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SEMI-PRESIDENTIAL GOVERNMENT IN THE POST-AUTHORITARIAN CONTEXT

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Executive Summary

The semi-presidential system is a form of government in which a directly elected president shares executive power with a prime minister and government appointed by, and serving with the continuing confidence of, a democratically elected legislature. The system is characterized by two sites of executive power, each with a separate electoral mandate.

Semi-presidentialism offers a middle ground between "pure" presidential and "pure" parliamentary systems of government.

The dual executive structure of the model is a move away from a purely presidential system of government. At the same time, political conditions in democracies emerging from authoritarianism may not be ripe for parliamentary government, especially if party structures are weak and parties have little experience with true electoral and parliamentary democracy. A dual executive structure, therefore, might be especially attractive to new or transitioning democracies.

The influence of a country's historical experience can further influence its choice of post-authoritarian system. Where semi-presidential government precedes the transition to democracy, there is a likelihood that semi-presidential government will emerge after the transition. Historical bias towards a system with which people are familiar may lead to greater support for that system over any other. The architects of a post-authoritarian semi-presidential system have an opportunity to learn from the experiences of authoritarian government under the previous semi-presidential system, and design a system that guards against these risks.

This Working Paper considers the options available for structuring the semi-presidential system under three headings: constitutional architecture; the distribution of executive powers; and security and emergency powers.

CONSTITUTIONAL ARCHITECTURE

The basic structural features of a system of government can be thought of as that system's constitutional architecture. In the semi-presidential system of government, precisely because it blends features of pure presidential and pure parliamentary systems, the following features of constitutional architecture are important:

1. Government formation;
2. Government dismissal;
3. Dissolution of the legislature; and
4. Presidential term limits and mid-term removal of the president.

DISTRIBUTION OF EXECUTIVE POWER AS A MECHANISM OF CHECKS AND BALANCES

As a system of government characterized by a dual executive, the distribution of power between the president and the prime minister is a key consideration. Where the balance of power between the two executive leaders favors one over the other, there is a danger that the benefits of the system, as a middle ground between presidentialism and parliamentarism, will be undermined. Subject areas where the distribution of power between president and prime minister is critical to the success of a semi-presidential system are:

1. Domestic and foreign policy;
2. Decree authority;
3. Appointment of senior officials to the civil services and bureaucracy;
4. Chairmanship of the cabinet;
5. Veto powers.

SECURITY AND EMERGENCY POWERS

The distribution of security and emergency powers between the president and prime minister warrants special attention. Whether a president exercises control over the security forces, and has the ability to declare a state of emergency and exercise emergency powers, will affect the balance of power in a semi-presidential system. It is important that constitution-makers carefully consider who holds the following powers:

1. Commander-in-chief powers such as:
   a. Declarations of war and states of emergency;
   b. Deployment of the armed forces domestically and abroad;
2. Powers to appoint the cabinet members responsible for security and defense; and
3. Powers to appoint senior bureaucrats in the security and defense infrastructure.

Further, the constitutional rules governing the state of emergency require special attention. While the rules that constrain executive powers during emergencies are important in any system of government, they are of particular concern in semi-presidential systems because of the opportunities that emergency powers may create for one of the two executive leaders (usually the president) to side-line or undermine the political interests represented by the executive leader that is not granted emergency powers (usually the prime minister). For this reason, rules governing the following require consideration:

1. Who has the power to declare a state of emergency?
2. How long can a state of emergency last?
3. Under what conditions can a state of emergency be declared?
4. What are the substantive limitations on the exercise of emergency powers?

This Working Paper considers a range of options available for a semi-presidential system under each of these three topics of constitutional design. Underlying the discussion of these options is the recognition that semi-presidentialism is adopted as a middle ground between two "pure" forms of democratic government, and is intended to avoid risks associated with each of these pure forms.

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1. Introduction

Semi-presidentialism is a form of government in which (i) a president is directly elected by a popular vote to serve a fixed term as head of state, and (ii) a prime minister leads a government for as long as it enjoys the support of a majority of a popularly elected legislature, and (iii) the president and prime minister share executive authority. The president is directly elected by and accountable to the people, while the prime minister and government hold a governing mandate from, and are accountable to, the legislature. The existence of two executive leaders, with different bases of electoral legitimacy, distinguishes semi-presidential government from pure presidential government and from pure parliamentary government.

The attraction of the semi-presidentialism is that the dual executive model may lower the risk that political power will become centralized in either the president or the prime minister, while the dangers of a rapid move to a pure parliamentary system can be mitigated. Semi-presidentialism ensures that there is a site of executive power even if the legislature is less effective, but splits executive power between the president and prime minister as a way of reducing the prospects of the centralization of power in a strong president.

However, simply establishing a semi-presidential form of government is not enough to ensure that a new democracy will avoid the dangers of both centralized executive power and a chaotic, fractured legislature. Careful thought must be given to the matters of institutional design that structure the relationship between the president, prime minister, and legislature, and the extent to which specific choices of constitutional design tend to promote two outcomes:

1. effective yet restrained executive leadership; and
2. an effective and functioning legislature, with the president able to step in to provide executive leadership in the event of legislative incapacity.

Three areas of institutional design are important to constructing an effective semi-presidential system: (1) the constitutional architecture establishing the semi-presidential system; (2) mechanisms by which power is exercised and shared within a semi-presidential system; and (3) responses to political crises.

2. Constitutional architecture

The "constitutional architecture" of government is the institutional and structural framework within which power is exercised. Different constitutional architectures offer different incentives to the president and the prime minister to cooperate and compromise in the exercise of power, and affect whether power is likely to become concentrated. There are five specific questions of constitutional design that constitute this architecture: government formation (section 3.1); government dismissal (section 3.2); powers to dissolve the legislature (section 3.3); presidential term limits (section 3.4); and impeachment or removal of the president (section 3.5).

2.1 GOVERNMENT FORMATION

There are three broad options for the appointment of the prime minister:

1. The president has exclusive authority to appoint the prime minister;
2. The president appoints a candidate for prime minister, whom the legislature confirms as prime minister;
3. The legislature appoints the prime minister, and the president plays only a ceremonial role.

Where the president dominates the appointment of the prime minister and the rest of the government, the president may be able to ensure that the prime minister and government are loyal to the president or ideologically aligned with the president's political program. The French President has the exclusive power to appoint the Prime Minister, although the legislature retains the power to dismiss the Prime Minister and government through a vote of no confidence.

In contrast, where the prime minister and the government are appointed with the consent of the legislature – that is, where the legislature must

confirm the prime minister and government before they take office – the president and the legislature must work together in forming the government. This approach is followed in Russia, Croatia, Belarus, and Slovenia, among other countries.

There are two distinct advantages to this second approach. First, it is more likely that the government will represent political interests that are different to those the president represents, expanding political representation in the executive. Second, a government that is not loyal to or ideologically aligned with the president is more likely to exercise oversight and restraint of the president's exercise of power. However, there is a danger that the legislature will be unable to agree on a candidate for prime minister. If this occurs, the constitution may call for the dissolution of the legislature and for fresh elections to be held (see section 2.3).

The third option is closest to the parliamentary model. The legislature appoints the prime minister with only a ceremonial role for the president. This approach is followed in Ireland and Finland, and is rare.

2.2 GOVERNMENT DISMISSAL

There are three reasons it is important to create a constitutional mechanism for dismissing the government. First, it ensures that recourse is available when a government fails to perform. Second, where the government fails to act as a check on the president, the legislature can dismiss the government and demand the formation of a new government. Similarly, the government can be dismissed when it exceeds its own powers. Third, when president and the government are entirely unable to work together, and effective government has become impossible, dismissing the government creates an opportunity for the formation of a new government.

There are two institutional options for dismissing the prime minister and government together:

- Both the president and the legislature may dismiss the government ("president-parliamentary" government).
- Only the legislature may dismiss the government ("premier-presidential" government);

If the president has the power to dismiss the prime minister ("president-parliamentary" government), he or she can use this power as a threat to coerce the prime minister to support the president politically. The president has little incentive to accommodate different political interests in the legislature, because the president can simply dismiss a prime minister and government that do not support the president. In these circumstances, the president may more easily centralize political power, with little or no opposition from the prime minister or government.

Comparative experience and empirical evidence indicates that premier-presidential systems, where the president cannot dismiss the government, resist autocracy, executive dominance, and democratic dictatorship better than president-parliamentary regimes. Failures of democracy occur more than ten times more frequently under president-parliamentarism than under premier-presidentialism (Elgie: 2011).

Countries that adopt (or adopted) the president-parliamentary approach include Belarus, Burkina Faso, Central African Republic, Croatia (1991-2000), Iceland, Madagascar, Mozambique, Niger, Peru, Portugal (1976-1982), Russia, Senegal, Sri Lanka, Taiwan, and the Weimar Republic.

Countries that adopt (or adopted) the premier-presidential approach include Bulgaria, Cape Verde, Croatia (2000-), Finland, France, Georgia (2013-), Ireland, Lithuania, Macedonia, Mali, Moldova, Mongolia, Namibia, Poland, Portugal, Romania, and Slovakia and Slovenia.

Russia's experience stands as a warning against empowering the president to dismiss the government. From 1993 to 2001, the President's party did not have a majority in the Duma, which made conditions ripe for power sharing – yet no power sharing occurred. The President dismissed six different Prime Ministers during this eight-year period. Five Prime Ministers served with President Boris Yeltsin between 1998 and 1999 alone. These dismissals largely served Yeltsin's own quest for power. Partly due to these repeated dismissals, Russia was frequently without a sitting government for a period of months. The ensuing political instability harmed both the transitioning democracy and the economy.

In the premier-presidential system, the president does not have the power to dismiss the prime minister and the government, and the prime minister and president can become coequal executives. Furthermore, the prime minister and government remain accountable to the legislature only, ensuring that the president cannot unduly influence the government's program. Finally, the legislature can act as a more effective check on the prime minister and government when the government is accountable only to the legislature and not to the president in addition.

The danger of empowering only the legislature to dismiss the prime minister and government is that when the legislature is fractured or divided, it may be unable to muster the majorities needed to support a vote to dismiss the government or to agree on a new government. However, the risk that the legislature will not be able to dismiss an underperforming government must be weighed against the risk that the president will be able to dominate the prime minister and government through the threat of dismissal.

In both premier-presidential and president-parliamentary systems, the mechanism by which the legislature dismisses the prime minister and government is the "vote of no confidence." There are different procedural options for the vote of no confidence. A new semi-presidential system may consider the following procedural safeguards to ensure that the no confidence mechanism is not abused:

1. *Tabling a motion of no confidence*: A motion of no confidence may only be tabled for vote if supported by a significant minority of members: e.g. 25 per cent or one third of the members of the legislature.
2. *Passing the motion of no confidence*: The constitution may require that the motion of no confidence be passed by a majority of the members present, by a majority of members "present and voting", or by an absolute majority of all of the members of the legislature. The higher the voting threshold for the passing of a vote of no confidence, the more secure a government will be. The benefits of easily dismissing a government through no confidence procedures must be balanced against the risk of unstable government where the government is easily dismissed.
3. *Constructive vote of no confidence*: The constitution may require the legislature to approve a new prime minister before the existing prime minister is dismissed. This ensures that there is no power vacuum once the government is dismissed.

In addition to dismissal by the legislature, most semi-presidential systems provide that the prime minister may resign, thereby automatically dismissing the entire government. The prime minister is usually empowered to dismiss and replace individual members of the government.

2.3 DISSOLUTION OF THE LEGISLATURE

Dissolution of the legislature by the president is a drastic move, but one that is sometimes necessary when the legislature is incapacitated or where the president and the government are so opposed that they cannot effectively govern together. Since the government's term of office comes to a natural end when the legislature's term ends, dissolving the legislature and calling for new elections allows the president to "reset" the political landscape. The new legislature may be constituted differently, to reflect changing political preferences in the country. This new legislature will in turn support a new government, which may prove more capable of working with the president and more effective in pursuing a policy program acceptable to the legislature.

Legislative dissolution carries significant costs and consequences, however: new elections must be organized, and there may be a vacuum of executive power as a result of the dismissal of the prime minister and government. There are some ways that a constitution can guard against these risks.

It is necessary at the outset of the discussion to distinguish between discretionary dissolution, where the president chooses to dissolve the legislature for a specific reason, and automatic or "mandatory" dissolution, which happens by operation of law when the legislature cannot form a government within a specified period after legislative elections.

2.3.1 Discretionary dissolution

A legislature under the ever-present threat of dissolution will not provide effective or credible checks on the exercise of executive power. Kuwait provides a good example of the dangers of unconstrained dissolution power, where the Emir dissolved the legislature five times between 2006 and 2012.

However, a legislature that is divided and beset by conflict between a number of parties with weak representation in the chamber may struggle to produce legislation necessary for the functioning of a government (such as a budget law). It may be necessary in these situations to dissolve the ineffective legislature and call for new elections.

In Russia's semi-presidential system, the President may dissolve the legislature (the Duma) when the legislature passes two successive votes of no confidence in the government within three months. A deadlocked legislature that cannot support a government breeds political instability. The legislature must be able to agree on a government, or the semi-presidential system will be left without an effective government, functioning effectively as a presidential system. In Russia, this power is open to abuse because the President dominates the appointment of the Prime Minister: the threat of dissolution coerces the legislature to accept the President's preferred Prime Minister.

Where a president does not appoint the prime minister unilaterally, the threat of abuse by the president is reduced. Frequent and rapid dismissal of the government by the legislature may indicate that the legislature is too fractured to function effectively, and should be dissolved in order to hold fresh elections and allow the selection of a new and more stable government.

There are a number of options to ensure that the president's power of discretionary legislative dissolution does not lead to a situation in which the prime minister and government are dominated by and subservient to a strong president.

First, the dissolution power could be triggered only by specific events, such as the failure to pass a budget law after a set number of votes, or the successive dismissal of two governments by a vote of no confidence within a specified time period (e.g. three months).

Second, the risks that a president may be able to abuse the dissolution power to strengthen his or her position against the legislature and government are greater under certain conditions, such as during states of emergency or war (where the holding of fresh elections may be impossible); where the legislature has begun impeachment or removal proceedings against the president (where dissolution of the legislature would allow the president to escape impeachment or removal); or shortly after the election of a new legislature, e.g. six months (during which time the president may seek to dissolve the legislature if electoral results are not favorable to him or her). One way of limiting these risks is by prohibiting dissolution during these periods.

Third, the frequency of dissolution can be limited, for example with a prohibition on more than one dissolution within a certain period (e.g. 12 months), or a prohibition on the successive dissolution of two separate legislatures for the same reason.

Finally, the procedural rules for dissolution can help to minimize the risks of dissolution, for example by requiring that new legislative elections be held within 40 or 50 days of the dissolution, failing which the previous legislature is reinstated, and prohibiting changes to the electoral law after the legislature has been dissolved but before fresh elections are held.

2.3.2 Mandatory dissolution in case of deadlock

Where the legislature is unable to form a government, the business of government cannot go ahead. In a fragile new democracy, the failure to form a government may act as an incentive to the president or even the military to seize power. Where the legislature cannot form a government within a set period after elections (e.g. 90 days), the mandatory or automatic dissolution of the legislature ensures that fresh elections are held, and that the risks associated with the inability to form a government are minimized.

Holding fresh elections during a state of emergency or war will be difficult whether the legislature is dissolved

through mandatory or discretionary dissolution powers. For this reason, it may be preferable to allow the legislature to continue to function during a state of emergency, even though it fails to appoint a government within 90 days of election. The alternative is to dissolve the legislature and run the risk of elections not being feasible, leaving the country without a legislature during a crisis.

2.4 PRESIDENTIAL TERM LIMITS AND REMOVAL OR IMPEACHMENT OF THE PRESIDENT

Limits to the total number of terms a person can serve as president are widely accepted as elements of constitutional architecture in semi-presidential as well as presidential systems. These provisions must be carefully drafted. In Russia, for example, the prohibition on two *consecutive* terms (but the absence of a prohibition on total terms) allowed President Putin to serve a third term as President after stepping aside for a single term. This has allowed President Putin to consolidate executive power.

In addition to constitutional prohibitions on multiple terms in office, the ability to remove a president before the expiry of his or her term office is a significant mechanism by which the legislature can ensure that the president adheres to the principles of the constitution. The threat of removal will dissuade a president from acting in ways that attract the censure of the other branches and create an incentive for the president to consider the wishes of opposition or coalition parties when exercising presidential powers.

There are two different procedures for removing a president. The first is impeachment, in which the president is impeached for crimes he is alleged to have committed, tried by a specially constituted tribunal or court, and faces removal upon a guilty verdict. Usually in semi-presidential systems, a supermajority of the legislature votes either to charge the president for alleged crimes or to remove the president from office following a verdict of guilty. Where only a simple majority of the legislature (or less) can impeach the president, a supermajority must vote in favor of removing the president upon a verdict of guilty.

The second procedure involves removing the president without a trial or formal charges of misconduct. Since removal procedures are more flexible, and do not involve trial-like proceedings, the threshold for voting to remove the president is usually a supermajority. The requirement of a supermajority vote minimizes the opportunities for the legislature to abuse the process and remove the president for purely partisan reasons.

Removal procedures exist in Burkina Faso (four fifths), Belarus (two thirds), Lithuania (three fifths) and Namibia (two thirds). In France, either house of the legislature may propose the removal of the President by a two-thirds majority, upon which both houses meet in a joint sitting to consider the proposal for removal. A vote supported by two thirds of the members of the joint houses is required to remove the President. In Ireland, similarly, either house may propose the President's removal for reasons of misconduct, by a vote supported by a two-thirds majority. The house that did not propose the removal of the President must consider the proposal, investigate the charges of misconduct, and allow the President an opportunity to address the house. The President is removed by a vote supported by two thirds of the members of the second house.

3. The distribution of executive power in the semi-presidential system

3.1 DIVISION OF POWER: THE ARBITER/MANAGER MODEL

In general, semi-presidential constitutions lay out three different relationships through which the president and government exercise executive power:

1. the principal/agent model;
2. the figurehead/principal model; and
3. the arbiter/manager model.

Russia is an example of the principal/agent model, in which the President exercises explicit control over policy making, while the government is charged with implementing policy as an agent of the President. This arrangement can create the risk of a powerful,

autocratic president, especially if the president holds the power to dismiss the prime minister and government and is therefore able to coerce loyalty, or at least acquiescence, from the government. Indeed, the principal/agent model is more common in "president-parliamentary" systems where the president is empowered to dismiss the government, because the threat of dismissal discourages the prime minister and government from challenging the president's exercise of executive power.

The figurehead/principal model defers policy-making and executive powers to the prime minister and government, with the president acting only as a ceremonial figurehead. This is the case in Finland and Ireland, where the Constitution confers relatively little executive power on the President. Under this arrangement, the president exercises little influence in policy making or the exercise of executive power.

The arbiter/manager model gives the prime minister control over setting the government's domestic program and managing the day-to-day functions of government. The president functions as an arbiter, weighing in on certain constitutionally defined matters in defined ways, and holding a limited veto over legislation. The arbiter/manager model defines clear roles for the president and the government in the policy process. It strikes a balance between the pure presidential system where the president drives the policy process, and the pure parliamentary system, where the prime minister and government are alone responsible for policy and executive authority.

The French Constitution adopts the arbiter-manager model, granting the government authority over national policy, specifying that the Prime Minister will "direct" the government's actions, and authorizing the President to operate as an "arbiter" and ensure the efficient functioning of the government. This division in responsibilities, as complemented by the countersignature requirements and other procedural checks (see below), leads to a policy environment in which the French President can weigh in on (but not entirely block) the Prime Minister's direction of domestic policy.

The discussion in the sections below (sections 3.2, 3.3, 3.4, 3.5, 3.6, and 3.7) consider how these three relationships between the president and prime minister would allocate a range of specific executive powers between the president and prime minister.

Semi-presidential systems of government must pay particular attention to the distribution of power between the president and prime minister because the possibility exists that the two will not represent the same political party or coalition of political interests. Where the president and prime minister are opposed in this way, a situation of "co-habitation" emerges. While in several semi-presidential systems, such as France, co-habitation is viewed as something to be avoided, in a new democracy where several political interests are competing for power for the first time, co-habitation offers an opportunity for shared executive power. A semi-presidential system that is designed with the possible power-sharing benefits of co-habitation in mind can, in fact, help to consolidate democracy. Cases where the semi-presidential form of government has been used in a post-conflict situation to bring two oppositional political forces together in a power sharing government include Kenya (2008-2013) and Zimbabwe (2009-2013). In Tunisia following the ousting of Zine El Abidine Ben Ali during the Arab Spring, President Moncef Marzouki, of the Congress for the People, shared power with Prime Ministers from the Ennahda party. (Note, however, that President Marzouki was indirectly elected by the constituent assembly rather than in a popular vote. Popular election by the people is usually considered a requirement of the semi-presidential system of government).

3.2 DOMESTIC POLICY

Domestic policy matters include, for example, the determination of macro-economic policy. Under the principal/agent model, the president takes the lead on this and other domestic policy matters, while the prime minister acts only as the president's agent in implementing the president's decisions. In the figurehead/principal model, the president plays no role in domestic policy, leaving it all to the prime minister.

Under the arbiter/manager model, the president may be allocated a role to participate in setting domestic policy in specific functional areas. The president's policy-making powers in these specific functional areas are often curtailed by requirements that the president

act in consultation with the prime minister, through a co-decision mechanism such as "countersignature". The countersignature mechanism requires that both the president and the prime minister consent to a particular action, by each signing a single order. In France, the President is empowered to grant pardons, but the Prime Minister must countersign a presidential order granting pardons.

The prime minister remains responsible for domestic policy in all residual functional areas. This power is usually exercised by the cabinet rather than exclusively by the prime minister. The president's role as an arbiter in cabinet policy meetings can be provided for by a constitutional rule that allows the president to call and chair cabinet meetings (see section 3.6).

3.3 FOREIGN AFFAIRS

Affording the president a role in a country's foreign affairs may have three outcomes, depending on the extent of power conferred on the president.

First, it may allow the president to act a symbol of the nation. Where the president exercises only ceremonial functions, with the prime minister and government exercising all substantive powers of foreign policy, the president's role is purely symbolic. This is consistent with the figurehead/principal model.

If the rationale of giving foreign affairs powers to the president is to permit the president to represent the nation symbolically, then the constitution should distinguish clearly between foreign affairs powers with a policy-making dimension and those with only symbolic dimensions. This rationale suggests that the president be authorized to exercise enumerated symbolic or ceremonial powers and perform enumerated symbolic or ceremonial functions, but not to exercise foreign policy-making power. The president may, for example, be designated as the state's ceremonial representative at international meetings and organizations. In Iceland, the President represents the nation at international events, but the Constitution provides that the President 'entrusts his authority', including authority over foreign policy, to the cabinet.

Second, affording the president a role in a country's foreign affairs may allow the president to act as a symbol of the nation during ordinary times. This may serve to enhance the president's status as an autonomous leader able to rise above politics, offer leadership, and act as an arbiter in times of crisis, and if the legislature and government become divided. On this approach, enumerated foreign affairs powers, including policy-making powers, can be allocated to either the president or the government, while un-enumerated powers can be exercised jointly. This is the case in Finland, where the Constitution provides that 'the foreign policy of Finland is directed by the President of the Republic in co-operation with the Government' (article 93(1)). However, the government retains authority over decisions regarding the European Union, which tips control of foreign affairs in favor of the government (article 93(2)). This balanced option corresponds to the arbiter/manager option, in the sense that the government retains control over key foreign affairs powers, while the President participates in co-operation with the government in directing other matters of foreign policy.

Third, affording the president a role in a country's foreign affairs may entail granting the president extensive foreign affairs powers, empowering the president to lead the nation on the international stage, for example by negotiating and signing treaties. This is a significant and substantial policy-making role, which goes beyond a merely symbolic function or a leadership role during times of crisis and allows the president to direct foreign policy through the treaty-making power. Where this is the case, however, legislative ratification is often required before a treaty becomes binding or has domestic effect. This requirement prevents the president from legislating "via treaty", and thus bypassing the legislative process. This model has elements of the principal/agent model. In Russia, the President has virtually unchecked foreign affairs powers. The Russian Constitution grants the President the power to 'supervise control over foreign policy' (article 86(a)) and charges the government with 'implementing' the foreign policy (article 114).

The drafters of a constitution should have a clear idea of which of these three outcomes they want to

achieve, since this will affect the extent of foreign policy power the constitution confers on the president.

3.4 DECREE POWERS

A decree is a mechanism by which the executive can issues orders that have the force of law, but are not necessarily submitted to or approved by the legislature before they assume the force of law. Presidential decree powers pose a dilemma, because their exercise allows a president to sidestep the legislature and pave the path to autocracy. Yet presidential decree powers can be necessary at times: they allow for quick, efficient policy making, which may assist during a period of constitutional transition, and they may be necessary if the legislature is dissolved or during a state of emergency. Giving the president too great a range of decree powers runs the risk of undermining the legislature as the principal site of law making. The danger of presidential decree powers is amply illustrated by the example of Egypt, where President Mubarak was able to redraft the electoral law by decree. The Russian Constitution confers wide decree powers on the President, with the result that in 1996 alone, for example, President Yeltsin issued over 600 decrees. Semi-presidential constitutions must steer between giving the president too many and too few decree powers.

Regardless of how many decree powers are given to the president, confusion about the proper exercise of those powers can be minimized if the constitution enumerates clearly the subject areas in which the president can issue decrees. Further, a constitution may empower a president to exercise decree powers when the legislature cannot effectively legislate, such as during a state of emergency or legislative dissolution.

Semi-presidential constitutions often require the prime minister to countersign or confirm the decree before it takes legal effect, as a safeguard. This is the case in France, where the Constitution provides that presidential decrees on certain subjects must be countersigned by the prime minister and the cabinet minister concerned (art. 19).

Because the prime minister and government are directly accountable to the legislature and subject to direct legislative oversight, prime ministerial decree powers raise fewer concerns about power consolidation and autocracy than presidential decree powers. Prime ministerial and government regulations are sometimes necessary to ensure the effective implementation of legislation.

3.5 APPOINTMENT OF GOVERNMENT OFFICIALS AND BUREAUCRATS

By appointing their preferred candidates to senior bureaucratic offices, such as the heads or directors general of government departments, the president or the prime minister can capture the bureaucracy. This may result in the establishment of a partisan bureaucracy that is dedicated to the policy preferences of either the president or the prime minister.

This is of particular concern where the president and prime minister represent different parties, as in a situation of co-habitation: a partisan bureaucracy may undermine the power-sharing benefits that co-habitation holds for a new democracy. Careful constitutional design of appointments powers can guard against this possibility.

An important principle for appointment powers is clarity. Where a constitution expressly identifies the government officials that the president and prime minister can respectively appoint and dismiss, the risk of confusion and conflict can be minimized. A similar approach is to expressly identify only a handful of appointments that the president can make, providing that residual power to appoint and dismiss all other government officials will be held by the prime minister (or vice versa).

An alternative precaution is to require that the appointments made by the president are countersigned by the prime minister, and that the prime minister's appointments are made in cabinet (i.e., collectively by the entire cabinet and not by the prime minister acting alone) or countersigned by the president.

For particularly sensitive appointments, such as to the senior ranks of the security services and military, a requirement of legislative approval may act as a

further guard against the president or the prime minister capturing the bureaucracy through the appointments process.

3.6 CHAIRMANSHIP OF THE CABINET

Under the arbiter/manager model, the prime minister drives the policy-making process, and the president acts only as an arbiter during deadlock or in times of crisis. This model gives greater weight to the prime minister's and government's policy preferences, with the result that the president's policy preferences, and the political interest he or she represents, may be sidelined. To counteract this problem, and to allow that the political interests represented by the president are protected to some degree, the president may be empowered to chair cabinet meetings. The president will thus have some influence over the policy agenda of the government and exert some control over proceedings of cabinet meetings.

The figurehead/principal model, by contrast, affords the president no significant role in policy formulation. The prime minister chairs cabinet meetings and directs the actions of cabinet without input from the president.

The principal/agent model aims to give the president a significant role in policy. In this model, the president chairs cabinet meetings. In addition to the other powers that the principal/agent model ensures the president is able to exercise (e.g. decree powers, appointment powers, domestic and foreign policy powers), the power to chair and direct cabinet meetings ensures that the president holds a greater share of executive power than the prime minister and government.

3.7 PRESIDENTIAL VETO OVER DRAFT LEGISLATION

A presidential right to refuse to promulgate, or veto, legislation duly passed by the legislature acts as a counterbalance to the prime minister's power to set policy and initiate legislation. It is important, however, that the veto power does not block legislation entirely. When designed correctly, a presidential veto can encourage cooperation and negotiation between the parties or interests that are respectively represented by the president and prime minister.

There are two main dimensions along which presidential veto powers vary. The first is the scope of legislation that is subject to veto. Some veto powers are limited to a straight up-or-down rejection of a bill, while more flexible vetoes allow a president to insert amendments ("amendatory veto") or veto specific provisions of a bill ("line-item veto").

Second, the legislative majorities required to override a veto and pass bills into law despite the president's opposition vary (no country has an "absolute veto" that cannot be overruled). In some cases, the legislature may overrule the president's veto by an ordinary majority (or by the same majority with which the legislation was originally passed); in other cases the legislature may overrule the veto only by passing the legislation for a second time by a special majority (usually two-thirds).

In sum, there are four options for designing veto powers:

> *Option 1*: line-item or amendatory veto that is subject to supermajority override;
>
> *Option 2*: line-item or amendatory veto that is subject to override by the originally required legislative majority;
>
> *Option 3*: straight up-or-down veto that is subject to supermajority override; and
>
> *Option 4*: straight up-or-down veto that is subject to override by the originally required legislative majority (also known as a "suspensive veto").

Option 1 weights the veto in favor of the president: the president may veto an entire bill, or specific provisions in a bill, and may propose amendments to the bill that the legislature must debate. Further, the legislature can only override the president's veto or amendments with a supermajority, making it more difficult to oppose the president's wishes than if a simple majority sufficed.

Option 4, on the other hand, weights the veto in favor of the legislature: the president may only veto the entire bill, which is a politically more significant act that a veto of only specific provisions or proposed

amendments to specific provisions. The legislature can override the veto more easily, by simply passing the legislation again by a simple majority.

The veto arrangements presented by options 2 and 3 distribute power between the president and the legislature (and by extension the prime minister) in a balanced fashion. The risk that either the president or the legislature will dominate the other, through the use of veto powers or an easy legislative override, is reduced in these two options. The French Constitution confers a veto on the President of the kind described in option 2. The Russian Constitution establishes a presidential veto of the type described in option 3. It is perhaps worth pointing out that Russian Presidents have made extensive use of the veto power. Because of the supermajority requirements needed to overturn a presidential veto, the Russian legislature was often unable to oppose or override the President's legislative vetoes. Other countries that adopt option 3 include Central African Republic (although the Central African Republic's Constitution was abrogated by rebel leaders in March 2013), Mozambique, Senegal, Poland, Portugal, and Ukraine. While President of Ukraine, Viktor Yanukovych made frequent use of the veto power: between November 2010 and January 2012, he vetoed at least 17 bills.

4. Semi-presidentialism in crisis: security powers and states of emergency

The need for effective executive leadership during times of crisis justifies carving out a role for the president as an "autonomous crisis manager". Where a weak party system or a fractured and divided legislature results in a legislature that is incapacitated (e.g. is unable to meet or agree on legislation), or is unable to support a government capable of providing stable executive leadership, the president may need to step in to restore stability and provide executive leadership. This is true for all three models of distributing power between the president and prime minister, but is most closely consistent with the arbiter/manager model.

This logic justifies granting the president a primary role in managing emergencies. It is important, however, to ensure that the president's emergency powers are closely regulated, so that the risks of backsliding into democratic authoritarianism or presidential dictatorship are minimized.

This section examines several important elements of emergency powers.

4.1 APPOINTMENT OF CABINET MEMBERS RESPONSIBLE FOR SECURITY

In most semi-presidential countries, the appointment of the cabinet members responsible for the defense and security portfolios follows the procedure laid out for the appointment of the rest of the cabinet. This means that in most semi-presidential countries, the prime minister appoints cabinet members responsible for security. This is the case, for example, in France, Russia, Austria, Croatia, Portugal, Bulgaria, Ireland, Macedonia, Finland and Slovakia.

In some semi-presidential systems, however, attempts have been made to share the power to make these appointments between the president and the prime minister. These attempts are driven by a desire to ensure that executive authority to exercise key security powers is not concentrated in a single functionary but shared between the dual executive. There are two mechanisms of shared appointments power, which are considered here.

4.1.1 Split appointments power

Between 2006 and 2010, under amendments to Ukraine's 1996 Constitution, the Prime Minister appointed the majority of the cabinet while the President appointed the ministers responsible for defense and foreign affairs (article 114 of Ukraine's 2006–10). This is the only example of a semi-presidential system in which the president and prime minister appointed separate members of cabinet, and indeed, the Constitutional Court reversed these amendments in 2010 and re-instated the 1996 model,

under which the Prime Minister appointed the entire cabinet. The 2014 Egyptian Constitution provides that the President shall appoint the Ministers of Defense, Interior, Foreign Affairs and Justice "in consultation with the Prime Minister", but only in circumstances where the government is chosen from among the party or coalition holding the majority or highest number of seats in the legislature (art. 146).

A president empowered to appoint certain cabinet ministers may be able to carve out an area of influence that is insulated from the rest of the government. Moreover, the ministries of defense, security and foreign affairs together constitute the state's machinery of armed and coercive force. Allowing the president to appoint the ministers of defense and foreign affairs creates a risk that the president will be able to capture the machinery of state violence.

4.1.2 Appointment by co-decision

A second option for power sharing in the appointments process is to require the president and prime minister to jointly appoint ministers responsible for key government portfolios. Article 61 of Poland's "Little Constitution" of 1992 provided that the ministers responsible for foreign affairs, defense, and internal affairs would be appointed by the Prime Minister "after consultation with" the President. The Tunisian Constitution of 2014 adopts a similar approach, providing that the prime minister appoint the ministers of foreign affairs and defense in consultation with the president.

The Polish provision suffered from a lack of clarity: it was not clear whether the President or the Prime Minister could veto the other's selection of these ministers, for example, or whether "consultation" meant only that the Prime Minister consider the President's preferences but could nevertheless appoint the specified ministers regardless of the President's preferences. If adopted as part of a semi-presidential arrangement, co-decision provisions must be clearly and unambiguously drafted.

Another option for the appointment to these key ministries, consistent with the idea that semi-presidentialism is a middle ground between presidential and parliamentary systems of government, requires the legislature to confirm any appointments that are made to key security portfolios by either the president or the prime minister.

4.2 APPOINTMENT OF SENIOR SECURITY SERVICES OFFICIALS

As with appointments to key security portfolios in cabinet, procedures for appointment to the senior bureaucracy of the security services can create opportunities for the president or prime minister to consolidate a power base in the security services. Executive leaders can draw strength from the security services, and abuse then for the purpose of sidelining political opponents. This may become a particular concern during periods of co-habitation, where either a president or prime minister may undermine the position of the other by using the security services.

A handful of options exist to structure these appointments powers in a way that minimizes the opportunities for partisan abuse of the security services.

First, appointments to senior military, security and intelligence services can be made by the prime minister, with the countersignature of the relevant cabinet minister. This ensures that cabinet is involved in appointments, and that the prime minister does not exercise sole control over these appointments.

Alternatively, the president may play a role in appointing senior bureaucrats, acting jointly with the prime minister through co-decision procedures. These may include, for example, appointment by the president on the proposal of the prime minister; appointment by the cabinet acting collectively, as chaired by the president; or appointment by the president or prime minister, as countersigned by the other.

A third alternative is to allow the president to make these appointments, but to require confirmation by a majority of one or both houses of the legislature.

4.3 COMMANDER-IN-CHIEF POWERS

Clearly designating a commander-in-chief sets out the chain of command in the military and authorizes a single functionary to oversee and assume responsibility for a country's military apparatus. It is common in semi-presidential systems to designate the president as commander-in-chief of the armed forces, and doing so is consistent with the president's role as an autonomous crisis manager in a semi-presidential system.

There is a distinction to be drawn between the exercise of commander-in-chief powers and the power to formulate security and defense policy, however. Designating the president as commander-in-chief of the military does not automatically imply that the president have primacy in security and defense policy. Where the prime minister and government retain the power to set security and defense policy, the president's role as commander-in-chief is limited to executing or implementing the government's policy.

The president's power to act as commander-in-chief may therefore be constrained by that fact that the prime minister and government remain the primary drivers of policy. The president's role as commander-in-chief may thus be limited to situations of emergency or crisis.

4.3.1 Declarations of war and states of emergency

While parliamentary declarations of war or martial law are the global norm, a semi-presidential constitution – as with a purely presidential or purely parliamentary system – may contemplate less formal mechanisms for authorizing the use of force in narrowly constrained and closely regulated situations of imminent threat and emergency.

The president may be empowered to declare war or states of emergency only if the legislature is unable to meet. In all semi-presidential systems, a presidential declaration must be confirmed by the legislature upon meeting within a specified period of (e.g. 48 to 72 hours). The declaration of war or state of emergency lapses if the legislature does not confirm the declaration within the specified period.

4.3.2 Deployment of the armed forces domestically or abroad

In order to preserve political stability and the role of the legislature and opposition in a semi-presidential system, the deployment of the armed forces should be subject to strict constitutional rules, both in circumstances of war or states of emergency and in emergency situations where no declaration of war or state of emergency has been made.

These rules can include the following examples.

First, the deployment of the armed forces within or outside the nation's territory, upon a declaration of war or state of emergency, must be authorized by the legislature after a proposal by the president as commander-in-chief.

Second, the deployment of the armed forces beyond the territory of the nation (but not within the nation's borders) without a formal declaration of war may be authorized by the government, or by co-decision of the president and prime minister, for specific purposes and for a limited time. The legislature must be immediately informed of deployment and, after a specified period of time (for example 48 to 72 hours) must declare war or withdraw the armed forces.

4.3.3 National defense council

A national defense council is a cooperative body usually representing the president, the government, the legislature and opposition parties. It exists in France, Russia, Ukraine and Portugal, for example. The idea behind a national defense council is to ensure that the formulation of defense policy is not dominated by the prime minister and government. Further, by including representative of the legislature, a national defense council can increase legislative oversight of defense and security policy.

There is a risk that where the composition, functions, and terms of reference of a national defense council are not set out clearly in a constitution, the council can become dominated by either the president or prime minister, or co-opted by leadership of the security forces themselves. This risk can be minimized by ensuring that details regarding the composition, powers, functions and responsibilities of a national

defense council are clearly set out in a constitution. Kenya's National Security Council established by article 240 of the Constitution of Kenya, 2010, provides an example of how constitutional provisions can set clear rules for the composition and functioning of an institution of this nature.

Further, if the objective of a national defense council is to ensure that the control of security and defense powers is not concentrated in a single person or executive office, it may be necessary to entrench in the rules for the council that its membership include the president and representatives of the legislature, government, and opposition political parties.

4.4 STATES OF EMERGENCY

The power to declare a state of emergency and assume emergency powers is usually vested in the president in semi-presidential systems. A state of emergency allows the president to exit the framework of normal government and exercise executive power free from the ordinary constraints that the constitution puts in place.

However, a constitution can nevertheless impose some procedural and substantive constraints on the exercise of emergency powers, which are designed to ensure that once the crisis or emergency passes, normal government resumes under an unchanged constitutional framework.

There are four kinds of constitutional rules that can limit and constrain the president's emergency powers. These are:

1. procedural restrictions on the declaration of the state of emergency;
2. temporal limitations on the duration of the state of emergency;
3. substantive conditions that trigger the state of emergency; and
4. substantive limits on emergency powers.

4.4.1 Procedural limitations: who declares the state of emergency?

There are four options for who can declare the state of emergency. It can be declared by:

1. the president unilaterally,
2. the president acting in consultation with the prime minister,
3. the prime minister unilaterally; or
4. the legislature, or by the president or prime minister subject to confirmation by the legislature.

A unilateral presidential power to declare a state of emergency is not common among semi-presidential systems. Only the Presidents of Madagascar and Senegal can unilaterally declare a state of emergency. In Armenia, France, Burkina Faso, and Niger the President can declare a state of emergency only after consulting with the government and the legislature.

Empowering the executive branch (i.e. president and prime minister) to declare a state of emergency in order to act quickly to avert a crisis is justifiable on the principle of ensuring effective leadership during times of crisis. In many semi-presidential constitutions, however, the legislature must confirm the declaration of a state of emergency within a specified period, or it lapses (e.g. France, Belarus, Mozambique, Georgia, Namibia, Romania, Ukraine, Bulgaria, Portugal).

4.4.2 Temporal limitations on the duration of the state of emergency

In authoritarian countries, states of emergency have often endured for long periods of time, allowing the president to accumulate and consolidate executive power. In Egypt, a state of emergency was in place from 1967 to 2012, with only one 18-month break. During these periods, the two Egyptian Presidents were able to secure their grip on political power.

One way of avoiding the risks that extended periods of emergency pose is to place one or more limitations on the length of time that a state of emergency can exist, or limit the length of time for which a state of emergency can be renewed. Examples from semi-presidential constitutions around the world include:

1. An absolute limit on the duration of the state of emergency (e.g. six months as in Lithuania);
2. A limit on the length of the period for which the legislature can extend a state of emergency as declared by the president (e.g. 30 days, extendable 3 times, as in Mozambique); or
3. A requirement that legislative renewal of the state of emergency after each 30-day period be supported by a two-thirds majority of the members of the legislature (e.g. Namibia).

4.4.3 Substantive conditions necessary to trigger the power to declare a state of emergency

The declaration of a state of emergency is a significant act that can have significant consequences. It is important to ensure that a state of emergency can be declared only if the circumstances warrant it: specific substantive conditions "trigger" the power to declare a state of emergency. In most semi-presidential systems, the executive or legislature has no power to declare a state of emergency in the absence of these substantive triggers.

Substantive triggers can be enumerated clearly and narrowly in the constitution, or they can be broadly defined in order to encompass a range of circumstances that are not specifically foreseeable.

The Russian Constitution, for example, does not define the substantive conditions under which an emergency can be declared, instead leaving this to ordinary law. Since ordinary legislation can be easily amended by a legislature, a legislature sympathetic to the president legislature may to expand the circumstances under which an emergency can be declared. Egypt's 1971 Constitution imposed no substantive limitations on the declaration of the state of emergency, stating only that the President could declare a state of emergency "in the manner prescribed by law" (art. 148).

Examples of the kind of substantive conditions that trigger the power to declare a state of emergency include:

1. Actual or imminent aggression by foreign forces;
2. Serious threat to, or disturbance of, the democratic constitutional order;
3. The interruption of the functioning of public authorities;
4. Where the fulfillment of international obligations is impeded; or
5. Natural disaster.

The Portuguese Constitution allows the declaration of either a state of siege or a state of emergency in cases of "actual or imminent aggression by foreign forces, serious threat to or disturbance of the democratic constitutional order, or public calamity". Rather than narrowly defining the substantive triggers for declaring a state of emergency, the Constitution provides that the decision to introduce a state of emergency or a state of siege (the latter allowing for a greater restriction of rights and freedoms) should be influenced by the nature of the crisis. The Constitution thus requires that the response to the crisis should be proportional to the severity of the crisis itself. Mozambique's constitution establishes a similar model.

4.4.4 Substantive limitations on emergency powers

Aside from limiting the power to declare a state of emergency, a constitution can limit the risks that a state of emergency poses to the long-term stability of democratic government by narrowly defining the powers the president or government can exercise during a state of emergency. Constitutionally entrenched limitations on the exercise of emergency powers can help to limit the opportunity for their abuse.

The following are examples of the kinds of limitations that can be placed on the exercise of presidential powers during a state of emergency, drawn from semi-presidential constitutions around the world:

1. During a state of emergency, there shall be no discretionary dissolution of the legislature by the president (e.g. Armenia, Belarus, Burkina Faso, Cape Verde, France, Mozambique, Niger, Peru, Poland, Portugal, Romania, Russia and Senegal);
2. During a state of emergency, emergency decrees must not derogate from fundamental rights,

including those designated by international law as non-derogable, such as the non-derogable rights designated by the International Covenant on Civil and Political Rights (e.g. Armenia, Bulgaria, Cape Verde, Finland, Georgia, Ireland, Lithuania, Mongolia, Peru, Russia, Slovakia, Slovenia and Ukraine); and

3. During a state of emergency, emergency decrees must be confirmed by the legislature within a specified time period (e.g. 14 or 15 days, one month, or six weeks) or else such decrees lose the force of law (e.g. Senegal, Sri Lanka, Namibia, Taiwan, and Iceland).

5. Conclusion

Semi-presidentialism has the potential, in countries in the Middle East and North Africa region and indeed in all countries making a transition from an authoritarian past to a democratic future, to offer a system of government that moves away from the pure presidential system and reduces the risk that a single and powerful executive president will be able to dominate the political process and centralize power.

At the same time, the semi-presidential system guards against the risks that a pure parliamentary system poses. In new democracies where there is a risk of a weak party system and little experience of true parliamentary politics, there is a danger that parliaments will be fractured and divided, incapable of passing legislation or agreeing on a prime minister and government.

The semi-presidential system offers an option where the president is not the exclusive site of executive power while allowing the president to step in to provide executive leadership where the legislature might be incapable of supporting a prime minister and government.

This Working Paper sets out to identify several important institutions of government, and to describe how various design choices may advance or undermine the advantages of semi-presidentialism as a form of government, and which justify the selection of the semi-presidential form in the first place.