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DEMOCRACY WITHOUT POLITICAL PARTIES: CONSTITUTIONAL OPTIONS

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Executive Summary

This Working Paper addresses the question of what role political parties generally play in democracies, and asks whether an electoral system can establish effective and democratically accountable government in the absence of political parties. The Working Paper identifies the democratic functions ordinarily performed by political parties in electoral democratic government, describes how parties are typically regulated in constitutions, and discusses constitutional design options for electoral democracy in which political parties play a minimal role.

THE ROLE OF POLITICAL PARTIES IN DEMOCRACY

Practically all established constitutional democracies rely on political parties, and a large majority of constitutions worldwide recognize the beneficial role of political parties. In contrast, authoritarian regimes typically eliminate party competition. Past attempts at creating non-partisan democracy on a nation-wide scale have failed, and examples of large-scale, functioning democratic systems without political parties are limited to sub-national and local government.

Parties have become a central element of constitutional democracy because they are uniquely placed to perform four key democratic functions: political parties (1) establish structures for the peaceful competition for power and political pluralism (competition); (2) represent and aggregate citizens' interests in structures of government (representation); (3) promote stable and coherent government and lawmaking (stability); and (4) provide effective structures for opposition politics and for holding government to account (accountability). A democratic

electoral system requires these functions to be fulfilled in order function effectively, whether or not political parties exist. Since parties are well placed to fulfill them, it is less likely that they will be fulfilled in the absence of parties.

RISKS OF POLITICAL PARTIES

A party-based system of politics does pose risks to democracy, which provide a basis for arguments against partisan democracy. Parties can serve as vehicles for small elites and their interests; they can be instruments of divisive factionalism; and party splintering may lead to instability in government. Many democratization processes have been complicated by the weakness of the political party system, for example in Iraq and Egypt. However, doing away with political parties does not necessarily solve these problems, and may in fact exacerbate these risks while eliminating any of the benefits that a party-based system can deliver.

In order to promote the benefits of party politics and guard against its downsides, modern constitutions and legislative frameworks typically contain a series of principles and rules: They guarantee freedom of association for parties; establish independent institutions to administer elections and political party laws; set out requirements for parties to be registered (including the criteria for party bans); lay down some principles governing party finance such as financial transparency; define the role of parties in the formation of government; and address the basic character of the electoral system. The specifics of the electoral system shape the party system and are typically laid out in electoral laws, which may for example choose between, or combine, proportional representation and first-past-the-post electoral systems.

NON-PARTISAN SYSTEMS OF GOVERNMENT

If a democratic system was to prohibit political parties, all political candidates for elections would be required to present themselves as "independent", with no party affiliation. This is the case in a very small number of countries around the world. Most of these countries are not democratic (e.g. United Arab Emirates, Oman and Saudi Arabia), while the examples of democratic non-partisan systems are very small island states (e.g. Tuvalu and Nauru). Elections to the legislature in the US state of Nebraska are non-partisan.

In a non-partisan system, the choice of electoral system is limited: the single-member district system is most suited to non-partisan democracy. However, this system favors well-known or wealthy personalities and carries the risk of being resistant to change. A non-partisan parliamentary system might suffer from unstable government, as the lack of cohesion in parliament would tend to undermine the likelihood of reaching the parliamentary majority necessary to support a prime minister and government. Similarly, lawmaking is likely to be more cumbersome and incoherent in the absence of cohesive voting blocs in the legislature.

In response to the difficulty of passing legislation and the instability of government in the absence of political parties, members of the legislature may form ad hoc voting blocs or groups. Were a non-partisan system to give some formal recognition to these ad hoc voting blocs, at least for the duration of the legislative period, the legislature may function with greater efficiency in passing laws and provide greater stability to government. Similarly, high thresholds for the passage of votes of non-confidence may decrease the likelihood that the government will be dismissed, and alleviate government instability.

Whether such a non-partisan system could sustain democracy is doubtful however, given the negative experiences with non-partisan democracy in countries such as Ethiopia. The options presented in this Working Paper should be carefully analyzed in light of a country's specific history and context. Given the limited experience with non-partisan democracy, one attractive option is an experimental approach in which flexible constitutional and statutory rules allow for subsequent adjustments to the political system.

Further reading

Barger, John: "After Qadhafi: Prospects for Political Party Formation and Democratization in Libya" (1999) 4 *Journal of North African Studies*, 62.

Carothers, Thomas: *Confronting the Weakest Link: Aiding Political Parties in New Democracies* (Washington DC: Carnegie Endowment for International Peace, 2006).

Power, Greg and Rebecca A Shoot (eds): *Political Parties in Democratic Transitions* (Danish Institute for Parties and Democracy, available at <http://dipd.dk/2012/10/8436/>).

Dann, Philipp, Michael Riegner, Jan Vogel & Martin Wortmann: "Lessons learned from constitution-making processes with broad based public participation", Democracy Reporting International, Tunisia Briefing Paper, November 2011, available at, http://www.democracy-reporting.org/files/dri_briefingpaper_20.pdf.

Hess, Robert L and Gerhard Loewenberg: "The Ethiopian No-Party State: A Note on the Functions of Political Parties in Developing States" (Dec. 1964) 58/4 *American Political Science Review*, 947-950

Hofmeister, Wilhelm and Karsten Grabow: *Political Parties: Functions and Organisation in Democratic Society* (Singapore: Konrad Adenauer Stiftung, 2011)

Aning, Kwesi and Fiifi Edu-Afful: "Legal and Policy Frameworks Regulating Behaviour of Politicians and Political Parties – Sierra Leone", International IDEA 2013, available at <http://www.idea.int/publications/legal-and-policy-frameworks-sierra-leone/>.

International Crisis Group: "Afghanistan's Parties in Transition", Asia Briefing No. 141, June 2013, available at <http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/b141-afghanistans-parties-in-transition.aspx>.

Issacharoff, Samuel: "Fragile Democracies" (2007) 120 *Harvard Law Review*, 1406.

Muasher, Marwan: "The Path to Sustainable Political Parties in the Arab World", Carnegie Endowment for International Peace, November 2013, available at:

<http://carnegieendowment.org/2013/11/13/path-to-sustainable-political-parties-in-arab-world/qthg>.

National Democratic Institute: "Believing in Democracy: Public Opinion Survey Report Libya", National Democratic Institute, August 2013, available at <https://www.ndi.org/libya-believing-in-democracy>.

Ojigbo, A. Okion: "On the Advantages of a No-Party State" (1972) 10 *Journal of Modern African Studies* 122.

Pildes, Richard H: "Political Parties and Constitutionalism", in Rosalind Dixon and Tom Ginsburg (eds), *Comparative Constitutional Law* (Cheltenham and Northampton: Edward Elgar, 2011).

1. Introduction: Designing constitutional democracy without political parties?

This Working Paper addresses the question of what role political parties generally play in democracies, and asks in particular whether an electoral system can establish effective and democratically accountable government in the absence of political parties. The Working Paper identifies the democratic functions ordinarily performed by political parties in electoral democratic government, describes how parties are typically regulated in constitutions, and discusses constitutional design options for electoral democracy in which political parties play a minimal role. This approach assumes a preference for a non-partisan political system as a point of departure, but also points out the risks associated with such an approach.

Designing a democratic system without political parties poses considerable challenges. There are no real precedents for an entirely non-partisan political system among existing, relatively large democratic nation states, and there are thus no real-world examples on which a comparative analysis can draw. The few examples of functioning non-partisan democracy are limited to sub-national or local government, or small island nations with a national population of less than 10,000. National governments in practically all existing constitutional democracies rely on multi-party political systems to organize citizen participation in democratic politics. Political parties are seen as the distinctive institutions of modern democracy, and democracy has even come to be defined as multi-party competition for political power. Indeed, the prohibition of multi-party competition is a common feature of non-democratic and authoritarian regimes.

This Working Paper proceeds in three analytical steps:

1. In Part 2, the paper describes the role political parties play in existing constitutional democracies around the world and in Part 3 identifies four primary functions they perform in promoting electoral democracy, namely competition, representation, stability and accountability.
2. In Part 4, the paper examines some of the problems associated with party politics. While the desire to avoid these problems may provide some arguments for minimizing the role of parties, the paper considers whether or not simply eliminating parties is likely to solve these problems.
3. In Part 5, the paper considers constitutional design options for a democratic system with a minimal role for political parties. It describes how political parties are typically regulated in democracies by constitutions and by electoral law, discusses how alternative arrangements for non-partisan democracy might look, and asks whether these alternative constitutional designs are likely to promote competition, representation, stability and accountability as effectively as political systems that do not prohibit political parties.

2. Political parties as a central element of constitutional democracy

2.1 CONSTITUTIONAL PROTECTIONS FOR POLITICAL PARTIES

In virtually all established constitutional democracies, political parties have become the most enduring and most powerful vehicle for organizing citizens into effective participants in politics. More than 80 per cent of the constitutions in force today contain provisions on political parties, and more than 60 per cent explicitly guarantee the right to form a political party. By contrast, authoritarian regimes have tended to eliminate party competition. For instance, the Gadhafi regime outlawed independent political activity as early as 1969. In other African states, former independence parties often evolved into a dominant ruling party in a one-party state that acquired increasingly authoritarian characteristics, as was the case in Tanzania. Ethiopia was considered a non-party state in the 1960s in the context of non-democratic rule by an unelected emperor and a weak parliament.

Today, bans on political parties remain a typical feature of non-democratic regimes such as Oman, Saudi Arabia, and the United Arab Emirates. The surviving communist regimes in China, Vietnam and Cuba remain single party states.

In light of these experiences, post-authoritarian constitutions often explicitly recognize the importance of political parties for democracy, guarantee the freedom to form a political party, and foresee a role for parties in the formation of government and in the expression of public opinion. A case in point is the German Constitution (or "Basic Law") enacted after the fall of the Nazi dictatorship at the end of the Second World War. Article 21(1) reads:

Political parties participate in the formation of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles [...].

Most national constitutions that do not include explicit protections for political parties were enacted before 1950. An historical example is the German Weimar constitution of 1919, which failed to recognize or regulate political parties and stipulated that public servants must be non-partisan. While constitutions that predate the rights revolution of the 1940s and 1950s did not prohibit or ban political parties, neither did they explicitly protect the place and role of political parties in the political system. This phenomenon is observed in many other states that do not formally recognize parties: For example, Kuwait has no laws that formally regulate political parties, but parties are not expressly prohibited either. As a result, political organizations have arisen in Kuwait that act like political parties and fulfill the same political functions, although they are not formally regulated or recognized as political parties.

Formal recognition of political parties in the constitution or in statute is by no means limited to established Western democracies. Almost all constitutions in Eastern Europe and the post-Soviet countries, Latin America, East Asia and sub-Saharan Africa make reference to political parties. Popular views generally support the view that political parties are necessary for effective democracy. For example, a 2011 opinion poll in Latin America showed that 58 per cent of the citizens thought that democracy would be impossible without political parties. In a 2013 opinion

poll in Libya, more than 80 per cent of respondents said political parties are important for democracy. The 2014 Constitution of Tunisia makes ample reference to political parties: Art. 35 explicitly guarantees the freedom to form political parties, Art. 89 recognizes their role in the formation of government, Art. 60 enshrines rights of the parliamentary opposition, and Art. 65 provides legislative competence for the further regulation of political parties. In the 2013 Egyptian Constitution, which came into force in January 2014, Art. 74 guarantees the right to form political parties. Articles 68 and 69 of the Turkish constitution contain detailed provisions on the rights, functions and duties of political parties.

This is not to say, however, that party politics is the same all over the world. In fact, there is great variation in party politics, and different electoral outcomes can have a decisive impact on the nature of a country's politics. Party-based elections may reveal one dominant party, two roughly equally competitive parties, a few competitive parties, or a very fractured system with multiple small parties. Parties also vary in terms of the major issues around which they are organized: liberal versus conservative, secular versus religious, ethnic or linguistic, and regional economic interests (e.g. rural farmers' interests or urban commercial interests). Ultimately, the party system that emerges in a country will be a reflection of its social and economic character, its history, and its legal framework and electoral laws. Certain electoral outcomes can pose a threat to democracy, such as where a single party dominates politics, or where a large number of small parties compose a weak and fractured legislature incapable of forming effective government. Many constitutions contain provisions designed to guard against these risks (see in more detail in Part 4 and Part 5).

2.2 PARTY POLITICS IN TRANSITIONAL AND NEW DEMOCRACIES

In transitions from authoritarianism to democracy, political parties may find it difficult to form and to function effectively. Authoritarian regimes typically repress genuine multi-party democracy or prohibit political parties entirely. In these circumstances, opposition takes other organizational forms, such as

exile organizations or civil society activist groups and loosely organized social movements operating at the fringes of the political system. Transforming these groups into a new government that is both effective and democratic often proves difficult, and many post-authoritarian democracies have suffered from the weakness of the political party system.

Iraq, although a “pure” parliamentary system, experienced a period of governmental instability following the March 2010 parliamentary elections. No single party won more than 25 per cent of the vote, with no clear majority party or coalition dominating the legislature. Instead, the seats in the legislature were divided among a number of smaller parties. The consequently divided legislature proved unable to form a government until December 2010. The historical absence of political parties and a weak party system in Libya, similarly, accounts for problems in Libya’s post-authoritarian democracy. The presence of numerous independent parliamentarians and the lack of cohesive political parties has made it difficult to form and maintain governments, muster stable majorities, and negotiate compromises. This has benefited former members of the Gadhafi government, because the fractured parliament has been unable to agree on replacements for Gadhafi-era bureaucrats and officials.

The experience of established democracies and the difficulties encountered in democratic transitions are ordinarily taken to illustrate how important well-functioning political parties are for electoral democracy. To better understand why this is so, the next section analyses the functions political parties typically play in electoral democracies. Understanding these functions is important because even a political system that minimizes the role of parties will need to provide for alternative mechanisms to facilitate electoral democracy. Independent parliamentarians, NGOs, trade unions, activist groups or civil society at large all play important functions in democracy and are sometimes cited as alternatives to parties. After setting out the functions of parties, this Working Paper will address to what extent these alternative organizations can actually replace parties in the performance of these functions.

3. Four democratic functions of political parties

Democracy is based on the idea of self-government. This means that governmental authority is based on the consent of the people, is subject to limits, and is exercised for the equal benefit of all citizens. In order to implement this idea, constitutions have two essential functions: First, they limit governmental power through, for example, checks and balances, fundamental rights, and minority protections. But secondly, they also have a “positive” or constitutive function: Constitutions create institutions and frameworks for decision-making that translate the diffuse interests of mass society into governmental policies. In representative democracy, the major decision-making procedure is elections. Electoral democracy may be complemented by mechanisms of direct democracy such as referenda, but these mechanisms do not fulfill the function of elections, namely selecting representative for government.

That said, elections alone do not mean democracy. Elections need to effectively translate citizens’ preferences into representative institutions and governmental policies. Consequently, effective electoral democracy depends on certain enabling conditions. At least four such conditions can be identified: (1) peaceful competition for power (competition); (2) effective citizen representation and participation in politics (representation); (3) stable government and effective lawmaking (stability); and (4) political accountability of government (accountability). In established democracies, political parties make a contribution to promoting all these conditions.

3.1 CHARACTERISTICS OF POLITICAL PARTIES IN HEALTHY DEMOCRACY

Before discussing the role of parties in establishing these four conditions, it is useful to consider why parties are well-placed to assist in promoting them. Three characteristics of political parties distinguish them from other forms of political organization, and highlight their suitability for this role:

1. Parties are voluntary associations of citizens that are independent from the state. This enables citizens to freely associate with one another in organizations that represent their collective interests. Parties can thus aggregate the diversity of opinions in pluralistic societies.
2. Parties seek to influence public opinion, compete for political office and participate in elections, and they attempt to do so over sustained periods of time. The links that political parties establish between public power and civil society help to promote systematic transmission of information and preferences between citizens and the state. As they compete for political power, parties provide citizens with viable policy options that have a realistic chance of becoming government policy.
3. Parties seek to win political power in elections by appealing to large numbers of people across the political and social spectrum of a country. If a party is to do well in an election, it must develop a comprehensive political program and take responsibility for governing the country as a whole. This means that parties cannot and usually do not focus on a single issue or constituency. They rather develop solutions and policies that cover the breadth of social and economic problems faced by a country. These solutions and policies usually represent compromise among a variety of interests within the party.

Alternative forms of political organization such as independent parliamentarians or NGOs generally lack one or more of these attributes. This means that they may contribute to one or the other of the four conditions that promote electoral democracy, but they are unlikely to fulfill all of them at once. The combination of these three features in political parties enables them to promote all four conditions that support electoral democracy.

3.2 PEACEFUL COMPETITION FOR POWER AND POLITICAL PLURALISM

Peaceful and regular competition for political power through elections is a defining feature of stable democracy. Democracy implies that dialogue and public debate, rather than violence and oppression, are the primary means of government. Meaningful political competition generally requires a measure of political pluralism: several political groups must be willing and able to compete for power in elections. Where regular electoral competition for political power takes place, power is less likely to be monopolized in the hands of one dominant group.

Political parties play a role in both lowering tension between groups in society and ensuring political pluralism. They offer competing groups such as revolutionary movements, military organizations, and remnants of the old regime an organizational form for organizing their supporters and for expressing their interests and demands. Empirical evidence from Afghanistan, for instance, suggests that at least some armed groups and local warlords gave up armed fighting when offered the alternative of having a share in political power through the vehicle of a political party. While this is by no means a secured outcome, it is clear that the absence of effective guarantees for political parties is a disincentive for groups to peacefully compete for power *within* the democratic political system.

Political parties are also more effective in upholding competition among groups than isolated individuals. In the absence of effective intermediary organizations like political parties it is easier for small groups to capture and monopolize the state apparatus. In addition, social organization may fall back on kinship and tribal ties, as was the case in pre-revolutionary Libya where political parties and other intermediary organizations were mostly absent.

In new democracies, a plurality of political voices may emerge following the collapse of a political regime that previously suppressed the free expression of political opinion and prohibited political association. Political parties may help to aggregate these voices and bring cohesiveness to an otherwise chaotic and divided political system.

Parties offer a release valve for social tensions and enable citizens and social groups to feel part of the same political community despite differences of ethnic background or religious views. Indeed, a 2013 opinion poll in Libya showed that post-revolutionary party affiliation tended to be driven more by the parties' political ambitions than by local or tribal ties.

3.3 CITIZEN REPRESENTATION AND PARTICIPATION IN POLITICS

Representative democracy creates an opportunity for groups and individuals to have a voice in government, even though they cannot participate directly in government. However, the mere existence of representative institutions is not enough for meaningful democracy. The real challenge is to forge a link between a society's numerous and diverse policy preferences and the representatives who govern. This link requires some entity to mediate between citizens and state institutions. Political parties can perform this intermediary function in three important ways:

1. Political parties offer a mechanism to aggregate, articulate and mobilize social interests and preferences. Well-organized parties are continuously in touch with their members and citizens, not only during election periods. They listen to citizens' needs, mediate between different opinions, and give citizens a voice in representative institutions. Political parties are, so to speak, the ear of democracy and the voice of the people. While it certainly the case that not all parties fulfill this function equally well in all democracies, without parties this function is likely to go unfulfilled at all.
2. Parties offer all citizens greater opportunities for active political participation. Parties provide the organizational infrastructure that make it more likely that any citizen will be able to stand for election. In the absence of this party infrastructure, it is more likely that only wealthy and influential individuals will be able to afford to campaign effectively. In democratically organized parties, all members have a chance to influence the political program and to select candidates.

3. Political parties contribute to the formation of public opinion, and disseminate political information based on which public opinion can be formed. When it comes to elections, citizens often cannot form an opinion on every single issue and on every single candidate. Party programs and party labels simplify this electoral choice.

3.4 EFFECTIVE LAWMAKING AND STABLE GOVERNMENT

Successful democracy depends on the ability of the legislature to continuously enact legislation that effectively responds to social and economic problems, and it requires a stable government capable of implementing policies and providing competent leadership without frequent disruptions. To be effective, the various legislative programs and government policies need to be coherent and coordinated. This means that they do not contradict or counteract each other, that they prioritize the most pressing measures, and that they systematically tackle bottle-necks and impasses that stall economic development and social progress.

In established democracies, political parties play a critical role in ensuring the efficacy of the lawmaking process and in providing stability to government. Precisely because political parties must develop coherent policy platforms that appeal to a wide cross-section of society, and which can be translated into government and bureaucratic action, parties generate balanced and coherent governmental programs more easily than individuals or organizations focused on specific interests. Parties also develop internal structures of interest aggregation, specialization and discipline that make it easier to organize stable majorities in the legislature, to execute policy coherently in the bureaucracy, and to competently negotiate political compromises when necessary.

While elected representatives in most democracies are formally independent, political parties generally develop mechanisms to enforce adherence to a party line. This is not necessarily undemocratic if every party member has a chance to influence the formation of the

party line in the first place. Such party discipline stabilizes the government and enables it to implement its political program in a more coherent manner than in a situation where majorities must be formed anew on each political issue. Moreover, party-led negotiations can often reach political compromises more efficiently than discussions among a multitude of independent lawmakers.

3.5 POLITICAL ACCOUNTABILITY OF GOVERNMENT

The mere fact that public officials are elected does not guarantee that they will continue to be responsive to citizens' needs, nor that abuse of public power will not occur. Hence, electoral democracy also depends on mechanisms of governmental accountability, to ensure that government can be sanctioned when it fails to discharge obligations to the electorate or where it abuses power in unconstitutional or unlawful ways. Regular elections offer one mechanism to hold elected officials accountable, but elections happen rarely, only every four or five years. In between elections, government policies and conduct need to be scrutinized to expose misconduct and failures.

In established democracies, parties are an important channel for holding government to account for its actions. They help citizens assign responsibility for success and failure more clearly than would be the case if governmental policy was based on shifting, ad-hoc majorities of mostly independent politicians. Opposition parties, in particular, critically scrutinize government policies and conduct between elections and provide policy alternatives for citizens who disapprove of the government. Opposition parties in parliament have access to information and are well-placed to voice criticism. In some established democracies, opposition parties form a "shadow government" or "shadow cabinet" that assigns specialized members to scrutinize particular government ministries. Independent members of parliament or loose coalitions of opposition members of parliament lack these organizational advantages.

Well-organized opposition parties provide a more effective check on government and a more powerful bulwark against the centralization of power than both

individual opponents or political groups outside parliament, and unaffiliated independent or small opposition groups within parliament. If functions of accountability are to be achieved, non-partisan political structures or entities must establish alternative mechanisms of holding government to account.

4. Possible problems with party politics

As with any institutional arrangement in a modern, plural society, the democratic benefits of party politics depend upon a number of conditions and external factors. If these conditions are not met, party politics can itself present a risk to democracy and effective government. These risks may provide a justification for moving away from partisan politics towards a non-partisan political system. This section of the Working Paper considers some of these problems and analyzes whether doing away with political parties would actually solve them.

4.1 ELITISM AND NEPOTISM

A first criticism of the political party system is that political parties may come to serve the interests of small elites rather than society at large. Indeed, there is empirical evidence that in some instances political parties serve powerful individuals or special interests, as has been the case with some political parties in Afghanistan. In Tunisia, Egypt and Libya parties often rely on a few elite party members and small group of wealthy donors, as they lack a broad support base and fundraising networks. Throughout the Arab world, allegations have been made that ruling parties are nepotistic, channeling positions and benefits to close allies and family members rather than representing citizens' interests.

In light of this experience, a prohibition on partisan politics and on political parties more generally may be seen as way to limit elites' opportunities for pursuing their interests. A prohibition on parties, however, does not ensure that informal networks and other channels will not provide the same opportunities for elitism and

nepotism. Doing away with parties may even exacerbate these problems in some ways: If only independents are admitted to stand as candidates for elections, individuals without considerable personal resources and power will find it harder to compete, compared to when they could rely on a party structure for their campaign. A constitution aiming at non-partisan democracy would thus have to guard against the risks of elitism in the same manner as one relying on parties.

The opportunities for nepotism and the risks of elitism in the party system can be minimized by a political system that ensures openness, transparency and democratic practices within parties. Where parties' nepotism or other misconduct is likely to be brought to light by a vigilant and free press, with access to information and guaranteed freedom of expression, party leaders will be wary of alienating voters by serving only a narrow section of interests. Similarly, electoral laws that prohibit parties from participating in the political system unless their internal procedures comply with principles of democracy may help to reduce elitism within parties.

4.2 FACTIONALISM AND FRAGMENTATION

A second risk is that party politics may lead to divisive factionalism and political disintegration. This may occur when opinions on fundamental issues diverge and party politics becomes so polarized as to prevent compromise. In the context of divided societies, parties organized along ethnic or religious lines have sometimes deepened divisions in society instead of mediating between them. Bosnia-Herzegovina is sometimes cited as an example for this.

However, resorting to non-partisan politics will not necessarily eliminate or prevent factionalism and fragmentation, which are often an expression of underlying social structures. Candidates for government positions may still be elected on the basis of their ethnic or religious affiliation, and their presence in a legislature may still polarize the political system. In fact, it may be harder to reach compromise in a non-partisan legislature in the absence of the negotiating structures that are usually provided by parties.

The problems of divided societies exist whether or not there is a partisan political system. An alternative solution to abolishing the partisan system is to develop political structures that accommodate difference. In Bosnia-Herzegovina, for example, a three-member presidency represents each of the ethnic groups in the country, ensuring some degree of executive power sharing. In post-apartheid South Africa, the interim (1993) Constitution provided that any party holding 80 or more seats in the lower house of the legislature would be entitled to appoint an executive Deputy President, while any party holding 20 or more seats would be entitled to at least one portfolio in the executive cabinet. These 'governments of national unity' may help to encourage power sharing and minimize factionalism.

In a partisan political system, one of the ways of reducing the likelihood of party fragmentation is to set a threshold to entry into the legislature. Where a party must win a certain percentage of the national vote – say five per cent – it has an incentive to maintain some degree of coherence and unity, and to resist an impetus towards fracture or fragmentation, as described in the next section.

4.3 GOVERNMENT INSTABILITY

Thirdly, democracies sometimes suffer from unstable government where the party system is so undeveloped that there are, effectively, no political parties. This is illustrated by Libya's post-Gadhafi experience, where the representation of numerous, non-partisan independent members of parliament made formation of a government capable of commanding the support of the legislature difficult. Moreover, Libya has experienced a frequent turnover in government, as the Prime Minister can be easily dismissed by the legislature in the absence of party support within the legislature. A historical example is the Weimar Constitution in Germany, which did not include effective mechanisms to mitigate party splintering. Weimar Germany's proportional representation electoral system and its many political parties, deeply rooted in specific constituencies including landowners, Catholics, and civil servants, contributed to chronically fragile coalitions and Prime Ministers powerless in the face of a fractured legislature incapable of providing a

clear policy mandate to the government. As a result, the President of the Republic assumed increasing powers of government and legislation, by means of presidential decrees. This system eventually slid into the Nazi dictatorship.

Problems of government instability plague well-established contemporary democracies also. For example, Italy experienced a period of deadlock after the February 2013 general election, and the government eventually formed in April 2013 was replaced in February 2014. The reaction to government instability in these established democracies, however, has not been to ban party politics, but to adjust the rules of the party system. For example, in March 2014 the lower house of Italy's legislature approved a new electoral law designed to reduce the number of smaller parties. The bill, yet to be approved by the upper house, would require parties to win a threshold percentage of votes in order to enter the legislature, and requires a run-off vote if no party or coalition wins at least 37 per cent of the vote.

Similarly, Germany's electoral rules include minimum thresholds for elections: parties can only take up seats in the legislature if they win more than five per cent of valid votes or win at least three single-member constituencies.

These threshold rules prevent the proliferation of smaller parties in parliament and encourage the formation of parties that have electoral appeal beyond single issues or special interests.

A prohibition on political parties, by contrast, makes threshold rules impossible. Non-partisan elections require candidates for election to run as individuals and independents, with the resulting legislature composed of numerous disaggregated individuals and loose coalitions representing a wide array of political interests and policy preferences. In the absence of cohesive voting groups within the legislature to support a government, the risk of unstable government is very high. A legislature without parties will have to evolve alternative or informal mechanisms of aggregating political and policy interests, in order to ensure that the members of the legislature can come together to support a government for an extended period.

5. Designing constitutional democracy with a minimal role for political parties

Most modern democracies regulate parties by law, with the intention of creating the legal framework within which parties can operate. The legal framework is intended also to mitigate the risks associated with party politics. This section reviews the legal instruments to regulate parties, and discusses what consequences may arise if constitutional drafters choose to limit or even exclude the role of political parties.

5.1 LEGAL REGULATION OF THE PARTY SYSTEM IN EXISTING DEMOCRATIC SYSTEMS

Modern constitutions have several types of provisions regarding elections, electoral laws, and political parties. The advantage of putting provisions in the constitution is that constitutions are more difficult to change, and thus less likely to be amended by a self-interested governmental majority. However, there is a limit to how much detail can be included in the constitution, and constitutional provisions regarding elections, electoral law and parties often provide that more detailed arrangements must be set out in legislation. The following sections detail elements of the political system that are often regulated by modern constitutions and/or fleshed out in subordinate legislation.

5.1.1 Freedom of association and guarantees for the formation and operation of political parties

The rights to freedom of association and to form and join political parties signal a serious commitment to multi-party democracy, irrespective of which political party or person happens to be in power. These rights provide guarantees that all persons and parties will be able to compete peacefully for political power in multi-

party elections. An example is Art. 35 of the 2014 Constitution of Tunisia, which reads:

The freedom to establish political parties, unions, and associations is guaranteed. Political parties, unions and associations must abide, in their internal charters and activities, by the constitution, the law, financial transparency and the rejection of violence.

5.1.2 Establishment of an independent commission to oversee elections and political party laws

As with any form of competition, political competition needs an arbiter that ensures that political parties abide by the rules, and protects parties against undue interference from the state. An independent judiciary is important in this regard. Many states have also found it useful to place the administration of electoral and party laws in the hands of non-political bodies like an independent electoral commission. For instance, Art. 126 of the 2014 Tunisian Constitution establishes an independent elections commission entrusted with the management of elections and referenda and composed of nine independent, impartial and competent members.

5.1.3 Basic character of electoral system (proportional or constituency-based or mixed)

Political competition takes the form of elections, and constitutions often lay down some basic rules of the game to remove them from day-to-day politics. Electoral laws are the primary instrument available to policy makers for shaping a party system. For example, Art. 55(1) of the Tunisian Constitution provides: "Members of the Chamber of the People's Deputies shall be elected in secret, direct, free, fair and transparent general elections in accordance with the Election Law."

5.1.4 Party registration

Some electoral laws may prohibit political parties that are themselves non-democratic. The requirement that

parties be registered allows the state to scrutinize political parties and determine whether or not a party falls foul of these prohibitions. For instance, some constitutions or laws require the internal organization of political parties to follow democratic principles, to promote citizen participation in the party structures and prevent powerful individuals or small elites from dominating the party agenda. Multi-ethnic states sometimes ban single-ethnicity parties and require all parties to have a nation-wide base and/or to establish offices in all parts of the country in order to prevent ethnic or religious affiliation from playing a divisive role. For instance, the Constitution of Sierra Leone provides in Art. 35(5) that no organization shall be registered or allowed to function as a political party if its membership is restricted to a single ethnic, tribal or religious group, its motto or symbols are of particular or exclusive significance to a single ethnic, tribal or religious group, or its purpose is to advance the interests of a single ethnic, tribal or religious group. Afghanistan has enacted legislation that requires political parties to have offices in all provinces of the country. Other requirements, either in legislation or the constitution, may concern representation of women and minorities.

Many democracies place restrictions or bans on extremist and anti-democratic parties. The basic conditions for such restrictions and bans are mostly regulated in the constitution and are administered by an independent institution. This helps to prevent abuse by those in power. For example, Art. 21(2) of the German Constitution provides that party bans may be determined only by the Constitutional Court. The article provides:

Parties that, by reason of their aims or the behavior of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality.

5.1.5 Principles governing party finance

Campaigning and political communication require resources, and many democracies regulate the way in which parties are funded, be it through private or public funds. These restrictions on party funding may

require transparency and disclosure of funding sources, regulate the amount of private donations, and provide for some public funding of party activities or campaigns. Article 35 of the Tunisian Constitution is an example of a constitutional provision to this effect. At the same time, these restrictions must not disproportionately curtail the guarantee for parties to operate freely and for citizens to express their political support. Constitutional provisions usually set out the principles of party finance regulation, while the regulations themselves are often very detailed and are typically contained in legislation.

5.1.6 Role of parties in the formation of government

In parliamentary democracies, the constitution sometimes contains explicit rules that the party or coalition with the largest share of seats in the legislature must be entrusted with the formation of government, in order to ensure a measure of stability. This rule is contained, for instance, in Art. 89(2) and (3) of the 2014 Tunisian Constitution. In other countries like Great Britain or Germany, there is an unwritten constitutional convention or constitutional practice to this effect.

5.2 ELECTORAL LAWS

Besides constitutional provisions, electoral laws are the primary instrument available to policy makers for shaping a party system. Electoral laws may pursue a number of objectives and principles, listed separately below.

5.2.1 Proportional representation

In order to most accurately represent voters' choices, electoral systems may provide that the number of seats a party occupies in the legislature is proportional to the share of votes it wins in national elections. Most countries that use proportional representation do so based on a party list, in terms of which seats in the legislature are allocated to each party proportionally to performance in the election and according to the list of electoral candidates prepared by each party before the

election. Party list PR is used, for example, in Algeria, Iraq, Spain, and Turkey.

5.2.2 Accountability to voters

An electoral system can focus on making individual representatives more closely accountable to a particular constituency by creating numerous single-member election districts in which candidates compete for the same seat. Elections in the United Kingdom follow this "first-past-the-post" system, which has led to a two- to three-party system in which smaller parties get disproportionately small numbers of seats in parliament. Some mixed electoral systems set aside some seats for election through a single-member constituency system, while other seats are filled by election through a system of proportional representation. This is the case in Germany.

5.2.3 Simple versus absolute majority requirements

In single-member constituencies, a candidate can be elected by a simple majority, in a first-past-the-post-system such as in the UK's parliamentary elections, or by an absolute majority of at least 50 per cent plus one of the total votes cast. The benefit of the majority vote system is that candidates for election must command wider electoral appeal in order to meet the higher threshold. In France, where this system is used, two rounds of votes are sometimes required to ensure that a clear majority winner emerges. Multiple rounds of voting can be costly, however. An alternative is the "single transferrable vote" system, in which voters list their first- and second-choice candidates in a single round of voting.

5.3 CONSTITUTIONAL DESIGN OPTIONS FOR POLITICAL SYSTEMS WITHOUT POLITICAL PARTIES

5.3.1 Electoral rules

If a democratic system was to function without political parties, constitutional provisions and electoral rules would have to change accordingly. Most importantly, in

a system without parties, all political candidates for elections would have to present themselves as “independent”. This is the case in the legislature of the US state of Nebraska, where candidates for election appear on the ballot paper without any formal party political affiliation. The legislature’s leadership (i.e. the speaker and legislative committees) is not based on party affiliation. However, members of the legislature in this system do have non-formal ties to political parties, and most voters are aware of them. This can hardly be prevented, as freedom of association in principle guarantees that citizens can join organizations and associate freely, including for political purposes. A constitution or legal system that prohibited political association altogether would severely limit the right to freedom of association.

A prohibition on political parties would also limit the choice of electoral laws: The system could not be based on proportional representation based on party lists. It would most likely have to be based on a constituency system with each constituency represented by a single elected person, or by a very small number of elected persons. Similarly, the voting system for the president would have to take account of the fact that there is no party system to identify suitable candidates for president. Without party affiliation and support, no single candidate is likely to win a clear majority outright, and two or more rounds of voting would probably be required. This system, both in parliamentary and presidential elections, would favor personalities who are well known locally or who can afford expensive advertising, and disadvantage younger candidates or new entrants to politics. By contrast, well-functioning political parties are often able to identify, select, train, and ultimately promote their younger members as viable electoral candidates, creating opportunities for voters to choose from a wider range of candidates than would be possible in the absences of parties.

Creative legislation may provide some functional equivalents for parties in this regard. For example, legislation may attempt to mitigate the influence of established politicians or wealthy individuals in a non-partisan constituency system, with provisions that require disclosure of a candidate’s personal wealth and funding sources. This would help voters to make an informed decision. Public funding for candidates may

also help to ensure some degree of equal opportunity for all candidates. Although such funding is often provided to parties, some systems cover the campaign costs of individual candidates if they can establish minimum levels of support through, for example, signed petitions from supporters. In the US, candidates for presidential elections can choose to opt into a system of public funding for presidential campaigns. The vast majority of candidates in US presidential elections, however, are members of and represent a political party.

5.3.2 Government

A non-partisan system would also influence the design of the system of government more generally. Without parties, it may be very difficult to have a parliamentary system with a prime minister, because the prime minister requires the support of a stable majority in the legislature. A stable majority may be difficult to achieve, or to hold together for long periods, in a legislature composed of unaffiliated individual representatives. A legislature that is composed of independent and non-partisan members may struggle to find the policy or ideological bases on which consensus and political cooperation can proceed. Governments as well as the legislative process would have to rely on shifting coalitions and shifting majorities. All votes would be “free votes” (i.e. not determined by party discipline), which leaves the outcomes of the legislative process uncertain. This may render government policy inconsistent and incoherent unless mechanisms of policy coordination other than party programs are in place.

Moreover, in presidential or semi-presidential system in which the president and the legislature are elected in non-partisan elections, the president is more likely to emerge as the dominant political figure because he or she only needs to command a majority of the electorate once, at the time of the presidential election. The members of the legislature, on the other hand, must deliberate and reach majority decisions throughout the life of the legislature. Further, in a semi-presidential system where the legislature is fractured, the prime minister may enjoy only fleeting support from a temporary coalition or majority, and without consistent legislative support will be less able

to challenge the president. In order to act as a check on the president and ensure that the legislature is able to exercise oversight of the president, members of the legislature will need to form voting blocs or groups that will look increasingly like political parties.

5.3.3 Parliamentary rules

In order to guard against the fragmentation of parliament and ensure a minimum of legislative effectiveness, the rules of procedure in parliament could allow members of parliament to form parliamentary groups for the duration of the legislative period. Moreover, to keep the legislative process efficient, parliamentary rules could require legislation to be initiated by a minimum number of parliamentarians. For example, Art. 62 of the 2014 Tunisian Constitution requires that private members' bills be tabled in the legislature with the support of at least ten members of parliament. As regards the role of the prime minister and his cabinet in a semi-presidential or parliamentary system, a measure of stability could be achieved by keeping the majority required to pass a vote of non-confidence high, at more than a simple or absolute majority for example. Similarly, while a procedure that allows the recall of individual members of government may destabilize the government over minor policy issues, a rule that limits votes of non-confidence to the entire government may ensure that the government is dismissed only in cases of fundamental political disagreements.

While it may be difficult to identify "the opposition" in a non-partisan system, parliamentary rules and procedures could give recognition to voting blocs that are opposed to a majority voting bloc in the legislature or to the policies of the government. In order to encourage effective opposition politics, the constitution could foresee some special rights for these opposition members of the legislature. These rules would enable the opposition to exercise scrutiny of government policies through, for example the formation of parliamentary committees to investigate government misconduct. Art 60 of the Tunisian Constitution empowers the opposition to create and preside over investigative committees, and reserves the posts of president of the budgetary committee and rapporteur

of the foreign affairs committee to opposition politicians.

In the absence of strong opposition parties, other actors outside parliament become crucial for governmental accountability. This requires strengthening civil society organizations and trade unions, ensuring freedom of the press and media, and an independent and effective judiciary. At the same time, however, a fledgling non-partisan democracy would have to guard against non-democratic opposition groups which may resort to illegal extremist activity in the absence of an opportunity to organize themselves into political parties.

5.3.4 Direct democracy

Finally, a non-partisan system may rely on direct democracy. Referenda allow citizens to express their preferences on a particular policy question directly, without the formal mediation of representatives or parties. Referenda are a mechanism to circumvent the traditional party-political and representative system. However, most existing examples of direct democracy function in the context of a party political system. Parties often play a role in selecting the questions that should be put to a referendum, in informing citizens of their choices in the referendum, and in implementing the results of the referendum. If referenda are to be used on a national or local level as a mechanism of direct democracy, the constitution or implementing legislation will have to specify who is empowered to call a referendum and to formulate the question, what the quorum for a valid referendum is, and how the referendum outcome would be implemented.

5.3.4 Is democracy possible in a non-partisan system?

Whether a non-partisan system built on these elements could sustain democracy is doubtful. Very few nation states operate democratic systems without political parties, and those that do are very small in terms of both geographic size and population, and are thus of limited comparative value to emerging democracies in larger nation states. There are no non-partisan democratic systems that can serve as a model

for these emerging democracies. The non-partisan legislature of the US state of Nebraska illustrates that non-partisan democracy can function on a sub-national scale, but even this system operates in the context of a well-established national democratic party-based system and party-based executive elections. Historical examples of non-partisan political systems in Africa are sobering: Ethiopia for instance experienced contested elections without political parties in the 1950s and 60s, but lapsed into autocratic rule soon thereafter. In single-party states, where only one political party exists and is the party of government, periods of impressive economic growth have been experienced: China is the major example. But in China, mechanisms of intra-party competition and interest aggregation within the ruling party, such as the party congress, deliver some of the benefits of the political party system even in the context of a single-party system.

6. Conclusions

Political parties play an important role in consolidating democracy. They perform important functions relating to political competition, representation, stability and accountability. It is thus no surprise that multi-party systems have evolved in all established constitutional democracies. Weak party systems have been a major obstacle to past democratic transition experiences, such as in Iraq and Egypt. Designing a constitutional system with a minimum role for political parties is thus a difficult task. Simply banning political parties without providing for alternatives is not a solution, as democracy requires the performance of the functions ordinarily performed by political parties – whether they are performed by political parties or not. This Working Paper makes some suggestions for how these functions may be performed in a non-partisan system. Whether these suggestions will work in practice, however, is hard to predict without any global experience of large-scale, national-level non-partisan democracy.

Ultimately it is for each society to decide whether political parties should play a role in its political system. The available options should be carefully analyzed in light of the specific context. The architects of a new political system may wish to take into account citizens' views in this regard: citizens may in fact

consider political parties important, as indicated by recent opinion polls.

In countries with limited experience of political parties, an experimental approach could be adopted. A non-partisan system could be established, with constitutional provisions expressly allowing for, if not actively mandating, reconsideration and possibly modification of the system at a later date. Constitutional rules that are difficult to amend will prevent future generations from reconsidering and amending the rules of the political system: at a minimum, therefore, it is prudent to ensure that the rules of a non-partisan political system are capable of adjustment and change at a later date by the appropriate legislative majority. So called "sunset provisions", which expire after a specified amount of time, are one possible instrument of an experimentalist constitutional approach. Sunset provisions require a legislative majority to actively renew a constitutional arrangement, rather than to actively overturn or change that arrangement. In the absence of any global experience of meaningful, large scale democracy in a non-partisan system, an experimental approach is a desirable approach for the establishment of a non-partisan system.