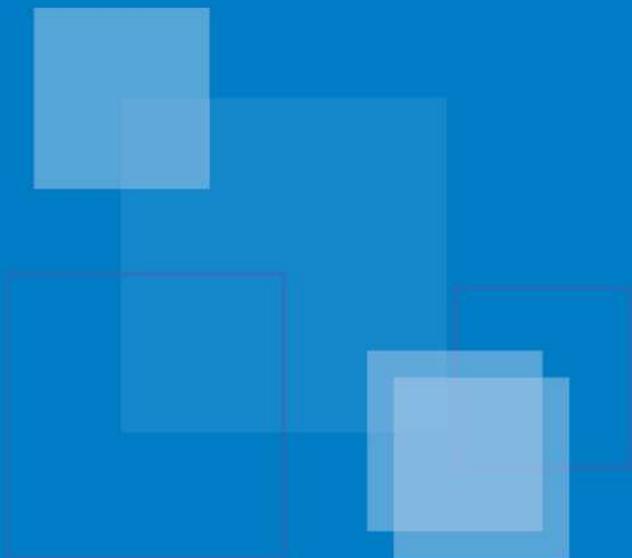# Electoral system design in the context of constitution-building

International IDEA Discussion Paper 4/2018

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Summary

- Electoral system design plays a crucial role in political settlement processes. However, it is a world with which political actors in transitions—and even to some extent the constitutional community itself—often have limited familiarity.

- Electoral system choice may facilitate a wide range of objectives, but not all apparently desirable objectives can be achieved at the same time, and there may be disagreement as to what counts as the most desirable objectives. Electoral system design thus involves choosing priorities. Constitution-building processes often seek to emphasize inclusion and cohesion, but when an elected assembly also fulfils the role of a legislature, it may be necessary to take into account issues relating to the conduct and oversight of executive government as well. Democratic elections are about boosting the legitimacy of both the elected body and its function.

- Democratic elections, in contrast to elections in authoritarian environments, are fundamentally about uncertainty. However, levels of trust during constitutional transition processes are rarely high. The amount of uncertainty that is acceptable to participants at any given time may be limited, which may in turn limit the options for any move towards democratic elections. If the level of trust changes and grows during a transition, new options may become possible. A transition may last for several electoral cycles and may involve more than one change of electoral system over a series of elections.

- The practical impact of electoral systems is related to context. It is unwise to assume that an electoral system imported from elsewhere will function in a new context as it did in its original one. Re-adoption of a traditional or familiar electoral system may also not be helpful. Trade-offs in negotiations between core actors may produce coherent frameworks, but are not guaranteed to do so.

- Changes in the precise technical details built into an electoral system can lead to major changes in electoral outcomes. It can therefore be important for political players to understand for themselves the potential consequences of the technicalities, rather than leaving them entirely to backroom technicians.

- Electoral system choice can be constrained by other elements of the electoral framework, some of which may be linked to constitutional issues. The existence and structure of diaspora involvement in electoral processes through out-of-country/out-of-territory voting is a particularly important example.

- While the timing, stages and sequencing of a constitutional transition might be thought to be relevant to electoral system choice, there does not currently appear to be any strong link between them. Nor does there appear to be any evidence that either the choice between a federal state and a unitary state or the choice between presidential, semi-presidential and parliamentary institutions is linked in practice to the choice of electoral system, either for the constitution-making body (when this is elected) or for the legislature that emerges from the constitutional transition.

- In practice, it is rare in a political settlement process for local elections to be held before national elections—perhaps because the national-level actors involved in the process want to ensure their own legitimacy first, or even wish to seek to exclude the emergence of other routes to political recognition. There is a choice for political stakeholders and institutional framework designers, but it is in practice limited to either holding national elections first, or synchronizing national and local elections.

- A legitimate and credible election requires an electoral management body (EMB) that is fearlessly independent in seeking to ensure a level playing field for the electoral process. For elections to a constitution-making body or interim legislature, the almost universal pattern is that the initial constitutional document specifies an EMB that is independent in form. In the constitutional settlement that emerges at the end of a transition, the predominant pattern is either for the constitution to provide for an EMB that is independent in form, or, less frequently, for a traditional colonial-era model of electoral administration to be re-established without being included in the constitution.

1. Electoral system design: General observations

The phrase 'electoral system design' is used in this paper to describe the framework and process by which the votes cast in an election are translated into seats won by parties and candidates. At its core is a choice of principle: whether it is basically majoritarian in nature, where winners are determined by who in some sense receives the most votes; whether it is basically proportional in nature, where participants share the spoils in a manner roughly proportional to the level of support they receive; or whether it is mixed, with more than one component, each voter contributing to the election both of members elected according to majoritarian principles and of members elected according to proportionality principles. While a few electoral systems exist that defy this categorization, almost all those currently in common use fall within it. Alongside this core element, other decisions are also integral to electoral system design, the most important of which is whether voters express a choice between political parties/movements, or a choice between candidates.

Electoral system design matters because different electoral systems result in the election of different people, from the same votes cast. Thus, while it may look like a technical exercise to be handed over to the numerate and the geographically aware, it is actually a process with deep political implications. The starting point for electoral system designers is therefore the question of identifying political objectives. There are many possibilities, including ensuring geographical, ideological, descriptive (e.g. in terms of gender, age and so on) or identity representation, accountability of government or of individual representatives, incentives for conciliation and coalition-building, stability and efficiency of government, promoting legislative opposition and oversight, encouraging the development of political parties, and simplicity and sustainability of the electoral process. The challenge is that these are not all achievable simultaneously. A move towards one of these objectives is often accompanied by a move away from another. Identifying objectives means choosing priorities.

All electoral frameworks create incentives—and probably also barriers—to participation. In the majority of cases, political parties or groupings will play a major role, and the rules for their formation, operation, and participation in elections will result in inclusion of some and exclusion of others. The relationship between political parties/groupings and their candidates is critical, both at the point where candidates are chosen and nominated and also once they are elected. The rules regarding political finance are often minimal during a political settlement process, but money can play a major role in the electoral process. It is a characteristic of any electoral system that it may assist or hinder different kinds of parties— for example, large parties, small parties or regionally concentrated parties.

Getting electoral system design right doesn't guarantee the success of political institutions; however, bad design almost always guarantees their failure. As a polity develops and changes through a constitutional transition process (and indeed afterwards), voters and political actors develop an understanding of the incentives built into the system and may develop strategies to take advantage of them, and political stakeholders may seek to use amendment processes to change the electoral system. Incentives are, of course, not restricted to those who are broadly supportive of a political settlement process. Spoilers will also look at the incentives built into an electoral system, and act accordingly to further objectives that are inimical to the process. Even actors who are broadly supportive of the process may wish to use their power at a particular moment to gain or retain sectarian advantage. This means that electoral system choice is not a once-and-for-all decision, but something that may need to be reviewed as a transition develops in order to respond to those who seek to use their role in elections to hinder or derail them. Change may require negotiation between stakeholders, and political interest trade-offs between power holders do not always produce a coherent whole.

Finally, the functioning of any electoral system depends on local context. For example, majoritarian, first-past-the-post elections do not have the same impact on the politics of the Solomon Islands, for example, where political parties are weak, as they do in Malaysia, for example, where they are much stronger; they also function differently again in countries such as Canada and India, where there is a strong regional element to the political system. An electoral system that is adopted wholesale in a new location—effectively 'flown in and assembled'—is unlikely to operate in exactly the same way as it does in its original location.

2. Electoral system design in the constitution-making setting

This Discussion Paper is based on a presentation at the fourth Edinburgh Dialogue on post-conflict constitution-building, the theme of which was 'The Quest for Legitimate Stability: Understanding the Interactions between Elections and Constitutions in Fragile and Conflict-affected State Transitions' (see Underwood, Bisarya and Zulueta-Fülscher 2018). Specifically, it looks at political settlement processes in fragile and conflict-affected settings since 1990, all but one of which have concluded with a 'final' constitution. Of these cases, 23 are considered in a Policy Paper resulting from the second Edinburgh Dialogue, *Sequencing Peace Agreements and Constitutions in the Political Settlement Process* (Bell and Zulueta-Fülscher 2016). The current paper adds Libya and Tunisia to that group, and also considers the ongoing process in Somalia. This study is thus based on 27 cases of constitution-building during transition (see Table 1).

Of the cases outlined in Table 1, a total of 10 conducted an election during the transition process for a constituent assembly, for an interim legislature (in some cases the same body), or separately for both of these. Six made exclusive use of some form of list proportional representation (PR). Three—Egypt (2012), Nepal and Timor-Leste—used a parallel system. Libya used a combination of first-past-the-post (FPTP) and single non-transferable vote (SNTV) for its constituent assembly, and a parallel system for its interim legislature.

Moving forward to the outcome of these processes, 11 countries adopted a form of list PR. Five carried over their majoritarian system from the colonial era: Kenya and autonomous Bougainville using a British-derived FPTP system, and Chad, the Comoros and the Central African Republic using the French-derived two-round system. Four—Guinea (Conakry), Nepal, Timor-Leste and Zimbabwe—chose a parallel system. Three—the Democratic Republic of the Congo, Egypt (2014) and Madagascar—used composite systems, where members from some geographical areas are elected using one system, while those from elsewhere are elected using another. Afghanistan uses the single non-transferable vote, a system which defies the categorization frame and whose outcomes can be highly unpredictable, especially where political parties and groupings are weak. At the time of writing, the Libyan process is not yet at an endpoint, and Somalia is still in the decision-making process and has not reached the stage of holding direct elections.

There has been a tendency in internationally driven transitions (e.g. Cambodia and Iraq) to adopt list PR for reasons that include general simplicity, and facilitation of relatively quick elections. In the 10 cases where elections in the recent history before transition had been rare or non-existent, six used list PR; in the Democratic Republic of the Congo, list PR was a major component of a composite system.

Table 1. Cases of constitution-building during transition

Case	Body ultimately responsible for the constitution	Electoral system for constitution-making body (CMB)	Electoral system for interim legislature (if separate from CMB)	Electoral system for legislature at end of transition
Afghanistan*	Constitutional Loya Jirga	Indirect election	n/a	SNTV
Bosnia and Herzegovina	Peace negotiations	Not elected	List PR province	List PR province[1]
Bougainville (PNG)*	Constituent Assembly	Appointed	Partly indirectly elected, partly appointed	FPTP
Burundi*	Transitional National Assembly	Partly elected (already in existence, elected 1993 by list PR national), partly appointed	n/a	List PR province
Cambodia	Constituent Assembly	List PR province	n/a	List PR province
Central African Republic*	National Transitional Council	Appointed	n/a	TRS
Chad*	Sovereign National Conference	Indirectly elected by the Tripartite Commission	Appointed	TRS[2]
Colombia	Constituent Assembly	List PR national	List PR district (existing body already elected)	List PR district
Comoros	Tripartite Commission	Appointed	n/a	TRS
DRC*	National Assembly and Senate	Appointed	n/a	FPTP and list PR
Egypt (2012)	Constituent Assembly	Appointed	Parallel: list PR component district	
Egypt (2014)*	50-member constitutional committee	Appointed	n/a	TRS/BV and PBV
El Salvador	Peace negotiations	Not elected	List PR district (existing body already elected)	List PR district
Guinea (Conakry)*	National Transitional Council	Appointed	n/a	Parallel: list PR component national
Iraq	Transitional National Assembly	List PR national	n/a	List PR national
Kenya*	National Assembly	FPTP (existing body already elected)	n/a	FPTP
Kosovo*	Assembly	List PR national (existing body already elected)	n/a	List PR national
Libya	Constituent Assembly	FPTP and SNTV	Parallel: list PR component district	n/a
Madagascar*	Transitional Government	Appointed	n/a	FPTP and list PR
Mozambique	People's Assembly	Indirect election by provincial assemblies (body already in existence)	n/a	List PR district

Case	Body ultimately responsible for the constitution	Electoral system for constitution-making body (CMB)	Electoral system for interim legislature (if separate from CMB)	Electoral system for legislature at end of transition
Nepal	Constituent Assembly	Parallel: list PR component national	n/a	Parallel: list PR component national
Rwanda*	Transitional National Assembly	Appointed	n/a	List PR national
Somalia (2012)	National Constituent Assembly	Indirect election	n/a	
South Africa	National Assembly	List PR national	n/a	List PR national and provincial
Timor-Leste	Constituent Assembly	Parallel: list PR component national	n/a	Parallel: list PR component national[3]
Tunisia	National Constituent Assembly	List PR district	n/a	List PR district
Zimbabwe	House of Assembly	FPTP (existing body already elected)	n/a	Parallel: list PR component province (women's seats)

* Constitution-making body assisted by an externally appointed commission for the preparation of the draft. The role of the commission varies from proposal of an initial draft to being the principal site of negotiation.
BV = block vote; FPTP = first-past-the-post; PBV = party block vote; PR = proportional representation; SNTV = single non-transferable vote; TRS = two-round system.

Source: Compiled by the author.

Notes:
1. The Bosnia and Herzegovina electoral system used the two political entities within the country as list PR electoral units up to 2010; in 2014, the list PR system was changed so that the majority of members of the legislature were elected from district electoral units, and the remainder across Bosnia and Herzegovina as a whole.
2. The Chad transition considered ran from 1990 to 1997. Subsequent events have included a new electoral law of 2009 adopting an FPTP and PBV/list PR system.
3. The subsequent 2006 electoral law in Timor-Leste moved to a list PR national system.

In the constitution-making context, some possible electoral system design objectives appear more relevant than others. In the search for inclusion in constitution-building, a trend for elected bodies to be 'representative' has been identified. The aim is to ensure that all significant players are included in the assembly that emerges from the electoral process. The achievement of this objective usually points towards the use of PR or mixed systems, with the proportional element of the system in practice always a version of list PR.

The principle of inclusion in constitution-building has also led to efforts to ensure the election of women and members from minorities, with quotas adopted as part of the electoral system. Indeed, Nepal has demonstrated that it is possible to operationalize quotas simultaneously for women and for five different disadvantaged groups. However, to achieve this, control over which women and which minority candidates filled the seats won by each political party was handed entirely to the parties. This means there is a potential contradiction between quota requirements and open lists, which derives from the fact that voters using an open list can order the party candidates in such a way that a group of candidates would be elected that does not correspond to the quota requirements. This makes any open list system impractical in this context.

Regional spread of representation may be important, meaning that the group of members elected by each political party or movement is more likely to include people from all or most parts of the country than being solely or heavily composed of members from the party's or movement's strongest areas. If the legitimacy of a polity is shaky or conditional, choosing a

system where results cut across regional origins, rather than one where political cleavages in the elected assembly reflect and reinforce regional differences, may be an important factor in building common acceptance of a new constitutional framework. This is a second factor that may point towards the use of list PR or a system that includes list PR as a major component.

When list PR systems are chosen, an important secondary decision is the level at which the multimember electoral districts are defined. A single national district was used in South Africa for the election of a legislature/constituent assembly, and in the internationally administered elections in Iraq and Kosovo for a legislature. In addition, wherever parallel systems have been adopted, the single national list has been used for the proportional component, with the exception of Zimbabwe's use of this mechanism at a provincial level in order to promote women's representation. In other list PR systems, for example Cambodia and Tunisia, smaller multimember districts, often at provincial level, were adopted for the election of a legislature/constituent assembly, the rationale sometimes being to promote geographical representation and the election of members from across the country.

The single national list approach is simpler for administration, and also avoids questions around the accuracy of and trust in demographics, which arise as the number of seats given to each smaller district is determined. However, its likely consequence is that the candidate lists are drawn up entirely by the central leaderships of political parties, probably leading to a high concentration of elected members based in the capital and the consequent downgrading of regional voice within political groups. In parallel systems, a spread of representation across regions may be more likely to emerge, if it does so at all, from the majoritarian component.

The relative importance of political parties, movements or gatherings, and individual personalities or candidates in the constitution-making process is a further issue to consider. If cohesion of groups within the elected assembly is considered to be desirable, the choice of electoral system is likely to gravitate towards a system with a proportional element—either list PR pure and simple, or a mixed or composite system including a major list PR component. While not part of the 'votes to seats' question, the relationship between political groupings and their elected members—will powers be put in place for groupings to direct or even recall their members?—is also important in this respect.

3. The question of trust

All democratic elections involve uncertainty. However, in the process of constitutional transition, the level of trust between major players is likely to be low. Political groups therefore ask whether their interests will be protected, and whether they will have as much influence after the election as before. The electoral system design objectives that emerge, therefore, will include (probably in an implicit or unstated form) an understanding that the system will give a significant guarantee to the major players who are deciding it.

This kind of dynamic is, for example, salient in Somalia as discussions develop towards transitional elections planned for 2020. In a society where clan identification is extremely strong, the interim legislature was set up in 2016 based on the '4.5 principle'—equal representation for each of the four large clans, with half as many places allotted to the smaller clans collectively. While many stakeholders express a clear desire to abolish the principle of clan representation, such a move would have to address the fact that the level of uncertainty to which this would give rise may be a step too far for many political leaders. This uncertainty is compounded by the accompanying discussion on electoral registration, because of the potential effect of implementing one person, one vote, one value in a context where demographics are unclear and there is not even a shared perception of what the real balance between the size of clans may be.

Majority support in the abstract for a major change may well not extend to majority support for any specific change that might be proposed. As discussions proceed in more detail, the level of uncertainty and distrust could lead towards the adoption of an electoral system that retains an element of clan guarantees in its definition of representation. (Although precedents for this approach are limited, relevant ideas may, for example, be found in the discussions that preceded the changes to the electoral system in Lebanon in 2018, which while not an example of constitutional transition is a context where community representation is deeply embedded.) In transitional elections, the quota principle may be used not only to ensure the representation of women and minorities, but also to gain the buy-in of established interests who insist on limiting uncertainty to protect their voice.

4. The devil is in the detail

The number of participants in a transition process who are familiar with electoral system design principles is usually limited, and in the design of a constitutional assembly election it is likely that even fewer participants have such knowledge. At the same time, what appear to be small and technical differences can have a major influence on the outcome of elections, and thus on the flow of events that follow.

In Tunisia, a commission composed of representatives of political parties and civil society groups produced a broad consensus on fully proportional, rather than majoritarian, elections, and a list PR system resulted for the 2011 constituent assembly elections. However, different methods exist for translation of votes into seats in list PR systems. There are two major approaches—largest remainder systems and highest average systems. In general, largest remainder systems produce a higher level of representation for smaller parties than do highest average systems. For a summary definition of these terms see Reynolds et al. (2005: 177–78).

It is not clear whether this level of detail was discussed in Tunisia at the time that the electoral system for the 2011 constituent assembly elections was defined. What is clear is that the choice of the largest remainder system, using the Hare quota, turned out to be of critical importance. Table 2 shows the actual result, and compares it with the alternative results that would have emerged based on the same votes under two different common versions of the highest average approach. No method is (or can) give perfect proportionality, and the actual vote totals of 2011 provide an example of a system that is recognized as proportional producing representation that is a long way from proportional. In practice, the 37 per cent of the vote polled by Ennahda translated to 41 per cent of the seats, which meant there was a need to build cross-party agreement for government—even more so when considering the two-thirds majority that had been agreed as necessary for constitutional decisions. Had the D'Hondt system, the most common version of highest average list PR, been used, Ennahda would have been able to write the new constitution unilaterally— if it had chosen to—based on the same 37 per cent of the vote, which would have translated to 69 per cent of the seats.

Many people centrally involved in transitions are not natural mathematicians. With the wide range of other issues that they face and the sheer pace of events, they often tend to regard the details of the electoral system as purely technical issues and leave them to mathematical technocrats and backroom experts. Although Tunisia may provide an extreme illustration of what can happen, it indicates that political stakeholders ignore the detail at their peril.

Table 2. Results from the 2011 Tunisian National Assembly elections under different list PR methods

Political party	% vote	Hare quota largest remainder		Sainte Laguë highest average		D'Hondt highest average	
		No. of seats	% of seats	No. of seats	% of seats	No. of seats	% of seats
Ennahda	37%	89	41%	119	55%	150	69%
Congress for the Republic	9%	29	13%	27	12%	21	10%
Ettakatol	7%	20	9%	18	8%	14	6%
Popular Petition	7%	26	12%	23	11%	18	8%
Progressive Democratic Party	4%	16	7%	9	4%	2	1%
Initiative Party List	3%	5	2%	6	3%	8	4%
Others	33%	32	15%	15	7%	4	2%

Source: Derived from Carey, J., 'Party Systems and the Choice Sets Voters Confront in Transitions to Democracy', Paper presented at the Workshop on Democracy and Regime Change, Sabanci University, Istanbul, Turkey, 17 June 2014, <http://aceproject.org/ero-en/misc/party-systems-and-the-choice-sets-voters-confront/view>, accessed 3 August 2018.

5. Electoral system design and institutional framework design

Electoral systems do not operate in a vacuum, and it is worth considering whether possible patterns exist that link electoral system choice for the constitution-making body to elements of the wider frameworks both for new institutions and the transition process itself. The sequence of events from peace agreements to final constitutions is one such element.

Analysis of the case studies (Bell and Zulueta-Fülscher 2016) leads to a classification of four patterns, which are summarized in Table 3. Is it possible to perceive a pattern of electoral system choice linked to these four models? There is no obvious hypothesis that stands out, and the limited size of the sample and the extent to which this classification homogenizes the differences between processes would make any suggestion tentative at best.

An alternative approach to categorizing the case studies focuses on potential electoral participants. In a few countries, the major political players in the transition display differences and cleavages that are not solely conflict related, and the contest involves both traditional political parties with established places in the political spectrum and new parties that have emerged from combatant groups: Colombia, El Salvador, Madagascar and Nepal are examples. A second pattern is an environment where political parties are very weak and much of politics is personalized and localized, such as in Afghanistan, Bougainville and Libya. The third, most common pattern occurs when cleavages are wholly or primarily related to the conflict: the major players are often then primarily driven by identity or ethnicity. However, again, no immediate hypothesis of a relationship with electoral system choice suggests itself.

Table 3. Political settlement processes since 1990

Model	Description	Examples
1.	Peace negotiations direct to constitutional settlement	Bosnia and Herzegovina, Colombia, El Salvador, Mozambique
2.	Transitional political arrangement direct to final constitution	Bougainville (Papua New Guinea), Cambodia, Comoros, Guinea (Conakry), Kenya, Timor-Leste, Tunisia, Zimbabwe
3.	Ceasefire or partial peace agreement to interim constitution to final constitution	Chad, Democratic Republic of the Congo, Egypt, Libya, Madagascar, Nepal, South Africa
4.	Transitional political arrangements to interim constitution to final constitution	Afghanistan, Burundi, Central African Republic, Kosovo, Iraq, Rwanda

Source: Compiled by the author.

It is worth also considering possible connections between electoral system choice and the broader constitutional framework. Four of the countries studied have adopted a federal model, as has Somalia, for which this is a starting point of the settlement process; the remainder are unitary states. There is no evidence of an electoral system pattern, though, with two cases of list PR, a parallel system and a two-round system found among the four federal countries where the electoral system has been determined. Nor is there any obvious connection between the form of the state—presidential, semi-presidential (in either form) or parliamentary—and the electoral system chosen.

When designing a legislature, consideration may well be given to objectives of stability, efficiency and accountability of government, and promotion of opposition and oversight. Where an elected body fulfils the functions of a constituent assembly, the objectives of inclusion and cohesion, which may dominate thinking about the constitution-making process, may be given primacy. However, if the elected assembly functions primarily or solely as a legislature, and the constitution is drafted elsewhere, these issues may be less likely to come into play.

In practice, where an elected assembly served both as a legislature and as a constituent assembly, three countries—Cambodia, South Africa and Tunisia—used list PR, and two countries—Nepal and Timor-Leste—adopted a parallel system. Where an interim legislature was elected that did not serve as a constituent assembly, Egypt adopted a parallel system, while the heavily internationally led transitions of Bosnia, Iraq and Kosovo adopted list PR. Colombia, in electing a constituent assembly that was not also a legislature, used list PR. Both the small number of cases and the possible strength of external influencing factors, such as the desire of international actors to simplify administration and shorten timetables, make it difficult to establish that electoral system design is driven by objectives derived from the function of the body being elected.

Libya provides the only recent example where two separate elected bodies were established, one of which was a legislature (elected using a parallel system) and the other a constituent assembly (elected using a composite majoritarian system including FPTP and SNTV components). In practice, this model did not work: confusion and power struggles took place and the legitimacy of each body appeared diminished by the existence of the other.

6. The role of the diaspora

The real-world influence of diaspora actors, voices and money, alongside the general argument for inclusion, has contributed to the steady growth of the role that diasporas play in electoral processes, including those for constitution-making. Not only does out-of-country/out-of-territory voting raise questions about who to include and how, it may also impose practical constraints on the choice of electoral system. The design and implementation of such out-of-territory voting are not simple, with issues of electoral integrity, inclusion, cost and timetable to be resolved. In addition, there may be questions of diplomacy and protocol to be addressed regarding the organization of the electoral machinery and the acceptability of electoral campaigning in foreign countries.

While most countries that provide for diaspora voting do so through the electoral law, it is sometimes included in the constitution. In the transitional context, Colombia, Egypt and Tunisia have made specific constitutional provisions involving diaspora voting, and Kenya's constitution provides for its progressive introduction. The Bougainville Peace Agreement contains the right for non-resident Bougainvilleans to vote in the independence referendum, although whether it will be realised for other electoral processes is a matter for future legislation.

Practical questions of electoral operations must be borne in mind when considering whether to include diaspora voting provisions in a constitution. Some of these are linked to electoral system choice. For example, diaspora voting in person depends (unless there is international involvement in implementation) on the ability of diplomatic representations to handle the electoral process. A list PR election with a single national list, where every voter receives an identical ballot paper, is simpler to conduct than an election with small or indeed single-member districts, which requires determination of the electoral district to which each external voter is attached and then issuing the correct corresponding ballot paper.

7. Electoral management in the constitutions of transition

Some academics and commentators have suggested that it is desirable to build the electoral framework upwards, holding local elections first, with national elections taking place only later. The idea is that encouraging cooperation to provide local services (and perhaps to rebuild local infrastructure) may be conducive to the development of relationships that cut across the divisions of conflict. However, only Burundi has clearly taken this route in the transitions of recent years, and the reality is that electoral frameworks are almost certain to be on the agenda of the discussions between national-level actors.

Constitutional transition designers thus face a choice both when elections are planned during the course of a transition, and when the timing is considered for the first national and local elections after a constitution is promulgated at the end of a transition. In practice, interim stage elections almost always focus on the national level alone. At the end of the transition, in practice, the choice appears to lie between either synchronizing national and local elections, or holding national elections first.

Synchronization gets elected local authorities up and running earlier, and is less demanding on organizational, administrative, financial and human resource constraints, but it may see local-level issues shut out in voting patterns by national-level cleavages. Conversely, local questions may play a clearer and more significant role in local elections that take place separately after national elections, but having two separate elections is more demanding on resources. There may even be a danger that, once national elections have taken place, national politicians may not regard local elections as a priority, and may even be unenthusiastic about facilitating the emergence of a second route by which other politicians can gain profile and credibility.

There is no evident reason why the general principles of electoral management design do not apply with equal force to elections for constitution-making bodies. Thus, the EMB must display fearless independence in practice, implementing and enforcing the electoral framework to seek to ensure a level playing field for all electoral participants. It may further be argued that the entrenchment of this principle in the constitution is valuable from the beginning.

The electoral management models used during the transitions considered in this paper are shown in Table 4. In practice, except where international agencies remained directly in control of the process, the body responsible for running elections to a constituent assembly and/or interim legislature was set up as independent in form and remained so throughout the transition. Where a constitutional document existed, it included provisions for this independent EMB in all but one case, Egypt, although in several others—Kosovo, Libya and

South Africa—the document referred to the existence of a commission with little or no additional specification and the details were then fleshed out in laws.

After the process of constitutional transition had worked through to the end, there is no sign that entrenchment of independence of election administration is at all related to the model of constitutional transition adopted. While the majority of transitions have ended with the constitutional entrenchment of independent electoral administration, many countries with French or Portuguese colonial heritage have not constitutionally entrenched independence of electoral management, often following the mixed electoral management model of the former colonial power: and Bosnia provided a further notable exception to the adoption of the constitutional independent EMB.

Table 4. Constitutional provisions for the electoral management body during transitions

Case	Model of EMB for constituent assembly and/or interim legislature elections	Defined in an interim constitution?	Model of final EMB	Defined in final constitution?
Afghanistan	n/a	n/a	Independent	Yes
Bosnia and Herzegovina	n/a	n/a	Internationally led body under peace agreement[1]	No
Bougainville (PNG)	n/a	n/a	Independent	Yes
Burundi	n/a	n/a	Independent	Yes
Cambodia	International body	n/a	Independent	No[2]
Central African Republic	n/a	n/a	Independent	No
Chad	n/a	n/a	Mixed	No
Colombia	Independent	n/a	Independent	Yes
Comoros	n/a	n/a	Mixed	No
Democratic Republic of the Congo	n/a	n/a	Independent	Yes
Egypt	Independent	No	Independent	Yes
El Salvador	n/a	n/a	Independent	Yes
Guinea (Conakry)	n/a	n/a	Independent	Yes
Iraq	Independent	Yes	Independent	Yes
Kenya	n/a	n/a	Independent	Yes
Kosovo	Independent	Yes[3]	Independent	Yes
Libya	Independent	Yes[3]	Independent	Yes[4]
Madagascar	n/a	n/a	Independent	Yes
Mozambique	n/a	n/a	Mixed	No
Nepal	Independent	Yes	Independent	Yes
Rwanda	n/a	n/a	Independent	Yes

Case	Model of EMB for constituent assembly and/or interim legislature elections	Defined in an interim constitution?	Model of final EMB	Defined in final constitution?
Somalia	Independent[5]	Yes[5]		
South Africa	Independent	Yes[3]	Independent	Yes
Timor-Leste	International body	n/a	Mixed	No
Tunisia	Independent	n/a	Independent	Yes
Zimbabwe	n/a	n/a	Independent	Yes

Source: Compiled by the author.
Notes:
1. Replaced in 2001 by an independent model electoral commission defined through legislation.
2. The electoral commission was included in the constitution as a defined independent body in 2014.
3. The interim constitution refers to the electoral commission by name, leaving composition and powers to legislation. The final constitution includes provisions on composition and powers.
4. Included in the draft, which is not yet ratified at the time of writing.
5. An independent model electoral commission has been established under the interim constitution, but was not responsible for the indirect election of the interim legislature.

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About the author

Andrew Ellis is a senior consultant adviser on the design and implementation of electoral systems and processes and of constitutional frameworks, on the facilitation of political dialogue and on other aspects of support for democratic transition and democracy building. Until early 2014 he served as International IDEA's Director for the Asia-Pacific region, having previously served as Director of Operations and as Head of the Electoral Processes Programme. He is the co-author of many International IDEA knowledge resources, including *Electoral System Design: The New International IDEA Handbook*.

Ellis has wide experience as a technical adviser on electoral and institutional matters in democratic transitions. He acted as Senior Adviser for the National Democratic Institute in Indonesia from 1999 to 2003, working with members of the Indonesian legislature dealing with all aspects of the constitutional amendment process and reform of electoral and political laws, on gender representation issues, and on the practicalities of decentralization. Other major assignments have included leading The Carter Center Limited Electoral Observation Mission in Mindanao in 2016, acting as Chief Technical Adviser to the Palestinian Election Commission for the first Palestinian elections in 1996, and designing the European Commission's electoral assistance programme in Cambodia for the 1998 elections.

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

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In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

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