53. A Parallel System is a mixed system in which the choices expressed by the voters are used to elect representatives through two different systems—one List PR system and (usually) one plurality/majority system—but where no account is taken of the seats allocated under the first system in calculating the results in the second system.
54. While an MMP system generally results in proportional outcomes, a Parallel system is likely to give results whose proportionality falls somewhere between that of a plurality/majority and that of a PR system.

### **Advantages and Disadvantages of Electoral Systems**

55. The table below summarizes the advantages and disadvantages of the principal electoral systems. It is important to keep in mind that these can vary from case to case and depend on a large number of factors. For example, turnout can in fact be high under an FPTP system, and a List PR system can produce strong legislative support for a president. Also, what is seen as an advantage in one context or by one party can be viewed as something negative in another context or by another party. However, the table does give an overview of the likely implications of the choice of electoral system. It can also give an indication of the relationship between electoral system choice and political/ institutional outcome, even allowing for the effects of differences of detail within each type of electoral system.

	Advantages	Disadvantages
<b><u>List Proportional Representation (List PR)</u></b>	<ul style="list-style-type: none"> <li>• Proportionality</li> <li>• Inclusiveness</li> <li>• Minority representation</li> <li>• Few wasted votes</li> <li>• Easier for women representatives to be elected</li> <li>• No (or less) need to draw boundaries</li> <li>• No need to hold by-elections</li> <li>• Facilitates absentee voting</li> <li>• Restricts growth of single party regions</li> <li>• Higher voter turnout likely</li> </ul>	<ul style="list-style-type: none"> <li>• Weak geographic representation</li> <li>• Accountability issues</li> <li>• Weaker legislative support for president more likely in presidential systems</li> <li>• Coalition or minority governments more likely in parliamentary systems</li> <li>• Much power given to political parties</li> <li>• Can lead to inclusion of extremist parties in legislature</li> <li>• Inability to throw a party out of power</li> </ul>
<b><u>First Past The Post (FPTP)</u></b>	<ul style="list-style-type: none"> <li>• Strong geographic representation</li> <li>• Makes accountability easier to enforce</li> <li>• Is simple to understand</li> <li>• Offers voters a clear choice</li> <li>• Encourages a coherent opposition</li> <li>• Excludes extremist parties</li> <li>• Allows voters to choose between candidates</li> <li>• Strong legislative support for president more likely in presidential systems</li> <li>• Majority governments more likely in parliamentary systems</li> </ul>	<ul style="list-style-type: none"> <li>• Excludes minority parties</li> <li>• Excludes minorities</li> <li>• Excludes women</li> <li>• Many wasted votes</li> <li>• Often need for by-elections</li> <li>• Requires boundary delimitation</li> <li>• May lead to gerrymandering</li> <li>• Difficult to arrange absentee voting</li> </ul>
<b><u>Two-Round System (TRS)</u></b>	<ul style="list-style-type: none"> <li>• Gives voters a second chance to make a choice</li> <li>• Less vote-splitting than many other plurality/majority systems</li> <li>• Simple to understand</li> </ul>	<ul style="list-style-type: none"> <li>• Requires boundary delimitation</li> <li>• Requires a costly and often administrative. challenging 2<sup>nd</sup> round</li> <li>• Often need for by-elections</li> <li>• Long time-period between election and declaration of results</li> <li>• Disproportionality</li> <li>• May fragment party systems</li> <li>• May be destabilizing for deeply divided societies</li> </ul>
<b><u>Parallel System</u></b>	<ul style="list-style-type: none"> <li>• Inclusiveness</li> <li>• Representation of minorities</li> <li>• Less party fragmentation than pure List PR</li> <li>• Can be easier to agree on than other alternatives</li> </ul>	<ul style="list-style-type: none"> <li>• Complicated system</li> <li>• Requires boundary delimitation</li> <li>• Often need for by-elections</li> <li>• Can create two classes of representatives</li> <li>• Strategic voting</li> <li>• More difficult to arrange absentee voting than with List PR</li> <li>• Does not guarantee overall proportionality</li> </ul>
<b><u>Mixed Member Proportional (MMP)</u></b>	<ul style="list-style-type: none"> <li>• Proportionality</li> <li>• Inclusiveness</li> <li>• Geographic representation</li> <li>• Accountability</li> <li>• Few wasted votes</li> <li>• May be easier to agree on than other alternatives</li> </ul>	<ul style="list-style-type: none"> <li>• Complicated system</li> <li>• Requires boundary delimitation</li> <li>• Often need for by-elections</li> <li>• Can create two classes of representatives</li> <li>• Strategic voting</li> <li>• More difficult to arrange absentee voting than with List PR</li> </ul>

## **Considerations on Representation**

### **Representation of Women**

56. There are many ways to enhance the representation of women. Proportional systems tend to result in the election of more women. Electoral systems which use reasonably large district magnitudes encourage parties to nominate women on the basis that balanced tickets will increase their electoral chances. Some List PR systems require that women make up a certain proportion of the candidates nominated by each party. In plurality/majority systems, seats can be set aside in the legislature for women.
57. In addition to the choice of electoral system, there are also a number of other strategies that can be used to increase the number of women representatives. A certain number of seats can be reserved for women in the legislature. Also, the electoral law can require political parties to field a quota of women candidates. However, quota laws do not always guarantee that the target will be met unless there are mechanisms guaranteeing that women are placed in electable positions on party lists. Political parties may also adopt their own internal quotas for women as legislative candidates. Further details and data about quotas may be found on the IDEA/Stockholm University Global Database of Electoral Quotas for Women at [www.quotaproject.org](http://www.quotaproject.org).

### **Representation of Minorities**

58. There are also many ways to enhance the representation of minorities and communal groups. Electoral systems which use reasonably large district magnitudes may encourage parties to nominate candidates from minorities on the basis that balanced tickets will increase their electoral chances. A very low threshold, or the complete elimination of a formal threshold, in PR systems can also promote the representation of under-represented or unrepresented groups. In plurality/majority systems, seats can be set aside in the legislature for minorities and communal groups.

### **By-elections**

59. If a seat becomes vacant between elections, List PR systems often simply fill it with the next candidate on the list of the party of the former representative, thus eliminating the need to hold another election. However, plurality/majority systems often have provisions for filling vacant seats through a by-election. It is also possible to avoid by-elections by electing substitutes at the same time as the ordinary representatives.
60. In some circumstances, by-elections can have a wider political impact than merely replacing individual members, and are seen to act as a mid-term test of the performance of the government. In addition, if the number of vacancies to be filled during a parliamentary term is large, this can lead to a change in the composition of the legislature and an altered power base for the government.

### **External Voting**

61. External voting may take place in person somewhere other than an allotted polling station or at another time, or votes may be sent by post or cast by an appointed proxy. It is easiest to administer under a nationwide List PR system with only one list per party, and most complicated under a system using single-member districts. Once cast, out-of-country votes can be included in the absentee voter's home district; counted within single (or multiple) out-of-country districts; attached to one or more particular districts; or merely added to the national vote totals when seats are allocated under a nationally-based List PR system.

### **Electoral Systems and Turnout**

62. There is an established relationship between the level of turnout in elections and the electoral system chosen: PR systems are in general linked with higher turnout. In plurality/majority systems, turnout tends to be higher when national election results are expected to be close than when one party looks certain to win, and also higher in individual districts where results are expected to be closer.

**Time to Prepare and Train**

63. The time needed to set up the infrastructure for different electoral systems varies. For example, electoral registration and boundary delimitation are both time-consuming exercises which can lead to legitimacy problems. At one extreme, if all voters vote in person and voters are marked at the polling station, List PR with one national district may be feasible without either. At the other extreme, a plurality/majority system with single-member districts may require both if no acceptable framework is in place. And time is always required for training of election personnel, especially when new systems are introduced.

**Electoral Systems and Political Parties**

64. Highly centralized political systems using closed list PR are the most likely to encourage strong party organizations. Decentralized, district-based systems may have the opposite effect. Many other electoral variables can also be used to influence the development of party systems. Access to public and/or private funding is a key issue that cuts across electoral system design, and is often the single biggest constraint on the emergence of viable new parties.
65. Just as electoral system choice will affect the way in which the political party system develops, the political party system in place affects electoral system choice. Existing parties are unlikely to support changes that are likely to seriously disadvantage them, or changes that open the possibility of new, rival parties gaining entry to the political party system, unless there is a strong political imperative. The range of options for electoral system change may thus be constrained in practice.
66. Different kinds of electoral system also result in different relationships between individual candidates and their supporters. In general, systems which make use of single-member electoral districts, such as most plurality/majority systems, are seen as encouraging individual candidates to see themselves as the delegates of particular geographical areas and beholden to the interests of their local electorate. By contrast, systems which

use large multi-member districts, such as most PR systems, are more likely to deliver representatives whose primary loyalty lies with their party on national issues. Both approaches have their merits, which is one of the reasons for the rise in popularity of mixed systems that combine both local and national-level representatives.

67. The question of accountability is often raised in discussions of political parties and electoral systems, especially in relation to individual elected members. The relationships between electors, elected members and political parties are affected not only by the electoral system but also by other provisions of the political legislative framework such as term limits, provisions regulating the relationship between parties and their members who are also elected representatives, or provisions barring elected members from changing parties without resigning from the legislature.
68. The freedom for voters to choose between candidates as opposed to parties is another aspect of accountability. Many countries in recent years have therefore introduced a greater element of candidate-centred voting into their electoral systems, for example, by introducing open lists in PR elections.

**Conclusion: Many Options, Key Principles**

69. One of the clearest conclusions drawn from the study of electoral systems is simply the range and utility of the options available. There is a huge range of worldwide comparative experience. Often, designers and drafters of constitutional, political and electoral frameworks have chosen the electoral system they know best - often, in new democracies, the system of the former colonial power if there was one, or the system of the donor country whose technical adviser is most persuasive - rather than fully investigating the alternatives. Here is a summary of key principles.

**Remember It's Part of an Overall Institutional Framework**

70. It cannot be said too often that the electoral system is linked to the constitutional and

political framework, and will work in different ways in different institutional settings. It is wise to make the choice of a pattern of institutions, and not choose an electoral system in a vacuum.

### **Keep It Simple and Clear**

71. Effective and sustainable electoral system designs are more likely to be easily understood by the voter and the politician. Too much complexity can lead to misunderstandings, unintended consequences, and voter mistrust of the results. But it is equally dangerous to underestimate the voters' ability to comprehend and successfully use a wide variety of different electoral systems. Voters often have, and wish to express, relatively sophisticated orderings of political preferences and choices.

### **Don't be Afraid to Innovate**

72. Many of the successful electoral systems used in the world today themselves represent innovative approaches to specific problems, and have been proved to work well. There is much to learn from the experience of others—both neighbouring countries and seemingly quite different cases.

### **Err on the Side of Inclusion**

73. Wherever possible, whether in divided or relatively homogeneous societies, the electoral system should err on the side of including all significant interests in the legislature. Regardless of whether minorities are based on ideological, ethnic, racial, linguistic, regional or religious identities, the exclusion of significant shades of opinion from legislatures, particularly in the developing world, has often been catastrophically counterproductive.

### **Process is a Key Factor in Choice**

74. The way in which a particular electoral system is chosen is also extremely important in ensuring its overall legitimacy. A process in which most or all groups are included, including the electorate at large, is likely to result in significantly broader acceptance of the end result than a decision perceived as being motivated by partisan self-interest alone. Although partisan considerations are

unavoidable when discussing the choice of electoral systems, broad cross-party and public support for any institution is crucial to its being accepted and respected.

### **Build Legitimacy and Acceptance Among All Key Actors**

75. All groupings which wish to play a part in the democratic process should feel that the electoral system to be used is fair and gives them the same chance of electoral success as anyone else. Those who 'lose' the election should not feel a need to translate their disappointment into a rejection of the system itself or use the electoral system as an excuse to destabilize the path of democratic consolidation.

### **Try to Maximize Voter Influence...**

76. Voters should feel that elections provide them with a measure of influence over governments and government policy. Choice can be maximized in a number of different ways. Voters may be able to choose between parties, between candidates of different parties, and between candidates of the same party. They may also be able to vote under different systems when it comes to presidential, upper house, lower house, regional and local government elections. They should also feel confident that their vote has a genuine impact on the formation of the government, not just on the composition of the legislature.

### **Balance That Against Encouraging Coherent Political Parties**

77. The desire to maximize voter influence should be balanced against the need to encourage coherent and viable political parties. Maximum voter choice on the ballot paper may produce such a fragmented legislature that no one ends up with the result they were hoping for. Broadly-based, coherent political parties are among the most important factors in promoting effective and sustainable democracy.

### **Long-Term Stability and Short-Term Advantage Are Not Always Compatible**

78. When political actors negotiate over a new electoral system they often push proposals

which they believe will advantage their party in the coming elections. However, this can often be an unwise strategy, as one party's short-term success or dominance may lead to long-term political breakdown and social unrest. Similarly, electoral systems need to be responsive enough to react effectively to changing political circumstances and the growth of new political movements. Even in established democracies, support for the major parties is rarely stable, while politics in new democracies is almost always highly dynamic and a party which benefits from the electoral arrangements at one election may not necessarily benefit at the next.

**Don't Assume that Defects can Easily be Fixed Later**

79. All electoral systems create winners and losers, and therefore vested interests. When a system is already in place, these are part of the political environment. It may be unwise to assume that it will be easy to gain acceptance later to fix problems which arise. If a review of the system is intended, it may be sensible for it to be incorporated into the legal instruments containing the system change.

**Assess the Likely Impact of Any New System on Societal Conflict**

80. Electoral systems can be seen not only as mechanisms for choosing legislatures and presidents but also as a tool of conflict management within a society. Some systems, in some circumstances, will encourage parties to make inclusive appeals for support outside their own core support base. The use of inappropriate electoral systems serves to exacerbate negative tendencies which already exist, for example, by encouraging parties to see elections as 'zero-sum' contests and thus to act in a hostile and exclusionary manner to anyone outside their home group. When designing any political institution, the bottom line is that, even if it does not help to reduce tensions within society, it should, at the very least, not make matters worse.

**Try and Imagine Unusual or Unlikely Contingencies**

81. Electoral system designers would do well to pose themselves some unusual questions to avoid embarrassment in the long run. Is it possible that the system proposed is not detailed or clear enough to be able to determine what the result is? Is it possible that one party could win all the seats? What if you have to award more seats than you have places in the legislature? What do you do if candidates tie? Might the system mean that, in some districts, it is better for a party supporter not to vote for their preferred party or candidate?

**Remember It Needs to be Sustainable**

82. The electoral system chosen – with any associated requirements for electoral registration and boundary delimitation - will place human demands on the election administration and financial demands on the national budget. Is it possible and desirable to make these resources available on a continuing basis?

An Electoral System Designer's Checklist
• Is the system clear and comprehensible?
• Are the mechanisms for future reform clear?
• Does the system avoid underestimating the electorate?
• Is the system as inclusive as possible?
• Will the design process be perceived as legitimate?
• Will the election results be seen as legitimate?
• Are unusual contingencies taken into account?
• Is the system financially and administratively sustainable?
• Will the voters feel powerful?
• Is a competitive party system encouraged?
• Does the system fit into the constitutional framework as a whole?
• Will the system help to alleviate conflict rather than exacerbate it?