



Making Presidentialism Work: Sharing and Learning from Global Experience

A Summary of the International IDEA/UNAM Workshop

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This summary is based on '*Making Presidentialism work: Sharing and Learning From Global Experience* in *Cómo hacer que funcione el sistema presidencial; Making Presidentialism Work*, UNAM (2009); pp. 509-541'

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Introduction

The nature of democracy building support has changed radically in the last ten years. In the 1990s, much work was focused on making available the 'expert' knowledge of the democracies of the North and West to the participants and practitioners engaged in democracy building in the global South. This approach all too often treated democratic development as technical and expert driven, with ready made solutions provided as one-off events. It ignored the reality that effective democracy building is a political process based on dialogue and on local ownership.

At the same time, the third wave of democratisation has led to an explosion of experience, knowledge, successes and failures across the global South. It is now thirty years since the start of the major wave of change in Latin America, twenty years since the fall of the Berlin Wall, fifteen years since the first universal free and fair elections in South Africa, and ten years since the first elections of the reform era in Indonesia. A major role of organisations which support democracy building is thus to facilitate networks, partnerships and the synthesis of comparative knowledge from this huge resource.

Nowhere is this more relevant than in the debate over the relative merits of parliamentary and presidential constitutions. Ten years ago, it was possible to argue that, the United States aside, there were few if any enduring presidential democracies. European countries have typically adopted parliamentary structures, and have considered them superior: so presidential

systems have attracted less analysis (certainly outside Latin America) and have suffered from a perception that they were less able to provide stability and effective outcomes.

However, many states have adopted presidential systems as part of transitions or democratization in the last fifteen years, and there is increasing evidence that these systems appear as resilient to political crises or economic shocks as parliamentary systems. Although it has been known for many years that the lifespan of parliamentary systems of democracy is greater than that of presidential systems, it has now been demonstrated that the reason for this does not appear to lie in the structure of presidentialism itself, but rather in the circumstances where and when it is established – and most particularly when it is established in countries emerging from military dictatorship, where democracy of any kind stands a lesser chance¹.

Moreover, the question in the real world is most often not ‘should we choose a parliamentary or presidential system’ but rather ‘how do we make our system work’. There are generally contextual, historical and symbolic reasons for the institutional system that exists in a country, and it is rare that a dramatic change from one institutional system to another is pursued. Indeed, there have been few institutional system changes in democracies in the last sixty years: considering transitions between parliamentary institutional frameworks on the one hand and presidential or semipresidential institutional frameworks on the other, we can count only seven - two in Brazil and one each in France, the Gambia, Moldova, Slovakia and Sri Lanka.

¹ See Jose Antonio Cheibub, *Presidentialism, Parliamentarism and Democracy* (2007).

Responding to this dynamic, International IDEA and the Autonomous National University of Mexico (UNAM) hosted a workshop in Mexico City in February 2008 on the theme of “Making Presidentialism Work”, bringing together a broad group of experts, ranging from academics and lawyers to political activists and political commentators involved in debate and work on political reform. The workshop included representatives from thirteen presidential democracies, drawing on comparative experience from Latin America, where presidential democracy is most established, Asia and Africa. It sought to enrich understanding of the potential role of presidential systems in democracies and democratization by considering the challenges that presidential structures face in practice, investigating the features of institutional design in presidential systems that make them more or less likely to deliver governments that are stable and/or effective, and developing some guidance to respond to the question—how do we help presidential systems work? Some discussion touched also on semipresidential systems, but their performance was not analysed in great depth. In addition, the workshop sought to contribute to the debate on potential institutional reform in Mexico. This overview summarises the global comparative discussions which arose from the individual presentations at the workshop, a compendium of which is also published by UNAM and IDEA.

The Scope of Executive Powers: What constitutional and meta-constitutional (political) powers should be granted to the President?

Panelists: Laurence Whitehead, Dieter Nohlen, Jesús Orozco Henríquez

Jose Antonio Cheibub contributed a keynote paper but was not able to attend the panel discussion.

The president can come to embody the power of the state, and then becomes progressively less accountable to his or her government, legislature, political party or people. Thus, there is a challenge in managing the tension between an empowered presidency, capable of taking decisive decisions and committing to long-term developmental goals, and an accountable and consultative presidency. How should the balance be struck between the two dangers, that a presidency becomes an autocracy, or that presidential powers become so limited as to lead to immobility and ineffectiveness?

Experience has shown that there is no executive branch model that is considered ideal in all contexts. Much is dependent on political culture, institutional traditions, political party system, perception by the population, and leadership style of the president. How strong a president should be depends on the circumstances. In some cases, a president needs to be able to act

immediately to address urgent problems and provide effective leadership, especially if the legislature is weak (e.g. with respect to drug trafficking): in others, the president should aim to build long term consensus and help to moderate conflict between different parties.

There is a tendency to overemphasise the role that formal provisions in constitutions play in shaping institutional realities. These provisions, or the way in which they are implemented, may seem unrelated to the reality on the ground: other factors, such as the leadership style of the president or his or her respect for the legislature, should also be kept in mind. In many cases, a key difficulty is a pattern of weak institutionalization, rather than problems with the formal distribution of power between legislatures and presidents. In many Latin American models, this has caused a type of seesaw between episodes when the executive encroached on the legislature, and episodes when the legislature pushed back. In Mexico, for instance, although no changes had been made to the text of the constitution, a very strong presidential system has become more plural and less authoritarian over time. However, at the same time, the executive and the legislature have become increasingly obstructive and oppositional to each other.

Incremental developments rather than radical amendments are thus more likely to bring about the results sought by those seeking to strengthen democratic institutions, since there is a danger that abstract rule changes designed to “improve incentives” may disrupt tacit understandings, provoke emotional resistance, or in other ways produce consequences unintended by their authors. Adjustment of proposals to take into account

local context and popular understanding; modesty on the part of technical advisers concerning the reliability of diagnoses and prescriptions; and a general preference for incremental development rather than silver bullet blueprints – these are the elements likely to do least harm.”

Underlying the discussion was the question of how to evaluate presidential systems—arguments were made for criteria based on stability of government, success of government in getting legislation past, and/or the degree of institutionalization of a government that delivers effective and responsive services.

The potential of semi-presidential or hybrid systems was considered, but many felt that these do not actually provide midpoints that can moderate autocratic tendencies, as these systems in practice fluctuate between acting like parliamentary systems and acting like presidential systems. According to this view, there is no autonomous position between presidentialism and parliamentarism: rather, in systems such as the French system, the system functions as a presidential system when the president has a majority in parliament, and as a parliamentary system when he or she does not have a majority in parliament.

Cheibub questioned the validity and legitimacy of many traditional assumptions and ‘lessons’ about Presidential systems—the desirability of avoiding strong constitutional powers which increase potential for conflict with the legislature, adopting concurrent and/or two round presidential elections to reduce the number of political parties and make legislative majorities more likely, avoiding proportional legislative elections because they will lead to legislative fragmentation,

and instituting constitutional limits to re-election to prevent an 'all powerful' actor from using its institutional position to perpetuate itself in power. Cheibub questioned the common case for term limits, and in particular the case for one term of considerable length (for example, the single six year presidential term in Mexico) for presidents or legislative members. The benefits of having a president focusing on the interests of the state rather than his or her own prospects for re-election were considered, some arguing that no-one is indispensable, and that in clientelistic systems, for instance, re-election of legislators or presidents will not necessarily add value. This was balanced by the view that the will of people in choosing whether to re-elect a politician provides one of the key forms of accountability in democracies: it is elections and the wish to be re-elected that encourage governments to work for and be accountable to voters. Instead of term limits, mechanisms should be put in place – relating for example to political financing and media access – to regulate and limit the advantages that incumbents inevitably possess in electoral contests.

The Checks and Balances on Executive Powers: The Role of Political Parties, the Judiciary, the Legislature & Public Administration

Panelists: Maria Amparo Casar, Juan Rial, Aquilino Pimentel, Domingo García Belaunde

The discussion followed that of the first panel in concluding that the divergence between the written law and reality remains a key difficulty, in particular with respect to institutional political culture. Often, no matter which design is chosen, hyper-presidentialism has resulted because the checks and balances are weak—weak political parties, weak judicial structures, weak deliberative bodies. In countries with the same model, one president might be consensus building and another might be autocratic – or indeed in the same country at different times. Thus, the focus in drawing comparative lessons should be less on the powers the president has, and more on how they are combined and how accountable he or she is for them.

One key channel of accountability, through political parties, is often of uncertain value. In much of Latin America, political parties are not thought to be legitimate representatives by a large part of the population—for instance Bolivia and Ecuador have rejected their classical political parties, a process of de-institutionalization of parties is taking place in Nicaragua and

elsewhere in the region, and the role and functioning of political movements is becoming increasingly important. This trend has encouraged increased focus on the president and personalization of politics, as a great deal of hope can then become invested in the person of the president. In Latin America, 12 out of the 18 presidents in office in 2008 could be considered to have been elected on the basis of personality or charisma.

The underlying challenges of institutional weakness and immature democracies were also explored. The case study of the Philippines showed that the very broad power of appointment of the president encourages patronage politics—the President has the power of appointment over the major functionaries of government, from the cabinet ministers, to the ambassadors, to the officials of constitutional bodies like the Ombudsman and the Commission on Human Rights, to military officers from the rank of colonel, to the top police officers, to the regional directors running government offices and to the directors of government-owned corporations. The President also appoints all members of the judiciary, from the lowest trial court to the Supreme Court, which encourages politicization of the judiciary. This undermines the creation of professional institutions that could render the presidency accountable. In the Constitution, the legislature is entitled to check presidential appointments, but in reality it is too weak to have any genuine impact.

The challenges of seeking to use constitutional reform to modify the power relationship between the president and the legislature were explored through the example of Peru. Although the formal model has changed over time, power struggles and confrontational behavior have remained the norm. In Peru, the relationship between the executive and the legislature has been conflictual whenever the president did not have a majority

in parliament. The 1933 constitution instituted a mixed presidential-parliamentary system and reduced presidential powers. This structure resulted in a number of executive-legislative stalemates and power struggles that ultimately led to political crises and coups d'état. The 1979 constitution re-centralized power in the president, but difficulties continued in instances where the president did not have a majority in the legislature. Presidential power was further strengthened in the 1993 Constitution after the seizure of power by Alberto Fujimori: despite the fall of Fujimori, this Constitution remains in place.

Given the near impossibility in the short term of rapidly strengthening weak institutions or re-legitimizing political parties, the panel proposed to shift the debate from a single focus on the lack of checks and balances, to a broader focus that included also the lack of mechanisms that lead to cooperation. One major problem is the perception and assumption that to perform as a check and balance, the relationship between the legislature and the executive should be confrontational. Rather, for effective and stable government these two bodies should be working well together, and the question should be what institutional structures best facilitate this.

Electing and Removing a President: Effect of the electoral system and party system in the good performance of presidentialism

Panelists: Lorenzo Córdova, Laurence Whitehead, Mathias Hounkpe, Jorge Lanzaro

Elaborating on themes in the previous panel, the best electoral system might be one that provides the president with a majority, but a fragile majority that requires negotiation. This would mirror parliamentarist structure by requiring the president to keep the members of the party onside.

In the case study presented, Benin had sought to use the electoral system and party system to balance presidential power. After many decades of instability, ethnicization and personalization of politics, and military dictatorship, a national conference sought to modify the system, and adopted a presidency with a multiparty system with a low entry barrier to party formation and a strong judiciary. The impact has been relatively successful. Benin is highly fragmented in ethnic groups and languages, and thus it remains difficult to build and maintain a majority coalition (there are 106 political parties in Benin, although only 12 are represented in the legislature). At the same time this has helped keep presidential power in check, since the president cannot easily control the different factions.

The presidentialism model adopted in Benin in 1990 was designed to be 'strong presidentialism' that could operate in an

extremely divided political landscape by avoiding making the executive depend on the stability of the legislature. In reviewing the three potential challenges the system faced—risk of instability and conflict in the system, risk of autocracy, and lack of accountability—the clear separation of authority between the executive and legislature (the president had a weak veto over legislation, and the legislature could amend the legislation that he initiates – with the exception of the budget, which the president could pass by decree) combined with a strong constitutional court has ensured that conflicts have not led to immobilism. Key factors that had assisted in managing autocratic tendencies included: the strength of the Constitutional Court, human rights provisions which allowed individuals to bring actions to the Constitutional Court, an electoral system requiring two rounds for presidential elections, and an independent electoral management body.

None of the formal provisions created to encourage the legislature to monitor or oversee the executive had functioned well (e.g. questions to government, inquiry and information commissions, vote on the budget laws). However, credible actions as regards accountability had come from civil society organizations combined with the political will of the president and/or cabinet members: civil society organizations are at the forefront of the battle against corruption and public affairs mismanagement.

Presidentialism can be said to complicate the legislative bargaining environment: accordingly, the goal should be to develop this environment towards a basis of deliberation and compromise. In presidential systems, it can be shown that elected legislators are less likely to vote along party lines, and

hence parties are 'weaker'. However, it is not clear whether weak parties lead to presidential systems, or whether presidential systems result in weak parties.

Although it is often said that strong parties are essential for successful democracy, data shows that many people in Latin America want their individual representatives to vote according to their conscience rather than party lines. Given that that parties are essential to resolving the collective action problems that can afflict legislative decision making, the challenge of institutional design in presidential systems is to provide for a presidency that can co-exist with legislative parties without marginalizing them or undermining them completely.

Cheibub in his keynote paper argued that there is no empirical support for the notion that it is harder for presidents to form coalitions when there is high party fragmentation, or that single party minority presidential governments are less effective than coalition governments—thus proportional representation does not in itself undermine presidential systems. The design of presidential electoral systems needs to take account of the political, ethnic, geographic or religious cleavages to encourage the presidency to operate as a force towards unity and integration - for example, the provision in Nigeria that the election winner must have at least a quarter of the vote in at least two thirds of the states of the federation. The two round system commonly used in Latin America can play that sort of role as well. Concurrent presidential and legislative elections deprive voters of the opportunity to signal their disapproval in the middle of the presidential term.

However, what matters is not so much how the president is elected, but the existence and effectiveness of mechanisms

which allow the government to shape the legislative agenda and organize the legislative majority. Designers need to consider for example the details of the legislative deliberation process, the mechanisms for proposing and amending legislation and in particular the budget, provisions under which the president can declare legislation urgent, and the existence and form of the presidential veto (line item or only legislation as a whole?).

When is a Strong President a Benefit?

Panelists: Tania Groppi, John Carey, Kawun Kakar, Jorge Silvero

Strong presidential power can be constructive when the president expands the bargaining circle in the core political centre, and thus encourages deliberation. A strong president can be a unifying and integrating figure symbolising the state, who can step in to unify when the legislature is divided. However, a strong president can also be divisive where he or she is not truly representative of the whole society.

In fragile states, or states emerging from conflict, governance systems face a range of extreme challenges deriving from general unfamiliarity with the legislative process and habits of conflict. In Afghanistan, for instance, where the president did not emerge from a political party, power became very centralized in the president. The legislature has played a minor role, spending much of its time on technical debates: there is little understanding of the respective roles of the executive and the legislature, and insufficient support and funding of legislative bodies and committees. This has resulted in a confrontational relationship between the president and legislature: for instance, the president not being consulted on legislation until it was adopted, causing confrontation and resulting in a potential veto.

In contrast, in Brazil, a strong presidency has partial bill veto, decree power, the power to request urgency in the consideration of specific legislation, and the power to exclusively initiate budget legislation. In practice, the Brazilian presidency appears to hold together a country with many pulling apart forces—such as a federally structured country with economically diverse regions, political parties with weak popular penetration, an electoral system for the assembly with low barriers to entry and features that make state governors influential over party decisions (e.g. the specific form of open-list proportional representation).

Collaboration between the Executive & Legislative branches

Panelists : Pedro Salazar, Jean Claude Colliard, Abdou Khadre Lo

Moderating the “winner take all” nature of presidential institutions

Panelists: Carlos Huneeus, Etsi Yudhini, María Amparo Casar, David Usupashvili

The panels found that moderating the dominance of presidents and seeking methods to encourage collaboration between the executive and the legislative branches were closely related topics of great importance. In most of the examples considered, the dominance of the president and/or conflict between the president and the legislature were common features, and there was little constructive collaboration.

In Chile, the current president appeared limited by the existence of constitutionally established para-state entities such as the central bank and constitutional court and by laws regulating the financing of electoral campaigns. The Senate is particularly strong, and elects the board members of a variety of the independent bodies, including the central bank, the comptroller general and the civil service board that appoints many of the civil servants. In addition, the Senate elects two of the members of the Constitutional Court and ratifies the

nominations of two further members proposed by the Chamber of Deputies. Rather than a “president takes all” model, this can be described as a “democracy by consensus” model. However, the same general constitutional architecture had allowed for different approaches during four different presidencies, with differing centralization of power in the presidency. The way in which the system functions is closely tied to the goals and the leadership style of the president.

Georgia has tried parliamentary, presidential, and semi-presidential systems and has experienced problems with all three. At independence in the 1990s, Georgia transitioned from a parliamentary system to a presidential system. Until 2004, the presidential model centralized power in the president, giving him full control over congress and society. The expectation of the population that the president would be responsible for solving their problems caused great instability when these expectations were not met: presidents were overthrown by coups or resigned due to demonstrations in the street. In 2004, Georgia moved to a semipresidential system with a prime minister, a cabinet approved by parliament, and presidential power to dissolve the parliament. However, instead of moderating the power of the president, this seems to have resulted in the emergence of an even more powerful autocratic president.

In Indonesia, attempts to moderate the tendency of the president to take a winner takes all attitude focused on limiting the ability of both the president and legislature to make decisions unilaterally. Deliberation in the legislative process involves both legislators and representatives of the executive government, and legislation requires joint approval. Rule-by-decree is limited in

scope to emergencies and requires subsequent legislative assent as soon as possible. Executive orders are fixed within a hierarchy of legal instruments which requires them to be consistent with higher legislation. At the same time, review by the newly created constitutional court allows challenges to the constitutionality of laws passed. In order to diversify political involvement in a country that had suffered from the dominance of one single party, Indonesia initially adopted a low threshold to allow a party or coalition to run a presidential candidate, although this has subsequently been increased substantially. Another strategy to ensure representativeness and legitimacy of the president was to adopt a two round system for presidential elections which requires that in addition to an overall majority, the president must also win 20 percent of the vote in half of the provinces.

Particular attention was given to the role of constitutional courts in presidential systems. Presidential appointment of judges can weaken constitutional courts by rendering the judges too closely linked to the president: however, appointment by the legislature also has its risks. In Georgia, the reforms that led to the legislature becoming weaker also led to a weaker constitutional court, as one third of judges were appointed by the legislature. With a weakened legislature, the court felt less support to act in an independent fashion.

Benin is an example of a model where the constitutional court was a backbone of the constitutional framework. It has the trust of the legislature, has been called upon to help it resolve problems, and has also played a key role in protecting citizens' rights and liberties since any citizen is allowed to bring a matter before the court.

In order to encourage the cooperation between the president and the legislature that appears to be a key element of a functioning system, further analysis is desirable of the mechanisms for adoption of the budget, veto rights, the powers the legislature and the president have to draft, introduce and amend bills in the legislature and to declare bills as urgent, and presidential powers of appointment. How the president and political parties are integrated is also significant.

Presidentialism and the Division of Power: Decentralization, Devolution and Federalism

Panelists: Virgilio Afonso Da Silva (Brazil), Antonio Maria Hernández (Argentina), José María Serna (Mexico)

In principle, decentralization or federalism should act as a countering force to the dominance of presidential power and provide a mechanism for the fair devolution of power. However, how this works out in practice depends on many factors. In instances where the federal or decentralized structure is weak, ineffective or badly funded, this mechanism has little impact. When the regions or sub-states are effective and empowered, however, the power contestation between the president and the governors or state leaders can increase immobilism and conflict.

Nevertheless, in the interesting example of Brazil, an empowered federal structure has functioned well alongside a strong presidency. On paper it would seem that the regions, political parties and congress are weak, and only the president is strong. However, in practice the executive and legislative branches often work well together: the model has been called ‘presidentialism of coalition’.

This is partly due to the fact that in Brazil the president has never had a majority in congress, so has had to form a coalition

to govern: both the president and the parties that form the coalition have then worked together with great discipline. The states of the federation also play a role in this cooperative atmosphere. While the states appear not to have important powers under the constitution, in practice candidate selection and election takes place at the state level. The choice of candidates depends on regional leaders: to have an opportunity to be elected to congress, an aspiring candidate needs to prove they have provided services and brought investments to the region and to do that he/she must have good relations with the governors of the states. It would seem therefore that it is possible for a federal structure to encourage cooperation and an environment of inclusion, especially when the president takes the approach of seeking to build coalitions across parties that also satisfy regional demands and regional representation.

Conclusion

Practical advice and tools for democracy builders do not necessarily require the same full rigour as academic publications. An academic writer would conclude from the papers and panel discussions at the Mexico seminar that more rigorous study and analysis is necessary before the propositions which emerged from the debate could be regarded as fully robust. In contributing to the practical world, it is possible to draw some lessons which may be helpful to participants in democracy building and institutional change processes, with the caveat that further analysis – and further experience – will enable these lessons to be developed, refined and perhaps changed. There can and should be a cycle in which experience informs action, and action then informs accumulated experience.

The record of presidential systems in Latin America, Asia and Africa in the last ten years clearly suggests that while presidentialism has strengths and weaknesses, there is nothing inherently impossible in seeking to build and sustain a presidential democracy. How this works in practice does not depend only on the formal institutional framework adopted – although this is important, and there are choices which can advance sustainable democracy and choices that can retard it – but also on the personalities involved and on more general cultural issues.

This makes it useful to explore the question of how to make presidentialism work, rather than to consider dramatic system changes towards a parliamentary or semi-presidential model

(with the problems as well as the advantages associated with each) as the only answer. Given that the same system can behave in different ways under different presidents (with more or less centralized power), reforms, and especially radical reforms, should be approached with caution. Incremental changes may be a slower but more reliable way of adjusting the system to achieve the results sought. Careful consideration should be given not only to the formal divisions of power as described in the constitution, but also to informal practices and the leadership style of the president, in evaluating how a system will function.

Overall, the propositions put forward by Mainwaring and Shugart² for a successful presidential system received support from the seminar discussions. These are that an electoral system which gives the president a reasonable bloc of support in the legislature, although not necessarily a majority, is helpful; that the president should have few or no powers to legislate by decree; and that political parties should have the right degree of control over their representatives in the legislature—neither too little, leading members of the legislature to buy support (literally or figuratively) each time there is an issue to debate, nor too much, resulting in intractable conflicts between the president and the leadership of the parties.

An important theme throughout is the need for a culture of cooperation between the executive and the legislature, with mechanisms to match. Rather than this relationship being confrontational, for effective and stable government the two should be working collaboratively together. The question

² Scott Mainwaring and Matthew Shugart, *Presidentialism and Democracy in Latin America*, Cambridge University Press (1997), 394-395 & 434-437

is therefore: what institutional structures best facilitate cooperation? There are many details which can contribute, and the case studies draw attention to some of the possible approaches. Design of a collaborative legislative process, consideration of who can initiate and amend legislation and in particular the budget, urgency provisions, and careful consideration of the existence and form of a presidential veto are all part of this agenda. Much will depend on the political culture, representativeness and professionalism of the political parties, and the leadership styles of the president and within the legislature.

Strong presidential power is not necessarily destructive by nature. It can equally be constructive when it is used to encourage deliberation and expand the core political bargaining circle. A strong president can also be a unifying and integrating figure and symbol of the state that can step in when the legislature is divided. However, a strong president who uses power for sectoral ends can be dangerously divisive. The appropriateness of a strong presidential model with highly centralized power in a multi-ethnic and divided society should thus be considered with particular care, because of its tendency to result in exclusion and conflict. While the seminar did not address the recent experience of semipresidential systems in for example Eastern Europe and francophone Africa, much of the limited discussion which took place tended to suggest that semipresidentialism does not typically function to moderate the pitfalls of presidentialism, but rather to increase areas of conflict and friction.

While there is much more to share and learn from the continually growing pool of experience with the practice of presidentialism,

it does appear possible to advise that it is likely that a successful presidential system will be based on collaborative relationships within an effective framework of checks and balances. A strong constitutional court that has broad jurisdiction to hear cases brought by citizens as well as by government entities has proved itself a useful mechanism to ensure moderation in the use of presidential power, as well as to encourage an atmosphere of respect for rule of law more generally. How to improve the effectiveness of presidential systems in situations where the surrounding institutions are weak and political parties are not considered representative thus remains a fundamental challenge.

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This publication is a summary and analysis of a discussion that took place in a workshop organised by International IDEA and the Autonomous National University of Mexico (UNAM) in Mexico City in February 2008 on the theme of “Making Presidentialism Work”.

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