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PREVENTING DICTATORSHIP: CONSTITUTIONAL SAFEGUARDS AGAINST ANTIDEMOCRATIC CONSOLIDATIONS OF POWER¹

EXECUTIVE SUMMARY

Emergent democracies are at an especially acute risk of deteriorating into authoritarian governance usually through the concentration of power in the executive. Constitutional safeguards can help prevent such antidemocratic concentration of power.

Safeguards used in constitutions around the world include, among others:

Limits on executive authority

- Presidential term limits;
- Clear and restrictive provisions for declaring a state of emergency.

Clear guidelines for constitutional amendment

- Entrenched or unamendable constitutional provisions or principles;
- Legislative supermajorities to approve constitutional amendments;
- Clear and detailed provisions for constitutional referenda.

Accountability and other mechanisms

- Guarantees for transparent, independently managed elections;
- Constitutional judicial review;
- Legislative budget oversight;
- Limits on antidemocratic forces

Given the histories of antidemocratic concentration of power in the Arab world, constitution makers in Tunisia, Libya and Egypt should consider implementing these safeguards. Although constitutional safeguards alone cannot prevent dictatorship, they make the concentration of power more difficult.

¹ This briefing paper was inspired by a presentation of Thomas Markert at DRI's workshop, "Challenges of Constitutional Reforms in the Arab World," Berlin, Germany, 2 December 2011.

1. INTRODUCTION

New constitutions are on the horizon in Egypt, Libya, and Tunisia. Constitution makers in these three countries aspire to enshrine the goals of their respective revolutions in institutions and laws.

One risk is that, over time, democracy could deteriorate into authoritarianism. In Arab countries, the antidemocratic consolidation of power by national executives has been widespread in the last decades. Tunisia's two presidents, Habib Bourguiba and Zine El Abidine Ben Ali, both concentrated vast powers through constitutional moments early in their reigns. Bourguiba secured a lifetime term as president in 1975. Ben Ali, facing his term limit, pushed through a constitutional referendum in 2002, allowing him to stand for two more elections. Constitutional reforms in Egypt in 2007 made it difficult for opposition parties to field candidates, paving the way for a candidature of Gamal Mubarak.² In Syria, Bashar Al-Assad dashed hopes that he would pursue political reforms by extending a state of emergency when he took office in 2000.³

These histories suggest that democracy-minded constitution-writers should consider safeguards against antidemocratic concentration of power, meaning the claiming of authority by one branch of government (usually the executive) through the manipulation of laws in order to upset the balance of power. This paper surveys some constitutional provisions used around the world to safeguard against antidemocratic consolidations of power. The paper could be of value to constitution makers anywhere, but it is inspired by and targeted in its examples to the constituent assemblies of Egypt, Libya, and Tunisia.

A rich literature is associated with each of the safeguards listed here, but this paper offers an outline that distills the key points for constitutional policymakers. All safeguards considered here are options for constitution makers interested in preventing executive consolidations of power. The potential benefits and drawbacks of each option are summarized. The list is not prioritized. A summary table appears at the end.

This paper describes constitutional provisions that help safeguarding democratic institutions. These provisions do not constitute democratic governance by themselves. Such constitutive elements — including the separation of powers, the civil oversight of the military, the protection of political rights, among others — have been outlined in other publications by DRI that focus on international consensus around essential elements of a democracy.⁴

² See DRI Briefing Paper 7, November 2010, *Egyptian Elections Paving the Way for Presidential Succession*.

³ Roger Owen, "The Rise and Fall of Arab Presidents for Life" (Cambridge: Harvard University Press, 2012).

⁴ "International Consensus: Essential Elements of Democracy," Democracy Reporting International (October 2011); "Strengthening International Law to Support Democratic Governance and Genuine Elections," Democracy Reporting International and the Carter Center, July 2012.

2. KEY SAFEGUARDS

CHECKS ON EXECUTIVE AUTHORITY

a. Presidential term limits

Authoritarian rule often consolidates power in one person, often a long-ruling president. To prevent autocratic, personalized, and unaccountable rule, many constitutions limit the length and number of terms that a national executive can hold. Constitutional term lengths around the world typically range from four to six years; some constitutions allow for only one term, some for only two terms total, and some for a maximum of two consecutive terms but no restriction on the total number.⁵

Some countries, such as Azerbaijan, do not place a term limit on its president. During the 2009 constitutional referendum that removed term limits, Azeri president Ilham Aliyev argued that the removal of the two-term limit would expand the freedom of the voters to choose their president. In a comment on the proposed referendum, the Council of Europe's Venice Commission wrote that,

*while this argument may sound rather attractive at least in theory, explicit limitations are needed in practice, because an incumbent president may easily use various plebiscitary means in order to strengthen his or her position and secure his or her re-election.*⁶

Some presidents seek to extend or abolish presidential term limits in order to strengthen their power. Recent attempts to change term limits have triggered political crises around the world, especially in sub-Saharan Africa. Since 1990, seven sub-Saharan African presidents extended their constitutional two-term limit by referendum and won a subsequent third term. In Chad, a 2005 referendum enabled President Idriss Déby to run for a third term in 2006, which he won in an election boycotted by the opposition party.⁷

In addition to Déby's method, presidents around the world have tried to circumvent term restrictions in several ways, including:

- Abolishing relevant provisions through constitutional amendment in the legislature (Tunisia 1975).
- Abolishing relevant provisions through constitutional amendment by referendum (Uganda 2005, Azerbaijan 2009, Venezuela 2009, Chad 2006, Tunisia 2002).
- Abolishing relevant provisions through the decision of a partisan court (Nicaragua 2009).

⁵ This and further references to comparative constitutional design are drawn from the Characteristics of National Constitutions dataset (version 1.0, 14 May 2010) from the Comparative Constitutions Project, compiled by Zachary Elkins, Tom Ginsburg, and James Melton.

⁶ Venice Commission, 10 March 2009, [http://www.venice.coe.int/docs/2009/CDL\(2009\)053-e.asp](http://www.venice.coe.int/docs/2009/CDL(2009)053-e.asp).

⁷ See Daniel Vencovsky, "Presidential Term Limits in Africa," *Conflict Trends*, Issue 2 (2007), p. 15–21.

- Arguing that a constitutional amendment intended for the next president applies to the sitting president (Senegal 2012).
- Enlisting a surrogate, such as a political ally, to run for president in order to avoid restrictions on subsequent terms while wielding significant power over the surrogate (Russia 2012).

In January 2011, one year before his ouster, Yemen's former president Ali Abdullah Saleh sought a constitutional amendment to allow him to run for a third term in the 2013 presidential elections. There was stiff opposition to the amendment, which never reached a vote.

Several Arab presidents are not bound by term limits. The president of Algeria can be elected for an unlimited number of five-year terms. Under the 1973 Syrian constitution (officially replaced in 2012), the Ba'ath Party's nominee for president has been confirmed by referendum every seven years, and the pre-revolution Egyptian constitution called for a referendum of the parliament's nominee for president for a five-year term. The Syrian and Egyptian presidents were subject to term limits.

In order to prevent manipulation, the Honduran constitution provides that any leader who proposes the abolition or amendment of term limits is subject to immediate removal from office. This was the fate of former president Manuel Zelaya in 2009 who proposed a constitutional amendment that would allow him to stand for a third term.⁸

A number of legal barriers can be erected in constitutional law to prevent presidents for life through the manipulation of term limits. Drafters should consider provisions that would:

- Restrict the number and length of terms for the national executive.
- Clarify in the text that a term limit continues applying even if other parts of a constitution have been amended.
- Clarify in the text whether a person who serves as president at the time of adoption of a constitution already falls under the term limit, or whether only his or her future terms will be counted.
- Declare term limits unchangeable by any means, including by ordinary constitutional amendment, court decision, or referendum.

b. Clear and restrictive provisions for declaring a state of emergency

A state of emergency is a state of executive governance that by definition undermines the constitutional balance of powers in a democracy. States of emergency can empower national executives with the tools to lift their countries out of crisis, but without placing restrictions on how they can be used and under what circumstances, states of emergency can also be

abused to consolidate power for long periods of time. Decades-long states of emergency have been a common tool of antidemocratic consolidation in Arab countries, notably in Algeria, Egypt, and Syria.

Among the constitutions that authorize a national executive to declare a state of emergency, 80 percent call for approval from a second state organ: the head of state or head of government (in systems with two executives), the legislature, or the cabinet (see Chart 1). Eighty-four percent of constitutions with emergency provisions stipulate explicit conditions under which a state of emergency can be called, such as war, invasion, natural disaster, economic emergency, or a threat to the constitutional system.⁹

Indeed, Article 4 of the International Covenant on Civil and Political Rights (ICCPR) introduces strict limitations on applications of the state of emergency.¹⁰ It allows derogations "to the extent strictly required by the exigencies of the situation" and includes rights that cannot be interrupted, such as those protected under articles six, seven, eight, 11, 15, 16, and 18. The Human Rights Committee's General Comment on Article 4 states that states of emergency are of an "exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened."

The Siracusa Principles also limit emergency powers. Adopted by the United Nations Economic and Social Council in 1984, the Siracusa Principles provide a detailed interpretation of the limits of a state of emergency. Among other restrictions, Siracusa requires:

- Specific conditions under which a state of emergency can be called.
- Protection of specific rights or freedoms even during a state of emergency, in line with Article 4 of the ICCPR.
- Explicit limitations of the executive's extraordinary powers to only that narrow set afforded her or him during a state of emergency.

In addition to the above safeguards, constitution makers could also consider requiring:

- Approval of a state of emergency from some supermajority of legislators or other government organ.
- Renewed approval from an authorizing body over regular periods of time.
- Endorsement from an independent body that can determine whether or not the conditions authorizing a state of emergency have been met.
- A limit to the length of time for which a state of emergency can be in effect.

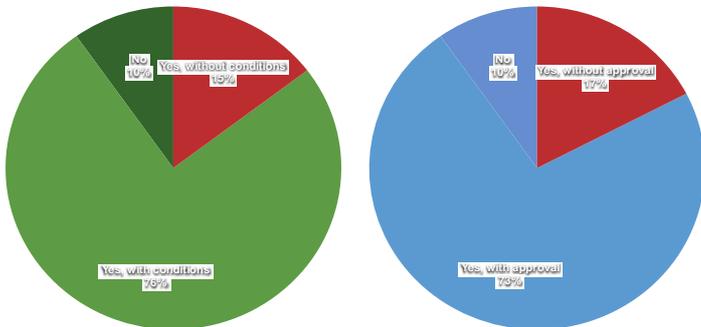
⁹ Data drawn from Characteristics of National Constitutions, *supra*.

¹⁰ For more on restrictions placed on emergency power by Article 4 of the ICCPR, see "Strengthening International Law to Support Democratic Governance and Genuine Elections," Democracy Reporting International and the Carter Center, pages 19–20: <http://www.democracy-reporting.org/publications/thematic-papers/research-report.html>.

⁸ Tom Ginsburg, "The Puzzle of Unamendable Provisions: Debate-Impairing Rules vs. Substantive Entrenchment," Comparative Constitutions Project, 12 August 2009.

- Safeguards to protect the rest of the government from executive interference, such as by explicitly preventing the executive from dissolving or extending the term of parliament, amending the constitution, or ruling by decree.

Chart 1. Does the constitution allow for emergency powers?



CLEAR GUIDELINES FOR CONSTITUTIONAL AMENDMENT

c. Entrenched or unamendable constitutional provisions or principles

Constitutions can entrench certain provisions, a practice that makes such provisions more difficult to amend than others. Some constitutions even make specific provisions or principles unamendable; 35 percent of the world’s constitutions include such so-called *eternity clauses*.¹¹ Unamendable provisions are targeted at enshrining certain principles that are so fundamental to the democratic character of the state that they must remain out of reach of an overbearing legislature or executive. In the interest of maintaining a flexible document, it is generally principles and not articles that are declared unamendable. Some examples include:

- “The republican form of government shall not be amended” (France, Article 89);
- “Changes in the essential requirements for a democratic state governed by the rule of law are not permissible” (Czech Republic, Article 9.2);
- “Amendments of this fundamental law affecting the division of the federation into states, their participation in the legislative process, or the principles laid down in articles one and 20 shall be inadmissible” (Germany, Article 79.3); Article 1 of the German constitution also states that human dignity shall be unviolable, and Article 20 enshrines the principles of a democratic and social federal state as well as the rule of law.

The entrenchment of specific constitutional articles — rather than principles — is much less common. Turkey’s Article 4

declares articles one, two, and three of the constitution to be unamendable. Article 2 states:

The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble.

The provision then highlights the risks of declaring articles unamendable, namely their unease that one generation of constitution drafters would lock later generations into specific political ideologies like “Atatürk’s nationalism.”

In its evaluation of unamendable provisions, the Venice Commission

*considers that unamendability is a complex and potentially controversial constitutional instrument, which should be applied with care, and reserved only for the basic principles of the democratic order. A constitutional democracy should in principle allow for open discussion on reform of even its most basic principles and structures of government.*¹²

A key question emerges from the debate over unamendability: is the text too inflexible and in danger of becoming an obstacle to legitimate change, or is the risk higher that it will be manipulated in order to concentrate power?

A technical question is whether a clause declaring certain principles or articles to be unamendable should be unamendable in itself. While constitutional interpretation may conclude that such articles by their very objective must be themselves unamendable, it may help clarity if this is stated in the text.

Some constitutions allow for “anti-entrenchment,” or provisions that are easier to amend than others. Article 62 of Iceland’s 1944 constitution states: “The Evangelical Lutheran Church shall be the State Church in Iceland and, as such, it shall be supported and protected by the State. This may be amended by law.”

d. Legislative supermajorities to approve constitutional amendments

When it comes to amending the constitution, drafters must strike a balance between stability and flexibility. A constitution, as the fundamental law of the land, should not be subject to the whim of the parliamentary majority of the day. At the same time, however, a constitution must be able to adapt to significant changes in public opinion or institutional development over time.

In this way, a constitution could be either too easy or too difficult to amend. Tunisia’s 1957 constitution, for example, could be amended by a two-thirds majority of the Chamber of

¹¹ Data drawn from Characteristics of National Constitutions, *supra*.

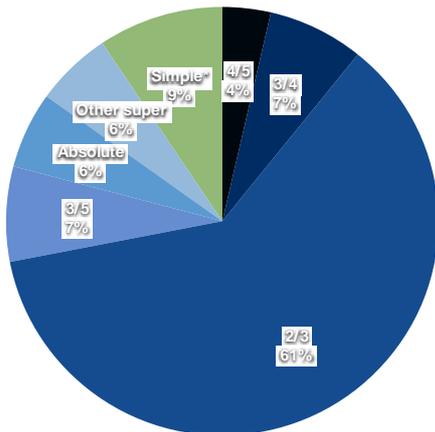
¹² Point 218, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)001-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)001-e.asp).

Deputies, a body under the strong influence of the president. Bourguiba was able to amend the constitution virtually at will by this procedure. On the other hand, the U.S. constitution might be too difficult to amend. In the United States, the usual way to amend the constitution requires a two-thirds vote in both houses of the national legislature, followed by approval by three-fourths of state legislatures.

Over 90 percent of constitutions worldwide require amendment approval by some supermajority, between an absolute majority (majority of members of the assembly, not members present) and three-fourths of the legislature.¹³ The type of electoral system is an important consideration in determining the appropriate supermajority for amendment. In majoritarian electoral systems, for example, one party can gain significant majorities that could easily translate into constitutional amendment.¹⁴ See Chart 2 on comparative constitutional-amendment procedures.

One danger of a very high threshold for a supermajority is that it can strengthen disproportionately the bargaining position of minority or fringe groups. Where few voters are needed to create a blocking minority, incentives for fraud are increased.

Chart 2. What majority is required to amend the constitution?



* — 50% + 1 in assembly, followed by referendum

Some constitutions (Lichtenstein, Sweden) require that two successive votes in the legislature on the same proposed amendment before it can become law. Such time delays reduce the likelihood of political engineering of a constitution, but they do not allow for swift changes in exceptional situations. Other constitutions (Italy, Guyana, Burkina Faso, Latvia) require a referendum to approve amendments that have passed the legislature, unless the vote in the assembly garners a certain supermajority. Still more (Chile, Malta, Iceland) call for different majorities depending on the type of provision being amended. Some constitutions with bicameral

legislatures (Korea, Swaziland) require different thresholds in each house.

e. Clear and detailed provisions for constitutional referenda

Some constitutions require public referenda to ratify constitutional amendments. The Lithuanian constitution reserves the amendment of certain provisions for referendum only. Article 148 states that “the provisions of the First Chapter (‘The State of Lithuania’) and the Fourteenth Chapter (‘Alteration of the Constitution’) may be altered only by referendum.”

A referendum can serve as a useful additional safeguard against partisan amendments. But provisions for constitutional referenda can also open the door to authoritarian rulers who try to override constitutional texts. Suggesting that the people verdict must weigh more than any constitutional text, referenda have been used across the former Soviet Union to ride roughshod over constitutional limitations.

For example, Ukraine suffered from a prolonged political conflict in the late 1990s stemming from a controversial constitutional referendum. Amid a bitter dispute with parliament, then-president Leonid Kuchma called for a constitutional referendum that greatly reduced the legislature’s power by extending the president’s authority to dissolve parliament, establishing a second chamber, and weakening the immunity of deputies. Ten years after the referendum, the Venice Commission concluded that the All-Ukraine referendum was at the root of the country’s chronic political instability. The Commission indicated that Ukrainian constitution was not sufficiently clear in safeguarding referenda from populist tampering with constitutions.¹⁵

One way to balance public approval of amendments while limiting the potential threat of populism would be to stipulate only one procedure for revising the constitution: popular referendum followed by supermajority approval by the parliament. Italy’s constitution must be amended by a vote in the legislature and a referendum, unless the legislature votes to approve by a two-thirds majority.

Constitution drafters can reduce the risk of referenda being used to undermine the constitution by clearly stipulating:

- The process for referenda, including their timing (before or after an amendment has been approved by a parliamentary majority);
- The types of articles that can be amended through referendum;

¹³ Data drawn from Characteristics of National Constitutions, *supra*.
¹⁴ For example in the Hungarian elections of 2010 the center-right FIDESZ party won approximately 53 percent of the votes resulting in more than 2/3 of the seats. The party then enacted far-reaching and highly controversial constitutional reforms.

¹⁵ Venice Commission opinion of 30 March 2000: [http://www.venice.coe.int/docs/2000/CDL-INF\(2000\)011-e.pdf](http://www.venice.coe.int/docs/2000/CDL-INF(2000)011-e.pdf), Venice Commission ‘Opinion on the constitutional situation in Ukraine’: [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)044-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)044-e.pdf). See also ‘Democracy Delayed: Obstacles in Political Transition,’ Democracy Reporting International (October 2011).

- That all referenda must be held according to the procedures outlined in the constitution, and by entrenching those procedures;
- A referendum followed by a supermajority vote in parliament is the only way to amend the constitution.

ACCOUNTABILITY AND OTHER MECHANISMS

f. Guarantees for transparent, independently managed elections

International law, in particular Article 25 of the ICCPR, contains detailed and clear obligations on the meaning of a genuine election.¹⁶ Nevertheless, neither constitutions nor election laws can specify in all detail how elections should be conducted. Therefore it is useful for constitutions to include broad operating principles not included in international law, such as transparency, public confidence, and independent oversight.

The manipulation of elections is often a key factor when democracies slide towards authoritarian rule. Electoral fraud is often aided by a lack of transparency. In Arab dictatorships before 2012, election results were not published in detail and political parties and civil-society organisations were usually not allowed to monitor the process of how results were counted and aggregated. Furthermore, elections were mostly managed by ministries of the Interior, whose role as part of the national security apparatus meant that there was no public confidence in their impartiality.

The 2012 presidential elections in Egypt, the first since the fall of Hosni Mubarak, demonstrate the value of constitutional protections for election transparency. While the transitional electoral law granted the Egyptian Presidential Elections Commission (PEC) broad authority to make legal determinations, international observers found that it did so “at times in a manner counter to the principles of democracy.”¹⁷ For example, the PEC did not grant candidates access to the voter rolls because the electoral law did not explicitly guarantee access. A challenge to this ruling on constitutional grounds of electoral transparency could have been made had the requisite provisions been in place.

Constitutions can also guarantee independent oversight of elections. Over half of countries worldwide constitutionally require that either the judiciary or an independent management body supervise elections, and many more do so by non-constitutional law.

g. Constitutional judicial review

Even with the clearest and most democratic provisions against the concentration of power, a constitution will remain weak without some constitutional method of enforcement. Therefore many judicial systems around the world include the possibility of constitutional reviews of laws or acts by the other branches of power. In different jurisdictions and legal systems, the power of judicial review is extended to a constitutional court or a supreme court, or to subordinate courts. Though judicial review was not explicitly included in early constitutions, such as the U.S. constitution of 1789,¹⁸ it is a principle now commonly enshrined in democratic constitutions around the world.

There are many possible designs of constitutional judicial review. An appropriate design depends on complex factors such as legal systems and traditions, political context, and the objectives of constitution drafters.¹⁹ But the broad principle of constitutional judicial review over the executive and legislative branches is a key safeguard.

The constitution should, however, include language that limits a court’s jurisdiction as a protection against activist courts that can either become a tool of the national executive or start serving as an ersatz legislature. The Pakistan judiciary played an essential role in the overthrow of President Musharraf in 2008, but the highly political role of its Supreme Court has been criticised by many analysts. The June 2012 decision by Egypt’s Supreme Constitutional Court to dissolve the first democratically elected parliament has been described by many authors as a military coup by judicial means.

h. Legislative budget oversight

Legislative authority to approve the national budget, guaranteed by 84 percent of constitutions worldwide, is an essential element of any democracy. At the same time it is a specific tool to safeguard against re-emerging authoritarianism (see Chart 3), because unchecked executive spending allows presidents to direct funding toward state organs under their control and away from others, upending the system of checks and balances. Tunisia’s Ben Ali in the first years of his presidency, for example, invested significant parts of the state budget to build up the state security apparatus to unprecedented levels, over time building the power to silence his critics and shield himself from democratic interventions.²⁰ Therefore, proper monitoring of executive spending is essential to maintaining the balance of power.

Similar legislative checks on targeted spending bills, finance bills, and monetary policy — including legislative committees,

¹⁶ “Strengthening International Law to Support Democratic Governance and Genuine Elections,” Democracy Reporting International and the Carter Center, July 2012.

¹⁷ “The Carter Center’s Preliminary Statement on the Second Round of Egypt’s Presidential Election,” The Carter Center, 19 June 2012. For a comprehensive review of Egypt’s electoral framework, see Democracy Reporting International, Assessment of the Legal Framework for Presidential Elections, February 2012 (English and Arabic).

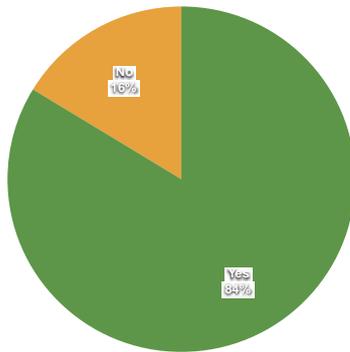
¹⁸ Judicial review was later established as a core principle of the U.S. Supreme Court in the landmark decision *Marbury v. Madison* in 1803.

¹⁹ See *A Practical Guide to Constitution Building*, “The Design of the Judicial Branch,” International IDEA (2011), pp. 223–245.

²⁰ See Kenneth Perkins, *A History of Modern Tunisia* (London: Cambridge University Press, 2004).

economic advisory councils, and an independent central bank — can help prevent antidemocratic consolidation of executive power through economic policymaking.

Chart 3. Does the constitution require legislative budget approval?



i. Limits on antidemocratic forces

The competition of political parties is essential for democratic governance, but some parties may have anti-democratic platforms. Dominant political parties have provided a base for the concentration of power in Sudan and Algeria and formerly in Egypt, Tunisia, and Yemen. The Syrian constitution of 1973 went as far as establishing the Ba’ath Party as the only legal party in the country.

Some constitutions prohibit antidemocratic political parties. For example Article 48 of the constitution of Honduras prohibits “political parties that attack against republican, democratic, and representative system of government.” Article 21(2) of Germany’s basic laws includes a similar provision and provides for a method of adjudication:

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

Provisions against political parties carry an inherent risk since they can be abused by powerful political forces to marginalize the opposition. Such provisions and their implementation must be carefully crafted.

The Venice Commission recommends that restrictions against political parties “must be clearly stated in law and based on objective criteria.”²¹ Article 22 of the ICCPR further states that freedom of association may only be restricted by law and in the “interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”²² The

Venice Commission goes on to state that “the possibility to dissolve or prohibit a political party from forming should be exceptionally narrowly tailored and applied only in extreme cases.”²³ In constitutions that ban un-democratic political parties, it is rarely the legislature or the national executive that has the authority to exclude or authorize political parties. Such decisions are commonly left up to judges or an independent elections commission.

3. CONCLUSION

For constitutions to be democratic, they must include a number of essential elements that constitute a democracy, such as genuine elections, the separation of powers, protection of political rights, free media and the civilian oversight of the security sector. Beyond these constitutive elements of a democracy, constitutions often include safeguards to protect against erosion towards authoritarian rule. Constitution makers in Arab countries and beyond should consider including such safeguards in the new constitutional texts.

Each of the safeguards mentioned in this paper carries risks and deserves careful consideration. The most often made argument against such safeguards, indeed against any constitutional text that seems to be too detailed, is that it could make the legal framework inflexible and unable to respond to significant political changes. Ultimately it will be for the new constituent assemblies to balance the need for flexibility with the desire to reduce the risks of re-emerging authoritarianism. Striking the right balance is the challenge in Tunisia now, and soon in Libya and Egypt.

ABOUT DEMOCRACY REPORTING INTERNATIONAL

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²¹ Venice Commission, point 68, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)024-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)024-e.asp)

²² See “Strengthening International Law to Support Democratic Governance and Genuine Elections,” Democracy Reporting International and the Carter Center, (July 2012), page 22.

²³ Venice Commission, “Guidelines on Political Party Regulation,” adopted at the 84th plenary session, 15–16 October 2010.

Safeguard	Implementation Options	Risks
PRESIDENTIAL TERM LIMITS	<ul style="list-style-type: none"> Restrict the number and length of terms for the national executive Clarify that a term limit continues applying even if other parts of a constitution have been amended Clarify whether a person who serves as president at the time of adoption of a constitution already falls under the term limit, or whether only his or her future terms will be counted Declare term limits unchangeable by any means Impose strict penalties on national executives who try to manipulate term limits 	<ul style="list-style-type: none"> Presidents can manipulate term limits to stay in power for long periods of time
CLEAR AND RESTRICTIVE PROVISIONS FOR DECLARING A STATE OF EMERGENCY	<ul style="list-style-type: none"> Require approval from the cabinet or legislature to declare a state of emergency Stipulate specific conditions under which a state of emergency could be called and designate an independent body to determine whether those conditions have been met Name specific rights or freedoms that are guaranteed even during a state of emergency Define strictly the extraordinary powers that an executive holds under a state of emergency Limit the length of time for which a state of emergency can be in effect Require that states of emergency be renewed periodically by the legislature Safeguard the rest of the government from executive interference from executive interference 	<ul style="list-style-type: none"> Restrictions can be too inflexible in a genuine state of emergency
ENTRENCHED OR UNAMENDABLE CONSTITUTIONAL PROVISIONS	<ul style="list-style-type: none"> Declare certain articles unamendable, especially those preventing common methods of antidemocratic consolidations of power Declare broad democratic principles unamendable 	<ul style="list-style-type: none"> Drafters can bind future generations to an inflexible ideology
LEGISLATIVE SUPERMAJORITIES TO APPROVE CONSTITUTIONAL AMENDMENTS	<ul style="list-style-type: none"> Require amendment approval by two-thirds, three-fifths, or three-quarters of legislators Require amendment approval from sub-national legislatures in a federal system Require amendment approval from two consecutive national legislatures 	<ul style="list-style-type: none"> Lack of flexibility to respond to significant changes or crises Qualified majorities give strong bargaining position to small groups
CLEAR AND DETAILED PROVISIONS FOR CONSTITUTIONAL REFERENDA	<ul style="list-style-type: none"> Clarify the process for referenda, especially timing List the types of articles that can be amended through referendum Reiterate that all referenda must be held according to the procedures outlined in the constitution, and make those procedures unamendable Support safeguards for credible elections 	<ul style="list-style-type: none"> Referenda could become too difficult to pass
GUARANTEES FOR TRANSPARENT, INDEPENDENTLY MANAGED ELECTIONS	<ul style="list-style-type: none"> Include commitments to credible elections beyond international obligations, such as transparency Stipulate independent election-management and dispute-resolution bodies 	<ul style="list-style-type: none"> Constitutional requirements for elections could be inflexible in the face of changing political or technical constraints
CONSTITUTIONAL JUDICIAL REVIEW	<ul style="list-style-type: none"> Provide a supreme or constitutional court with the authority of judicial review Clearly define how jurisdiction is determined, possibly separately from the top court 	<ul style="list-style-type: none"> Judges can become the tools of the national executive The courts could act as an ersatz legislature
LEGISLATIVE BUDGET OVERSIGHT	<ul style="list-style-type: none"> Subject executive spending to detailed legislative oversight Create similar checks on financial and monetary policy, including an independent government auditor 	<ul style="list-style-type: none"> Legislatures can be slow to approve spending bills A longer process can increase the influence of special interests
LIMITS ON ANTIDEMOCRATIC FORCES	<ul style="list-style-type: none"> Ban specific political parties that pose a threat to democracy by some objective criteria Outlaw political parties that adhere to defined antidemocratic principles Appoint or designate an independent commission to regulate prohibitions on political parties 	<ul style="list-style-type: none"> Executives could use restrictions on political parties to marginalize opposition groups

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