



الجمعية اللبنانية من أجل ديموقراطية الانتخابات  
Lebanese Association for Democratic Elections

## Assessment of the Electoral Framework

The Election Law of 2000 and the Draft Law  
by the Boutros Commission

# Lebanon

April 2008

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Berlin/Beirut, April 2008

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## Executive Summary

Parliamentary elections are due next year (May-July), but the current electoral framework is not in line with international standards for democratic elections. Holding elections under the current election law (from 2000) would represent a serious liability from the outset, independent of the actual conduct of elections. Adequate electoral legislation should be adopted for the 2009 elections to ensure that they will be held in line with international standards. Given Lebanon's high political tensions, the electoral framework should give no reasons to challenge the new Parliament's legitimacy.

In 2005 most stakeholders accepted that elections were held under the 2000 law as a political necessity in a transitional situation, but observers noted that there "is a need for urgent reform of the legal and election framework" (EU Election Observation Mission Report 2005) and there appeared to be broad domestic consensus for election reform.

In 2006 the government-appointed 'National Commission on Electoral Law' submitted a new draft election law to Prime Minister Siniora, which proposes significant improvements to the framework for elections in a number of key areas and should provide the basis for Parliamentary discussions on election law reform. However, in a context of political stalemate between government and opposition there has not been any serious political debate on the new draft law, despite the urgency of the issue.

Apart from the issue of the electoral system, most aspects of the new draft law should not be controversial (improving secrecy of the vote, independent election administration, etc.), because they would bring the system into line with international standards without affecting core political interests. A deliberation between government and opposition on these less controversial aspects of election reform could present an opportunity for political re-engagement. Given that changes to the law should take place significantly ahead of upcoming elections, such a process is urgent.

The aspect of the draft law which is likely to be the most difficult to agree on is the politically sensitive question of the electoral system. The draft law includes cautious changes, including the introduction of elements of proportional representation. This could be a positive change.

Apart from the legal framework for next year's elections, there are serious concerns about the security environment in a context where four MPs have been assassinated over the last four years. The current security concerns could prevent government-affiliated MPs from campaigning effectively.

## **Political Context**

Lebanon's political system is based on the 1926 Constitution, the extra-constitutional 1943 'National Pact' and the 1989 Ta'if agreement that ended 15 years of civil war. Up to 2005, the post-civil war political system was put to the test in only limited ways, because Syria dominated Lebanese politics and served as the final arbiter of domestic conflicts. The system was therefore seriously tested for the first time after the Syrian troop withdrawal in 2005, through which Lebanon regained a modicum of national sovereignty.

Initially the political system achieved a number of important successes, including the peaceful 2005 elections, whose results were generally accepted, the subsequent formation of a cross-party government, the establishing of a dialogue among all national political leaders and the elaboration of a new draft election law by a government-appointed expert commission. However, the national dialogue broke down in the context of assassinations of pro-government MPs, disagreements about the composition of the cabinet and the role of the international investigation into the Hariri and subsequent assassinations. The international context complicated the situation, with Syria becoming more assertive, the July 2006 war with Israel and subsequent questions about Hezbollah's international and domestic role. In November 2006 Hezbollah and Amal left the government to form an opposition together with General Aoun's 'Free Patriotic Movement'. Parliament's legislative activities have been blocked ever since. After the end of President Lahoud's term in November 2007, no new President has been elected. While there was consensus in 2005 that the election law needed to be reformed, this issue has fallen victim to the current paralysis.

## **The Question of the Election Law**

The election law has always been one of the most sensitive issues in Lebanon's history, where 11 confessional groups compete to guard or advance their political interests through parliamentary representation. However, while the electoral system is politically the most sensitive issue, many of the shortcomings of the 2000 election law are related to the way elections are conducted. The main problems include: secrecy, which is often compromised by the use of un-official ballots; no rules on campaigning; only scarce regulations on media coverage of elections and no framework for independent election observation.

These flaws, in combination with the electoral system, resulted in 2005 in an election process which was sterile and un-competitive in large parts of the country. More than 20% of the seats were assigned without elections at all, because candidates from powerful lists were not opposed. The EU Election Observation Mission (EOM) to the 2005 elections concluded: “The electoral law should be completely revised.”<sup>1</sup> This appeared to be the consensus of all Lebanese stakeholders also.

In August 2005 the Council of Ministers appointed a ‘National Commission on Electoral Law’ presided by former Foreign Minister Fouad Boutros (hereafter referred to as the Boutros Commission). In May 2006 the Commission submitted a draft law to the Prime Minister after extensive deliberations with political parties, voters and civil society organisations. The draft law proposes a number of reforms which would represent significant progress over the current 2000 law and earlier election laws (e.g. the 1960 law) and would bring the law largely into line with a number of international standards for democratic elections that Lebanon is bound by, such as Article 25 of the UN’s International Covenant on Civil and Political Rights (ICCPR).

### **Achievements of the New Draft Election Law**

The Boutros Commission’s draft election law would make important progress in the organisation of elections in a number of areas:

- Under the 2000 law voters can use any ballot they want. In practice most voters use ballots prepared by political groups/candidates. These are often produced in ways that make it difficult to choose specific candidates rather than a whole block, although the electoral system does allow for that. Furthermore, they can be prepared specifically to identify individual ballots during counting, undermining the secrecy of the vote and inviting vote buying. Secrecy of the vote is a cornerstone of democratic elections. The draft law introduces an officially printed ballot, as is standard practice in other democracies.
- According to the 2000 law elections are managed by the Ministry of the Interior. While observers of the 2005 elections recognised the technical competence of the Ministry in organising elections, they recommended establishing an independent election commission in order to increase the independence and impartiality of the election administration. The UN’s Human Rights Committee has interpreted Article 25 of the ICCPR to mean that elections should be managed by independent

1 EU EOM, Final Report 2005, page 7. The report can be downloaded: [http://ec.europa.eu/external\\_relations/human\\_rights/eu\\_election\\_ass\\_observ/lebanon/final\\_report.pdf](http://ec.europa.eu/external_relations/human_rights/eu_election_ass_observ/lebanon/final_report.pdf)

bodies<sup>2</sup>. The draft law provides for the establishing of an election commission with wide-ranging competencies.

- The 2000 law includes no regulation of campaign financing. According to the EU EOM 2005, “the absence of adequate finance regulations contributed to the creation of an uneven playing field during the election campaign.”<sup>3</sup> The Lebanese Association for Democratic Elections (LADE) and the EU EOM recommended that campaign financing be regulated, as is the case in most democracies and supported by the UN Human Rights Committee’s interpretation of Article 25 of the ICCPR.<sup>4</sup> The draft law introduces rules and limits to campaign financing, without however providing for public disclosure of accounts.
- LADE and the EU EOM to the 2005 elections expressed concern about the inadequate and problematic rules on media conduct during elections and recommended that proper rules be established. The draft law includes such rules.

## The Question of the Electoral System

The Boutros draft law also includes a reform of the electoral system. The 2000 law is based on elections in 14 election districts with 6 to 17 seats per district for altogether 128 seats. All seats are reserved for 11 different confessions with half of the seats for Muslims and half for Christians. Voters can vote for as many candidates as there are seats in their district. The final allocation of the seats will however follow the distribution of seats among confessions as established by law.<sup>5</sup>

Given that voters largely use ballots prepared by specific parties, the element of choice inherent in the system (voters could vote for candidates of different parties/groupings) was rarely used in 2005 with dominant political groups/candidates winning seats *en bloc*. Various Christian representatives pointed out that many Christian candidates are elected by a majority of Muslim voters, raising concerns that many Christian voters were deprived from decisively influencing who of ‘their’ candidates would win.

The electoral system proposed by the Boutros Commission is a parallel system: 77 seats would be distributed in small election districts (one to six seats) largely based on the administrative units of *qadas*. Voters could vote for as many candidates as there are seats in an election district, in line with confessional

<sup>2</sup> See UN Human Rights Committee (UN HRC), General Comment on Art. 25, point 20: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)

<sup>3</sup> EU EOM, Final Report, p.39

<sup>4</sup> See UN HRC, General Comment on Art. 25, point 19

<sup>5</sup> For example, if two seats are allocated to Sunnis and two to Maronites, the four candidates gaining seats will be in principle the two Sunni candidates with most votes and the two Maronite candidates with most votes. However, the distribution may be further complicated because seats are allocated to sub-districts (*qadas*). See chapter B.2.2. for details.

allocations. Given the reduced size of election districts in comparison to the 2000 law, confessional groups would have more control over the election of 'their' candidates, in particular Maronites in relation to Christian candidates. This would result in less equality of the votes.

The remaining 51 deputies would be elected on the basis of a proportional system of seat allocation. Voters would vote for one list and could indicate up to two preferences for candidates on the list. This would represent a cautious introduction of a more proportional seat allocation than hitherto in Lebanese election laws. The proportional aspect would however be highly limited, because of the confessional seat allocation and because the law includes a very high threshold (between 9% and 16%) for lists to participate in the distribution of the seats<sup>6</sup>.

6 This results from Art. 123 IV Draft Law. See chapter B.2.2. for details.

## Introduction to the Programme and Appreciation of Support

This report was prepared by Michael Meyer-Resende and Michel Paternotre of *Democracy Reporting International* (DRI) following a mission to Lebanon from 26 March – 4 April and by Ammar Abboud and Said Sanadiki for the *Lebanese Association for Democratic Elections*, (LADE). The report reflects the findings and conclusions of the authors.

Both organisations express their gratitude to all the interlocutors that they met on the mission. They also acknowledge the valuable support of Richard Chambers, Chief of Party, *IFES* Lebanon. They also thank Giovanna Maiola from the *Osservatorio di Pavia* for her valuable comments on the media legislation.

This report is part of a regional programme assessing electoral frameworks, carried out by DRI with financial support from various donors. DRI's work on this report has been supported financially by the Swiss Federal Department of Foreign Affairs, while LADE's contribution has been supported financially by *IFES*, Lebanon. Both organisations are grateful for this support. The report does not necessarily reflect the position of either of the donors.



### Political and Constitutional Context and the Role of Elected Bodies

#### 1. Political System

Lebanon is a parliamentary republic. Since its first Constitution of 1926 – still under the French Mandate – the political system has been characterised by the logic of confessional power-sharing in the state institutions and the public administration. At independence, the 'National Pact' (1943) was agreed, determining the representation of confessions in the state institutions. It is considered an 'unwritten' part of the Lebanese Constitution. The National Pact introduced a confessional ratio of 6/5 Christian/Muslim on the basis the 1932 census. Given the political sensitivity of the issue no census has been held since.

The post-civil war (1975-1990) Ta'if peace agreement (1989) changed the confessional quota to 50/50 Muslim/Christian for the executive and the legislative. Ta'if also envisaged that confessionalism should be abolished in the long-term. The constitution was amended to include provisions to this effect (preamble, Art. 24 and 95). However, no steps have been taken to abolish or diminish political confessionalism and there appears to be no political will to do so.

The 'National Pact' reserves the presidency to a Maronite Christian, the position of Prime Minister to a Sunni Muslim and the post of speaker of the Chamber of Deputies to a Shi'a Muslim.<sup>7</sup> Given the central role of all three posts in the political process, the constitution thus provides representatives of the confessional communities with the chance to block the political process. While these safeguards may be re-assuring for the confessional communities, they also facilitate political stalemate, as can be seen in the current crisis.

The Chamber of Deputies indirectly elects the President<sup>8</sup> for a six year non- renewable term.<sup>9</sup> The eligibility requirements for the post of President are the same as those for members of the Chamber of Deputies. The President is the Head of State, negotiates international treaties, promulgates the laws and appoints the Prime Minister on the basis of "consultations with Parliament which shall be binding" (Art.53 §2 Constitution). The President can veto a law passed by the Chamber, in which case it has to be re-confirmed by an absolute majority of members to become valid.

<sup>7</sup> The posts of deputy prime minister and deputy speaker of Parliament would be given to a Christian Orthodox.

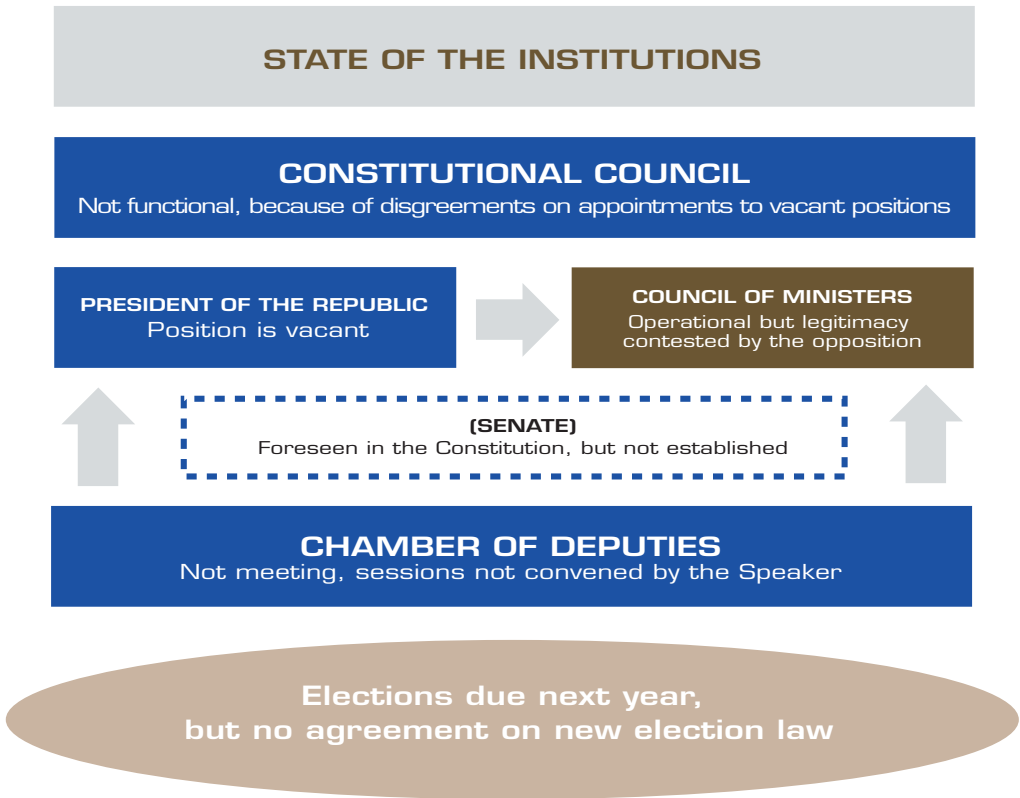
<sup>8</sup> Article 49 (2) of the Constitution states that „the President of the Republic shall be elected by secret ballot and by two third majority of the Chamber of Deputies. After a first ballot, an absolute majority shall be sufficient“. The article is silent as regards the quorum needed for the election to be valid which has led to conflicting interpretations, contributing to the current stalemate on the election of a new president.

<sup>9</sup> This principle was over-ruled in 1998 to allow the extension of President Elias Hrawi's and again in 2004 to allow the extension of Émile Lahoud's term.

Following the Ta'if agreement, the Constitution was amended in order to reduce the direct powers of the President and to reinforce the position of the government within the executive. The Prime Minister, representing the government, counter-signs Presidential decisions, liaises with him/her for the conduct of international negotiations, appoints all public servants and assumes by delegation the powers of the President in case of vacancy. The Ministers are collectively and individually responsible to Parliament and can be put to a vote of no confidence. As is the case with the other institutions the composition of the cabinet should be balanced in terms of confessions.<sup>10</sup> The constitution includes specific procedures for Cabinet decisions on 'national issues' (Art.65 §5), such as constitutional amendments, general mobilisation of the army, calling a state of emergency, the election law, the annual budget, etc. Such issues should be decided by cabinet consensus, or by two-thirds of cabinet members. This provision explains the opposition's demand to have one-third of cabinet members.

The number of Deputies was increased from 99 to 128 in 1992. The Deputies are elected for a four year term.

Table 1



<sup>10</sup> See Article 95 of the Constitution: „During the transitional phase (...) the confessional groups shall be represented in a just and equitable fashion in the formation of the Cabinet“.

## 2. Political Context

Lebanon's recent history is marked by 15 years of civil war (1975 – 1990) and the domination by Syria, which served as a final arbiter of domestic Lebanese conflicts. Since the assassination of the Prime Minister Rafik Hariri in February 2005, the withdrawal of Syrian troops and the subsequent reduction of Syrian influence, Lebanon is struggling to find a new internal balance.

The 2005 parliamentary elections and subsequent formation of a unity government represented a moment of hope that domestic stakeholders could agree on the fundamental questions of Lebanon's future. In this period the 'National Commission on Electoral Law', presided by former foreign Minister Fouad Boutros was appointed. The appointment of an independent expert commission on a subject as sensitive as the election law was an innovation in Lebanese political history. The Commission engaged in wide-spread public consultations and proposed a new draft election law, which could provide a long-term basis for national elections, overcoming a history of changes to election rules before each election.

However, this period was already over-shadowed by regular assassinations of politicians and public figures critical of Syria.<sup>11</sup> When disagreements over issues such as a Tribunal with an international character for the murder of Rafik Hariri and over the causes and implications of the 2006 war with Israel multiplied, ministers from Hezbollah and Amal withdrew from the government in November 2006. Ever since stalemate has prevailed and key institutions have become dysfunctional: There has been no President since November 2007, Parliament has not been convened since then and no judges have been appointed to the Constitutional Council since 2005. The agreed candidate<sup>12</sup> for President and current head of the armed forces, Michel Soulemein, declared his intention to leave his army position in August 2008, which would leave another key institution without leadership. There is thus a tangible threat of a prolonged failure of Lebanese political institutions.

While the government insists that the agreed candidate for President should be elected first, the opposition wants to reach a package deal linking the election of the President with an agreement on a national government and a new election law.

<sup>11</sup> R. Hariri was killed together with 22 members of his entourage in February 2005; subsequently an additional six politicians have been assassinated on Beirut's streets (two of whom were also journalists). They were all considered to be 'anti-Syrian'.

<sup>12</sup> Government and opposition agreed in principle on M. Soulemein as the new President, but while the government wishes him to be appointed immediately, the opposition sees his appointment as part of a package that should include the formation of a new cabinet and electoral law reform.

Some analysts link the current stalemate with the development of two opposing political blocs – government and opposition - which took place around and after the 2005 elections. This limits the chance of variable alliances making compromises on different subjects. The main divisions of the two blocs result from different perceptions of Lebanon's international position, either as a "Western ally" or a country more closely aligned with Syria.

The current electoral system contributed to the building of blocs in 2005, with Saad Hariri's movement winning all seats in two of five election districts and Hezbollah/Amal winning all seats in the South. The blocs thus resemble confessional divisions, with Hariri's Sunni-dominated 'Future movement' and Jumblatt's Druze 'Progressive Socialist Party' providing the back-bone of the anti-Syrian government while the opposition is formed by Hezbollah/Amal, elected in the regions where Shiites form the majority. Only the Christian vote is divided between anti-Syrian groups (Lebanese Forces, Qornet Shewan rally) and those aligned with Hezbollah/Amal (Aoun's Free Patriotic Movement).

Table 2

Government and Opposition Blocs	
"March 14" Movement <sup>14</sup>	"March 8" Movement <sup>15</sup>
Future Movement (S. Hariri) Progressive Socialist Party (W. Jumblatt) Lebanese Forces (S. Geaga) Phalange Party (A. Gemayel) Qornet Shewan Democratic Left Movement in Lebanon Democratic renewal Movement National Coalition Armenian Social-Democratic movement. Armenian Liberal Party	Hezbollah (H. Nasrallah) Amal (N. Berri) Free Patriotic Movement (M.Aoun) Armenian Revolutionary Federation. Syrian National Social Party. Nasserist Popular Organization Arab & Socialist Ba'ath Party
<b>68 seats in Parliament<sup>16</sup></b>	<b>56 Seats in Parliament<sup>17</sup></b>
3 seats are non-affiliated and one seat is vacant.	

13 The name "March 14" is derived from a large demonstration against the Syrian presence in Lebanon, which took place on 14 March 2005.

14 The name "March 8" is derived from a large demonstration to express gratitude for Syria's involvement in Lebanon, which took place on 8 March 2005 in Beirut.

15 Of the original 72 government-affiliated MPs, four have been assassinated: Gibran Tueni (December 2005), Pierre Gemayel (November 2006), Walid Eido (June 2007), Antoine Ghanime (September 2007). In by-elections for G. Tueni's seat a pro-government candidate won. P. Gemayel and W. Eido were replaced through by-elections on 5 August 2007, where one seat was won by a government-backed candidate and the other by an opposition candidate. In addition since 2005 one MP from the government majority- Edmond Neim – died in 2006 of natural causes and one Akkar MP became neutral. In by-elections for E. Neim's seat a pro-opposition candidate won.

16 The opposition gained two seats in by-elections in August 2007 but suffered the defection of Michel Murr, who in April 2008 joined two MPs as 'neutrals'.

The emergence of the two blocs can obscure more fundamental features in Lebanese politics, namely the strong role played by individual personalities, leading families, patronage networks and local interests within various confessional groups. Generally Lebanese politics and political parties are not marked by strong ideological or programmatic differences. If anything, confessional allegiance may be the most divisive feature beyond pure power considerations. Indeed, religious actors are significantly involved in political debates.

It is possible that at any point confessional or power interests could trump the currently dominant question of Lebanon's international orientation and thereby lead to shifts in the respective alliances. For example, all Christian political players could become interested in an electoral system which gives Christian voters more control over seats allocated to Christian candidates.

## **Election Prospects**

According to the election law, next year's Parliamentary elections should be held between 18 May and 17 July.<sup>17</sup> However, it is possible that parliamentary elections will also fall victim to the current stalemate. According to the election law (Art.8) by-elections should have been held long since in the Baabda district to replace the slain MP Antoine Ghanime, but the political players appear to be wary of testing the public mood at this stage.

A postponement of next year's elections would be highly problematic<sup>18</sup>, adding to a sense of prolonged failure of state institutions. In the past elections were held periodically, except during the civil war. There would be no legal justification for postponement of the elections.

Municipal elections are due in 2010.

<sup>17</sup> Art.42 of the Constitution stipulates that Parliamentary elections should be held within 60 days of the end of Parliament's mandate. The current Parliament ends on 17 July 2009.

<sup>18</sup> "Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors". UN HRC, General Comment on Art.25, point 9.

### 3. Human Rights and Fundamental Freedoms

#### 3.1. Overview

Lebanon's state structures remain fragile with constant challenges to its authority by foreign intervention (Syria's role over the years; the 2006 war with Israel), violent groups (such as recently, *Fatah al-Islam* in the Palestinian refugee camp of *Nahr al-Barid*), the military role played by Hezbollah and generally competing confessional allegiances. According to many analysts, loyalty to confessional groups or families and clans often trumps allegiance to the state.

Human rights groups have drawn attention to a number of human rights violations committed by the Lebanese state, including torture and ill-treatment of detainees and the poor treatment of Palestinian refugees.<sup>19</sup>

Political life in recent years has been marred by a number of apparently politically- motivated assassinations of political figures, who were aligned to the 14 March movement which forms the government. No charges have yet been brought in any of these cases and they have been included within the jurisdiction of the United Nations Independent International Investigation Commission (UNIIIC). The UN and Lebanon have agreed on the establishment of a Special Tribunal to try those allegedly responsible for the murder of R. Hariri and those with him.<sup>20</sup>

The threat to their life significantly restricts the possibility for March 14 politicians to operate freely; most MPs belonging to the government majority have to live with heavy security procedures and are not able to meet their constituents. This situation would be a serious obstacle to pre-election campaigning.

Freedom of assembly is mostly respected and government and opposition forces have staged large-scale demonstrations at different occasions over the last few years. There is however a constant concern that these demonstrations can result in clashes, as was the case on several occasions recently.

Lebanon scores better than most Arab states on media freedom indexes.<sup>21</sup> However, the assassination of anti-Syrian journalists impedes media freedoms and may lead to self-censorship by journalists who fear for their lives. Restrictions are sometimes put on publications, e.g., for being offensive to religious feelings.<sup>22</sup>

<sup>19</sup> See Amnesty International, 2007 Report Lebanon.

<sup>20</sup> The Tribunal will be composed of international and Lebanese judges. See UN SC Resolutions 1664 (2006) and 1757(2007).

<sup>21</sup> Lebanon is listed as no.98 of 169 countries evaluated by 'Reporters without Border'. Among Arab countries only Kuwait and the United Arab Emirates have better scores (63 and 65), Worldwide Press Freedom Index 2007.

<sup>22</sup> E.g. 'The Da Vinci Code' was banned by the authorities in 2004, because it was considered offensive to Christians.

### 3.2. Freedom of Association: Political Parties and Civil Society Organisations

The constitution guarantees freedom of association (Art.13). There is no law on political parties, which register under the 1909 (Ottoman) Law on Associations. This law is generally liberal, although it requires notification of the Ministry of the Interior. Reportedly, the Ministry tried until recently to turn the notification process into an approval procedure.

The current election law and the Boutros draft law put the emphasis on “candidates” and “lists of candidates,” rather than political parties.

The open framework for the operation of political parties allows for the unusual situation of a party – Hezbollah – being at the same time a legal political party and an armed group.<sup>23</sup> Furthermore the current situation allows parties to receive unlimited funds from Lebanese donors and from abroad.<sup>24</sup>

Civil society organisations can generally operate freely. There are a large range of such organisations, ranging from confessional charities to Western-style human rights organisations.

## 4. Confessional Representation in the Chamber of Deputies

The composition of the Chamber, as provided by Article 24 of the Constitution, is based on the following principles:

- “a) Equal representation between Christians and Muslims;*
- b) Proportional representation among the confessional groups within each religious community;*
- c) Proportional representation among geographic regions”<sup>25</sup>.*

The current distribution of the seats, when compared to the official figures of registered voters, privileges the first two criteria. As shown in the analysis of the electoral system (Chapter B.2.2.), proportional representation among regions is difficult to reconcile with confessional representation, particularly if the confessions insist on an ‘effective control’ of ‘their’ seats. Respecting the three requirements of Article 24 together is difficult to achieve, because the equal distribution of seats between Muslims and

<sup>23</sup> Most current political movements had a military wing during the civil war and the Christian Lebanese Forces were originally a militia that organised itself as a party at the end of the war.

<sup>24</sup> The Boutros Commission draft law states that only Lebanese individuals and non-profit organisations may offer contributions to the funding of the candidates’ campaign (Article 73 (4)). However, the draft law does not appear to exclude the possibility of such donors to receive funding from abroad.

<sup>25</sup> The Ta’if agreement contained provisions for a decentralisation of Lebanon’s administrative structure and a revision of the administrative boundaries which have not been implemented yet.

Christians introduces an element of inequality that further reduces the chances of reaching a proportional representation of the regions, given the geographical distribution of the communities within Lebanon. As regards the proportional representation within the Christian and Muslim communities, the current distribution generally respects this principle, except for a slight under-representation of the Sunnite and Shiite communities to the benefit of the Druze and the small Alawite community.

Table 3

Parliamentary seats distribution per confessional group				
Confessional Groups	Seats	Share of 128 seats (Share of 64 seats)	Share of the Total Registered Voter Population	Share of the respective Muslim or Christian electorate (registered voters)
Muslims	64	50%	> 59.5%	100
Sunni	27	21 % (42.1 %)	26.8%	45.0%
Shi'ite	27	21 % (42.1 %)	26.3%	44.1 %
Druze	8	6.2% (12.5%)	5.6%	9.4%
Alawite	2	1.5% (3.1 %)	0.8%	1.3%
Christians	64	50%	> 39.9%	100
Maronite	34	26.5% (53.1 %)	21.8%	54.5%
Greek Orthodox	14	10.9% (21.8%)	7.7%	19.2%
Greek Catholic	8	6.2% (12.5%)	5.1%	12.5%
Arm. Orthodox	5	3.9% (7.8%)	2.9%	7.2%
Arm. Catholic	1	0.7% (1.5%)	0.6%	1.6%
Evangelist	1	0.7% (1.5%)	0.5%	1.3%
Minorities	1	0.7% (1.5%)	1.3%	3.3%

According to the Ta'if agreement, bicameralism should be introduced with a non-confessional lower house of Parliament and a Senate representing confessional communities. The Senate would only have competence in matters of major national interest. This reform was integrated into the constitution (Art.22), but never implemented.



### Analysis of the Legal and Administrative Framework for Holding Elections

#### 1. Relevant International and Regional Standards

Lebanon has ratified the International Covenant on Civil and Political Rights (ICCPR), which sets out basic international standards for genuine democratic elections<sup>26</sup>, notably Article 25 which includes the right “to vote and to be elected at genuine periodic elections”.

The preamble of the Lebanese constitution also notes that Lebanon abides by the UN’s covenants and that the “Government shall embody these principles in all fields and areas without exception” (paragraph b.).

Since March 2008, the Arab Charter on Human Rights is also in force, although Lebanon has not ratified it. The Charter’s Art. 24 states: “Every citizen has the right (...) 2. To take part in the conduct of public affairs, directly or through freely chosen representatives. 3. To stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will. (...)”

#### 2. Legal Framework of Elections

##### 2.1. Overview of Relevant Legal Provisions

The overall framework for elections is somewhat vague, given that it is governed by the Constitution, the un-written National Pact of 1943 and the Ta’if agreement of 1989 with the relationship between the three not always being clear. A number of aspects of the Ta’if agreement have been introduced into domestic law, but not all.

The Ta’if agreement foresaw that confessional representation should take place in a second chamber with the first chamber elected on a non-confessional basis. Though mentioned in the Constitution, this change has not been implemented. The Ta’if agreement also stipulated that the election districts should be governorates (*muhafazat*), though many consider that it left open the possibility to change the borders of governorates and to increase their number. The 2000 election law did not respect this agreement. Finally, the Ta’if agreement also introduced the concept of “effective representation”, but this concept is not mentioned in the Constitution. The vagueness around these fundamental concepts would require

26 Lebanon acceded to the ICCPR (1966) on 3 November 1972.

clarification in law, but left open significant space for political bargaining. There is also a history of *ad-hoc* legislation to over-rule constitutional provisions, for example “one-time” laws to extend Presidential mandates beyond their constitutional terms.

Two parliamentary elections (2000 and 2005) were held under the current election law (no.171 of 6 January 2000). The law is similar to the earlier election laws of 1960 and 1996 in most aspects concerning the organisation of elections. These provisions – unchanged for decades – are archaic in many respects, as discussed in this report.

The main changes that have been made to the election laws relate to the electoral system used, often reflecting attempts to ensure certain electoral outcomes. The 1960 election law based electoral districts on *qadas*, a small administrative unit, while the 2000 law established larger districts without clear consistent criteria being used, in spite of the 1996 Constitutional Council decision 4/96, ruling that one criterion should be used in the delimitation of election districts.

## 2.2. Electoral System

### The Electoral System under the Current Law

According to the current election law, the electoral system is based on 14 electoral districts each of which is represented by a number of seats ranging from 6 to 17. Deputies are elected according to the ‘block vote’ system: Each voter can vote for as many candidates as there are seats, with the candidates winning the highest numbers of votes gaining seats. However, the distribution of seats is subject to the limits on the number of seats reserved for each confession in the *qada* or district.<sup>27</sup>

In theory, the block vote system leaves many choices to a voter: he/she could vote for any combination of preferred candidates. Until 2005 voters tended to use these possibilities to a degree by expressing local preferences. Some described those elections as ‘super-local elections’. The 2005 elections were the first to be run almost entirely on “national” issues with voters choosing candidates *en bloc*, rather than voting for different individual candidates. The block vote system is known to work in favour of well-

27 For example, in a single *qada* district with three Sunni and one Maronite seats, the three highest-winning Sunni candidates and the highest winning Maronite candidate gain seats. In a multi-*qada* district, the allocation of seats among the confessions is done on the basis of each *qada*, so if the one Sunni seat is allocated in *qada* A and the second in *qada* B, the winners will be the Sunni candidate with the highest number of votes competing for *qada* A and the one with the highest number of votes competing for *qada* B (even if another Sunni candidate in *qada* B won more votes than the Sunni in *qada* A)

organised parties or groups of candidates, enabling them to win all seats in a constituency, even with only a relative majority of the votes.

Given that there is no official ballot paper (see below: chapter B.2.9.), political parties hand out prepared ballots, which include all their candidates in one 'list'.<sup>28</sup> The ballots are often printed in such small fonts that it is difficult to strike off a name and to enter another name. In addition the absence of campaign and media regulations contributed in 2005 to the dominance of certain parties in specific districts. The net effect of these flaws was a lack of competition in many areas. More than 20% of the seats were won uncontested, because strong parties campaigned with 'bulldozer lists' making candidates unwilling to compete against them, or following political agreements between major political actors.<sup>29</sup> Voter turn-out was systematically lower in these areas: in Beirut, where 9 out of the 19 seats were uncontested, the turnout in the three constituencies was 32%, 31% and only 21% in Beirut III, where five out of seven seats were uncontested. On the contrary, in the four constituencies of Mount Lebanon, where electoral competition was more open, the turnout ranged from 49% to 56%.

In many cases the composition of these lists was not guided by policy positions or ideology, but undisguised power calculations: e.g. in the election district of Baabda-Aley the opposed 'March 14' group and Hezbollah promoted a combined list of candidates which won all the seats. Such lists ensure a certain number of seats for both sides (in this case the Sunni seats for 'March 14' and the Shi'ite seats for Hezbollah), in what would otherwise be a highly competitive context.

In many electoral districts, because of the above-mentioned effect of the block vote system, the results were also distinctly un-proportional. For example, in the election district of North II the 'March 14' list won all 17 seats with 52% of the votes, while General Aoun's 'People's Will' list won some 39% of votes but no seat.<sup>30</sup> For these reasons there is general agreement in Lebanon that the current electoral system is not advisable and that an alternative should be sought.

28 "Lists" do not have an official status; they are *de-facto* alliances of individual candidates, who agree to call their voters to also vote for the other candidates with whom they form a bloc. Because the candidates have to rely on voters' discipline, organised parties or groups, with a high mobilisation potential are generally benefiting from this system.

29 The candidates/seats ratio in 2005 was relatively low: 3,5 candidates per seat. When taking account of the number of candidates who withdrew before Election Day, the ratio is only 2,2.

30 Other examples include the March 14/Hezbollah list in Baabda-Aley which won all 11 seats with 51% of the votes against 45% for Aoun's list. In the two Southern districts Hezbollah won all the seats with 84% of the vote. A lack of proportionality is typical of majoritarian systems. However, this results from small electoral districts, which increase the link between representatives and voters and the accountability of the representatives toward their voters, but this is not the case in Lebanon.

## The Issue of Equality of Votes and Confessional Representation

From the point of view of international standards, there are no requirements to use a specific electoral system (majoritarian/proportional/mixed or parallel). Electoral systems should however respect the requirement of equality between voters mentioned in Art.25 ICCPR.

The equality requirement is problematic in Lebanon, because it can conflict with the idea of confessional representation. Already the requirement that 50% of the seats should be filled by Christian candidates is a challenge to equality, given that Christian voters represent only 40% of the electorate.<sup>31</sup> This is based on a political agreement and according to the Lebanese constitution (Art.27) members of the Chamber of Deputies represent the whole country, rather than a confession. In that sense, the confessional quotas could be compared to a women's quota under which women are not elected to represent women specifically.

Equality under Art. 25 ICCPR is not directed necessarily at who is elected, but rather at the issue that each seat represents a similar number of voters: *"The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely."*<sup>32</sup>

Confessional representation and equality of votes are compatible *per se*, because each seat – whether Muslim or Christian – can be elected with a similar number of votes. The distribution of seats under the 2000 law is relatively equal in this sense with the ratio of registered voter per seat ranging from 19,471 in the district of Bekka III to 23,115 in the district of Beirut I (see Annex 1 for a district-by-district overview).

Additional aspects need to be taken into consideration concerning the equality of the vote in Lebanon: first, who 'controls' a seat and second, the 'natural' inequalities between *qadas*.

<sup>31</sup> According to the voters' list, approximately 60% of registered voters belong to one of the Muslim confessions (see Table 3 above)

<sup>32</sup> UN HRC General Comment on Art.25, point 21

### Christian electorates for Christian seats?

Christian representatives from across the government/opposition divide have complained that while there is confessional equality in Parliament, many Christian seats are effectively 'controlled' by majorities of Muslim voters. e.g. in the electoral district of North II some 65.4%<sup>33</sup> of Christian voters cast their vote in favour of Souleiman Franjeh who ran for a Christian seat in the district. However, given that some 65% of Muslims, who are the majority in the district, voted for the Hariri bloc, another Christian candidate, enjoying lesser Christian support of 37.2% was elected.<sup>34</sup> Altogether 38 out of 64 Christian seats are in electoral districts where there is a *de facto* majority of Muslim voters, while eight Muslim seats are in Christian-majority districts.

Some argue that there is an implicit trade-off between Christian over-representation in Parliament and lack of Christian 'control' of those seats. In principle, it is a positive feature of the current electoral system that candidates have to appeal to voters across the confessional spectrum. However, in 2005 various electorates tended to maintain a confessional voting pattern with the Sunni and Shi'ite electorates particularly cohesive in their votes.

Increasing community-based control of the confessional seats, which would be achieved by reducing the size of the constituencies, would necessarily mean a decrease in the equality of the vote, because Christians, being a minority, would then effectively be determining the same number of deputies as Muslims, who are a larger electorate.

### Qadas as Election Districts

There are three possible election districting systems in Lebanon which do not per se raise suspicions of gerrymandering: the whole country as one constituency; the governorates (*muhafazat*<sup>35</sup>); or the smaller administrative divisions of *qadas* (of which there are 26<sup>36</sup>). But the 14 electoral districts established by the 2000 Election law are not consistent, with some based on single *qadas* and others on mergers of up to five *qadas*. Currently, the discussion often refers back to the 1960 election law in which most electoral

<sup>33</sup> The Lebanese Parliamentary Encyclopedia by Kamal Fghally, August 2005, Beirut.

<sup>34</sup> It is possible to identify the confessional pattern of voting given the organisation of polling stations by confession. Every voter is registered as belonging to a confession.

<sup>35</sup> There are five so-called "traditional" *muhafazat*. In addition, one *muhafazat* was created in 1975 and two more in 2003.

<sup>36</sup> Beirut is one *qada*, which has made election districting particularly controversial there, the temptation being high to regularly re-district the neighbourhoods into districts of various forms to serve political interests. In their current composition, the Beirut constituencies tend to dilute the Christian votes, while the Boutros Commission draft law tends to concentrate the Christian seats and voters in one specific election district.

districts were single *qadas*,<sup>37</sup> with the exception of three districts consisting of two merged *qadas* and two districts consisting of half a *qada*.<sup>38</sup> While a *qada*-based system remains a possibility, the 1960 law could not simply be copied, because of the changes made to the boundaries of some *qadas*.

### **The Electoral System proposed by the Boutros Commission**

The Boutros Commission was mandated to draft a law achieving *“as much fair representation and equality among candidates and voters as possible.”* It appears therefore that the Council of Ministers recognised that the elements of ‘fair representation’ in the sense of confessional ‘control’ and ‘equality’ could not be achieved together, but that a compromise would need to be found to respect both principles *“as much as possible.”*<sup>39</sup> The Boutros Commission cited the Ta’if accord in its introduction to the draft law. Ta’if included a call for ‘effective representation’, which could also be seen as a reference to effective confessional control of the seats.

The Boutros Commission draft law proposes a parallel electoral system. 77 of the 128 deputies would be elected in the 24 *qada*-based electoral districts and three constituencies in Beirut using the existing majoritarian block voting system. The 51 remaining seats<sup>40</sup> would be allocated on the basis of a proportional vote in six larger constituencies (the five *“traditional” muhafazat* with Mount Lebanon being divided into two entities) where voters could cast a vote for a list of candidates or could opt for a personalised vote in favour of one or two of the candidates on the same list. While the allocation of seats between qualified lists would be proportional to their results, the designation of those actually elected to the specific confessional seats would be affected by individual results.<sup>41</sup>

By using the smaller units of *qadas*, the proposed system increases the control of confessions over ‘their’ seats, thus responding to concerns raised by Christian personalities. Smaller election districts would also mitigate the negative effects of the block vote system. The domination of districts by one list would be less problematic where election districts are smaller, because other districts may be dominated by other

37 A *qada*-based system enjoys the support of many Maronite personalities in particular, because smaller electoral districts would increase the number of districts with a majority of Christian voters.

38 However, in contrast to the 2000 election law these exceptions were based on the objective criteria that no district should consist of only one seat.

39 Similarly, the EU EOM 2005 noted that *“for a diverse society as the Lebanese, it is crucial to have as many different views as possible represented in Parliament. Delimiting electoral district boundaries should be done in such a manner that it serves best the principles of equal vote, and adequate political representation”*

40 The Boutros Commission did not touch the aspect of the allocation of the confessional seats to each specific *qada*. A method (explained in the Boutros report to the draft law) was used to determine which seats would remain contested at the *qada* level and which seats would be transferred to the proportional level. This has a significant impact in the case of a seat becoming vacant, as a by-election would then be held at the *qada* level under a basic majoritarian system, thereby changing the nature of the election for the seats initially allocated under the proportional election.

41 Given the existence of a high threshold, a candidate for a confessional seat with the highest result would not necessarily be elected, as the list on which he/she is competing would need first to reach the quotient.

lists, producing more proportional results overall.<sup>42</sup> On the other hand, the proposed new system would increase the inequality of the vote: seats would now represent very different numbers of voters, with a seat in Beirut II representing some 94,000 registered voters, a seat in Zahrany (South) 88,000 voters, while at the other end of the spectrum a seat in Hasbaya (South) would represent a mere 19,000 voters. This reflects the above mentioned fact that an increase in confessional ‘control’ of seats automatically results in higher inequalities in the voters/seat ratio across the country.

The introduction of an element of proportionality is relatively limited under the draft law. First, the six election districts are only medium-sized (ranging from six to 11 seats)<sup>43</sup>. Second, the law includes a threshold that must be reached for a list to qualify for seat distribution. The threshold is ‘hidden’ in the provision that the only lists participating in the distribution of the seats are those which have reached the electoral quotient (votes cast divided by seats available).<sup>44</sup> This threshold is very high and it varies from district to district (from 9% up to 16.6%). Such high and variable thresholds are very unusual and should the law be debated in Parliament, consideration should be given to abolishing this provision. As far as the equality of the vote is concerned, the proportional election component of the Boutros draft law would remain within reasonable limits.

Overall, the Boutros Commission’s approach to the thorny issue of the electoral system appears to be inspired by *realpolitik*: it generally gives more confessional ‘control’ of seats in smaller election districts, and the introduction of proportional representation is so moderate that it is unlikely to upset the political balance. The spirit of *realpolitik* may have guided the Commission also when splitting the proportional election district of Mount Lebanon into two, given political sensitivities of various confessions as regards this district. This is inconsistent with the attempt to introduce more objective criteria for the delimitation of election districts, as has been pointed out by one commission member in a dissenting opinion.<sup>45</sup>

There is no international standard on which electoral system to use, but it appears that the ‘block vote’ system of the current law is not advisable in the Lebanese context. In the 2005 elections it resulted in blocks winning all seats in a number of election districts and more than 20% of the seats were ‘won’ uncontested.

42 Furthermore the draft law includes changes to the way that elections are administered, which may reduce the phenomenon of dominant lists (see below on pre-printed ballot, campaign regulations, etc.)

43 The more seats in a district, the more proportional the system becomes.

44 Art.124 §4 Boutros Draft. The text talks of ‘qualified’ lists. The report of the Boutros Commission makes clear that only lists which reach the quotient would be qualified.

45 Objection by Mr. Ziyad Baroud to the proposal, published as Annex 5 of the Boutros Commission report.

The Boutros draft law maintains the 'block vote' system for 77 seats, but in smaller election districts which may diminish some adverse effects of the system. The Boutros draft would also increase the number of 'Christian' seats elected by majority-Christian electorates, but at the cost of diminished equality of the votes.

Otherwise, the Boutros draft law proposes a proportional electoral system for 51 seats, though the element of proportionality would be limited, because of the fact that election districts would only be medium-sized (6-11 seats) and because there is an unusually high threshold (9-16% depending on the electoral district).

The introduction of an element of proportionality could be positive, but it would be more significant if the threshold was abolished.

### **2.3. Periodic Election**

According to the current election law, the parliamentary term is four years (Art.1). The Constitution contains no provisions on the length of the term and neither does the Boutros draft law. This would need to be addressed if the draft law is debated in Parliament. Ideally a term should be stipulated in the Constitution. Four years is the most common term length for Parliaments.

### **2.4. Election Administration**

According to the election law of 2000 (and earlier laws), elections are organised by the Ministry of the Interior which co-operates with governors (*Muhafez*), who are appointed by the Minister, and 'sub-governors' (*Qaimmakam*).

The Ministry of the Interior manages the voter rolls, registers candidates for the elections, organises polling, counting and publication of the results and deals with complaints against the process.

The technical competence of the Ministry for carrying out these tasks is generally recognised. However, there appears to be limited confidence in the neutrality of a Ministry and the more polarised the political landscape becomes the more difficult it may be for a Ministry to be perceived as impartial, undermining voters' confidence in the process.



The Boutros draft law proposes the establishment of an independent election commission, to be appointed for one non-renewable term covering one parliamentary election. The commission would be tasked with managing the entire election process. While there is no international standard as regards the form that election management bodies should take, it is recognised that independent election commissions play a useful role in many transitional democracies. Indeed the UN Human Rights Committee interprets Art.25 ICCPR as meaning that *“an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.”*<sup>46</sup>

According to the Boutros draft law the election commission would be composed of ten members, including a presiding judge of the ‘Cour de Cassation’ as President, two other judges, former heads of Bar associations, one member each of the media council and the press syndicate, and three experts in election matters with a Ph.D. Each member would be required to swear an oath upon taking office to act in an independent and neutral manner. In spite of the current confessional structure of the State’s institutions, the draft law does not specify the confessional make-up of the membership.

This composition would provide the commission with strong legal and regulatory expertise. The operational and administrative expertise that is required for running elections would likely rest with the commission’s Secretary General (Art.13 draft law) and the commission would be authorised to ask for the secondment of civil servants to support its work and to hire experts (Art.28 draft law). The Boutros Commission report, accompanying the draft law (Annex 3), includes suggested rules of procedure for the election commission. While most elements are in line with usual practice, consideration could be given to increasing the commission’s transparency, for example, by holding meetings in public or at least in the presence of party and candidate delegates and by publishing minutes.

According to the draft law, the Council of Ministers upon the recommendation of the Prime Minister would appoint the commission. Best practice suggests that election commissions should be appointed by Parliament, possibly by a two-thirds majority, in order to enjoy broad acceptance by political forces.

46 UN HRC, General Comment on Art.25, point 20.

Whilst a Parliamentary appointment procedure could create another blockage when Parliament is not functioning, as is currently the case, an appointment by the Council of Ministers could make it more difficult for a commission to be perceived as being fully impartial. This increases the need for additional transparency safeguards, as mentioned above (public sessions, etc.).

The draft law recognises the need to make use of the Ministry of the Interior's technical competence by including its representatives in an 'operations room', which would be tasked with following the election process as it unfolds (Art.26 draft law).

According to the current election law, elections are largely managed by the Ministry of the Interior. The Boutros draft law would establish an independent election commission with overall responsibility for organising elections. Independent election commissions have been useful in many transitional democracies to increase the impartiality and independence of election management. It could be useful for the law to include transparency safeguards (for example, that sessions by the Commission are held in public).

## **2.5. Right to Vote (*ineligibilities, out-of-country voting, process of voter registration*)**

### **2.5.1. Eligibility/ Restrictions to Vote**

Under the current election law citizens who are 21 years or older have the right to vote, but there is a list of exclusions for persons with convictions for specified felonies or misdemeanours (Art.10). Persons who have been declared bankrupt and military personnel are not allowed to vote (Art.28). Under Art.25 ICCPR the notion of 'reasonable restrictions' on the right to vote is understood narrowly, thus the exclusion of military personnel or persons declared to be bankrupt appears to be unreasonable.<sup>47</sup> Ensuring that members of security forces are able to freely and secretly exercise their constitutional rights should be regarded as a matter of proper procedures rather than a question of principle.

There are no provisions for house-bound, hospitalised or detained citizens to be able to vote. It would be preferable if arrangements were made to enable citizens in these situations to vote, although this would need careful handling given the history of vote-buying and lack of secrecy in Lebanese elections. There are likewise no provisions to allow polling station personnel to vote.

47 The leading commentary on the ICCPR considers the exclusion of the military from the vote as unreasonable. See M.Nowak, ICCPR, Second Edition 2005, Art.25, point 27.

The Boutros draft law lowers the voting age to 18 years or older, which is more in line with international practice and would be consistent with the fact that the Lebanese reach the age of majority at 18. This change would require an amendment to Art.21 of the Constitution<sup>48</sup>.

It is also positive that the Boutros draft law provides for voting by polling station staff (Art.99) and allows the election commission to facilitate voting by disabled persons (Art.112). The draft law retains the list of ineligibilities (Art.2) in the current law. In the light of international standards, it would be advisable to review some of these restrictions (the ban on voting by the security forces, etc.) if the draft was discussed in Parliament. The draft law also proposes a limitation on the right to vote for naturalised citizens, who should only enjoy the right to vote four years after naturalisation (Art. 3). This seems to conflict with the UN HRC's interpretation of the obligations under Art.25 ICCPR<sup>49</sup>.

Under the 2000 election law, voting age is 21. Under the Boutros draft law, the voting age would be 18, which is more in line with international practice and coherent with the age of majority in Lebanese law, which is also 18 years. Both laws include a number of restriction on the right to vote (for example, for army personnel) which do not appear to be in line with international standards.

### 2.5.2. Voter Registration

According to the current law, the Voters' List is produced by the Ministry of the Interior (Mol) on the basis of the Civil Registry in which personal status changes are recorded. Administrative operations related to personal status are countersigned by *Mukhtars* on the basis of certificates issued by doctors (related to death and birth) or religious authorities (related to marriage). This information is recorded at registration offices of the Mol.<sup>50</sup> The role of *Mukhtars* in the process may raise concerns, because - as elected representatives – neither their neutrality nor their qualification for this work is necessarily guaranteed.

Citizens are usually registered in the place of their family's origin, which, in many cases, differs from their place of actual residence.<sup>51</sup> Changing one's place of registration is difficult. Procedures are not transparent and require approval from the Council of Ministers which has a large discretion. This question is politically sensitive as the transfer of registration

48 In 1999 a petition signed by 99 deputies requested this amendment to the Constitution. The project was never considered by the parliament.

49 „Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25". UN HRC, General Comment on Art.25, point 3.

50 There are 47 registries across the country.

51 The system does not aim to register 'actual residence' in the civil registry. Citizens are registered at their places of residence separately (for paying local taxes, etc.) with no connection to the civil registry.

can impact on the number of voters of different confessions in each election district.<sup>52</sup> The result is that the distribution of voters on the Voters' List does not reflect demographic realities: for example, the election districts of Beirut have a relatively small number of voters, despite significant urbanisation during the last decades. According to estimates, half of the country's population lives in Beirut, but there are only some 430,000 voters registered there.

Voters' Lists are permanent and updated annually over the period from 15 December to 30 March. The Mol updates the lists on the basis of its own personal status records (to include persons who have reached voting age or who may have died) and on the basis of information sent by the courts and governorates regarding citizens who have been convicted of crimes and those who have been declared bankrupt. On 10 February every year, the Mol sends an updated voter list to each municipality, *Mukhtar*, *Qaimmakam* and Governor, where the lists will be published for public inspection. In addition, anybody can purchase the preliminary national Voters' List.

Voters can complain about mistakes and omissions to a Registration Committee<sup>53</sup> in their area and appeals against decisions of these committees may be made to the election district's Higher Registration Committee<sup>54</sup>. After changes are made, the Voters' List is sent to the Mol which can refer any possible omissions or mistakes back to the registration committee. The final Voters' List is eventually adopted by the Mol on 30 March and will apply to any election taking place that year and up until 30 March of the following year.

The law does not provide for any exceptional revision of the Voters' Lists prior to elections occurring between these dates. Individuals becoming eligible for registration between the 30 March and Election Day are not included in the list and are *de facto* disenfranchised. Similarly, individuals who lose their eligibility would remain recorded as such until their names are removed during the next annual registration exercise.<sup>55</sup> These problems could be resolved in two ways: either voter register updates would include all who reach the voting age until the next year's update (polling stations would then need to verify that each young voter had indeed reached the voting age by Election Day), or there could be an exceptional update of voters' lists before election days.

52 Changing the place of registration is also difficult because of concerns that, following population movements during the civil war, changes in the places of registration could result in a bureaucratic form of 'ethnic cleansing'.

53 Registration Committees are composed of a judge as chairperson, a member of a municipal council in the electoral district and an employee of the Personal Status Directorate as rapporteur. The number and composition of the registration committees is fixed by decree.

54 Higher Registration Committees are composed of the President of an Appeal Chamber in the *Muhafazat* as chairperson, a judge and an inspector from the Central Inspection Bureau as members, assisted by a rapporteur from the Personal Status Directorate of the Mol.

55 Individuals would not be removed from the excluded list if they are under arrest, see art.48.

The Voters' List include each voter's name and surnames, family registration number<sup>56</sup>, sex, father's name, date of birth and confessional status. This information is also listed on the voter's card which is delivered upon request made to the Mol. The voter card is required for voting. The EU EOM 2005 was highly critical of the voter card procedures<sup>57</sup>, because voter cards are often organised by proxies, sometimes connected to candidates, who bus voters to polling stations and hand out the voter cards only at the last moment. These practices open possibilities for abuse and undue influence on voters' choices.

The voter card has only a limited use in identifying voters and represents an additional administrative and operational burden for voters and the election administration. Given that to obtain a voter card a photographic ID is necessary, the procedure adds nothing except complication: voters could instead vote directly with an ID. Positively, under the Boutros draft law the concept of voter cards would be abolished altogether.

Otherwise, most provisions of the Boutros draft law for voter registration are similar to those of the current law, with a few administrative modifications: the voter registration process would be undertaken by a newly established Office of Voter Records inside the Mol, which would work under the supervision of the proposed independent election commission. The draft law also provides explicitly for publication of the Voters' List on the Internet. According to the draft law, the Voters' List should also include additional data, such as the place of birth and the mother's name. While these may be extra safeguards against fraud, there should be an assessment of whether the changes require an overhaul of the whole civil registration system (currently the place of birth and mother's name are not recorded).

Other significant changes to the registration procedures are related to the new polling arrangements envisaged by the Boutros draft law:

- under the draft law, out-of-country voting is permitted, which gives a role to Lebanese consulates abroad in processing voter registration information, publicising the lists and receiving requests for changes;
- the draft law would allow voters to seek to change their place of voting to the place of their actual residence (Art.45); however, their vote would still be accounted for and counted in their place of origin (in other words, this would be a system of absentee voting).

Some of the registration deadlines in the Boutros draft may need to be reviewed.<sup>58</sup>

<sup>56</sup> There is no specific individual registration number for each citizen. Persons are registered to a number given to their family, but these numbers are not unique. Registration is sub-divided into confessions and villages. The same numbers may be used in different sub-categories (e.g. a village may have a Maronite family with the number 20 and a Sunni family with the number 20).

<sup>57</sup> EU EOM, Final Report, p.46-47.

<sup>58</sup> Examples of problematic deadlines are that voters can request the registration committee to make changes to the list until 10 March (art.43), but the committee should decide before 5 March (art.46).

Voter registration is based on a peculiar concept (registration at the place of family origin), which takes no account of the fact that many people do not live at the place of family origin. However, any reform of voter registration would be politically sensitive, because it could change the distribution of the electorate across the country, including the confessional make-up, with consequences for the electoral system.

Under the current law electors need to have a voter card in order to vote: obtaining the voter card is difficult and candidates often obtain voter cards for voters, opening up the possibility of pressure and intimidation. Positively, the Boutros draft law abolishes the use of voter cards.

It would be appropriate if voters who reach the voting age after the end of the annual registration update but before election day were allowed to vote: either voter register updates could include all who reach the voting age until the next update (polling stations would then need to verify that the voter has indeed reached the voting age by election day), or there could be an exceptional update of voter lists before election days. When debating the Boutros draft in Parliament it could be useful to assess the feasibility of some administrative changes and to review deadlines.

## **2.6. Right to Stand: Registration of Candidates and lists**

All seats are reserved for specific confessions, therefore a candidate of a specific confession cannot usually run in a district if his/her confession has no seats there. Persons who are not affiliated to any of the 11 confessions represented in Parliament<sup>59</sup> (e.g., because he/she follows another religion or has no religious beliefs) are unable to stand for elections.

The UN Human Rights Committee considered these provisions to be a violation of Art.25 ICCPR:

“The Committee notes with concern that every Lebanese citizen must belong to one of the religious denominations officially recognized by the Government, and that this is a requirement in order to be eligible to run for public office. This practice does not, in the Committee’s opinion, comply with the requirements of article 25 of the Covenant.”<sup>60</sup>

In practice, neither the current law nor the Boutros draft law formally require any proof of his/her confession from the candidate. Reportedly there have been candidates of one confession running for seats reserved for other confessions. However, these cases remain unusual. The Ta’if agreement’s aim of transferring confessional representation into a second chamber might solve this problem.

<sup>59</sup> One of the seats in Beirut is reserved for ‘Christian minorities’.

<sup>60</sup> Point 23, Concluding Observations of the Human Rights Committee: Lebanon. 01/04/97. CCPR/C/79/Add.78

Under the current election law candidates must be at least 25 years old, be registered in the Voters' List and not be deprived of their civil and political rights.<sup>61</sup> Naturalised Lebanese are eligible only 10 years after they gain citizenship. The UN HRC raised concerns about discrimination between citizens by birth and those who are naturalised.<sup>62</sup>

Candidates register on an individual basis. A candidate can only run for elections in one election district. The law restricts the right to stand as a candidate for military personnel, public personnel of the first and second rank, judges, and chairmen or board members of public institution boards as well as directors of these institutions (Art. 28, 30), and also presidents and vice-presidents of municipal councils.<sup>63</sup> A period of six months is required after retirement or resignation from these posts before recovering the right to stand. It is not allowed to be a Member of Parliament and to carry out certain functions related to state interests at the same time (Art.29).<sup>64</sup>

While the seats are attached to a specific electoral district, the law neither requires candidates to be registered as voters or to be resident in the constituency for which they are running.

Candidates have to pay a deposit of ten million Lebanese Pounds, (around 4,000€), which was considered to be unusually high by the 2005 European Union Election Observation Mission. The deposit is returned if the candidate is elected or receives at least 10% of the votes cast in the election district.<sup>65</sup> If the candidate withdraws the candidacy up to ten days before Election Day, half the deposit is returned.<sup>66</sup>

The Boutros draft law maintains the main requirements for candidacy (conditions of citizenship, age or literacy). The main professional restrictions and incompatibilities are maintained but the restrictions on lower ranking civil servants running are removed. The draft law is more precise as regards the administrative requirements to be fulfilled by candidates. The financial requirement is reduced by 50% (two million pounds registration fee and three million pounds potentially refundable deposit).<sup>67</sup> The payment of a registration fee is unusual and the combined costs of fee and deposit are still comparatively high.

61 Article 6. The article also states the need to be 'literate'.

62 See above, footnote 49

63 According to the 1977 Municipal Law they can only be candidates two years after they resign or two years after the end of their term.

64 This includes holding a public office at the local level. There appears to be a contradiction between articles 29 and 30: article 29 indicates that board members or chairpersons of public institution boards can run in elections while article 30 prohibits them from being candidates.

65 Given the confessional pattern of voting, the requirement to win at least 10% of the vote appears to be difficult to meet for candidates running for seats of small minorities and reinforces the interest in being co-opted by a large bloc when contesting one of these seats.

66 In 2005 out of 448 registered candidates, 121 withdrew before the official deadline and 40 after (see EU EOM final report – Lebanon 2005, p. 48).

67 For the block vote system a 10% threshold is foreseen for reimbursement of the deposit, while lists under the proportional electoral system have to reach the electoral threshold to be eligible for a reimbursement of the deposit. This results in inequalities, because the electoral threshold is different in each district (9-16%).

The Boutros draft law changes the timetable for registration: currently candidates have to register at least 15 days prior to Election Day<sup>68</sup>, while the draft law extends this period (see table), allowing for the production of official ballots. Some aspects related to deadlines should however be clarified if Parliament reviews the draft law.<sup>69</sup>

Table 4

TIMETABLE FOR THE REGISTRATION OF LISTS AND CANDIDATES ACCORDING TO THE BOUTROS COMMISSION PROPOSAL			
	Registration of individual candidates	Registration of individual candidates under Article 60	Registration of lists
E – 60	Deadline for submitting individual candidacies		
E – 55	Deadline for delivery of final receipts by the Independent Election commission		
E - 53		Extended deadline for submitting individual candidacies to still uncontested seats at E - 60	
E – 50	Deadline for introducing appeals petitions to the State Council		
E - 48		Deadline for introducing petitions to the State Council	
E - 47	Deadline for State Council's final decisions (fast track procedure)		
E - 45	Deadline for withdrawing candidacies	Deadline for State Council's final decisions	Deadline for registering lists of candidates (PR)
E - 43			Deadline for possible rectifications to applications submitted by lists upon request of the Election Commission
E - 41			Deadline for challenging Commission's decisions in front of the State Council
E - 38			Deadline for State Council's final decisions (fast track procedure)

The draft law includes more detailed procedures and gives responsibility for managing the process to the planned Independent Election Commission.

68 An extended deadline (until three days prior to Election Day) is foreseen if no candidate registered for a seat by the closing of the official period for registration.

69 Some problematic aspects are the case of by-elections, which have to be held within two months after an MP's seat becomes vacant (art.41 constitution) and the definition of accepted candidates as in Article 67 (publication of the list of accepted candidates by the Independent Commission).



The registration would continue to be based on individual registration, even for those candidates participating on lists in the proportional election districts. All candidates have to register 60 days prior to Election Day, but the deadline for registering the lists is only 45 days before the elections. This 15 day period will allow for bargaining about the composition of the lists between candidates and list submitters.<sup>70</sup> The 15 day gap may be problematic, because the official election campaign (60 days before E-Day) would start before the registration of lists (45 days), making it impossible in that period to apply campaign rules to list submitters.

Under the current law and the Boutros draft the right to stand for election is limited by the fact that all seats are allocated to specific confessions: citizens with other or no beliefs cannot run in elections. The UN Human Rights Committee considered this discrimination to be a violation of Art.25 ICCPR. The intention under the Ta'if agreement of creating a second chamber to represent confessional groups might solve this problem.

The Boutros draft law provides more detailed procedures for candidate registration than the current law and reduces the financial costs of registration, though they remain high. There may be a need to review some deadlines in the draft law.

## 2.7. Campaign Rules and Financing

The current election law contains almost no rules on campaigning and no rules on campaign financing. The EU EOM to the 2005 elections noted: *"The absence of adequate campaign finance regulations contributed to the creation of an uneven playing field during the election campaign. It has reduced the number of possible choices available for the electorate by preventing a number of candidates, who did not have the necessary financial resources, to run or by pushing them to withdraw"*.<sup>71</sup> The EU recommended that regulations for campaigning and campaign financing be adopted.

The Boutros draft law addresses these issues by proposing:

- An official opening of the campaign 60 days before the elections, corresponding to the deadline for submitting the individual candidacy applications. No pre-electoral silence period is foreseen,<sup>72</sup> but there is a ban on campaign activities in and around a 200m radius from polling sites (Articles 90 and 103);

<sup>70</sup> Incomplete lists would be authorised if they included at least four candidates. It is worth noting that given the existence of a high threshold, incomplete lists may face difficulties in reaching the threshold to qualify in the seat distribution.

<sup>71</sup> EU EOM final report , p. 38-39

<sup>72</sup> „The electoral campaign period shall start sixty days prior to polling day and end with the closing of ballot boxes“, article 71.

- A ban on public institutions, civil servants, *mukhtars*, etc. participating in the election campaign (Article 89);
- A ban on the use of public buildings and utilities, schools and universities or places of worship for electoral purposes (Article 89);
- The establishment of limits on electoral expenses (Article 74)<sup>73</sup>;
- Requiring candidates to open a campaign account and appoint a financial commissioner and a recognized auditor in charge of verifying the accounts (Articles 72 and 78);
- The definition of permitted electoral contributions (Articles 68 and 69);
- The definition of the nature of expenses that should be considered as electoral expenses and therefore be included within the calculation of campaign expenditures (Article 70);
- The prohibition for candidates to make donations (for example for charitable purposes) during the campaign unless these donations are part of a long term and regular activity of the candidate (since not less than three years) (Article 75);
- The submission by the candidates, of a financial report to the independent election commission;<sup>74</sup>
- The possibility of penal, electoral or financial sanctions in case of breaches to these obligations (Articles 79, 80, 81 and 90).

These provisions are generally in line with international best practices and follow the general trend of establishing a regulated framework for the conduct of campaigning, in order to provide equal chances for candidates. Including additional measures in the law could usefully be considered at the stage of parliamentary discussion, in particular post- election public disclosure of campaign accounts.

The current law includes almost no regulations for campaigning. EU and domestic election observers have criticised the lack of a level-playing field in the past.

The Boutros draft law provides a much improved framework for campaigning.

<sup>73</sup> The limits on expenses would be calculated as follows: a fixed amount of 100 million Pounds in addition to a variable amount based on the number of voters registered on the district's voter roll amounting to 1,000 Pounds per voter for individual candidates (in the case of the lists, the ceiling would be calculated by multiplying the fixed amount of 1 million Pounds by the number of candidates on the list).

<sup>74</sup> The proposal by the Boutros Commission does require a public declaration by the candidates of their personal property as required by a growing number of electoral laws. Similarly, the draft law does not foresee the obligation to publish the post- election financial reports introduced by the candidates.

## 2.8. Media/Campaign

The Lebanese media landscape is characterised by confessionalism as much as the political institutions are.<sup>75</sup> By convention the head of the Journalists' Union is a Christian while the head of the Publishers' Union is a Muslim. Confessionalism and the power of political families also determined the licensing of private TV stations under the 1994 audio-visual media law. These included<sup>76</sup>:

- Future TV, owned by the Hariri family;
- The National Broadcasting Network, owned by the family of Parliamentary speaker Berri;
- Al Manar TV, controlled by Hezbollah;
- LBC Television (now LBCI), formed originally by the Lebanese Forces, a major shareholder is former Deputy Prime Minister Issam Fares (Greek Orthodox);
- NewTV (NTV), originally formed by the Lebanese Communist Party, but then controlled by Tahsin Khayat, who supported the 'People's Movement' (Arab nationalist. Greek orthodox);
- TV (Orange TV) owned by the Aoun family

The public TV station Télé-Liban does not enjoy high audience rates. Foreign satellite channels, such as Al-Jazeera are widely watched.

The 2000 election law includes only one article related to the conduct of the media during elections (Art.68), which contains a very wide and vague prohibition: "broadcast media and non-political print media" shall not "perform electoral publicity during the election campaign" with a very severe sanction (suspension or shutting down of the media outlet).

According to the media monitoring by the EU EOM almost all media violated this provision without any sanction.<sup>77</sup> At the same time there is a history of closing down media outlets on the basis of this article.<sup>78</sup> Others analysts have raised concerns about the strong bias of many private media: *"In general, the TV channel owners were clearly promoting one candidate or party over another and did not provide all of the candidates with equal access or fair coverage."*<sup>79</sup> The current law is therefore in urgent need of reform.

<sup>75</sup> This overview is largely based on the "Media Situation in Lebanon," website of the Boutros Commission: <http://www.elections-lebanon.org/elections/default.aspx?lg=en>

<sup>76</sup> Murr TV, licensed in 1994, was closed down in 2002. The station had been owned by Gabriel Murr, brother of the former Minister of the Interior. Two shareholders were public figures: Walid Jumblatt and Fares Boueiz (a Maronite).

<sup>77</sup> See EU EOM, Final Report, p.52

<sup>78</sup> Murr TV was closed down for promoting the campaign of its owner Gabriel Murr in the 2002 by-elections. His competitor was Mirna Murr, the daughter of the former Minister of the Interior Michel Murr.

<sup>79</sup> See Assaf, S., Comparative Report on the State of the Media in Egypt, Jordan, Lebanon and Morocco, Arab Center for the Development of Rule of Law and Integrity & IFES, May 2007.

The Boutros draft law contains detailed rules on media issues. All registered lists and candidates would have free access to public audio-visual media according to rules determined by the election commission. Public media should be 'impartial' (Art.85). As far as private audio-visual media are concerned the election commission shall make 'binding recommendations' in order for 'equity, equality and impartiality' to be secured; private audio-visual media should not declare support for any one candidate or electoral list (Art.86).

The election commission shall "specify the terms for opinion polls during the election" campaign (Art.92). The commission shall ensure the "adherence of the audio-visual media in Lebanon to the electoral advertising provisions" (Art.94).

Sanctions range from giving a warning and fine to suspension and closure of media outlets (Art 95). Such decisions can be appealed to the 'Cour de Cassation'.

There are no specific rules for print media, except that they, like the audio-visual media, can be accredited by the election commission to follow the voting and counting of votes (Art.93).

The provisions of the Boutros draft law are generally in line with international standards and best practices aiming at a level-playing field for contestants.<sup>80</sup> A number of issues may need some clarification when the draft law is discussed in Parliament or through detailed instructions to be issued by the election commission.<sup>81</sup>

The current election law includes an article on media conduct which is very wide and carries serious sanctions (closure of media outlets). The article has been used in the past to close down media outlets.

The Boutros draft law contains specific provisions on advertising in and access to audio-visual media. These provisions would bring the legislation into line with international standards in this field, though a number of issues may need clarification.

<sup>80</sup> Public media should also be bound by rules of impartiality. The restriction on the freedoms of private media in election broadcasting can be justified under international law: Art.19 ICCPR guarantees the freedom of expression, but also stipulates that this right creates obligations and can be restricted for the "respect of the rights (...) of others"

<sup>81</sup> Examples of issues that need to be clarified: given that 'equity' and 'equality' are not the same, the Commission will need to decide which principle should rule which type of programme. It should also be borne in mind that strict principles for news reporting can be stifling and undermine the notion of 'newsworthiness'. Media should be obliged to archive their programmes, so that there is a factual basis should complaints arise. It appears the draft law gives the election commission authority to decide appropriate methodologies for opinion polling: this would seem to overstep the powers of an administrative body and should be left to opinion polling companies.

## 2.9. Voting

The current law sets out objective criteria for the establishment of polling stations<sup>82</sup>, which are maintained by the Boutros draft law:

- at least one polling station per village with a minimum of 100 voters,
- one polling station per 400 voters, extendable to 600 voters if so required “for the safety of the election process”;
- a limit of 16 stations per polling centre (reduced to 15 in the Boutros’ draft).

The list of polling sites has to be published within 15 days following the day after calling the elections (at least one month before polling according to the Boutros draft).

In the 2005 elections there were 5.875 polling stations for 3.007.261 registered voters, an average of 512 voters per polling station. No specific provision regulates the choice of the buildings to be used as polling sites. As a result, the EU observers noted in 2005<sup>83</sup> that several locations (police stations or places of worship) were used as polling sites, although they could not be considered as appropriate for that purpose.

The law is silent as regards the method of allocating voters to the polling stations. In practice, the administration follows a confessional, family and gender based approach. This practice has no logistical or geographic basis. Combined with the use of pre-printed ballots distributed by the candidates (see below), it favours a close monitoring of the voters’ choice by candidates.

The current law does not allow out-of-country voting, although many Lebanese live overseas. Lebanon has not signed any international instruments that would oblige it to permit out-of-country voting. However, many established democracies with a significant degree of emigration organise representation for citizens residing abroad<sup>84</sup>. The Boutros draft law includes several provisions for out-of-country voting with Lebanese embassies and consulates to be used as polling sites along with “*other place determined (...) in coordination with the Ministry of Foreign Affairs and Emigrant Affairs*” (Article 116 (2)). The draft law does not provide details on the method and timetable for the transfer of ballots before and after Election Day, the rules for the establishment of additional polling stations as provided by Article 116 (2) or the accreditation of candidate representatives or observers.

<sup>82</sup> Article 39, Election Law.

<sup>83</sup> EU EOM, Final Report, p. 57

<sup>84</sup> Considering that there is no residency requirement for registering as a candidate, it appears easier for a registered voter residing out of country to be a candidate than to vote.

Polling is to take place on one Sunday, from 07.00 am until 06.00 pm<sup>85</sup> (07.00 pm in the Boutros proposal).<sup>86</sup> Voters are entitled to vote on the basis of their presence on the voters' list and presentation of their voter card.<sup>87</sup> The Boutros draft law abandons the voter card (see above) in favour of the use of official ID documents<sup>88</sup>.

The Boutros draft includes other measures to increase the security and integrity of the polling process, such as transparent ballot boxes and indelible ink to mark the fingers of those who have voted.

According to the current law, each polling station's staff is composed of a head and one or more clerks, appointed by the governor (they are generally selected from teachers and civil servants); and four assistants, two chosen by the head of the polling station and two by the voters present at the opening of the polling station from among themselves. The EU EOM in 2005 observed that assistants were mostly candidates' representatives.<sup>89</sup> In 2005, no specific training was given to the appointed staff prior to the elections. According to EU observers this negatively impacted on their performance and explained a relatively high level of inconsistencies in the implementation of the official polling procedures<sup>90</sup>. No specific provision exists in the law for organising the vote for the appointed staff, who are *de facto* disenfranchised under the current legal regime.

The process of selecting the polling station staff is slightly different in the Boutros draft: the practice of appointing a maximum of two civil servants to each polling station is confirmed (Art. 98), a position of "polling centre officer" is created to be filled also by civil servants (Art. 98) and the responsibility for selecting assistants is reserved to the head of the polling station.<sup>91</sup> The election commission has to prepare its list of polling staff at least one month before the election but their exact assignment would remain unknown until five days before the elections. The Boutros draft law also includes advance polling for the polling staff on the Friday before Election Day, in parallel with the training and information sessions (Article 99).

85 The closing time can be extended in order to allow voters present at 06.00 pm to cast their ballot (Article 53, Election Law).

86 The decision to hold the 2005 elections on four consecutive Sundays was based on a special Law (n°676) establishing an exception from this general principle. However, elections have always been held over several days.

87 The voter card includes: name and surname, father's name, family number, date of birth, confession and picture of the holder.

88 According to the Boutros draft law, valid documents would include the national ID card, a Lebanese passport or a birth certificate.

89 EU EOM, final report, p.44.

90 Ibid, pp. 56-57.

91 But there is no provision preventing candidate representatives from being chosen for this role.

The EU EOM 2005 identified some serious shortcomings in the conduct of polling, the main ones resulting from the absence of official ballots and the fact that voters could express their choice in any written way.<sup>92</sup> These “home-made” ballots are placed in official stamped self-adhesive envelopes, provided by the Mol. In practice, most voters were using pre-printed lists of names provided by the candidates. This very unusual procedure opens up the possibility of identifying who cast which vote during counting. This apparently well-entrenched practice is a serious violation of the basic principle of the secrecy of the vote. The Boutros draft law abandons this outdated balloting method and introduces the exclusive use of the official pre- printed ballots for each district.

Election laws in Lebanon were always based on an archaic practice that voters could write their choice on any piece of paper. In practice this has meant that political parties produce most of the ballots with negative effects on the secrecy of the vote.

The Boutros draft law introduces a pre-printed ballot, as is standard in almost all democracies. The draft includes a number of other improvements (transparent ballot box, inking of fingers) in line with international best practices. The draft also foresees voting in consulates for Lebanese abroad: This is positive as it fosters higher participation, but would need careful legal, administrative and operational preparation.

## **2.10. Counting, Tabulation, Aggregation**

Under the current law votes are counted in polling stations and the results are announced and posted on the doors of the polling stations. After the tally and the completion and signing of protocols, the ballots are destroyed, except for contested or void ones. The results are then transferred to the Registration Committees for further aggregation.

The Registration Committees are vested with the power to scrutinise the polling station protocols and to take decisions on them. Results recorded in the protocols are announced and tabulated. A report is produced which is sent to the Higher Registration Committee. A copy of the Registration Committee’s report is delivered to a representative of the Ministry of the Interior. The Higher Registration Committee announces the results for each candidate given by the Registration Committees before announcing the aggregated final results. These results are delivered to the governor (*Muhafez*) who forwards them to the Ministry, which announces the official final results.

<sup>92</sup> EU EOM, final report, p.43

Given that voters can express their choices in any written way, the only reconciliation mechanism (comparing the number of actual voters as marked on the Voters' List with the number of envelopes in the ballot box) available under the current law is to count the official envelopes for the ballots, both before voting and after.<sup>93</sup> The destruction of the ballots after counting is not unreasonable in a context where there are no official ballots and where any piece of paper could be considered a ballot, making it easy to stuff additional ballots in ballot boxes. However, it is a major flaw that there can be no further investigation into results after elections and no recounts.

The Boutros draft law includes significant differences to the existing arrangements for aggregating results: In polling stations the number of envelopes found in the ballot boxes is compared with the polling station check list, without opening the envelopes. The re-sealed ballot boxes are then transferred to the registration committees where they are opened and their content mixed with envelopes from other polling stations. This was introduced by the Boutros Commission in the interest of guaranteeing the secrecy of the votes, because it would make it impossible to trace the results of a particular polling station and thus makes vote buying or intimidation more difficult.

However, this type of centralised counting has a number of drawbacks: when ballot boxes are travelling to the registration committee there is more scope for tampering with them. Furthermore, there would be less transparency, and implausible results from specific polling stations would not appear from the examination of the results. The public often prefer counting to take place in their local area and to know their own local results, and this gives a perception of greater transparency. Finally, in the case of problems a higher number of votes would be affected, e.g. re-counts would have to be held in larger areas, while a de-centralised count in polling stations limits possible problems and recounts. A centralised count would also take significantly more time, which could raise tensions in the post-election period.

It is understandable that the Boutros draft seeks to protect the secrecy of the vote, but there may be other ways to do so. As the problem of secrecy is particularly marked in Lebanon because voter lists/polling stations are generated according to families and gender, secrecy could perhaps be enhanced more easily by using other methods of organising voter lists and polling stations. Apart from the advance polling organised for appointed polling staff, the Boutros draft also introduces special polling arrangements for voters opting to cast their ballot in another place than their place of record (Article 97 §2) and for

93 „Voting takes place by means of ready to paste/self adhesive envelopes of the same pattern for all voters provided by the Ministry of Interior and placed at the disposal of voters ...” (Article 45, Election Law). These envelopes have to bear the official stamp of the *muhafazat* or the *qada*, the date of the election and, in 2005, were signed by the polling station staff.



Lebanese residing abroad (Articles 115-117). These arrangements would increase the actual electorate<sup>94</sup> which is positive. However, from an organisational point of view they would greatly complicate the process: various ballots would ‘travel’ around the country and come from abroad in the days after the elections and would necessarily slow down the process of aggregating and announcing the results.

Table 5

Categories of voters created by the Boutros Commission				
Category	Polling Day	Vote cast at	Vote cast for	Vote counted at
Appointed PS staff	Friday before E-Day	Special PS (training centres)	Constituencies of the place of record	Registration Committee competent for the place of record
“Ordinary” voters	Election Day	Ordinary PS		
Art. 45 voters (not voting at the place of record)	Election Day	Special PS identified by the election commission		
Out-of-country registered voters	Election Day	Embassies, Consulates and, possibly, additional special PS		

According to the Boutros draft law, registration committees should send the records to the higher registration committees which would aggregate the overall results in the election districts under its authority and pass these on to the election commission. The independent election commission would be entitled to announce the results. Election observers would be entitled to follow the counting and aggregation of results and would receive certified result copies.

The arrangements in the current law for counting and aggregation of results appear to be adequate, except that ballots are destroyed directly after counting which makes it impossible to re-count votes if necessary.

The Boutros draft law is generally more detailed than the current law. In contrast to current arrangements ballots would not be counted in polling stations, but in counting centres where ballots from many polling stations would be mixed before the count, in order to increase the secrecy of the vote. This process needs careful consideration as it reduces transparency and could be very time-consuming. Other ways could be explored to safeguard the secrecy of the vote.

94 In 2005, out of 3.007.261 registered voters, voter cards for 2.265.873 voters were distributed. 1.395.025 voters cast their vote.

## 2.11. System for Complaints and Appeals

The current election law provides only two instances for complaints or appeals: complaints against decisions by registration committees can be lodged with higher election committees before 25 March of each year, during the updating of voter registers (Art.24). This leaves no possibility of complaining after the revision, i.e. when a voter discovers before an election that he/she has been deleted from the voter list. As far as candidate registration is concerned, refusals by the Ministry of the Interior to register a candidate can be appealed against to the Council of State (Art.35).

According to the Administrative Code (Art.63), all decisions by the public administration can be appealed to an administrative court. According to the Constitution (Art. 19), the Constitutional Council shall “*arbitrate conflicts which arise from Parliamentary or Presidential elections.*” It seems that this provision relates to disputes over election results.<sup>95</sup> However, the Constitutional Council has not been functioning since 2005, because of disputes over the appointment of new judges. Thus there is currently no effective remedy for challenging election results.

The Boutros draft law (Art.52) contains the same provisions as the current law on complaints against voter registration and as far as candidate registration is concerned, the Boutros draft law also allows an appeal to the Council of State (Art.59 §7).

Otherwise the Boutros draft law is clearer on complaints and appeals: it explicitly provides that complaints against the election process can be brought to the election commission (Art.19 §14), while appeals against the commission’s administrative decisions can be lodged with the Council of State, which has to decide in summary proceedings (Art.22).

As far as counting is concerned, according to the Boutros draft law ballot papers are not destroyed, but kept for three months, which allows for possible recounts (Art.119). However, the law does not provide explicitly for complaints or appeals against the counting and aggregation of results. Possibly complaints could be brought to the election commission under Art.19 §14 and appeals to the Council of State (Art.22). In view of the need for effective remedies it may be useful to allow complaints to be filed in the first instance with the registration committees, which have the advantage of being local and so better placed to investigate and follow up on complaints.

95 Art.30 Constitution indicates that “deputies alone have the competence to judge the validity of their mandate”, but then states that “this clause is automatically cancelled as soon as the Constitutional Council is established”.

Appeals against the results are probably only permissible under Art. 19 Constitution with the Constitutional Council. As mentioned above such an appeal is not possible currently, because the Constitutional Council is not operational.

Any aggrieved media outlet, which would be sanctioned by the election commission for violations of media-related legislation, could appeal to the 'Court de Cassation' (Art.95).

The current law contains a limited number of possibilities to complain or appeal against decisions made in relation to the elections.

The Boutros draft law increases the opportunities to make complaints and appeals and its provisions are more detailed.

A serious limitation on the right to an effective remedy results from the fact that the Constitutional Council is not functioning due to disagreements over appointments. This makes it impossible to appeal against the results of elections as provided for in the Constitution (Art. 19).

## 2.12. Election Observation

Under the current election law each candidate can delegate representatives to each polling station in his/her election district to witness polling and the counting of votes (Art.42, 54). The current law makes no provisions for non-partisan election observation except in vote counting where, in the absence of delegates of the candidates, "representatives of citizens have the right to monitor."<sup>96</sup> In the 2005 elections the EU EOM was accredited on the basis of a Memorandum of Understanding between the Ministry of the Interior and the European Commission. Subsequently LADE and affiliated NGOs were also permitted to observe the elections.<sup>97</sup>

Non-partisan election observation has become a world-wide practice. The UN Human Rights Committee interprets Art.25 ICCPR in the sense that "there should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes."<sup>98</sup> In 2005, a large number of leading international organisations endorsed the UN-sponsored "Declaration of Principles for International

<sup>96</sup> This provision was interpreted widely in the 2005 elections and provided the basis for LADE to observe the elections. There is no provision explicitly prohibiting domestic election observation.

<sup>97</sup> The LADE report (in Arabic) can be downloaded on: [www.ladeleb.org](http://www.ladeleb.org)

<sup>98</sup> UN HRC General Comment on Art.25 (1996), point 20.

Election Observation,”<sup>99</sup> which includes a list of guarantees that are required for meaningful international election observation.

The Boutros draft law allows for election observation for candidate representatives in the same way as the current law. In addition, the draft law includes provisions for non-partisan election observation providing detailed criteria to be met for Lebanese associations to observe elections (Art.20). The draft law also provides for international election observation and leaves it to the election commission to define the details (Art.20). Positively, the Boutros draft law provides that each election observer has the right to obtain a certified copy of the counting results. This increases the transparency of the process.

The current law allows for the observation of elections by representatives of candidates, but contains no basis for observation by domestic or international non-partisan observers.

The Boutros law provides for partisan and non-partisan observation (domestic and international) in line with international best practice. It includes important safeguards for meaningful observation of the counting and aggregation of results.

## **2.13. Representation of Women**

Women are underrepresented in Lebanon’s political institutions. There is only one female minister and in 2005 only six women were elected among the 128 MPs (4,7%), some uncontested and largely thanks to their family background. This is far less than the global average of 17.2%. The current election law contains no specific provisions to increase women’s representation. Generally electoral systems with large election districts are more favourable to women’s representation, because the larger a district is, the higher the possibility for a woman who is part of a block or list to win a seat. In theory the current electoral system with 14 election districts comprising between 6-17 seats should not be entirely unfavourable to women’s representation. However, the cross-confessional set-up of lists could make it more difficult for women, because political leaders may consider it advantageous to present men in cases where a particular confession only has one or two seats. The patronage character of Lebanese politics may also make it more difficult for female politicians to prevail.

99 The declaration can be downloaded on: [http://www.accessdemocracy.org/library/1923\\_declaration\\_102705.pdf](http://www.accessdemocracy.org/library/1923_declaration_102705.pdf)

Women are likely to be also particularly disadvantaged as voters by the current administrative arrangements, which undermine the secrecy of the vote (no pre-printed ballots, etc.); these practices facilitate family voting. The fact that voting takes place in the districts of origin may also disadvantage women voters who may not be able to travel on Election Day, because of family duties. Given that the Boutros draft law would increase the secrecy of the vote and allow voters to vote at their place of residence, women voters stand to benefit from these reforms.

As far as the electoral system is concerned, the Boutros draft law includes a quota for women: on each list at least 30% of the candidates should be women (Art.64). The impact of this provision may prove to be limited, because of the size of the electoral districts proposed in the Boutros draft, and the possible effect of the preferential vote (voters may rank men higher). Women candidates are likely to be nominated at the end of lists and for confessional seats that a list is not necessarily expecting to win. Nevertheless, given the very low representation of women, any step that improves women representation is positive and the fact that the concept of a quota is introduced may be positive in the future.

Women are significantly under-represented in the Lebanese Parliament (4.7%). The electoral system and administrative arrangements are not favourable to women representation and women's voting. The Boutros draft law proposes a 30% women quota for lists of candidates for the 51 seats allocated through proportional representation. It is unlikely that this will significantly increase women representation, but it nevertheless may result in some progress.

The administrative arrangements proposed by the Boutros draft would be positive for women voters (more secrecy of the vote; possibility of voting at the place where voters live, etc.)

### 3. Local Elections

The only elected local bodies and positions elected at local level are municipal councils<sup>100</sup> and *mukhtars*. There are currently 771 municipalities, but not all have municipal councils. The terms of municipal councils are six years and they elect Presidents and Vice-Presidents for six year terms with a possible recall in the third year. The municipal councils' competences cover local development issues, excluding national infrastructure, national taxation, national security<sup>101</sup> and national education<sup>102</sup>.

The electoral system used is the same 'block vote' system that is used in national elections: a voter can vote for as many candidates as there are seats. The candidates with the most votes win the seats.<sup>103</sup> However, there are significant differences between the two electoral systems:

- Municipality seats are not reserved for confessions;
- Candidates for municipal seats (and *Mukhtar*) have to be registered voters in the district where they are running, unlike in the Parliamentary elections where a candidate can run for a seat where he is not a voter;
- Family members (up to three degrees<sup>104</sup>) cannot be elected in the same municipality.

The institution of *Mukhtars*, with roots in the Ottoman Empire, has some local prerogatives, including: maintaining the civil register and dealing with all kinds of proof of residency (necessary for bank loans, passports, etc.).<sup>105</sup>

Historically municipal elections were considered to be relatively competitive, because in small municipalities in particular, social control makes manipulation more difficult. Local elections were stopped in 1964<sup>106</sup> and only reinstated in 1998 following a civic campaign.<sup>107</sup> With the exception of big cities, turnout tends to be higher in local elections than in national elections.

If an independent election commission is established, it would be useful if it was also in charge of local elections.

100 The first law was issued on 27 November 1947; a new legislative decree (number 118) was issued in 1977.

101 They can appoint unarmed municipal police for traffic circulation and other limited duties.

102 They can help with the infrastructure of public schools.

103 Nine seats for 2.000 voters; 12 seats up to 4.000 voters; 15 seats up to 12.000; 18 seats up to 24.000; 21 seats for those with more than 24.000 voters. Beirut and Tripoli each have 24 seats.

104 If two family members are elected, only the oldest gets to keep his seat.

105 This is regulated in the law of 27 November 1947.

106 Beirut municipal council elections were already stopped in 1959.

107 The campaign was initiated by LADE in a coalition named "Balladi, Baldaty, Baladiyati" ("my home, my town, my municipal council").

## Conclusions

1. The current election law is not in line with international standards for democratic elections and it should be repealed. Given the significant improvements contained in the Boutros draft law, Parliament should take it as a basis for adopting a new election law. While the question of an electoral system is obviously a highly political matter, there is no excuse not to bring 'technical' aspects of the election law in line with international obligations and best practices.
2. The Boutros draft law contains a wide range of innovations in the way that elections are conducted. Some of them have significant administrative and managerial implications (establishment of an independent election commission, out-of-country voting, centralised counting, etc.). When debating the draft law, Parliament will need to evaluate which steps are feasible in which timeframes. Possibly the law would need to indicate that some innovations would only come into force after the next elections.
3. Domestic NGOs and international actors could support a process of deliberation in Parliament by providing background information on the different administrative issues and by analysing the costs/benefits and timelines in detail (for example, through simulations).
4. Once adopted, domestic and international actors should give all their support to a proper implementation of the law, to make sure that its reputation does not suffer because of poor implementation.

## ANNEX 1

## Equality of Votes – How many Voters are Represented by each Seat?

(based on 2005 data by the Ministry of the Interior)

2000 Election Law			
CONSTITUENCY	REG. VOTERS	SEATS	REG.VOT./SEAT
Beirut 1	138 686	6	23 115
Beirut 2	140 751	6	23 459
Beirut 3	149 733	7	21 391
Mount Lebanon 1	161 241	8	20 152
Mount Lebanon 2	165 650	8	20 707
Mount Lebanon 3	258 056	11	23 460
Mount Lebanon 4	170 527	8	21 316
North 1	312 019	11	28 366
North 2	405 033	17	23 825
South 1	399 646	12	33 304
South 2	293 760	11	26 706
Bekaa 1	244 761	10	24 477
Bekaa 2	145 058	7	20 723
Bekaa 3	116 823	6	19 471
Total Lebanon	3 101 744	128	24 233



Boutros Commission Draft Law				
PR CONSTITUENCY	QADA (district)	REG. VOTERS	SEATS	REG. VOT./SEAT
Beirut		429 170	9	47 686
	Beirut 1	132 845	6	22 141
	Beirut 2	188 387	2	94 194
	Beirut 3	107 938	2	53 969
Northern Mt Lebanon		326 583	6	54 431
	Jbeil	72 553	2	36 277
	Keserwan	88 688	3	29 262
	Metn	165 650	5	33 130
Southern Mt Lebanon		428 583	7	61 227
	Baabda	145 625	4	36 407
	Aley	112 431	3	37 477
	Chouf	170 527	5	34 106
North		717 052	11	65 187
	Akkar	215 645	4	53 912
	Becharre	44 514	1	44 514
	Miniye-Danniye	92 046	2	46 023
	Tripoli	182 614	5	36 523
	Zghorta	68 575	2	34 288
	Batroun	56 686	1	56 686
	Koura	56 972	2	28 486
South		693 406	9	77 046
	Saida	50 415	1	50 415
	Zahrany	87 636	1	87 636
	Tyre	147 624	2	73 812
	Bint Jbeil	113 971	2	56 986
	Marjeyoun	90 078	2	45 039
	Hasbaya	38 945	2	19 473
	Nabatiye	112 243	2	56 122
	Jezzine	52 494	2	26 247
Bekaa		506 642	9	56 294
	Baalbeck-Hermel	244 761	6	40 794
	Zahle	145 058	5	29 012
	West Bekaa-Rashaya	116 823	3	38 941

## ANNEX 2

Timetable for the Revision of the Permanent Voters' List					
		2000 Election Law		Boutros Commission draft law	
Dates	Operation	Carried out by	Requested by	Carried out by	Requested by
	Additions and deletions to the voters' list	Personal Status DG, Mol		Census offices	Office of Voters' Records
	Transmission of the names of those convicted	Offices of Police Records	Personal Status DG	Offices of Police Records	
	Transmission of the final court orders concerning bankruptcy and interdiction	Judicial Courts		Judicial Courts	
Prior 01/02	Establishment of the draft voters' list	Personal Status DG		Office of Voters' Records	Election commission
Prior 05/02	Communication of the list to municipalities, mukhtars, muhafazats, qaimmakam (and consulates in Boutros draft)			Election commission	
Prior 10/02		Personal Status DG			
Prior 11/03	Requests for rectification of omissions and mistakes		Voters		Voters
	Requests for deletion of illegally registered names		Voters, mukhtars, muhafez and qaimmaqams		Voters, mukhtars, muhafez, qaimmaqams and consulates
	Transfer of place of voting to place of residency			Registration Committees	Voters (upon certificate of the mukhtar)
Prior 05/03	Decisions on the requests			Registration Committees	
Prior 15/03		Registration Committees			
Prior 25/03	Decisions on the appeals of the Registration Committees' decisions	Higher Registration Committees	Voters (5 days from notification)	Higher Registration Committees	Voters (5 days from notification)
Prior 30/03	Transmission of the final voters' list	Personal Status DG	Minister of the Interior		
Within 3 days	Rectification of mistakes and omissions	Registration Committees	Minister of the Interior		
30/03	Voters' list is frozen for one year				

## **Democracy Reporting International**

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## **The Lebanese Association for Democratic Elections**

is a non-partisan organisation, established on 13 March 1996 through the efforts of a group of academics, researchers, journalists, lawyers, civil society activists, students and other citizens concerned with election monitoring, proposing electoral reforms and raising voters' awareness.

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This report is part of Democracy Reporting International's programme to review electoral frameworks in the Middle East and the Southern Mediterranean.

The research and the report has been financed by a contribution from the Swiss Federal Department for Foreign Affairs to Democracy Reporting International and a contribution by IFES to the Lebanese Association for Democratic Elections.