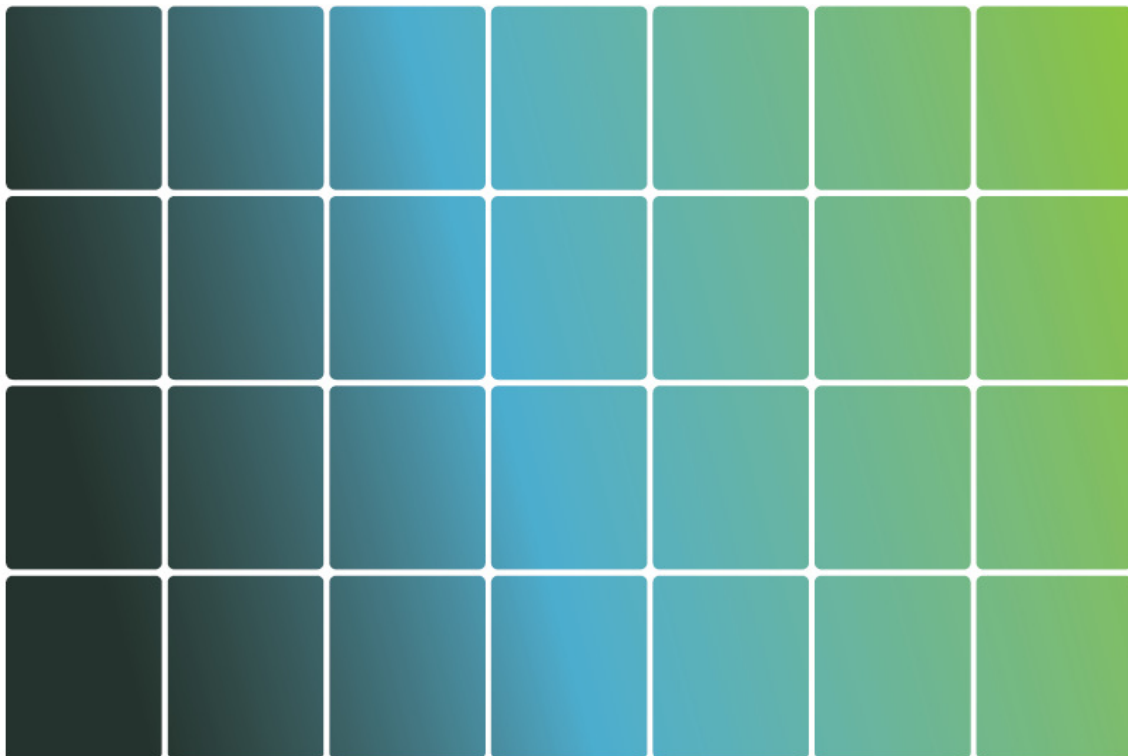




# The Frameworks for Elections in Egypt, Jordan, Lebanon, the Palestinian Authority and Syria

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## Executive Summary

It is generally assumed that elections in the Southern Mediterranean largely lack credibility, being managed events used by political elites to gain as much political legitimacy with as little challenges to the *status quo* as possible. This assumption is not wrong, but it is too simplistic: First, it says nothing about the long-term trend in the region to consider elections the only source of legitimacy for political office, while in the past Socialism or Pan-Arab ideologies competed with electoral legitimacy. Second, it does not take account of exceptions, such as the genuine democratic elections for the Palestinian Authority (PA) in 2005 and 2006, or partly competitive elections in Lebanon, to name two examples from the Mashreq. Lastly, it sheds no light on the more complex picture emerging in a case-by-case review. However, to support electoral processes effectively, strategies need to be built on an analysis of each country in question.

The EU treaty commits the Union to promote democracy and human rights abroad, and though these objectives do not enjoy a high priority currently in relation to Mashreq countries, elections are on the bi-lateral agendas, such as the respective action plans. The EU should use these to promote reform agendas, which are tailor-made for each country. Broad calls for election reform are not effective. Instead the EU should address specific key shortcomings of electoral frameworks in each country. The reference point for the EU's efforts must be international standards to which partner governments have freely agreed, namely the International Covenant for Civil and Political Rights, which includes clear obligations for democratic elections in its article 25 (the right to vote and to stand in elections).

Analysing the context and framework of each Mashreq partner country the following priorities emerge:

**Egypt** is a paradigmatic case of an authoritarian regime, ruled since 1981 by President Mubarak and the dominant National Democratic Party. The electoral framework for elections is an instrument of marginalising potential opposition: The registration of other political parties is controlled by the ruling party; rules on registering as an independent candidate for Presidential elections are so onerous, as to make it effectively impossible to do so; elections to the People's Assembly are not genuine, because half of its members have to be 'workers or farmers'; the election management bodies are not perceived to be impartial; amendments to the constitution abolished a role for judges in administering polling, while judges had been seen by many as the only guarantors of a level of impartiality and there are no guarantees of transparency, for example a framework for election observation or detailed and prompt publication of election

results. The EU-Egypt action plan calls for a continued review of Egyptian legislation to “align laws and practices with international human rights instruments (...)”. The EU should discuss electoral legislation and its non-compliance with human rights standards (art. 25 ICCR) with the Egyptian authorities. The EU could also sponsor an independent review of Egypt’s electoral framework in view of article 25 ICCPR.

**Jordan** allows for more political freedoms than other countries in the region, but political participation is weak and political life dominated by the executive branch of power headed by the King. The directly elected lower house of parliament has no more rights than the upper house, which is appointed by the King. The exotic electoral system disfavours the development of political parties, indeed the large majority of MPs are not affiliated to political parties.

The electoral law was issued by the King in 2003 as a temporary law but has been used since without being approved or even discussed by Parliament. The most serious shortcoming of Jordanian elections is the significant inequality of the vote. Some seats in parliament, in particular from Amman, represent as much as nine times more voters than others. The under-representation of the urban population is connected to the large proportion of Jordanians of Palestinian origins in the cities, while the monarchy’s power basis are tribal allies. There are no criteria for election districting which is decided by the executive without any consultation or explanation.

The EU – Action Plan raised in a general form 'electoral reform' as a priority, but the 2008 Progress Report is more specific, listing the main concerns regarding Jordan's electoral arrangements. The EU should give a discussion of these shortcomings a higher priority.

**Lebanon** enjoys a pluralistic, or at least heterogeneous, political process, which is largely based on confessional allegiances. The state is weak in the face of powerful confessional actors. Parliament is the only directly elected national institution and plays an important role by electing the President and in forming the government. Electoral arrangements therefore touch on core political interests of all confessional actors. In theory the electoral system gives voters many choices, but in the last elections of 2005 the Shi'i and Sunni electorates voted for large, uniform blocs. The electoral system was amended in September 2008, based on the May 2008 Doha agreement, but it is expected that the June 2009 elections will see a repetition of sweeping victories for uniform Shi'i and Sunni blocs. In contrast, the Christian electorate is divided, and it is expected to swing the vote into either direction. The recent change of the electoral system has increased the inequality of the vote with 'Christian seats' generally representing far less voters than 'Muslim seats'.

Electoral arrangements suffer from a lack of secrecy of the vote, due to the fact that there are no exclusive, official ballot papers; voters can write their choice on any paper, mostly they use ballot prepared by political groups. This, connected with the fact that voters are largely registered as part of their families in ancestral villages, where they cast the vote, allows confessional groups a degree of control and verification of who voted for whom. It is a key feature in maintaining confessional control of the electorate.

There have been some improvements on technical arrangements in the new electoral law, but any issue affecting confessional interests appears to be off-limits for reform. Indeed contrary to the post civil war Ta'ef agreement of 1989, confessionalism has been deepened in the 2008 electoral reform. The Ta'ef agreement foresaw the establishment of a second chamber to represent confessional interests, with a first chamber based on equal suffrage. Such a reform would automatically solve key shortcomings of the electoral framework.

The EU – Lebanon Action Plan points at some of the key issues, namely that electoral reform is linked to broader reforms of political representation. However, with no interest in fundamental reforms by any of the key political players in Lebanon, it is unlikely that the EU can promote such an agenda effectively. It should however make the issue of such reforms part of its public diplomacy, making clear that the current arrangements are not in line with Lebanon's international human rights commitments. The EU should also support civil society groups, which are promoting fundamental reforms.

**In Syria** the highly authoritarian nature of the regime is clearly reflected in the constitutional architecture as well as the electoral framework. The political system's linchpin is the President, who is in charge of the executive, manages the dominant party, which has an in-built majority in Parliament and is also a member of the highest court, whose members he appoints. There is no semblance of a separation of powers. Most opposition politicians are in prison.

There is no equal freedom to stand in elections, because the Baath party is allocated an absolute majority of seats in Parliament before the elections. There is no freedom to stand in Presidential referenda either: candidates are proposed by the Baath party and nominated by the Baath-dominated Parliament. In addition to these fundamental flaws the electoral framework lacks essential elements for transparency and secrecy, such as official ballot papers, election observation and a prompt and detailed publication of results at all levels of the election administration.

There is no Syria – EU Action Plan but the EU's Country Strategy Paper points correctly at key shortcomings of Syria's political system. However, in its conclusions the paper is describing key objectives cautiously as 'political and administrative reform'. This circumspection stands in contrast to the EU's more hardline positions to equally

undemocratic regimes in the Eastern Neighbourhood, namely Belarus.

The **Palestinian Authority** has one of the best electoral frameworks in the region and held two democratic elections: in 2005 for President and in 2006 for the Palestinian Legislative Council (the Parliament). Since then the institutions have largely broken down and the territories are split between the Fatah-controlled West Bank and the Hamas-controlled Gaza strip. Nevertheless, there are discussions about the establishment of a new government of national unity, which should prepare Presidential and Parliamentary elections for January 2010.

While the electoral framework worked well in 2005 and 2006, it has some weaknesses that could prove to be critical if fresh elections were held: The central election commission is appointed by Presidential decree, makes its decisions behind closed doors and its decisions have to be approved by the council of ministers. Since 2006 the relationship between Hamas and Fatah has become far more poisonous and some of the shortcomings of the electoral law may trigger political controversy, for example if the President appointed an electoral commission perceived to be partial. Beyond the legal framework it is difficult to imagine currently that Fatah could freely campaign in the Gaza strip and that Hamas – which is under pressure from Fatah as well as Israel – could campaign freely in the West Bank. There are additional conditions for democratic elections that only Israel can provide, such as allowing Palestinians in East-Jerusalem to vote there and providing free movement of poll workers.

The EU – PA action plan included detailed language on improving the electoral framework, but it is somewhat obsolete in the current circumstances. In order to play a meaningful role in supporting democratic elections in the Palestinian territories the EU would need to accept that genuine elections require that both main parties, Hamas and Fatah, participate in such elections on an equal footing. As long as the EU considers that Hamas is an unacceptable political player, it makes little sense for it to promote an electoral process.

## **I. Introduction**

Three assumptions underlie most of the debate on elections in the Southern Mediterranean: First, it is generally considered that elections in that region largely lack credibility, being events managed by political elites to gain as much democratic legitimacy with as little challenge to the *status quo* as possible. Second, it is often argued that elections make little difference to the politics of the status quo, because the elected institutions – namely parliaments – are weak in the face of powerful executive branches of power. Third, many believe that any truly democratic electoral process is bound to bring 'Islamic parties' to power, pointing at the 1991 Algeria elections and

the 2006 elections to the Palestinian Legislative Council. Many outside observers consider this an undesirable development.

While these assumptions are not entirely wrong, they simplify a more complex situation to a degree of obscuring it. This study will address the first assumption, while the second and third assumptions connect to wider debates, which cannot be covered here. However, given that promotion of elections is considered naïve by many who agree to the second and third assumptions, it is appropriate to briefly address these.

It is sometimes argued that elections are an unsuitable driver of change in the region, because the elected institutions, namely parliaments, enjoy no significant powers, being dominated by the executive and by 'parties of power'. It is true that most Parliaments are weak, though not all of them (e.g. the Lebanese Parliament and the Palestinian Legislative Council are significant political actors). The concern with the argument is however, that it results in a catch-22: There is no strong rationale in trying to empower parliaments if they are not democratically elected, while there is no rationale in improving elections if a parliament plays no significant role in the political process of a country. It would appear that democratically elected parliaments would be in a better position to stand up to powerful executive branches of power.

The third argument – “free elections always empower Islamists” –is questionable. The 2007 elections in Morocco were relatively free, yet the Islamic *Parti du Justice et Development* only gained 11% of the votes. Likewise the Islamic Action Front was reduced from 17 seats to six in the 2007 elections in Jordan, although it complained about electoral fraud. Hamas indeed won the Palestinian elections in 2006. However, it won with a narrow 3% lead over Fatah (44% to 41%) in a context of wide-spread dissatisfaction with Fatah over corruption

Whether it is desirable for such parties to win is ultimately for voters to decide. However, it appears contradictory for European politicians and analysts to consider the Turkish AKP to be a trustworthy interlocutor, while dismissing any Arabic party with roots in political Islam as unacceptable from the outset. A nuanced analysis would need to look at these parties on a case-by-case basis, while also clarifying the criteria for 'accepting' such parties as legitimate interlocutors or not. The catchphrase of 'separation of state and religion' is not satisfactory, if only because most European states do not entertain a complete separation of the two. In addition all Arab constitutions, except the Lebanese one, already state that the Shar'ia should be 'the' or 'one' of the bases for legislation. In that sense the 'secular' governments, which serve as interlocutors of the EU are already based on political systems, which do not respect religious neutrality of the state. In addition, favoured interlocutors, such as the



Moroccan and Jordanian kings, consider themselves descendants of the Prophet.

Any assessment of Islamic parties with the aim of deciding on their merit as legitimate interlocutors should not be based on vague notions of 'secularism', but on the question to which degree their programmes and action respect international human rights standards. Such analysis must be mindful however that many of the currently accepted governments and political parties do not fully respect international human rights standards in their programmes or actions.

Returning to the first assumption that all elections in the Southern Mediterranean are flawed, it is true that there was no systematic breakthrough in holding regular democratic elections in the Southern Mediterranean after 1989. Yet, there has been some progress. There are more regular elections in the region than ever before. Almost all regimes consider it necessary to legitimise themselves – at least partly - through elections. Alternative sources of legitimacy, such as socialism or Arab nationalism, have lost currency, though a reference to traditional-religious sources of legitimacy persist, e.g. in the Moroccan and Jordanian monarchies.

There have been a few elections that met democratic standards according to outside observers, namely those in Mauritania and the Palestinian territories. There has been some progress in others, namely in Morocco, Algeria, Lebanon and possibly the first round of the Egyptian Parliamentary elections in 2005. There have also been significant drawbacks: Mauritania's democratically-elected government was overthrown in August 2008, Palestinian's political competition degenerated into a civil strife and the Egyptian regime closed down the political system after the Muslim Brothers won a significant share of the vote in the first round of the 2005 elections.

Yet, it is difficult to imagine that in Mauritania and the Palestinian territories the precedent of democratic elections will have no long-term effect: in both cases any future election will be measured against these precedents. Likewise, Morocco's 2007 parliamentary elections brought a number of positive achievements that should be difficult to undo in the future, such as the presence of international election observers, a more transparent accounting of votes and a more effective handling of election appeals. The 2005 Lebanese elections, though based on a flawed electoral law, were more open than previous elections.

Thus, there are some achievements on which to build. These should inform the debate on and promotion of democratic elections. Promoting elections can only meaningfully be done on the basis of a detailed understanding of the electoral context in each country concerned. Southern Mediterranean governments tend to point out

that every democracy and any path of democratisation is different. While this is true, this should not result in complete relativism. There are international, legally binding standards for democratic elections (see next chapter). All governments have freely agreed to uphold these standards. They therefore provide an objective basis for any debate of democratic elections and are used as criteria of evaluation in this study.

This study covers ENP partner countries in the Eastern Mediterranean, namely Egypt, Jordan, Lebanon, Syria and the occupied Palestinian territories. Each country chapter opens with a brief overview of the current political context and the role of the elected institutions. Subsequently each country chapter covers: the electoral system used in a given country; a description of the electoral arrangements; an assessment of these arrangements in the light of international standards for elections; a description of electoral issues raised in action plans with the EU and conclusions and recommendations on EU priorities.

It should be stressed that the electoral arrangements are only one aspect of a democratic election. Other factors play an equally important role, such as freedom of expression and the media, the right to associate (in particular to form political parties) and the right to assemble. These aspects are not part of this study. Many domestic and international human rights organisations regularly report on these issues.

This study should contribute to the debate on elections and make it more specific. It should support the EU's efforts in this area. As far as its Eastern neighbours are concerned, the EU relies on detailed and authoritative reporting on elections by the Organisation for Security and Co-operation in Europe and the Council of Europe. No such institutions exist in the Southern Neighbourhood, which make it all the more important for research institutions and Non-Governmental Organisations to fill the gap. This study should therefore also support efforts at better benchmarking in the area of elections.<sup>1</sup>

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## **II. International Standards**

Democracy is a contested notion. Many governments reject outside interference on governance questions with the argument that there is no model of democracy.

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<sup>1</sup> For a study on the issue of benchmarking, see: Benchmarking Democratic Development in the Euro-Mediterranean Area: Conceptualising Ends, Means and Strategies, EuroMeSCo Annual Report 2006.

While it is arguable whether international law provides a detailed notion of democracy, there is no doubt that many aspects of democratic governance are clearly mandated and defined in international law. The right to vote and to stand for elections and to participate in public affairs is a fundamental right under international law, namely art.21 of the Universal Declaration of Human Rights (UDHR) of 1948, which is considered to represent international customary law and article 25 of the legally binding International Covenant for Civil and Political Rights (ICCPR) of 1966. The UN Human Rights Committee monitors the implementation of the ICCPR in all signatory states. It provided in its 'General Comments on art.25' (1996) an authoritative interpretation of the meaning of the article. This study's analysis of electoral frameworks is based on these provisions of international law.

All countries reviewed here have signed the ICCPR, except the Palestinian Authority (PA), which is not a state. However, the PA's electoral processes should respect customary international law, namely art.21 UDHR.

### **III. Egypt**

#### **1. The Political and Constitutional Context**

Egypt is a paradigmatic case of an authoritarian regime, with a President who rules the country since 1981 under emergency laws, supported by the dominant National Democratic Party (NDP), which is intertwined with state institutions. All political rights are significantly restricted, although a degree of pluralistic public debate takes place within limits that are often unclear. Of the state institutions, the regular judiciary enjoys a level of independence and a number of judges are in regular conflict with the government.

The 'Political Party Committee' is in charge of registering parties. The majority of its members are appointed by NDP-controlled bodies and its registration practice has been highly restrictive.<sup>2</sup> According to the constitution, parties should not be founded on a 'religious basis' or on the 'exploitation of religious feelings'.<sup>3</sup> The application of this provision appears to be arbitrary. While the NDP makes ample use of the Islamic discourse, repeated applications for registration by the moderate-Islamic *Al-Wasat* party were rejected. There appears to be no coherent interpretation and there are no clear and transparently applied criteria for the prohibition of 'religious parties'. This is particularly troublesome in a context where – according to the constitution – "Islamic jurisprudence is the principle source of

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<sup>2</sup> Between 1977 and 2006 the responsible 'political party committee', which is dominated by the NDP, refused 63 applications for the registration of political parties, while allowing only three. In the same period the committee dissolved a number of political parties.

<sup>3</sup> Article 4 Political Party Law. A similar provision was also inserted into the constitution as part of the 2007 amendments.

legislation" (article 2). The most significant opposition grouping is the Muslim Brothers, who are not registered as a political party.

There was a moment of optimism in 2005 when political reforms were promised and the electoral system for Presidential elections was changed. Until then the President was proposed by Parliament and then confirmed by a referendum. Since 2005 there are multi-candidate elections. During the campaign it was possible for opposing candidates to discuss the incumbent's record, which is usually considered a 'red line'. However, the actual elections lacked credibility and the best-scoring opponent to President Mubarak was jailed until February 2009 in a flawed process<sup>4</sup> under charges that were widely believed to be fabricated.

The 2005 Parliamentary elections were characterised by a sharp deterioration of the process along the three election weekends in the different regions. According to reports by domestic observers the first round was relatively open, but when candidates affiliated to the Muslim Brotherhood won in a majority of electoral districts, security forces prevented many voters reaching polling stations and there were high levels of violence around polling stations on the subsequent election days. According to official results the NDP and independent candidates affiliated to the NDP won 324 of 444 seats, while 88 candidates affiliated to the Muslim Brothers won seats. Legal opposition parties gained 14 seats.

The most competitive aspect of Parliamentary elections tends to be inside the NDP: the pre-selection of NDP candidates is controversial, resulting in significant numbers of NDP politicians running as 'independents' to compete with the official NDP candidates. In 2000 and 2005 these nominally independent NDP candidates won more seats than the official NDP candidates. Once elected to Parliament they return to the fold of the NDP parliamentary bloc.

There appears to be little confidence in electoral processes. According to official results voter turn-out was 26% in the 2005 Parliamentary elections, while domestic observers estimated a turn-out of a mere 5%.<sup>5</sup>

In March 2007 wide-ranging constitutional amendments were adopted. The process of adoption fell short of any semblance of a democratic process with a mere six days left between the adoption of the complex amendments by Parliament and the holding of a referendum on the amendments. Consequently there was no genuine debate or public campaigning on these reforms. According to official

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<sup>4</sup> See "Ayman Nur Trial Badly Flawed", Human Rights Watch, 6 December 2005

<sup>5</sup> See UNDP Programme for Governance in the Arab Region:  
<http://www.pogar.org/countries/theme.asp?th=3&cid=5>

results 75% voted in favour with a turn-out of 27%, which was questioned by domestic observer groups.

The amendments strengthened the role of Parliament against the executive to a degree, while simultaneously increasing the powers of the second Parliamentary chamber (Shura Council), one third of which is appointed by the President. Furthermore, the President can now dissolve Parliament without the need for a referendum to confirm such a decision. Other amendments changed the electoral system and other aspects of the electoral process.

The last years have seen an increasing repression against the Muslim Brothers with numerous arrests of its activists and sympathisers and there is a general sense of a hardening of authoritarian rule. As far as internal NDP power politics are concerned, the debate focuses on who may succeed Mubarak as President, with his son Gamal and the head of the security services Suleiman, currently tipped to be likely successors.

## **2. The Electoral System<sup>6</sup>**

### **a. Presidential Elections**

Since 2005 there are multi-candidate Presidential elections. The country is considered as one electoral district and a candidate needs more than 50% of the votes to win. If no candidate achieves this, a run-off election is held with the two highest-scoring candidates. In 2005 President Mubarak won the elections in the first round according to official results.

### **b. Elections to the People's Assembly**

There are 454 seats in the People's Assembly, the lower house. Ten MPs are appointed by the President; the remaining 444 are elected in direct elections in 222 electoral districts. Two MPs are elected in each district. Candidates have to win an absolute majority of votes to be elected; otherwise the highest-scoring candidates go to a run-off vote.

According to the constitution at least half of the elected members must be "workers or farmers", a heritage of the Socialist ideology. This is translated into a requirement that one winning candidate in each electoral district must be a worker or farmer. This creates a considerable complication of the electoral process and can result in highest-winning candidates not being elected, because they do not belong to the farmer/worker category. The criteria for being a worker/farmer are not clear and open to abuse.

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<sup>6</sup> For a detailed overview see: Assessment of the Electoral Framework – The Arab Republic of Egypt, Democracy Reporting International/Egyptian Organization for Human Rights, Berlin/Cairo, January 2007

According to the 2007 constitutional reform an electoral system may be adopted that combines the “individual system and the party lists by means of any ratio between them” (article 62 constitution). While there have been announcements that the electoral system will be changed in view of article 62, at the time of writing it is unclear which shape the new electoral system will have. A proportional system based exclusively on party lists (and not ‘lists of independents’) would exclude the Muslim Brothers, although in the past they made arrangements with other parties to run on their lists (1984 and 1987).

### **c. Shura Council Elections**

Two thirds of the Shura Council are directly elected, half of them each three years. The remaining third is appointed by the President. There are 88 electoral districts for Shura council elections with two members elected in each. The electoral system resembles the system for the People’s Assembly: To win a seat candidates have to gain an absolute majority of votes or there will be a run-off between the two highest scoring candidates. Elected members of the Shura council should be workers or farmers. The last Shura elections for one third of the seats took place in June 2007.

## **3. Electoral Arrangements**

### *Election Administration*

Tasks related to the administration of elections are carried out by election commissions, the Ministry of the Interior and the judiciary. In 2005 the constitution was changed in order to provide for the establishment of a Presidential Election Commission (PEC), while the constitutional amendments of 2007 ‘upgraded’ the existing High Election Commission (HEC) to be a constitutional body, responsible for parliamentary elections and referenda. Both commissions should be composed of a mix of judges and independent public persons. The HEC is chaired by the Minister of Justice. The independent public persons are chosen by the two Parliamentary chambers, in which the NDP enjoys majorities.

Though these commissions made some controversial decisions in the past (see below), it appears that overall they have not yet played a major role, leaving the effective administration of most aspects of the elections in the hands of the Ministry of the Interior (MoI). The MoI is represented on candidate registration committees, determines where polling stations are located and appoints members of polling stations, except judges.

The role of the judiciary in the electoral process tends to be the most widely-debated issue of election administration in Egypt. Many people believe that only judges can bring a degree of impartiality into the

administration of the elections. Indeed there were significant conflicts between the executive branch of power and the judiciary in the past. In 2000 the Supreme Constitutional Court ruled that the 1990 and 1995 elections had been un-constitutional on the grounds that there had been no judicial supervision of the elections. Many Egyptians consider the presence of a judge in each polling station to be vital with a view to assure the integrity of the electoral process.

Given that there are only some 10,000 judges, but many more polling stations (30,000 – 50,000), in the past elections were held over several weekends to cover different parts of the country. This arrangement has been abolished by the 2007 constitutional change and elections will be held on one day in the future. The constitutional changes consequently also abolished the provision that polling needs to be held under judicial supervision. Judges will still play a role in general election committees, which oversee the work of polling stations, but their influence is significantly reduced.<sup>7</sup> It appears that in the 2007 referendum on the constitutional amendments internal security forces and NDP representatives played a major role in running the process in polling stations.<sup>8</sup>

In other aspects, elections on one day may be beneficial: In the past the results of one region may have influenced voters' behaviour in regions, which voted at a later stage. Furthermore, the reports from the 2005 elections show how the multiple rounds of elections serve as an early warning mechanism to the government: When results in the first round of the elections seemed to favour the Muslim Brothers, the government orchestrated a crackdown in the following rounds of the elections.

#### *Right to Vote and to Stand in Elections*

Egyptian citizens above 18 years have the right and the obligation to vote in elections. While by law non-voting could be fined, the provision is theoretical in a context where authorities have hindered voters to reach polling stations and where even according to official results only 1/4 of the electorate vote and even fewer according to estimates by domestic observer groups.

Voters are registered by the Ministry of the Interior, but according to reports by domestic observers up to 25% of eligible citizens are not registered. While men are registered through their military service, women have to register themselves in writing.<sup>9</sup> Persons born after 1980 are registered automatically once they turn 18 years of age.

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<sup>7</sup> A judge cannot directly supervise numerous polling stations at the same time.

<sup>8</sup> Interview with international diplomats.

<sup>9</sup> National Commission on Human Rights, Annual Report 2005.

The right to stand for Presidential elections is significantly curtailed, because to be registered as an independent candidate, one needs the support of at least 250 elected deputies from Parliament, the governorates or the municipalities. Support must include 65 MPs from the People's Assembly and 25 MPs from the Shura Council. There are less demanding requirements to be nominated by a political party. The high obstacles for independent candidates are generally believed to have been designed with the objective of preventing a candidate affiliated to the Muslim Brothers from being registered as a candidate.

#### *Transparency*

There is no framework for the non-partisan observation of elections. However, in the past domestic organisations, including the National Commission on Human Rights managed to follow aspects of the electoral process. The Egyptian government has rejected international observation of elections, but has not hesitated to send Egyptian observers to elections abroad (for example to the occupied Palestinian territories).

Candidate or party observers can be present in polling stations, but they cannot systematically follow how results are counted and aggregated and they are not provided with any official copies of results. Furthermore, results are only published in a summary fashion, making it impossible to re-capitulate how overall results have been arrived at.

#### **4. Assessment**

The electoral framework of Egypt violates international human rights norms. There is no equal right to stand as a candidate for Presidential elections. The provisions for registration are so onerous as to make it effectively impossible for independent candidates to register for elections.

Elections to the People's Assembly are not genuine, because half of its members have to be 'workers or farmers'; the way this provision is implemented results in the highest-winning candidates not always gaining a seat.

While the UN Human Rights Committee interpreted the provision of art. 25 ICCPR as meaning that "an independent electoral authority should be established to supervise the electoral process"<sup>10</sup>, the two electoral Commissions are not perceived as being independent: Half of the members of the Presidential Election Commission are appointed by the chambers of Parliament, which are controlled by the NDP, while in the case of the High Election Commission (HEC), responsible for Parliamentary elections, six out of 11 members are appointed by Parliament. The HEC is chaired by the Minister of Justice and an additional member from the Ministry of the Interior represents

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<sup>10</sup> UN HRC, General Comments on Article 25, paragraph 20



the executive. It is noteworthy that the NDP and the executive branch of power have a stronger representation in the HEC than in the Presidential Election Commission. This may reflect the fact that Presidential elections, being significantly curtailed from the outset, are politically less risky than Parliamentary contests. At any rate, until today the electoral commissions have not played a major role, with elections mainly managed by the Ministry of the Interior.

The 2007 constitutional amendments have abolished a role for judges in administering polling. Given that judges gave a level of accountability to the electoral process in the past, this is a serious step backwards.

The process lacks serious guarantees of transparency, such as comprehensive election observation and official information on results at all levels of counting and aggregation of votes.

While there tends to be a limited level of pluralism and competition in Parliamentary elections, the framework for elections is seriously skewed to prevent the occurrence of a genuinely democratic electoral contest. The 2005 elections showed that in case these flaws are not sufficient in themselves, the authorities are willing to take cruder measures to ensure the desired outcome, which appears to be to preserve the 2/3 majority in Parliament for the NDP.

## **5. EU - Egypt Joint Action Plan**

The Egyptian government is extremely sensitive about international involvement in issues related to democracy and human rights. It has consistently rejected the deployment of international election observation missions to Egypt, but it has sent Egyptian observers to elections abroad. The EU pursues many other agendas with the Egyptian government (Israel relations, Gaza mediation, migration, anti-terrorism, etc.) and democratisation does not appear to be a priority issue.

The EU- Egypt action plan took longer to negotiate and was only signed in March 2007. It notes as planned actions relevant to elections:

- Strengthen participation in political life, including the promotion of public awareness and participation in elections.
- Exchange experience in the field of elections and jointly develop cooperation in areas of shared interest including through providing assistance on registering electors and capacity building.
- Continue the review of respective national legislations to further align their laws

and practices with international human rights instruments to which they are party and taking into account relevant UN recommendations.

The language is soft (“exchange of experience”) and of a range of serious problems it only mentions voter participation and registration. Nevertheless, the action plan’s call for a continuing review of national legislation to “align laws and practices with international human rights instruments (...) taking into account relevant UN recommendations” would open the door for a discussion of the aspects of Egypt’s electoral framework which are not in line with art.25 ICCPR and the general comment on art.25 of the UN Human Rights Committee.

The EU should discuss electoral legislation and its non-compliance with human rights standards (art. 25 ICCR) with the Egyptian authorities. The EU could also sponsor an independent review of Egypt’s electoral framework in view of article 25 ICCPR.

#### **IV. Jordan<sup>11</sup>**

##### **1. The Political and Constitutional Context**

In contrast to most other Arab states, Jordan gave citizenship to a large number of Palestinian refugees. Although there are no official statistics, it is widely assumed that around 50%-60% of Jordanian citizens are of Palestinian origin. A significant underlying issue of democratisation in Jordan has therefore been the balance between maintaining the political control of the Hashemite Kings and their tribal allies, while addressing calls for increasing public political participation, which would imply a greater political role for Jordanians of Palestinian origin.

In the constitutional architecture of Jordan, only the Chamber of Deputies is democratically accountable through elections. The executive is headed by the King, who appoints the Prime Minister and the Cabinet independent of election results. He also appoints the second chamber of Parliament (Assembly of Senators). The two chambers enjoy similar powers. There is no significant privilege of the elected chamber. By constitutional design, the level of democratic accountability is therefore low.

It appears that in reality it is even weaker than provided for in the constitution, because the government often rules with decrees and temporary legislation, which are not brought to the attention of Parliament. Significant political initiatives are usually taken by the

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<sup>11</sup> See for details on a number of issues covered in this chapter: Assessment of the Electoral Framework - The Hashemite Kingdom of Jordan, Democracy Reporting International/Al-Urdun Al-Jadid Research Centre, Berlin, Amman, January 2007

executive, often without any involvement of the legislature. Furthermore, parliamentary life is weakened by the fact that there is no multi-party competition. Apart from the opposition Islamic Action Front, there are no political parties of any significance. According to some, MPs are mainly used and seen as conduits for securing patronage and favours from the executive.<sup>12</sup>

These significant limits to democratic participation are contrasted by a relatively high degree of political liberalism. The enjoyment of freedom of speech and related media freedoms, freedom of association and freedom of assembly are higher than in most countries in the region. Nevertheless, there are currently serious concerns in relation to the freedom of association and assembly.<sup>13</sup>

The last elections to the Chamber of Deputies took place on 20 November 2007. It resulted in significant losses for the Islamic Action Front (IAF), whose representation decreased from 17 seats in the previous parliament to six seats. The elections were marred by controversies with the IAF alleging fraud. Domestic election observer groups were critical of the process (see below). No significant international missions observed the elections.

## 2. Electoral System

The Chamber of Deputies comprises 110 seats, which are elected according to the system of the 'Single Non-Transferable Vote' (SNTV). The SNTV is an exotic electoral system, which is otherwise only used in Afghanistan and the Republic of Vanuatu, an island group in the Pacific Ocean.<sup>14</sup> According to SNTV a voter has only one vote, regardless of how many seats there are in an electoral district. The candidates winning most votes win a seat. The system is known in Jordan as 'one man one vote', but that is misleading.<sup>15</sup>

The SNTV is credited to be disadvantageous for the development of political parties, because it leads to a focus on individual candidates and because it is very difficult for political parties to campaign effectively.<sup>16</sup> In Jordan many voters tend to give their vote to a

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<sup>12</sup> Elen Lust-Okar, Elections under Authoritarianism: Preliminary Lessons from Jordan, 2005. Online available under: [http://hei.unige.ch/sections/sp/agenda/colloquium/Lust-Okar\\_Elections%20in%20Jordan.pdf](http://hei.unige.ch/sections/sp/agenda/colloquium/Lust-Okar_Elections%20in%20Jordan.pdf)

<sup>13</sup> See e.g. Human Rights Watch, letter to Prime Minister Dahabi on the draft NGO and Public Assembly Law, 30 Juni 2008: <http://hrw.org/english/docs/2008/06/30/jordan19225.htm>

<sup>14</sup> A few other countries use the SNTV for elections of upper houses of Parliament.

<sup>15</sup> 'One man, one vote' usually means that there is equality of votes (one vote weighs as much as any other). It does not mean any particular electoral system. There are many electoral systems where each voter has one vote (e.g. closed list proportional systems). At any rate in terms of public relations, the name 'one man, vote' is cleverly-chosen, because it gives an image of fairness. This is even more remarkable, because the Jordanian system suffers from a significant inequality of the vote (see below).

<sup>16</sup> It is difficult for political parties, because in absence of a list effectively all candidates compete with each other, even if they are from the same party. Furthermore, in order to promote several of its

family, clan or tribal member in the expectation of gaining a position of political influence. Indeed the system was introduced in 1993 as a response to the 1989 elections where political blocs fared well. By making it more difficult for significant parties to emerge, the monarchy is less likely to face any cohesive political challengers.

In reality not all seats are awarded through the SNTV system, because some electoral districts only represent one seat<sup>17</sup>, making elections in those districts *de facto* a First-Past-the-Post electoral system. Furthermore, there is a quota for women (in 2003: six), who are not elected according to the SNTV. Those women winning the highest proportion of votes in a district without gaining a seat are awarded these reserved seats. This formula favours women from rural districts, who tend to win less voters than female candidates in the cities, but higher proportions of the vote.

All seats, except those for women, are allocated to religious communities by government decree. The majority of seats (83) are for Muslim candidates. In addition there are nine seats for Christians, three for Circassians and Chechens and there are three electoral districts reserved for specific Bedouin tribes, comprising nine seats. These are elected through SNTV. Voters can vote for any candidate, independent of religion.

There are no international standards mandating a particular electoral system. It is curious however that *de facto* in Jordan there are a number of different electoral systems operating in parallel with each other, meaning that voters are not participating on the basis of equal conditions. Furthermore it is a concern that due to the peculiarities of the electoral system, MPs tend to represent few voters (in the 2003 only 37% voted for candidates who won seats).

The equality of the vote is not respected in the case of Jordan: Different seats represent varying numbers of voters. While some variations in the ratio seat/voters are normal in all electoral systems, in the case of Jordan these are huge. In its most extreme "there are nine times as many voters per parliamentary seat in Amman 2<sup>nd</sup> district as there are in the 6<sup>th</sup> district of Karak".<sup>18</sup> It is generally believed that the under-representation of urban centres, notably Amman, aims at under-representing citizens of Palestinian origin to the benefit of citizens with tribal backgrounds. The Jordanian government confirmed the link between electoral reform and the Palestinian issue.<sup>19</sup>

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candidates a party needs to guide voters to make sure some vote for one, while others voter for another party candidate.

<sup>17</sup> In the last two elections, there were 18 electoral districts with only one seat.

<sup>18</sup> Democracy Reporting International, Jordan report, *supra*, page 20

<sup>19</sup> "This disproportion of constituencies in terms of the ratio of candidates to the population may be attributed to two factors: First, the large refugee population in and around densely populated urban

There are neither any criteria on how to delimit electoral districts, nor any provisions on the process (timeframe, responsibilities, consultation, etc.) of districting. This sensitive question is entirely left to the government.

### **3. Electoral Arrangements**

The current electoral law was adopted by the King in 2003 as a 'temporary election law'. According to the Constitution it would have required the subsequent approval of Parliament, in order to be valid. However, until today Parliament never dealt with the election law, which reflects the politically sensitive nature of the electoral arrangements and demonstrates the weakness of Parliament. From a point of view of international standards it is a concern when the legal basis for exercising the right to vote and to stand for elections is regulated in a law of questionable constitutional authority. In addition, many important issues of the electoral process are not even covered by the temporary election law, such as the question of districting (see above) and how many seats Parliament has. The current seat number of 110 and their allocation to religious communities was decided by a government decree in 2001.

Elections are managed by four levels of election committees from the Higher Committee for Election Supervision at the top to polling station committees at the bottom. The Ministry of the Interior dominates the electoral administration, with the Minister chairing the Higher Committee and the majority of staff being from the Ministry. One judge is present in committees at all levels, except in polling station committees. The election law is not detailed as to how the election administration should work (e.g. role of the higher committee, powers of supervision, decision-making in the committees) and does not mention the key role played by the Elections Department of the Ministry of the Interior, the latter of which provides the infrastructure for elections. The election administration is thus dominated by the executive branch of power.

There are no regulations on media access of candidates (e.g. equal treatment of paid advertising) or campaign financing. A candidate may start campaigning once his candidacy has been registered by the election administration, which means that candidates have campaign periods of different lengths. There are only a few campaigning

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constituencies is a political obstacle to any process of electoral reform. This may remain to be the case until the final status negotiations between Palestinians and Israelis reach a permanent solution on the issue of refugees. Second, the need to ensure sufficient access to underprivileged areas in the Kingdom in order to treat their demands on an equal footing with more privileged urban centers." Statement on "Political Reform and democratization" on the website of the Jordanian embassy in Washington: <http://www.jordanembassyus.org/new/aboutjordan/dp2.shtml>

provisions, but they are restrictive, e.g. banning any campaigning on 'public streets' and political rallies have been banned several times.<sup>20</sup>

Every citizen who is 18 years or older has the right to vote and to stand as a candidate in elections, except army and police personnel. Citizens who are older than 30 years have the right to stand as a candidate.

Voter lists are based on the National Personal Identification database, which contains civic information on Jordanian citizens. Voters use their National Personal Identification card ('ID card') as proof of identity and eligibility when they vote in polling stations.

Voters can cast their ballot in any polling station in their electoral district. In order to avoid that voters cast ballots in several polling stations, the voters' ID cards are stamped. However, this procedure has been controversial, with reports that stamps were easily washed off. In the 2007 elections a corner of the ID card was cut off to indicate that a voter had already voted.

There are concerns regarding the secrecy of the vote, because voters have to write the name of the candidate on the ballot. Such an arrangement can be used for vote-buying schemes, because a voter may be able to prove to the 'buyer' (through writing in a specific manner) that he/she voted for a particular candidate. Furthermore, illiterate voters must 'whisper' the name of their choice to the chairman of the polling station in a way that the other members of the polling station also hear it; the chairman then writes down the name on the ballot. Such breaches of secrecy could be easily avoided if there was a pre-printed ballot paper with photos and symbols to allow illiterate voters the identification of candidates.

There are no provisions for electoral results to be published promptly and in detail after counting in polling stations and when they are aggregated at higher levels of the election administration. Detailed and prompt publication of results at all levels of the process is best practice to ensure the transparency of the process and to allow all contestants to re-capitulate the results. While after the 2007 elections the votes of the winning candidates were proclaimed, the results of other candidates were not officially published.

There are only weak mechanisms to remedy potential violations of the election law. Voters can complain to the polling station committee, but the decision of the committee is final and cannot be further appealed even if it concerns an alleged wrong-doing by that committee. It is possible to appeal against the election of a deputy with the new Parliament. Such appeals are decided upon by two-

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<sup>20</sup> See Annual Report 2006, National Human Rights Centre.

thirds of the Parliament. Until today Parliament never upheld an appeal. The law provides few details on this type of appeal.

Representatives of candidates can observe polling and counting, but they do not receive official copies of results, making it difficult to challenge the counting process. For the 2007 elections there were no international election observation missions. The EU expressed an interest in observing the elections, but the Jordanian authorities did not invite an EU Election Observation Mission. A number of local groups decided not to observe the elections in absence of government guarantees of proper access to polling stations and vote counting.<sup>21</sup>

#### **4. Assessment**

The framework for elections in Jordan is not in line with a number of international standards. There is in particular no equality of votes. The structure of the electoral administration may also raise concerns: While it may be acceptable for the Ministry of the Interior to manage most aspects of an election in contexts where there is confidence in the neutrality of the administration, this is more problematic where some parties and observers express doubts over the integrity of the elections as is the case in Jordan. Indeed the UN Human Rights Committee interprets the provision of art. 25 ICCPR as meaning that "an independent electoral authority should be established to supervise the electoral process."<sup>22</sup>

The polling arrangements do not sufficiently guarantee the secrecy of the vote, which is a fundamental tenet of the right to vote under art.25. This is a particular concern in an electoral context where clan or tribal affiliations play an important role and where due to the electoral system often very few votes can make a difference.

The level of transparency of the electoral process is low: there is no clear framework for election observation, candidate representatives do not receive any copies of official results and there is no detailed and prompt accounting of voting results, etc.

The legal framework for elections is weak: Many key aspects of the process are not regulated in law at all (e.g. number of MPs, women quota, districting), while the election law is a temporary law of questionable constitutional authority.

It is noteworthy that the 'National Agenda', an extra-parliamentary consultation on Jordan's future instigated by the monarchy,

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<sup>21</sup> "Jordan's Poll Turn-Out 54%," Middle East News, 20 November 2007

<sup>22</sup> UN HRC, General Comments on Article 25, paragraph 20

recommended that these shortcomings be amended.<sup>23</sup> However, the National Agenda was superseded by a similar consultation process a year later, which excluded a discussion of the electoral legislation.<sup>24</sup>

## 5. Election Issues under the EU-Jordan Action Plan

The EU Jordan action plan notes as a mid-term priority to “reform the political parties law and the election law”, without further indication of which aspects of the election law require reform. Other items of the action plan that may be relevant for electoral issues include “Support ongoing efforts to improve good governance and transparency (...) in line with UN Conventions to which Jordan is party” (short-term) and „effective implementation of core UN Conventions to which Jordan is party” (mid-term). Given that the UN’s ICCPR includes provisions for democratic elections, these priorities could also be used as a basis for electoral reform.

The EC’s Progress Report of May 2008 indicated that there was no progress in electoral reform, given that the temporary election law was still in place. The report listed the main concerns regarding the electoral arrangements, including the inequality of the vote, the dominant role of the Ministry of the Interior and the absence of full-fledged domestic and international election observation.<sup>25</sup>

Positively the EC’s 2007 progress report clearly lists most shortcomings. The EC should continue to focus on the equality of the vote, the independence of the electoral administration, the secrecy of the vote and the overall transparency of the process. There should also be a focus on the process of electoral reform, which should involve parliament and other stakeholders, such as political parties and candidates. The stability of electoral arrangements should be strengthened by providing a firm legal basis for the electoral process. The EU should make use of the conclusions of the ‘National Agenda’ to demonstrate that the electoral shortcomings are domestic as much as international concerns.

## V. Lebanon

### 1. Political-Constitutional Context

Lebanon is an exceptional case in the Arab world, in that it cannot be conceptualised as an authoritarian political system. Its confessional patchwork ensures a pluralistic, or at least heterogeneous, political process. Lebanon struggles to build a state, rather than to reduce the state’s dominance. The divisions between Shiites, Sunnis and Christians are too marked and the groups too significant to allow any

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<sup>23</sup> see page 13-14, ‘National Agenda 2006 –2015’, English summary: <http://www.nationalagenda.jo/Portals/0/EnglishBooklet.pdf>

<sup>24</sup> The ‘We are All Jordan’ initiative, likewise initiated by the Monarchy.

<sup>25</sup> ‘Implementation of the European Neighbourhood Policy 2007’, 3 April 2008, SEC (2008) 396



one group or person to dominate political life. There are further subdivisions in each religious group, either on confessional, clan or family lines and there are also cross-sectarian ideological divisions, but these are less marked. The political process takes place in the rigid confines of a confessional system, in which confessional leaders not only guard over their interests, but frequently ignore constitutional constraints in order to assert them.

Even Syria, although dominant in military terms, could not directly rule Lebanon during the period 1990- 2005, but combined coercive power with shifting alliances of local proxies. Since the Syrian withdrawal, Lebanon has undergone a turbulent period in a context of huge regional tensions and has not yet achieved a sustainable internal balance.

The lack of a strong executive means that the role of the one directly elected national institution – Parliament – is far more important than in other Arab countries. Although state power is regularly challenged by un-constitutional means, Parliament is the forum from which legitimate political power emanates. Parliament not only legislates, but also elects the President, who appoints the Prime Minister and the cabinet on the basis of binding consultations with Parliament. Electoral reform, in particular changes to the electoral system, were therefore always the most sensitive and contentious aspect of Lebanon's political life. After the adoption of a new election law in 2008, the 2009 parliamentary elections will therefore be particularly significant.

The constitutional system is framed by the 1943 'National Pact' and the 1989 Ta'ef agreement, which ended the civil war (1975-1990). According to these agreements the Parliament speaker ought to be a Shi'ite, the Prime Minister a Sunni and the President a Maronite Christian. Parliament and high-grade civil service posts should be composed by Muslims and Christians on a 50/50 basis.

The confessional distribution of seats in Parliament and for state posts does not mean however that the system is not competitive, on the contrary: In view of significant divisions inside the confessional groups, Parliamentary elections are highly sensitive. Recently this has been particularly true for the Christian electorate.

The period immediately after the elections of 2005 was marked by constructive domestic politics, based on a cabinet that comprised all important political groups. In this time a government-appointed commission under former Foreign Minister Fouad Boutros drafted a new election law, which modified the electoral system as well as numerous technical aspects of the old election law of 2000. However, this effort had no immediate follow-up in the context of a deteriorating domestic situation marked by assassinations of politicians and other public figures, a more assertive role of Syria, the

July 2006 Israel war and the eventual disintegration of the cabinet of 'national unity'.

Political stalemate turned into violent conflict in May 2008 when Hezbollah militia took control of West-Beirut for a short period in response to cabinet decisions, which it perceived as challenging its security concerns. The crisis served as a catalyst for reaching a new political agreement in negotiations mediated by the Amir of Qatar in May 2008 in Doha. These led to the election of a new President (in May), the formation of a cross-party government (in July) and the adoption of a new electoral law with a different electoral system (adopted in September).

The eyes are now set on the Parliamentary elections scheduled for 7 June. One of the frequently raised issues of democratisation in Lebanon is the question of Hezbollah's status as a party and a militant group. Hezbollah asserted in the past that its militant aspect was only directed against Israel and expressed its support to a democratic domestic process. Whatever the wisdom of the cabinet's decisions which provoked Hezbollah's brief take-over of West-Beirut in May 2008, the group has used its weapons to settle a domestic dispute raising fresh questions about its legitimacy as a political party.

## 2. Electoral System<sup>26</sup>

As mentioned, the electoral system is at the heart of the distribution of political power in Lebanon. For many Lebanese politicians 'electoral reform' only means reform of the electoral system. The confessional and political groups tend to take a defensive stance on electoral system reform, seeking primarily to protect themselves against any potential of losing seats or control of their electorate. The only exception may be Hezbollah, which relies on the geographically more concentrated Shi'ite population in Southern Lebanon and feels that it can win elections in its areas under any electoral system.

The draft law of the Boutros Commission suggested a parallel system with small election districts for 77 seats and a nation-wide proportional election for the remaining 51 seats. The proportional list would have symbolised the quest for a national political identity overcoming purely confessional allegiances. A proportional vote being a novelty, political actors decided in the Doha negotiations to use a known quantity and fell back on a variation of the electoral system/electoral districts used between 1960 and 1975.

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<sup>26</sup> A number of aspects in this and the following sub-chapter are treated in more detail in 'Assessment of the Electoral Framework of Lebanon – The Election Law of 200 and the Draft Law by the Boutros Commission', Democracy Reporting International/Lebanese Association for Democratic Elections, Berlin, Beirut, April 2008

This new/old electoral system was adopted by Parliament in September 2008. It is based on 26 electoral districts which each represent between two and ten seats. The electoral system is a form of a 'block vote' system whereby each voter can vote for as many candidates as there are seats in the electoral district. However, imposed on this system is the element of confessional representation, given that the Parliament has to be made up of 50% Muslims and 50% Christians. Therefore, the highest-winning candidates gain a seat, but only in relation to a given confessional group: E.g. if an electoral districts represent one Sunni and one Maronite seat, the Sunni and Maronite candidate with most votes will win, even if the Maronite candidate has less votes than the second-highest Sunni candidate, or the Sunni candidate less than the second-highest Maronite candidate.

In theory the block vote system leaves many choices to voters, because they could vote for any combination of candidates. However, in 2005 the elections were fought along highly ideological lines ('pro-Western' vs. 'pro-Syrian'), which meant that most voters cast their ballots in favour of a slate of candidates proposed by a political group. Thus, an election, which could have been a contest with multiple competition and many choices, transformed into a sterile and mostly predictable contest with highly un-proportional results.<sup>27</sup> Anachronistic technical arrangements (no official ballot paper, see *below*) contributed to this result.

The 2009 elections will be different from those in 2005, because under the amended electoral system there are more electoral districts, meaning that each district represents less seats. The overall allocation of seats will likely be more proportional to the share of votes received.<sup>28</sup>

On the negative side the new electoral system has deepened confessionalism by creating 12 'mono-confessional' districts, where all MPs are affiliated to one confession and where electorates are relatively homogenous. This could lead to more inflammatory campaign rhetoric, because in these districts the candidates may have incentives to "appear" staunchly confessionalist in order to win the majority of votes of their confessional community..

The changes to the system took account of a long-standing complaint by some Christian personalities, who expressed concerns that many

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<sup>27</sup> E.g. in the North II district, the March 14 list won all 17 seats with 52% of the votes, while General Aoun's 'People's Will' list won 39% of the votes but no seats.

<sup>28</sup> This is counter-intuitive, because usually small electoral districts lead to less proportional results. If only three or four seats are to be won in a district, the effective threshold is so high that only large parties tend to win. In the case of Lebanon however, entire slates of candidates of one group won elections in large districts, meaning that the seat allocation was not proportional to the votes at all. See the example *supra*.

Christian candidates were elected by Muslim majorities. Now the Christian electorate 'controls' a larger share of Christian seats. The price for this change has been a marked increase in the inequality of the vote. Given that the Christian electorate is smaller (40% of electors on the Voter List), an increased 'control' of these seats means that Muslim votes count less than Christian votes: 'Muslim seats' in Parliament represent significantly higher numbers of voters than Christian seats. This violates the equality of the vote, a fundamental election standard under international law.

### 3. Electoral Arrangements

Elections are largely managed by the Ministry of the Interior. The law includes no specific provisions on transparency or impartiality of the Ministry's operation.

All Lebanese citizens who are 21 years or older and resident in Lebanon have the right to vote. Voter registration is peculiar in that citizens are registered at the place of family origin. In practice it requires many voters to travel to their ancestral villages on election day. What appears to be an out-fashioned arrangement based on Ottoman precepts is difficult to reform because of political sensitivities: If voters were registered at their place of actual residence, the confessional make-up of electoral districts would change considerably, with significant consequences for the distribution of seats and consequently political power.

Only citizens who are 25 years or older have the right to stand in elections. However, at least in theory there is a significant restriction in the confessional aspect of the electoral system: If a potential candidate does not have the confession of any of the seats in his/her districts, he cannot stand.<sup>29</sup> Even worse, if a potential candidate does not belong to any of the 18 recognised confessions (e.g. a non-believer), he/she cannot stand anywhere for elections. The UN Human Rights Committee pointed out that such discrimination on the ground of religion is inconsistent with the right to stand in elections under article 25 ICCPR.<sup>30</sup>

The 2008 election law introduced regulations on campaign financing and media conduct. Candidates will have to use a single account for campaign finances and there will be a ceiling to campaign spending per candidate. Media are obliged to charge the same rate for all candidates who buy advertising space/time. Broadcast media are

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<sup>29</sup> The new election law contain no obligation to prove ones confession when registering as a candidate. Positively this will allow the Ministry of the Interior to ignore the issue altogether. However, in political reality it is unlikely that a candidate who is clearly of another confession could win the seat of a given confession. This would also raise a constitutional issue, because the 50/50 representation is a constitutional obligation.

<sup>30</sup> Point 23, Concluding Observations of the Human Rights Committee: Lebanon; CCPR/C/79/Add.78.

mandated to ensure “equity, equality and impartiality” between candidates. News and comments should be separated.

There will be a ‘Supervisory Committee on the Campaign of the Elections’, charged with supervising and monitoring the media and their adherence to regulations and with monitoring respect of campaign financing rules by the contestants, including post-electoral auditing of campaign expenditure statements by contestants. The committee shall also ensure “equal media access” for all contestants.

The establishment of the committee is positive, as it will increase accountability of election contestants and may help to ensure some equality between candidates in a country where election campaigns have been marked by partisan media and a huge role of money. The shortcoming of the new legislation is that it mixes ambitious objectives with weak enforcement mechanisms: The Committee has few regulatory and enforcement powers.

A long-standing problem of Lebanese elections is that there is no official, pre-printed ballot paper. What appears to be a technicality has significant political repercussions, because political groups prepare ballot papers for voters. These include the names of the candidate slate proposed by the party and are often printed in such small fonts that the voter cannot make any changes. Furthermore, it allows political groups to mark these self-prepared ballot papers in a way that it can be verified during the vote count which voters have used the pre-pared ballot. This violates the secrecy of the vote and opens the door for vote-buying. There is almost no country in the world that does not use pre-printed ballots. However, a majority of MPs refused to modify this provision during the debate of the 2008 law. It is difficult to avoid the conclusion that they wish to maintain this manner of controlling the electoral process.

#### **4. Assessment**

The political space in Lebanon is marked by a high degree of political pluralism, contrasted by a political process, which takes place in the rigid confines of a confessional system. A ‘normal’ democratic government – opposition dynamic cannot develop as long as confessional groups are represented by blocs (as is the case with Shi’ites and Sunnis), because the three major confessions all claim an inherent right to government representation.

The electoral reform of 2008 brought some progress in the electoral framework, notably by regulating campaign financing and media coverage of elections. It needs to be seen if these provisions can be enforced in practice.

A number of key shortcomings have not been addressed, most notably Lebanon will continue the anomalous practice of having no

exclusive official ballot papers, leaving plenty of scope for vote-buying and breaches in the secrecy of the vote.

The new electoral system, which goes back on electoral districts under the 1960 law, is likely to result in a distribution of seats, which better reflects voting results, i.e. it is likely to be more proportional. On the other hand, the new electoral districts have increased the inequality of the vote and accentuated confessional divisions. Furthermore, the electoral system does nothing to weaken the confessional nature of the political process, on the contrary it deepens this aspect. It remains impossible by law for a Lebanese to stand as a candidate without any confessional affiliation, simply promoting a pan-Lebanese platform.

Most shortcomings of the electoral framework could only be addressed through political reform aimed at reducing the role of confessions. The Ta'ef agreement and the Lebanese constitution mandate such 'de-confessionalisation' with a lower house of Parliament based on universal suffrage without confessional logic. Confessional interests would be represented in a second chamber. However, these constitutional stipulations are ignored in the political debate in Lebanon, and as has been shown confessionalism has actually increased under the new election law.

## **5. Election Issues under the EU – Lebanon Action Plan**

The EU-Lebanon action plan includes the following election-related priorities: „Promote the establishment of a comprehensive strategy for reform of the system of political representation and the election framework, including fair representation of women, taking into account the recommendations set out in the final report of the EU Election Observation Mission.“ It notes furthermore:

„– Strengthen the election system addressing electoral and other laws, election administration, and the election complaints system, and develop ways to improve media access.

– Develop joint cooperation and exchange of experience in the field of elections.“

The priorities of the EU-Lebanon action plan point at the right issues, including not only issues related to electoral reform, but also to the broader point of political representation. The priorities demonstrate how action plan priorities are more focused and relevant in countries where the EU could rely on the analysis of EU election observation missions. As far as broad political reform is concerned it is difficult to see how outsiders could directly promote this agenda in a context where there appears to be no interest by the political players in Lebanon. Nevertheless the EU should support those Lebanese actors

who try to promote this agenda<sup>31</sup> and it should also support any incremental steps aimed at reducing the stranglehold of confessional groups over the political process.

## VI. Syria

### 1. Political-Constitutional Context

Syria is an extreme case of an authoritarian regime. Many aspects of its political system are similar to those of Egypt, a result of close historical links.<sup>32</sup> However, in Syria the authoritarian nature of the regime is more clearly reflected in its constitutional architecture and while Egypt enjoys a limited degree of media freedoms and public debate, this is not the case in Syria.

The linchpin of Syria's political system is the President. He "manages the executive branch of power, manages the dominant party and is a member of the highest court, whose members he appoints."<sup>33</sup> There is no semblance of a separation of powers. The executive's powers are enhanced by the state of emergency, which is in place since 1963.

The unicameral Parliament has the right to legislate, to approve the budget and to adopt a confidence vote in the government. However, these powers are checked by the President who can dissolve the Parliament at any moment, legislate when Parliament is not in session and – in cases of 'extreme necessity' - legislate even when it is in session. He can also veto Parliamentary legislation. His veto can only be over-ruled by a two-third majority of Parliament. The Syrian Parliament is considered to be very weak. It is not known to play a meaningful role of executive oversight.

Parliament is dominated by the Baath party, which is guaranteed the majority in Parliament.<sup>34</sup> The leading role of the Baath party is enshrined in the constitution (article 8). The President leads the party. The party and the state are intertwined. There appears to have been a Presidential decision to separate the Baath party from the state structures,<sup>35</sup> but this has never been implemented.

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<sup>31</sup> Note for example a new initiative by Lebanese civil society to promote the establishment of a second chamber, see: <http://lebanonsenate.org/>

<sup>32</sup> Egypt and Syria merged into the 'United Arab Republic' from 1958-61.

<sup>33</sup> "Flawed by Design – the 2007 Syrian Parliamentary and Local Elections and Presidential Referendum", Post-Election Briefing No.2, Democracy Reporting International, February 2008. A number of issues in this chapter are addressed in more detail in DRI's briefing.

<sup>34</sup> For the 2007 Parliamentary elections the *Baath* was guaranteed by decree 130 of the 250 seats. An additional 33 seats were given to small parties under the umbrella *National Patriotic Front*. Heritage of the Socialist past, these small parties are supposed to give a semblance of pluralism to a one party state.

<sup>35</sup> In the discussion with the UN Human Rights Committee, the Syrian representatives noted: "A Presidential injunction had been issued for the separation of the State from the Socialist Arab party." Point 51, summary record 2292nd meeting of the Human Rights Committee, 22 July 2005.



The current President Bashar Al-Assad took office in 2000 to follow his father, the late Hafez Al-Assad. At the time the constitution was hastily changed by Parliament, reducing the age limit for Presidential candidates to 34 years to allow the ascension of the son to his father's position. While there appeared to be a possible political opening in 2005, it has closed since. Government critics have been jailed. As recently as October 2008, twelve democracy activists were sentenced for two years in prison on charges of "weakening national sentiment".<sup>36</sup> There is little international pressure on regime opening, in particular in view of the prospect of a possible peace deal between Syria and Israel. There may also be concerns about what a political opening may mean in a country that is as complex in religious and ethnic terms as neighbouring Iraq.

## 2. Electoral System

There are 250 members of Parliament elected for a four-year term. There are 15 electoral districts based on the 14 governorates (the Aleppo governorate is divided into two). Voters can choose candidates from open lists; they can vote for as many candidates as there are seats. As mentioned above, the majority of seats are reserved for candidates of the Baath party.

The President is elected on the basis of a referendum. The candidate is proposed by the Baath party, which is chaired by the incumbent President and nominated by Parliament. The result of Presidential referenda was never in doubt. In the last referendum on 17 May 2007 Bashar Al-Assad was confirmed with 97% according to official results.

## 3. Electoral Arrangements

Syrian citizens who are 18 years or older have the right to vote. To stand for Parliament a voter must be 25 years or older. Candidates are screened by the security services<sup>37</sup> and genuine opposition candidates are 'discouraged' from presenting themselves. A number of opposition politicians could not present themselves because they are imprisoned.

The elections are managed by the Ministry of the Interior, which appoints 'central commissions' in each governorate. The commissions are composed of the governor as President of the commission, a judge and a representative of 'workers or farmers'. The commissions appoint polling station officials, receive complaints and supervise the counting of votes and the transfer of results to the Ministry of the Interior. There are no appeals against decisions by the commissions,

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<sup>36</sup> The twelve are: Walid al-Bunni; Yasser al-Eiti; Feda' al-Hurani; Akram al-Bunni; Ahmad To`meh; Jabr al-Shufi; `Ali al-`Abdullah; Fayez Sarah; Muhammad Hajji Darwish; Marwan al-`Ush; Riad Seif; and Talal Abu Dan. For more details see: „Harsh Sentences for Democratic Opposition“, Human Rights Watch, 30 October 2008.

<sup>37</sup> Bertelsmann Transformation Index 2008, Country Report Syria, page 7



except in relation to candidate registration.

Voters are not obliged to cast their ballots in particular polling stations. Many polling stations are located in state companies and administrations, which gives more scope to putting pressure on state employees to vote. In 2007 the inking of fingers to avoid double voting was introduced.

As in Lebanon there is no official pre-printed ballot. Voters can use any piece of paper. This opens the possibility for breaches of the secrecy of the vote, vote buying and intimidation.

Candidate representatives can observe the voting in polling stations, but the laws do not mention the right to observe the counting. There are no provisions for non-partisan domestic or international observation of elections.

#### **4. Assessment**

The Syrian framework for elections is flawed by design: The constitution gives excessive powers to the President and determines the leading role for the Baath party. There is no equal freedom to stand in elections given that the Baath party is allocated an absolute majority of seats in Parliament before the elections. There is no freedom to stand in Presidential referenda either with a candidate proposed by the Baath party and nominated by the Baath-dominated Parliament.

In addition to these fundamental flaws the electoral framework lacks essential elements for transparency and secrecy, such as official ballot papers, election observation and a prompt and detailed publication of results at all levels of the election administration

#### **5. EU Relations**

The EU and Syria have not yet signed an association agreement and Syria does not participate in the European Neighbourhood Policy. As for any other country the EC's current policy document is therefore the Country Strategy Paper (CSP)<sup>38</sup>. The last CSP noted that "Syria is a socialist republic with a constitution that guarantees a leading role to the Baath Party. Syria has a strong presidential system with a powerful executive" and „over the last five years, however, there has been little change in the political legacy Hafez Al-Assad left after his thirty-year term. The Baath Party, which enjoys the support of the military-security elite, still dominates Syrian politics. Decision-taking is in the hands of the President and a small circle of people around him. The hope for political reform after the 2005 ‚Damascus spring‘ was reflected in the CSP: „Genuine democratic participation (...)

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<sup>38</sup> The relationship between Syria and the EU is governed by the 1977 co-operation agreement.

remains a possibility".<sup>39</sup>. It is unlikely that the EU would still come to this conclusion.

The strategy paper includes the objective of "extending political pluralism and citizens' participation in political life, improvement of the situation of stateless people, civil society development, decentralisation/local democracy, respect for human rights and the rule of law." As far as 'strategic objectives' are concerned the CSP mentions "support for political and administrative reform – Modernising the administration, pursuing the decentralisation process, strengthening the rule of law, and increasing the respect for fundamental human rights."<sup>40</sup>

The EC's Country Strategy Paper describes the overall shortcomings of the political system correctly, but its 'strategic objectives' are cautious, avoiding the words 'democracy' or 'political participation' altogether. The EC may have judged that the Syrian authorities would not allow any EC activities, which address the shortcomings of the political system directly. However, in relation to other highly authoritarian regimes in the European Neighbourhood the EC has been less circumspect. For example in the case of Belarus the National Indicative Programme defines 'Support for democratic development and good governance' as one of two priority areas for action.

## **VII. Occupied Palestinian Territories**

### **1. The Political and Constitutional Context**

The Palestinian Authority is not a state, but the basic law provides a political framework for its operation. A directly elected President heads the executive branch of power, while the legislative is represented by the directly elected Palestinian Legislative Council (PLC).

Political competition has been marked by two major political groups, Fatah and Hamas. Fatah's Mahmoud Abbas won the 2005 Presidential elections, while Hamas won a majority of seats in the 2006 PLC elections. In 2007 the nascent political system disintegrated, with Hamas taking power in the Gaza strip and Fatah controlling the West Bank. Without some form of accommodation between the two sides it is difficult to imagine a resumption of a meaningful electoral process. In addition to the Fatah – Hamas dynamics, Israel plays a key role as an occupying force in the West Bank and by controlling most of Gaza's borders. Numerous members of the PLC are in Israeli prisons. Given the dependence of the PA on foreign support, international

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<sup>39</sup> page 5, Syrian Arab Republic, Strategy Paper 2007-2013 & National Indicative Programme 2007-2010, European Commission.

<sup>40</sup> *supra*, page 23.

actors also play a major role in domestic developments. The refusal by the Middle East Quartet (US, EU, UN, Russia) to deal with a Hamas-led government contributed to the disintegration of the domestic political process.

The 2005 and 2006 elections were considered to have been democratic by EU election observation missions.<sup>41</sup> Although the political context has changed dramatically since, those elections remain relevant as a precedent for democratic elections in the future, or even a referendum on a peace deal.

According to 2005 amendments of the basic law the term of the PA's President is four years, which means that the next elections should have taken place in January 2009. However, this is contested by some Fatah representatives who point at a provision in the electoral law stipulating that "new Presidential elections shall be held by the end of the legislative term of the first elected Palestinian Legislative Council after the enforcement of the provisions of this amended law" (art.111). With PLC elections due in 2010, this would mean that Presidential elections would only take place then. However, it is to be assumed that the basic law overrides provisions of ordinary legislation.<sup>42</sup> At any rate, the highly political issue of the timing of Presidential elections is unresolved and at the time of writing it appears unlikely that presidential elections will take place in 2009.

## 2. Electoral System

Elections for President and the PLC are governed by the electoral law of 2005. However, in 2007 the President adopted a new electoral law by decree. The new law modified an electoral system, which had proved to be detrimental to Fatah's election results. Hamas denies the legality of the new law on the basis that it is not within the President's authority to adopt an election law. Fatah defends the decree as an emergency measure. Given the current state of affairs, any meaningful election process requires co-operation between Fatah and Hamas, which would also need to cover the question of the electoral law. Any 'unilateral' conduct of elections by one of the groups would be limited to either the West Bank or Gaza, lacking any credibility.

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<sup>41</sup> "The successful conduct of the 25 January 2006 elections to the Palestinian Legislative Council (PLC) reflected an open and fairly-conducted electoral process that was administered by a professional and independent Palestinian Central Elections Commission", page 1, Final Report, EU Election Observation Mission – Palestinian Legislative Elections 26 January 2006; "The 9 January 2005 election for the President of the Palestinian Authority represented a genuine effort to conduct a regular electoral process." page 2, Final Report, EU Election Observation Mission – West Bank and Gaza/Presidential Elections.

<sup>42</sup> Another argument made by Fatah representatives is that the 4-year term was introduced after Abbas' elections and would therefore not apply to his term. However, if this was the legislators intention it could have been indicated in the law that the term limit only applies after the last elections. President Abbas' Fatah party enjoyed the majority in the PLC at that time.

The PA's President is elected by a simple majority of the votes in one round. The 2007 election law decree foresees a two-round election for President.

According to the 2005 electoral law, the 132 seats for the PLC are distributed in a parallel electoral system: one half from a proportional national list election, the other through district elections of a varying number of candidates per district. Here voters can cast as many votes as there are seats. Candidates winning the highest number of total votes gain the seats. This is known as the 'block vote'. There is a requirement that each national list (for half of the seats) must have female candidates on the 3rd, 7th or 12th position (or at higher positions). This provision resulted in 22% women MPs in the PLC, one of the highest rates in the Arab world.

The electoral system was adopted by the Fatah-dominated PLC in 2007. It was a modification of the 1996 electoral law, which was entirely based on the block vote system. Fatah did not realise that the block vote favoured disciplined political parties with cohesive electorates, such as Hamas, while Fatah's votes were split between Fatah candidates and independent candidates close to Fatah.<sup>43</sup>

In the 2006 PLC elections Hamas gained 29 seats with 44% of the votes in the proportional list elections, against 28 seats for Fatah, which had 41% of the vote, but the block vote part of the system dramatically transformed Hamas' narrow lead in votes into a massive gain in seats with 46 seats for Hamas against 17 seats for Fatah.<sup>44</sup>

### 3. Electoral Arrangements

As far as the PLC elections are concerned the EU EOM 2006 concluded: „Overall, the legal framework for elections provided an effective basis for the conduct of democratic elections“.<sup>45</sup>

The EU provided significant technical assistance to the establishment of the Central Election Commission (CEC) in the years ahead of the elections. The CEC is in charge of Presidential and PLC elections. The CEC's conduct during the two last elections was praised by international election observation missions. The CEC can be considered to be one of the few success stories in the build-up of Palestinian institutions.

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<sup>43</sup> There were on average three Fatah or 'independent Fatah' candidates for each seat, while to be successful a party should have one candidate per seat.

<sup>44</sup> How this happened can be illustrated with the example of the Hebron electoral district, which represents nine seats: Hamas' voters concentrated all their nine votes on the nine Hamas candidates, while Fatah voters did not always vote for the nine Fatah candidates with the result that the Hamas candidates landed on the first nine places and gained a seat, while the Fatah candidates "won" the next nine places and received no seat at all. Hamas had won all with 490,000 votes and Fatah nothing with 325,000 votes. See for more details on the 2006 PLC elections, Democracy Reporting International, Hamas' Victory: A Landslide in Seats, not in Votes, Post-Election Briefing No.1, February 2006.

<sup>45</sup> page 4, *supra*.

The CEC sits on top of a hierarchical three-level electoral administration (CEC, District Election Commissions, Polling Station Committees). Its nine members are appointed per Presidential decree.

While observers acknowledged the neutrality of the CEC, the main concern raised was a lack of transparency in its proceedings: deliberations took place behind closed doors and there was no framework for consulting stakeholders in the decision-making process. Furthermore, its decisions need to be approved by the Council of Ministers, which could undermine the concept of an independent institution.<sup>46</sup>

Voters are registered in a special voter register. The process of voter registration in the 2005 and 2006 was praised by international election observers.<sup>47</sup> The major shortcoming of the voter registration is beyond the control of the CEC: The Israeli authorities do not allow the registration of Palestinians resident in East-Jerusalem, estimated to be 130,000.<sup>48</sup>

Palestinians who are 18 or older have the right to stand in elections, while only voters who are 35 years or older can stand in Presidential elections. For PLC elections candidates can run individually or as lists proposed by parties, coalitions and groups for the elections in the 16 electoral districts, which elect half the seats. For the 'national elections' (based on the whole territories as one electoral districts), in which the other half of the MPs is elected, MPs are elected from closed lists, which are proposed by parties, coalitions or groups. The EU EOM noted a lack of regulatory detail for the process of registering candidates. In the run-up to the 2006 elections seven candidatures were rejected by the CEC on the grounds that some signatures supporting their candidatures were invalid. Three of them were reinstated as candidates after successful court appeals.<sup>49</sup>

The regulations on campaigning lack detail. In 2006 the CEC issued guidelines on campaigning, which were not however legally binding. A contentious aspect for proved to be the use of Mosques for campaigning by Hamas. The PLC election law includes limits for campaign financing.

As far as Presidential elections are concerned, the EU EOM 2005 noted a number of inconsistencies in the law, stemming from the fact that the law had been designed as an interim arrangement for the

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<sup>46</sup> The 2007 electoral law decree abolished this requirement.

<sup>47</sup> page 14, EU EOM 2006, *supra*.

<sup>48</sup> page 17, EU EOM 2006.

<sup>49</sup> page 22, EU EOM 2006.

1996 elections following the Oslo agreements. It did not fully fit the 2005 elections in a number of ways, for example in relation to voting in East Jerusalem or the status of the electoral commission (permanent or not?).

There is no law on referenda.<sup>50</sup> This could prove to be a crucial gap in case a referendum becomes part of a peace process with Israel.

#### 4. Assessment

The framework for elections is generally adequate and worked well in the 2005 and 2006 elections, but future elections are likely to be significantly tenser with a high potential for violence. In 2006 Fatah did not expect to lose the elections and in the Presidential elections in 2005 Hamas did not field a candidate. Nevertheless in 2005 the EU EOM expressed serious concerns about political interference in the work of the election commission and campaigning of PA authorities in favour of Abbas.<sup>51</sup>

Such problems could be much more significant in future elections given that the relationship between the two main political groups is extremely hostile and violent. A number of aspects of the electoral framework should be reformed to better cope with the possible pressures of a future election.

The most important issues include: Increasing the transparency of the Central Election Commission's decision-making; the Commission's decision should be valid without approval by the Cabinet of Ministers; the appointment mechanism of the Commission could also be reviewed, in case of insufficient confidence by the main stakeholders in a neutral appointment policy by the President of the PA; the law should be comprehensively reviewed to address inconsistencies and issues that are under-regulated. Given that a referendum could play an important role in the context of a possible peace deal, it would be worthwhile also to consider establishing a process of drafting a referendum law.

A number of other key aspects of a democratic electoral process are under the control of the Israeli authorities, namely proper arrangements for voting and campaigning for Palestinians in Jerusalem, freedom of movement across the occupied territories for candidates, voters and election officials, as well as the circulation of

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<sup>50</sup> The 2007 election law decree mentions that the CEC is in charge of referenda without providing details.

<sup>51</sup> "It is clear that this decision by the Central Elections Commission (CEC) to change the procedures during the day of the election was only undertaken after serious and sustained pressure by political authorities.", page 3 and „There was wide misuse of public resources in favour of Mahmoud Abbas, with public officials seen campaigning in his favour.“, page 4, EU EOM to the Presidential elections, *supra*.

election materials.<sup>52</sup>

## 5. EU – PA Action Plan

The EU – PA action plan, which was agreed before the 2005/2006 electoral cycle, was detailed and categorical as far as elections are concerned, listing under the headline „Organisation of transparent general and local elections according to international standards“:

“– Revise the legal framework to ensure compatibility with international standards and best practice; – Update the Voter Register for the West Bank, Gaza Strip and East Jerusalem (subject to freedom of movement within the Palestinian Territory); – Start preparations for polling, counting, observation and party registration; – Adopt a legal framework for the registration and activities of political parties; – Ensure the independence of the elections commissions and a fair and free election process covering both general and local elections; – Guarantee conditions for media coverage preceding and during the election campaign.”

The unusually clear and detailed language of the Action Plan, reflects the limitations of the PA’s bargaining power, given that the EU is the major provider of aid to the PA and that in the case of the PA, detailed information on the electoral process were available to the EU through its assistance projects to the Central Election Commission.

In its 2006 progress report the European Commission noted that democratic reform was the area where most progress was made “as shown by the January 2006 elections to the Palestinian Legislative Council.”<sup>53</sup> While usually such a process would be considered to be a major positive achievement, this was not the case because of the results. Indeed the EU position towards the PA government turned sharply negative after the elections, refusing to deal with Hamas if it did not meet a number of conditions.

In its 2008 progress report the EC noted that Palestinian democracy was threatened by the violent events of June 2007, which led to a split between the West Bank and Gaza. On specific electoral matters the report is critical of the new electoral law decreed by President Abbas in September 2007, in particular because it does not provide for continuous voter registration as recommended by EU EOMs and because it allows the President to dismiss members of the Central Election Commission at will, which would undermine its independence.

While it is laudable that the EC’s 2008 progress report raised concerns about the controversial election law decreed by President,

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<sup>52</sup> In the past the Israeli authorities did not allow election authorities to fully control the transport of any material between the West Bank and Gaza, including sensitive material such as ballots.

<sup>53</sup> Page 3, Progress Report, 4 December 2006, SEC (2006) 1509/2.

the EC/EU is not an outsider in the Palestinian's democratic process. Through the EU's role in the Quartet and the most important provider of assistance to the PA, the EU has significant influence on domestic Palestinian developments.

After the Hamas victory in the 2006 PLC elections the EC stopped all support for the PA's government, effectively forcing Hamas to cede power. The EU also acquiesced in the US policy of military building up Fatah, which contributed to the June 2007 fighting between Fatah and Hamas, resulting in a split of the territories.

It is not coherent for the EU to support an electoral process when one of the two main participants is considered to be an unacceptable partner, which cannot be allowed to take office. The EU would need to make a choice to either to support Fatah, a policy it perceives to be in the interest of peace, or to support a democratic process including Hamas, the outcome of which it may perceive not to be in the interest of peace.



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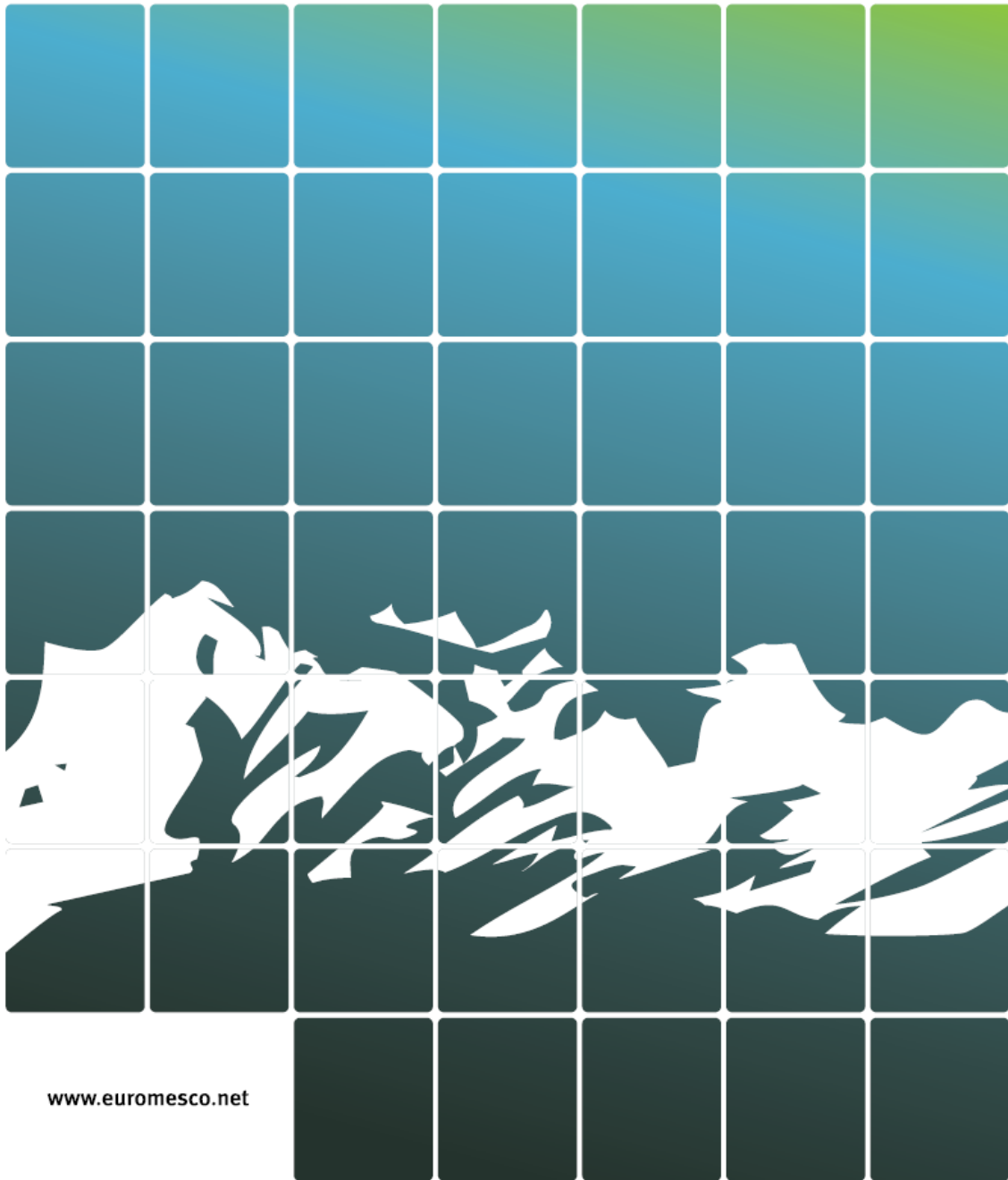
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