Joined up Democracy Building

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Keynote speech

**International Conference on Parliaments,
Crisis Prevention and Recovery**
**Hosted by UNDP and the Government and Chamber
of Representatives of Belgium**

Brussels, 20 April 2006

When my daughters were young, they, like so many, spent hours in front of video game machines. One of their favourites was called The Mole Hunter. A little mole would appear somewhere on the screen. You rushed around the screen and hit the mole with a hammer, and sometimes immediately, sometimes with a little delay, another mole popped up somewhere completely different….

This may sound familiar to anyone who has been engaged in the design and building of institutional frameworks. Each element of a framework can have an impact on the way the others work, sometimes in unexpected ways or in unexpected places. For example, on average worldwide, majoritarian electoral systems lead to one and a half less significant parties in the legislature than proportional systems[1] – with consequences for the way governing coalitions are built and remain together (or fail to do so). Majoritarian electoral systems can also regionalise representation, with parties which are strong in particular regions winning all the seats in those regions, and none where they are less so – potentially entrenching regionalism or even separatism into the dimensions of national debate. Presidentialism can engage the whole membership of the legislature in oversight: parliamentarism does not, which has consequences for the way that executives are held to account. Presidentialism is thought to work better if electoral systems tend to give presidents a significant block of legislative supporters, if presidents have little or no power to legislate by decree, and if political parties have some control over their elected members but not draconian control. Bicameral systems often emerge from a perceived need for a forum of representation of regional interests, which affects the way each legislative chamber works, and probably requires two electoral systems. It is no good, therefore, defining approaches to any of these issues alone. As one tries to do so, something will pop up or work differently somewhere else in the institutional framework.

The importance of some of the elements of the institutional framework is widely known – the electoral system, key constitutional choices such as presidential or parliamentary system, federal or unitary state, unicameral or bicameral legislature, and the organisation and independence of the judiciary. Other elements are perhaps less familiar, such as political party legislation and the political party system. But the elements relating to the operation and development of legislatures are perhaps among the least considered. The way that both the legislating and the oversight

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[1] Pippa Norris, *Electoral Engineering,* Cambridge University Press 2004, pp 81-95.

roles are defined, the powers of the legislature in relation to the structuring of ministries and the appointment and dismissal of ministers, the relationships between political parties and their elected members, term limits and the detailed provisions of standing orders can all change the way in which a new institutional framework functions.

The lesson is that joined up democracy building is a key to the process of successful institutional framework design – and to assistance to that process. It is a political process, involving political stakeholders and actors. Some of them may be long term, national and visionary in their approach, at least some of the time. Others may be short term, sectional, venal or even not committed to democracy. But they cannot be wished away by seeking to drop ideal solutions from outside as technical fixes, however well they might look as if they will work. Imposed frameworks are likely to be dismantled by local political forces later, either by amendment or by force. Angola's experience in 1992, with a two round presidential election in a winner take all institutional framework leading to the resumption of armed conflict by the loser, is as good an example as any.

Better on the inside...

The interests of the political actors restrict the practical range of solutions that can be agreed during a post-conflict transition. The ability of armed groups excluded from a negotiation to disrupt the process tends to incline agreements towards the design of inclusive institutions which will involve all or most of these groups – although sometimes questions of transitional justice may have an impact on who may participate. The resulting frameworks tend to require the continuing construction and maintenance of coalitions after elections have taken place.

Afghanistan provides an instructive example. International technical advice suggested that closed list proportional representation would enable the inclusion of all major players in the newly elected legislature. However, opposition – especially by President Karzai – to the concept of political parties as electoral participants meant that this solution would not be accepted. What resulted was the adoption of Single Non-Transferable Vote, the nearest the electoral system world possesses to a fruit machine. In the Afghan context, this has produced an assembly of elected individuals many of whom have a very limited base of support. The prospects for consistent groupings to develop and stable government to be enabled in the longer term have probably dimmed.

There's nothing so permanent as the temporary

It can be argued that any new institutional framework needs time to settle down, and that it takes some time for both the political participants and the electorate to fully appreciate and explore the possibilities and incentives of a new system. It has indeed been suggested in the specific context of elections that a new system should be allowed to function for three elections before it is changed except in cases of obvious disaster.[2] Leaving aside the question of what constitutes an obvious disaster, once any system is in place, there are winners and losers – and the winners may not want to change the rules that have assisted them.

An effective long term institutional framework may well differ from one which is useful or indeed achievable in the short term after transition – a distinction characterised by Andrew Reynolds[3] as parallel to that between emergency medicine and convalescent care. But there is no guarantee that the patient will wish to make the change in treatment; without economic collapse or further violent conflict, it may be difficult to get past the new powerholders. The consequence is that transitional negotiators and designers do not only need to think about the emergency itself, but what the convalescent stage might look like and how the further transition might later be made.

What is possible now – and what happens later?

It is therefore not enough to seek to produce a framework to get through the short term that is conducive to inclusion of all of the contenders. There are two additional tasks. The first is to try to ensure that solutions are robust against the effects of changes which the political context suggests may be made as their work goes through the initial process of approval and adoption. The second is that discussions need to consider not only the desirability – or even necessity – of inclusive frameworks, but the need for systems which can lead to stable political institutions and governments in the longer term. This is not always easy to envisage, let alone design. The political groupings involved in the process may well change, as will the individual personalities involved.

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[2] Rein Taagepera, *Designing Electoral Rules*, in *The Architecture of Democracy*, ed Andrew Reynolds, Oxford University Press 2001.
[3] Andrew Reynolds, *Constitutional Medicine*, Journal of Democracy 16:1, pp54-68, 2005.

Where the international community is taking the leading role in a transition, there is a further constraint on these tasks. The international actors are only present for a limited time, before interest or support wanes on the domestic agenda or international politics moves on to the next great cause, and political and financial pressures grow to declare victory and go home. Elections make a splendid visible peg on which to hang this declaration. Local participants in negotiations – whether democrats or not – are fully aware of this. Warlords know that if they only wait long enough and make a few concessions, the international presence will almost certainly be gone sooner or later.

When a transition is domestically driven, there are also limits on what can be agreed. The experience of Chile is instructive. In the constitutional and legislative package put together to reach agreement over the end of military rule, several provisions protected the position of the outgoing military and froze the system against change. These included a provision that further system change would require a 60% majority to pass an organic law, an electoral system which made this a steep hurdle, and the inclusion of appointed and exofficio seats in the Senate to try to ensure that this chamber would resist any change that was unwanted by the outgoing power. At the same time, the constitution provided that the legislature could not increase the budget over the president's proposal and that if no agreement was reached on the budget within sixty days, the president's budget would take effect, and a law was put in place guaranteeing a minimum level of military spending. The return of democracy was thus accompanied by constraints on both the composition and the powers of the legislature. More than fifteen years after the transition, change in these negotiated provisions is only now becoming politically feasible.

When do we need a legislature?

Post-conflict transitions do not only raise issues about the form of a new framework. How to get there from here, the timing, sequencing and phasing of the transition, is integral to the way the whole process of building a new constitution and a new legislature will function in practice.

The first universal elections in South Africa in 1994 took place after the process of transition had been under way for some years. By contrast, the early elections held in Bosnia in 1996 under the Dayton Agreement led to the freezing into place of zero sum identity politics in which the participants in the conflict played the major roles. The lesson drawn from these experiences is that it

may not always be advisable to hold early elections for bodies which are not transitional in nature. But if holding early elections is undesirable, who holds power until elections do take place? When does democracy delayed become democracy denied?

One approach is to divide the drafting of a constitution for the long term from immediate legislative needs, and therefore create both a constituent assembly – opening the opportunity for wider participation in the constitution building process - and a separate lawmaking body. But the way in which these bodies are constituted, chosen, and organised and the procedures they use will be critical in determining their success or failure.

Is it easier to get coherence and the beginnings of reconciliation by initially focusing on local level institutions for practical service delivery on the ground? While this sounds attractive, the question of who can legitimately hold national power (and be responsible for the context and resourcing of the activity of the local institutions) in the interim remains, and examples of the 'local first' approach are hard to find in practice. One intervention which may have captured this idea was the World Bank's initiative in setting up village committees as soon as possible after the conflict in East Timor – but this action was clearly not welcomed by the UN transitional authority.

OK, we've been elected – what do we do next?

Transition is often accompanied by euphoria, which may last perhaps for a year or eighteen months. During this period, it is possible to make fundamental structural and political changes that would take years in less fluid times, or would just not happen. Two examples are Boris Yeltsin's 'Let's abolish the Communist Party' intervention of 1990, and BJ Habibie's 1999 disengagement of Indonesia from East Timor and introduction of the largest big bang devolution ever.

Great political changes usually need lots of implementing legislation in order to work. After a transitional election, legislatures are likely to be full of new members who may be committed to change but inexpert in legislative detail just at the time when skill at effective legislating is most needed. In the field of election administration, we have already started to learn the lesson that capacity building and training beforehand is often the only effective way for enough people to be around at the moment that the wave – or even tsunami - of transition breaks who know how to run what is the largest enterprise that the state ever undertakes. The same lesson is waiting to be learnt in relation to the need for legislative capacity

building in advance. This needs to engage not only those seeking to become the new legislators but those who will be serving the new legislature as its secretariat and expert advisers. The experience of the support programme to the new legislature of Afghanistan – which despite its acknowledged limitations has been conceived on a scale which begins to address these issues – will be instructive and important.

Oversight – the Cinderella function

Legislatures are there to make laws: it's what the name says. And the period after conflict may be a time when this job is particularly important. However, legislatures have other functions too.

Oversight becomes particularly important when the euphoria has gone. The expectations of transition were always impossible to meet, and disillusion begins to set in. At this time, a legislature has a particular opportunity to establish itself as a major channel for popular feedback. In a parliamentary system, the function of opposition in the parliament is to be the watchdog of effective government performance: in a presidential system, the whole legislature has a role.

But oversight is not glamorous. Newly elected members are often far more engaged with the task of law making than with the task of holding to account. How can elected members most effectively get engaged in the importance of longer term oversight activity?

Are the new institutions sustainable?

Donor agencies tend to use an event driven approach to transitions, starting when they identify a polling day which may be at most eighteen months away and often much less. This does not sit well with the development of the human and organisational capacity to run democratic institutions that are both 'good enough' and sustainable within the national budget in the longer term.

For example, first elections are often visible and well funded, and may even set standards that are too high: second and third elections are equally important in developing long term electoral capability. Even when donors make commitments to follow up electoral assistance programmes, the political will may not in practice outlast polling day. Electoral observation reports are rightly independent, but then gather dust rather than being used as an input to future development programme planning. One result may be the international community supporting replays of the same semi-authoritarian election scenario every four or five years, where

the technical election performance may improve, but no progress towards democratisation is visible.

The same is true of legislative bodies. The newly elected assembly may not lack friends while the international community is engaged, but will it be able to access domestic financial and human resources to sustain its activities? A newly democratic legislature may inherit a budget allocation process entirely dependent on an executive ministry, and a secretariat whose members are supplied by an executive civil service in which the legislature has probably not previously been the most prestigious career channel. Even though these issues may not have high visibility at a the time of transition, arrangements of this kind almost certainly need to be changed if the legislature is to maintain the clout to play its proper role in the longer term.

Who do we represent – and to whom are we accountable?

Discussions about the design of legislatures talk a great deal about representation and accountability. The difficulty is that representation – and its counterpart, accountability – can take at least five different forms. Representation can be geographical, linking the representative to a specific area and to constituents within it. It can be based on an ethnic, tribal or other identity. It can be ideological; and it can be party political, which is not necessarily the same. It can be descriptive, seeking to ensure that an elected assembly contains women and men, old and young, or poor and rich. These definitions are sometimes in competition with each other: for example, it is known that the number of women elected increases when multi-member district electoral systems are used, but these may loosen geographical representation. The form of the legislature depends on the choices made about what forms of representation are most important.

The chosen basis of representation and accountability is an important factor in incentives for accommodative or 'winner take all' behaviour by those who hold or gain power. Do elected legislators respond primarily to the whole electorate, all voters, party supporters, party members, party activists, party leaders, or whoever is going to give them their next job? The last option may for example be particularly relevant if term limits are introduced – look for example at Costa Rica. Term limits are not however the only factor: some constellations of electoral systems and institutional frameworks are intrinsically more likely than others to promote turnover of elected members. This relationship is not simple: well over 90% of incumbents are reelected to the US House of Representatives using a first past the post electoral system, but

the same system while it was used in Papua New Guinea produced a turnover rate closer to 50% in recent years. The incentives for the PNG members to take benefit from their position while they were in a position to do so are self-evident – as are the consequences for the coherence of the Parliament.

Is geography important?

Much has been written about the importance of the geographical link in representation. However, the longstanding conventional wisdom may not in fact be true. John Curtice and Phil Shively[4] have shown that in a broad range of countries, this link is significantly valued only by that small group of the electorate who make actual contact with their elected representative between elections. The distinction these people draw is between electoral systems in which they vote for parties, and electoral systems in which they vote for candidates. Otherwise, people do not feel better represented either by a single member for their district, or by a group of members, often from a spread of parties, in a multi-member district.

The politics of identity

Identity is another controversial basis of representation. In post-conflict transition, it is well recognised that such identification can entrench the warring factions into the political process, leaving little or no space for new and cross cutting political forces to develop – as happened in post-Dayton Bosnia. And such identity, once established in the political system, may be hard to break. However, identity can work in very different ways.

To take three very different examples, compare and contrast the ethnic political identification of the vast majority of the people of Guyana, the collective and tribe or village based politics of Papua New Guinea, and the *'aliran'* or 'channel' identification – secular nationalist, traditionalist Islamic and modernist Islamic being the major examples - which has long been a major aspect of political loyalty in Indonesia. The first is a reflection of the long term entrenchment of two ethnic communities. The second reflects a society where a state which was never strong has delivered less and less and has not had reserves of popular loyalty on which to fall back. While identity is only arguably an inevitable element of tradition, it is a barrier to complete atomisation. The third has been

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[4] John Curtice and Phil Shively, *Quem nos representa melhor? Um deputado ou vários?,* University of Lisbon 2003, forthcoming in English.

a mechanism which has assisted the development in the democratic era since 1999 of a coherent political system in a vast and diverse country which nonetheless does for the most part possess legitimacy – and which formed the underlying basis of loyalties going back to the first free and fair elections in 1955. The real danger in institutional frameworks is perhaps not identity itself, but the entrenchment of zero sum politics.

Do ideological differences always exist?

Much of the conventional wisdom relating to the development of political systems contends that political party systems are most likely to be effective and stable when they reflect ideological divisions, and that electoral debate and campaigning consists ideally of offers by parties to the electorate of competing ideologies and policies. Leaving aside the extent to which this paradigm exists even within developed democracies, its value when conflict and human security issues play an important role is highly questionable. The politics of identity and/or the politics of leadership may be an inevitable part of the environment in which democracy builders are working.

For example, in less developed countries where poverty levels are high and the subsistence economy remains a primary way of life, people are unlikely to view programmatic competition between contestants in an election as very relevant - even when the state has managed to achieve some relevance and legitimacy in the minds of most of the people. It is likely that all parties or candidates participating in a contest will advocate similar, developmental policy aims – improvements in education or health or infrastructure. There will not be a clash of ideologies between pro-development and anti-development political forces. There may be differences in the pecking order given to potential spending in different geographical communities, tending to make the election a head count between competing areas. Otherwise, it probably makes sense in practice for voters to judge competing politicians and parties on how good they will be at practical service delivery. How competent will they be? How corrupt will they be? Will they appropriate public resources for sectoral or private purposes? The result is a choice based on leaders, not on programmes.

Institutions and communication

Effective democracy building takes place in the world as it is, and the evidence that programme based political systems may in theory perform better should not cause democracy builders to assume – still less try to recreate - a previous world of communication whose

obsolescence may or may not be desirable but is nonetheless a reality. The idea of the clash of programmes was conceived in an age where direct personal communication was paramount, and could be sustained when radio became the primary medium of communication. The same was much less true when television became the primary medium of communication, as is now usual in many countries. To attract and retain attention, messages need to be simultaneously visual and aural, not merely verbal, and not be formed as a long and carefully developed line of argument.

These realities of communication create particular challenges for legislatures. News values and detailed legislative work do not often sit well together. A newly elected legislature may not have the status and access to media that other political participants in a transition may be able to access. For a legislature to establish its position within an institutional framework, it is likely not only to need to develop capacity in fulfilling its roles, but also to develop capacity to communicate effectively.

Two approaches to new institutional frameworks

Much of the debate among political scientists around representation in divided or conflict prone societies has swirled around two radically different approaches. The consociational model, linked above all with the name of Arend Lijphart[5], accepts representation based on identity. Voters make a choice between groups through the mechanism of list proportional representation, and any group with more than minimal support gains seats in the elected assembly. Government formation requires a grand coalition of all major groups, giving each an effective veto; both legislative and executive posts are distributed between the actors, and groups enjoy considerable autonomy in their respective areas of strength. The model accepts limitations, but as Lebanon has shown, can deliver stability over significant periods.

In contrast, a more adventurous and individualist approach, the concept of vote pooling, has been developed by Donald Horowitz[6] and others. Its advocates viewed the consociational approach as giving no incentive to groups to make the compromises necessary to build a stable and inclusive political system in the longer term. If

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[5] Arend Lijphart, *Democracy in Plural Societies,* Yale University Press 1977.

[6] Donald Horowitz, *Ethnic Groups in Conflict,* University of California Press, 1985: *Encouraging electoral accommodation in divided societies,* in *Electoral Systems in Divided Societies: the Fiji Constitution Review,* RSPAS 1997.

a party sought to reach out to groups other than its own in a polarised society, it would probably gain few votes because trust across the divide between groups did not exist, but run the risk of losing the votes of its own group to a party which denounced an actual or potential sellout. Vote pooling requires the use of a preferential electoral system, under which voters are required to express not only a first choice which may inevitably go to a candidate of a party of their own ethnic group, but second and subsequent choices which will go to candidates of parties of other ethnic groups. Parties and candidates therefore have an incentive to take moderate positions in order to attract these voters – and perhaps to build alliances before, rather than after, polling.

It is intuitively likely that the party base of the consociational approach may be associated with stronger discipline over elected members. Equally, the candidate based approach usually associated with vote pooling may tend to give more freedom of action to elected legislators. Which is more helpful to accommodation and coalition building? And which is more helpful to building a coherent legislature?

Fiji: a test bed for vote pooling?

The major test so far of the vote pooling approach has taken place in Fiji. The report of the Fiji Constitution Review Commission established in 1995 put a high priority on multiethnic government, substantially accepting the arguments for the vote pooling approach. Voters were given the option to vote either 'above the line', selecting a party of first choice and allowing second and subsequent preferences to be allocated as specified by that party, or 'below the line', expressing preferential choices directly.

The above the line 'ticket voting' provision was strongly supported by Fiji's political parties at the time of the Commission's deliberations, during which its specific impact does not appear to have been addressed in great detail. The desire of parties and their leaderships to reduce uncertainty by limiting the power given to voters is not surprising. As the political process unfolded, the parties acquired a great deal of control over the redistribution of preference votes. This influenced electoral outcomes and the subsequent fate of the legislature in several unpredicted ways.

In the 1999 elections, 92% of those who voted chose the 'above the line' option. The Fiji Labour Party, the largest party of the Indo-Fijian community, won 34% of the first preference vote, and was able along with some small allied parties to gain an overall majority in Parliament. But a number of their successes rested on

preferences received from the VLV, a radical indigenous Fijian party. The FLP and the VLV had both declared preferences which put parties far away in the political spectrum above parties which were closer. Only those parties specifically identified with moderation and ethnic accommodation had followed the theory and regularly transferred their preferences to neighbouring parties.[7] In short, 'nice guys finished last'. The 1999 election result did not command sufficient legitimacy, and the majority government was unseated as a result of the attempted coup in 2000.

Voters have one interest: parties may have another

The missing factor was that political parties do not necessarily act in the same way as voters. Parties generally aim to maximise their own support and influence, and therefore seek votes from those who have previously not been supporters as well as from those who have. The electors targeted by a party are far more likely to be the previous supporters of a party that is adjacent in the spectrum of ideology or identity than previous supporters of a party which is far distant. If a party is to grow in a significant and sustained way while the composition of the electorate remains roughly constant, another party or parties must become correspondingly weaker over time. This would appear to hold under any electoral system. It may be particularly true in systems where an electoral threshold, actual or effective, exists – because once a party falls below that threshold, all its votes are more likely to be up for grabs.

Vote pooling is a mechanism which can involve individual voters in making choices across divisions. It might be thought good as a matter of democratic principle if Ben Reilly[8] were right in saying that vote pooling 'has not yet received the prominence it deserves as an alternative democracy and inter-ethnic accommodation in divided societies', thinking particularly of the urban areas with demographics of intermixed ethnicity which are becoming more prevalent worldwide. Its reintroduction in the highly diverse society of Papua New Guinea has also produced initially encouraging results in by-elections. But the Fiji experience shows it is not always that easy. Despite the 2000 coup, the same electoral system remains in place – it is only beginning to work differently because the

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[7] Data derived from the Fiji Election Commission website www.elections.gov.fj and from Jon Fraenkel and Bernard Grofman, *Does the Alternative Vote foster Moderation in Ethnically Divided Societies?*, forthcoming.

[8] Ben Reilly, *Democracy in Divided Societies,* Cambridge University Press 2001.

demography of Fiji is changing fast. The difficulty of making changes once there are entrenched winners is illustrated again.

Conclusion: Joined-up Democracy Building

Joined-up democracy building recognises that the design and building of the framework and practice of democracy is a complex and interlinked process, about which more is known about some parts than others. Practical knowledge and experience is helpful about constitutions, legislatures, electoral systems, party systems and a range of other issues – and just as importantly about the relationships between them. Legislatures have a critical role to play, and their contribution needs to be built in to the process from the beginning.

Any solution is complex, and tailored to the constraints of the political and power dynamics in which it is formed and the negotiating skills of the parties involved. The devil is always in the detail, and some provisions of transitional agreements may turn out to have unintended and surprising effects. The way in which any solution works may change over time. Solutions themselves may be changed over time – but only if resistance by incumbents can be overcome. The possibility of later change does not absolve participants and advisers in the design of institutional frameworks from the need to try to get it as right as possible at the beginning.

This conference will play an important role in two ways. It will add to the understanding that democracy building is a political process which requires a holistic approach, and not a set of unrelated operations involving solutions of a technical nature. It will also help to promote the role of legislatures in that process to the integral position which it can and should possess. In this respect, UNDP's Guidelines on Parliaments, Crisis Prevention and Recovery will be a cornerstone document, and this conference provides an excellent opportunity for debate to enable the final polishing of what is already an excellent draft.