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Lebanese Association for Democratic Elections

Assessment of the Election Framework

Election Law of 2008

Lebanon

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Table of Contents

4	Executive Summary
5	• Political Context
6	• The New Electoral Law
8	Key Recommendations
9	Introduction to the Programme and Appreciation of Support
10	Part A: Political and Constitutional Context and the Role of Elected Bodies
10	1. Political System
12	2. Political Context
15	3. Human Rights and Fundamental Freedoms:
15	3.1 Overview
16	3.2 Freedom of Association: Political Parties and Civil Society Organisations
17	Part B: Analysis of the Legal and Administrative Framework for Holding Elections
17	1. Relevant International and Regional Standards
17	2. Legal Framework of Elections
17	2.1. Overview of Relevant Legal Provisions
18	2.2. Electoral System
18	2.2.1. Confessional Representation in the Chamber of Deputies
20	2.2.2. The Electoral System under the New Law
21	2.2.3. Equality of Votes and Confessional Representation
22	2.2.4. Christian electorates for Christian seats?
24	2.3. Periodic election
24	2.4. Election Administration
26	2.5. Right to Vote
26	2.5.1. Eligibility/ Restrictions to Vote
27	2.5.2. Voter Registration
29	2.6. Right to Stand: Registration of Candidates and Lists
32	2.7. Campaign Rules and Campaign Financing
34	2.8. Media / Campaign
38	2.9. Voting
40	2.10. Counting, Tabulation, Aggregation
42	2.11. System for Complaints and Appeals
43	2.12. Election Observation
44	2.13. Representation of Women
45	3. Local elections
47	Recommendations
50	Annexes
50	• Annex 1
52	• Annex 2

Executive Summary

Lebanon is scheduled to hold parliamentary elections on 7 June 2009. Since the last elections in 2005, which took place after Syria's troop withdrawal, the political system has been under severe domestic and international strain. The country has yet to find a sustainable consensus on the working of its political system. The upcoming elections will be a challenging test for Lebanon. June's vote will be held according to a highly significant New Electoral Law adopted in September 2008. This New Law is generally in line with international standards, but fails to sufficiently guarantee the secrecy of the vote and reveals a number of shortcomings resulting from Lebanon's confessional political system. The modified electoral system arising from the New Law is likely to make elections more competitive but, contrary to the spirit of the 1990 Ta'if Agreement, it accentuates confessional divisions and creates significant voting inequalities. It also appears to conflict with the Lebanese Constitution. While it is part of an agreement to diffuse a serious crisis, the new electoral system may increase the long-term potential for conflict in the country.

The New Electoral Law includes a number of positive changes, which reflect international standards and best practices, including additional safeguards against electoral fraud such as transparent ballot boxes and inking of fingers; the holding of elections on one day; detailed regulation of campaign financing and media coverage, and oversight of elections by a newly-established 'Supervisory Commission'. It remains to be seen, however, if this new Supervisory Commission will be able to make a difference in the context of weak enforcement powers, the powerful role of certain influential political players, a highly partisan media and a history of the use of money to shape the outcome of elections.

The most serious shortcoming of the New Law is that voters can still use any piece of paper as a ballot. This will perpetuate the practice in the past where political groups have distributed prepared ballots, undermining the secrecy of the vote and discouraging voters from making their own choices of candidates, even though the law grants them this right. Despite a strong civil campaign in favour of the exclusive use of official ballot papers, a majority in parliament voted in favour of retaining the use of any piece of paper as a ballot, which has long marred Lebanese elections.

Apart from the issues surrounding the legal-administrative framework for this year's elections, serious concerns remain about the security environment in a context where four MPs have been assassinated over the last four years. Security concerns could prevent some candidates from campaigning effectively.

Political Context

Lebanon's political system is based on the 1926 Constitution, the extra-constitutional 1943 'National Pact' and the 1989 Ta'if Agreement that ended 15 years of civil war. The agreements made in Doha in May 2008 added a layer of political compromise to an already complex legal-political framework.

Between 1990 and 2005 the post-civil war political system was only put to the test to a limited degree, because Syria dominated Lebanese politics in this period and served as the final arbiter of domestic conflicts. The post civil-war system was therefore tested for the first time only after the Syrian troop withdrawal in 2005, through which Lebanon regained a modicum of national sovereignty.

Initially the country achieved a number of important successes, including the peaceful 2005 elections whose results were generally accepted, the subsequent formation of a cross-party Government, the establishment of dialogue between all national political leaders and the elaboration of a new draft election law by the Government-appointed expert 'Boutros Commission'. However, the national dialogue broke down in the face of assassinations of pro-Government MPs, disagreements about the composition of the Cabinet and the role of the international investigation into the Hariri and subsequent assassinations. The international context complicated the situation: Syria resisted attempts to limit its influence and the July 2006 Israel War raised urgent questions about the international and domestic role of Hezbollah. In November 2006 Hezbollah and Amal left the Government to form an opposition together with General Aoun's 'Free Patriotic Movement'. Simmering tension turned into civil strife in May 2008, when Hezbollah and affiliated groups took control of part of Beirut by force in response to a Cabinet decision that Hezbollah considered a threat to its core security interests. This incident disproved Hezbollah's longstanding claim that it would only use its weapons against Israel, not for settling domestic disputes. With the country on the brink of a wider civil war, the political groups met for talks in Doha under the mediation of the Amir of Qatar and reached agreement on three key issues: the election by Parliament of Michel Suleiman as President (May 2008), the formation of a new cross-party Government (in July 2008), and the adoption of a New Electoral Law based on a revised electoral system (adopted in September 2008).

The New Electoral Law

Revisions to electoral law have always been sensitive in Lebanon, where 11 recognised confessional groups compete to guard or advance their political interests through parliamentary representation. Lebanon uses an electoral system under which a voter has as many votes as there are seats in the district. However, all the different seats are allocated among the confessions. In theory this system leaves voters a lot of choice in selecting candidates to represent them, but in the 2005 elections a few political groupings (Future Movement, Hezbollah) dominated large geographical areas, winning all the seats there. These lists proved so dominant that opposing candidates did not even bother to stand in 20% of the seats, which were then awarded without contest. In many districts the results were distinctly disproportional, for example one list won all 11 seats in Baabda-Aley with only 51% of the votes.

The New Law maintains the electoral system, but reduces the size of electoral districts, which now largely¹ coincide with the administrative districts (*qadas*)². There are now a total of 26 electoral districts, in which varying numbers of MPs are elected (between two and ten).

On the one hand the new electoral system is likely to produce more proportional results than in 2005; that is, seat allocation will be more proportional to the support for all the various voting lists or blocs. A list enjoying significant but not majority support of voters in a region is more likely to find this support reflected proportionately in parliamentary seats than under the old system, because the new system prevents a sweeping victory with a narrow majority by one group of all seats in large districts.³

June 2009's elections may therefore also be more competitive than those in 2005. On the other hand the new electoral system has further entrenched confessionalism by creating 13 '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 will have incentives to appear staunchly confessionalist in order to win the majority of votes of their confessional community.⁴

1 18 districts coincide with 18 *qadas*; three further districts are each made up of two *qadas*; one *qada* is split among two districts and Beirut is divided into three contiguous districts.

2 Although strictly speaking the electoral 'system' has not been changed, this report talks about a 'new electoral system', given the significant impact that the increase in electoral districts has had on the overall electoral architecture.

3 Winning all seats with a narrow majority can also occur in smaller districts, but now there is more likelihood of this being 'balanced' by opposing groups winning in other districts. One could use pixels as an analogy: Under the previous system there were only a few pixels, each 'coloured' by one group, now there are more pixels, giving a more accurate picture of election results.

4 Although occasionally there may be an incentive to tone down confessional rhetoric, for example where two groups of one confession are equally strong and need votes from the other confessional voters as tie-breakers.

The New Law's changes to the electoral system took account of a longstanding complaint by some Christians that many Christian candidates were elected by Muslim majority electorates. The new smaller districts often being more confessionally homogenous, means that 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 voters' 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.

While the electoral system is politically the most sensitive issue, many of the shortcomings of the previous electoral law were related to the electoral administration. After the 2005 elections a 'National Commission on Electoral Law' presided over by former Foreign Minister Fouad Boutros was appointed. The Boutros Commission prepared a draft law, which included significant improvements. The New Electoral Law largely based its changes on the Commission's draft, without however including all these changes. The most important reforms of the New Law include:

- Detailed provisions on election campaign financing, requiring candidates to account properly for income and expenses and determining ceilings for campaign expenditure. This is a novelty in Lebanese elections, where money has always played a significant role without any limitations or accountability.
- Detailed provisions on media coverage: state and private media are obliged to cover the campaigns in a balanced way and to treat paid advertising by candidates equally (charging the same prices, conditions, etc.).
- The creation of a 'Supervisory Commission' to monitor compliance with the new provisions. The Commission is not fully independent, but associated with the Ministry of the Interior. The Commission's enforcement powers are weak and it remains to be seen if it will be able to ensure compliance in the context of highly polarised elections and powerful political actors' traditionally limited respect for the state and the law.
- Introduction of transparent ballot boxes and inking of fingers of those who have voted, to prevent electoral fraud.
- Elections will be held on one day.
- There will be out-of-country voting for the sizeable Lebanese diaspora, but according to the law this will be introduced only for elections after the upcoming June 2009 vote.

The most glaring omission of the New Law is that no uniform, exclusive official ballot paper was introduced. In contrast to almost universal election practice, Lebanese voters can write their choice on any piece of paper. Sometimes even napkins have been used as ballots. A majority in Parliament voted in favour of maintaining this practice. In the past the political groups mostly prepared their own ballot papers; these can be marked in such a way (different fonts, different letter types, different order of candidates) that they can be linked to specific voters or families during the counting of votes, thus seriously undermining the secrecy of the vote. This practice is thought to play a role in ensuring the political control of confessional groups by the respective confessional elites. Ballots prepared by political groups also tend to be printed in a way that makes it impossible for voters to cross out candidates or add others. These practices pervert and limit an electoral system that in theory provides voters with a large number of choices.

A step back of the New Law is the introduction of a legal distinction between naturalised citizens and non-naturalised citizens through the introduction of ten-year waiting period before a naturalised citizen is granted the right to vote.

Key Recommendations

- In the short term the Government, the Ministry of the Interior and the Supervisory Commission for elections should use their power to adopt sub-legal acts (for example decrees or guidelines) to implement the law as far as possible in line with international standards. This report includes a number of suggestions of how this could be done.
- Parliament should amend the New Electoral Law to introduce exclusive official ballot papers, which safeguard the secrecy of the vote.
- In the medium term there should be a debate on how to revive the spirit of the 1990 Ta'if Agreement, which foresaw reducing the role of the confessions by creating a non-confessional lower chamber of parliament and an upper chamber for confessional representation. While the electoral system of the New Law serves the legitimate short-term purpose of solving a serious crisis, its new inequalities have increased the longer term conflict potential of the political system.

A detailed list with all recommendations can be found at the end of this report.

Introduction to the Programme and Appreciation of Support

This report follows an earlier report of May 2008, which was published by Democracy Reporting International (DRI) and the Lebanese Association for Democratic Elections (LADE) following a mission to Lebanon. These reports have been prepared by Michael Meyer-Resende and Michel Paternotre (DRI) and Ammar Abboud and Said Sanadiki (LADE). The report reflects the findings and conclusions of the authors.

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

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Political and Constitutional Context and the Role of Elected Bodies

1. Political System

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

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

The ‘National Pact’ reserves the presidency to a Maronite Christian, the position of Prime Minister to a Sunni Muslim and the post of speaker of the Chamber of Deputies to a Shi’ite.⁵ Given the central role of all three posts in the political process, the Constitution thus enables representatives of each confession to block the political process. While these safeguards may be reassuring for the confessional communities, they also facilitate political stalemate, as could be seen in the 2006-2008 crisis.

The Chamber of Deputies indirectly elects the President⁶ for a six-year non-renewable term.⁷ The eligibility requirements for the post of President are the same as those for members of the Chamber of Deputies. The President is the Head of State, negotiates international treaties, promulgates the laws and appoints the Prime Minister on the basis of ‘consultations with Parliament which shall be binding’ (Article 53 §2 Constitution). The President can veto a law passed by the Chamber, in which case it has to be re-confirmed by an absolute majority of members to become valid.

⁵ The posts of deputy prime minister and deputy speaker of Parliament would be given to a Christian Orthodox.

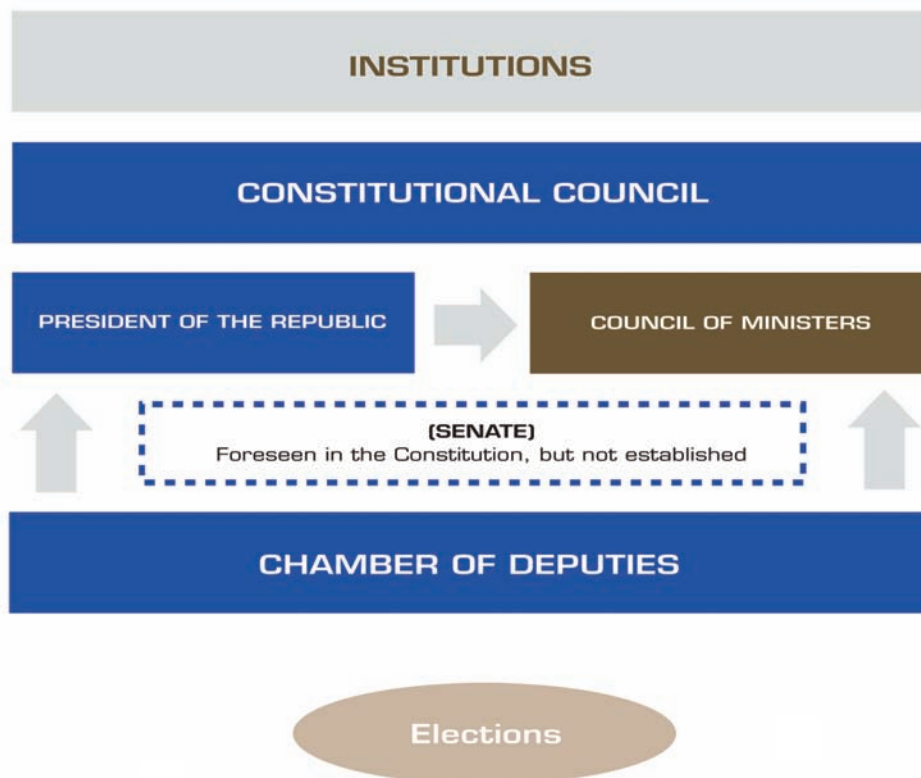
⁶ Art. 49 (2) of the Constitution states that: *the President of the Republic shall be elected by secret ballot and by two third majority of the Chamber of Deputies. After a first ballot, an absolute majority shall be sufficient.* The article is silent as regards the quorum needed for the election to be valid, which has led to conflicting interpretations, contributing to the stalemate on the election of a new President before May 2008.

⁷ This provision was overruled by ‘exceptional constitutional amendments’ in 1995 to allow the extension of President Elias Hrawi’s term until 1998 and again in 2004 to allow the extension of Émile Lahoud’s term until 2007.

Following the Ta'if Agreement, the Constitution was amended in order to reduce the direct powers of the President and to reinforce the position of the Government within the executive. The Prime Minister, representing the Government, counter-signs presidential decisions, liaises with the President in the conduct of international negotiations, appoints all public servants and assumes by delegation the powers of the President in case of vacancy. The Ministers are collectively and individually responsible to Parliament and can be subject to a vote of no confidence. As is the case with the other institutions the composition of the Cabinet should be balanced in terms of the confessions.⁸ The Constitution includes specific procedures for Cabinet decisions on 'national issues' (Article 65 §5), such as constitutional amendments, general mobilisation of the army, calling a state of emergency, the election law and the annual budget. Such issues should be decided by Cabinet consensus, or by two-thirds of Cabinet members. This provision explains the opposition's demand during 2006-2008 to have one-third of Cabinet members.

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

Table 1



⁸ See art. 95 of the Constitution: "During the transitional phase (...) the confessional groups shall be represented in a just and equitable fashion in the formation of the Cabinet."

2. Political Context

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

The 2005 parliamentary elections and resulting formation of a unity Government constituted a moment of hope that domestic stakeholders might agree on the fundamental questions of Lebanon's future. In this period the 'National Commission on Electoral Law', presided by former foreign Minister Fouad Boutros, was appointed. The appointment of an independent expert commission on a subject as sensitive as the election law was an innovation in Lebanese political history. The Commission engaged in widespread public consultations and proposed a new draft election law.

However, this period was already being overshadowed by regular assassinations of politicians and public figures critical of Syria.⁹ When disagreements over issues such as the convening of a tribunal with an international character to investigate the murder of Rafik Hariri and over the causes and implications of the 2006 war with Israel multiplied, ministers from Hezbollah and Amal withdrew from the Government in November 2006 and a stalemate saw key institutions fall into dysfunction: there was no President from November 2007, Parliament did not convene. Already since 2005 no judges were appointed to the Constitutional Council. Serious security risks meant that key Government figures could not move around the country.

In May 2008 a decision by the Cabinet to dismantle Hezbollah's private communication network¹⁰ triggered violent clashes in various parts of the country in which Hezbollah and aligned forces took control of parts of Beirut for several days. At least 80 people died in the violence. Faced with the country on the brink of all-out civil war, the political forces agreed to negotiations under the aegis of the Amir of Qatar. The meeting in Doha (17 – 21 May), resulted in agreements on a number of key issues, namely:

- The election of Michel Suleiman, former chief of the army, as President in May
- The forming of a Cabinet in which opposition forces were given one third of the seats
- The adoption of a New Electoral Law (in September 2008) on the basis of the Boutros Commission's draft without, however, adopting the electoral system foreseen by Boutros.

⁹ Hariri was killed together with 22 members of his entourage in February 2005; since then a six further politicians have been assassinated on Beirut's streets (two of whom were also journalists). They were all considered to be 'anti-Syrian'.

¹⁰ Hezbollah considers its communication network to have been an essential part of its fight against the Israeli army in July 2006.

The period of prolonged stalemate that lasted until May 2008 may have been a result of the emergence of two opposing political blocs – Government and opposition - during and after the 2005 elections. This limited the chance of variable alliances making compromises on sensitive subjects. The dividing line between the two blocs stemmed from different perceptions of Lebanon’s international position, either as a ‘Western ally’ or a country more closely aligned with Syria.

The electoral system as it existed before the 2008 New Electoral Law contributed to the coalescence of these two blocs: in the 2005 election Saad Hariri’s movement won all the seats in two-fifth of the electoral districts and Hezbollah/Amal won all seats in the south. The blocs thus resembled confessional divisions, with Hariri’s Sunni-dominated ‘Future Movement’ and Jumblatt’s Druze ‘Progressive Socialist Party’ providing the backbone of the anti-Syrian bloc while the opposition was formed by Hezbollah/Amal, elected in the regions where Shi’ites form the majority. Only the Christian vote was divided between anti-Syrian groups (Lebanese Forces, Qornet Shewan rally) and those aligned with Hezbollah/Amal (Aoun’s Free Patriotic Movement).

Table 2

The Two Blocs	
‘March 14’ Movement ¹¹	‘March 8’ Movement ¹²
<ul style="list-style-type: none"> • Future Movement (S. Hariri) • Progressive Socialist Party (W. Jumblatt) • Lebanese Forces (S. Geaga) • Phalange Party (A. Gemayel) • Qornet Shewan • Democratic Left Movement in Lebanon • Democratic Renewal Movement • Armenian Social-Democratic Movement • Armenian Liberal Party <p style="text-align: center;">68 seats in Parliament¹³</p>	<ul style="list-style-type: none"> • Hezbollah (H. Nasrallah) • Amal (N. Berri) • Free Patriotic Movement (M.Aoun) • Armenian Revolutionary Federation • Syrian National Social Party • Nasserist Popular Organisation • Arab & Socialist Ba’ath Party <p style="text-align: center;">56 Seats in Parliament¹⁴</p>
Two seats are non-affiliated and two seats are vacant ¹⁵	

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

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

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

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

15 One vacant seat is that of Antoine Ghanime, the other of Husein Al Huseini who resigned, although his resignation is not recognised either by the Government or Parliament.

The emergence of the two blocs can obscure more fundamental features in Lebanese politics, namely the strong role played by individual personalities, leading families, patronage networks and local interests within various confessional groups. Generally, Lebanese politics and political parties are not marked by strong ideological or programmatic differences. If anything, confessional allegiance is the most decisive feature beyond pure power considerations. Indeed, religious actors of all confessions are significantly involved in political debates. It is possible that at any point confessional or power interests could trump the currently dominant question of Lebanon's international orientation and thereby lead to shifts in the respective alliances.

The Minister of the Interior has called the next Parliamentary elections for 7 June 2009 (decree of 5 January 2009), in line with constitutional provisions.¹⁶ Municipal elections are due in 2010.

16 Art. 42 of the Constitution and art. 43 Election Law stipulate that Parliamentary elections should be held within 60 days of the end of Parliament's mandate. The current Parliament ends on 17 July 2009.

3. Human Rights and Fundamental Freedoms

3.1 Overview

Lebanon's state structure remains fragile with constant challenges to its authority by foreign intervention (Syria's role over the years; the 2006 war with Israel), violent groups (such as, recently, Fatah al-Islam in the Palestinian refugee camp of Nahr al-Barid in 2007; fighting in Tripoli in autumn 2008), the military role played by Hezbollah (Hezbollah's temporary takeover of parts of Beirut in May 2008) and generally by competing confessional allegiances. According to many analysts, loyalty to confessional groups or families and clans often trumps allegiance to the state.

Human rights groups have drawn attention to a number of human rights violations committed by the Lebanese state, including torture and mistreatment of detainees and the poor treatment of Palestinian refugees.¹⁷

Political life in recent years has been marred by a number of apparently politically motivated assassinations of political figures; all these victims were aligned to the 14 March movement. No charges have yet been brought in any of these cases and they have been included within the jurisdiction of the United Nations Independent International Investigation Commission (UNIIC). The UN and Lebanon have agreed on the establishment of a Special Tribunal to try those allegedly responsible for the murder of Rafik Hariri and his entourage.¹⁸

The threat to their lives has significantly restricted March 14 politicians' ability to operate freely; they have often had to live with heavy security and been unable to meet their constituents. This problem persists, though to a lesser degree, and may pose a serious obstacle to electoral campaigning this year. Freedom of assembly is mostly respected and Government and opposition forces alike have staged large-scale demonstrations on different occasions over the last few years. There is, however, a constant concern that these demonstrations might result in clashes, as has repeatedly occurred in recent years.

Lebanon scores better than most Arab states on media freedom indexes.¹⁹ However, the assassination of anti-Syrian journalists impedes media freedom, not least in forcing self-censorship by journalists in

17 See Amnesty International, 2007 Report Lebanon.

18 The Tribunal will be composed of international and Lebanese judges. See UN SC Resolutions 1664 (2006) and 1757 (2007).

19 Lebanon is listed 98th of 169 countries evaluated by 'Reporters without Borders'. Among Arab countries only Kuwait and the United Arab Emirates have better scores (63 and 65), Worldwide Press Freedom Index 2007.

fear of their lives. Restrictions are sometimes put on publications, for example where they are deemed offensive to religious feelings.²⁰ During the violence in May 2008 Hezbollah militia closed down the Future TV station.

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

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

The electoral law puts the emphasis on 'candidates' and 'lists of candidates', rather than political parties.

The open framework for the operation of political parties allows for the unusual situation of a group – Hezbollah – being at the same time a legal political party and an armed group.²¹

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

²⁰ For example, *The Da Vinci Code* was banned by the authorities in 2004 because it was considered offensive to Christians.

²¹ Most current political movements had a military wing during the civil war and the Christian Lebanese Forces were originally a militia that organised itself as a party at the end of the war.

Analysis of the Legal and Administrative Framework for Holding Elections

1. Relevant International and Regional Standards

Lebanon ratified the International Covenant on Civil and Political Rights (ICCPR), which sets out basic international standards for genuinely democratic elections,²² notably Article 25 which includes the right to vote and to be elected at genuine periodic elections.

The preamble of the Lebanese Constitution also notes that Lebanon abides by the UN's covenants and that the *"Government shall embody these principles in all fields and areas without exception (paragraph b.)"*

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

2. Legal Framework of Elections

2.1. Overview of Relevant Legal Provisions

The framework for elections is somewhat vague, given that it is governed by the Constitution, the unwritten National Pact of 1943 and the Ta'if Agreement of 1989, with the relationship between the three not always clear. Aspects of the Ta'if Agreement have been introduced into domestic law, but not all.

The Ta'if Agreement foresaw that confessional representation should take place in a second chamber with the first chamber elected on a non-confessional basis. Though mentioned in the Constitution, this change has never been implemented. The Ta'if Agreement also stipulated that the electoral districts should be governorates (muhafazat), though many consider that the Agreement left open the possibility of changing the borders of governorates and increasing their number.

The Ta'if Agreement also introduced the concept of 'effective representation', but this concept is not mentioned in the Constitution. On the one hand, the vague expression of these fundamental concepts requires legal clarification, yet left as they are they open significant space for important political bargaining. Also open to debate is whether the Doha Agreement of May 2008 overruled aspects of the Ta'if Agreement.

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

In addition to the lack of clarity over key concepts, there is a history of ad-hoc legislation overruling constitutional provisions, for example 'one-time' laws to extend presidential mandates beyond their constitutional terms. Finally, constitutional provisions are simply disregarded if powerful players so decide. The overall result is a political process in which legal requirements have only a relative value.

Two parliamentary elections (2000 and 2005) were held under the election law of 2000 (no.171 of 6 January 2000). The law was similar in most election organisation aspects to the earlier election laws of 1960 and 1996. These provisions – unchanged for decades – were archaic in many respects. The New Law (number 25 issued on 8 October 2008) introduces a number of important reforms.²³

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

2.2. Electoral System

2.2.1. Confessional Representation in the Chamber of Deputies

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

- a) *Equal representation between Christians and Muslims*
- b) *Proportional representation among the confessional groups within each religious community*
- c) *Proportional representation among geographic regions.*²⁴

Equal representation between Christians and Muslims is understood to mean that each should have the same number of MPs. The current distribution of the seats, when compared to the official figures of registered voters, privileges the first two above principles.

²³ The Law was amended by Parliament on 18 December 2008 with the objective of addressing a few spelling mistakes and omissions of the Law. This report is based on this latest version of the Law.

²⁴ The Ta'if Agreement contained provisions for a decentralisation of Lebanon's administrative structure and a revision of the administrative boundaries, which have not yet been implemented.

The third criterion is not respected. Regions are not proportionally represented: areas with concentrations of Muslim voters are underrepresented (in particular in the south of the country).²⁵ It is possible to respect all three criteria of Article 24, but not if Christian political players insist that most 'Christian seats' are elected by majority Christian electorates. Such a demand, accepted by the New Law, violates Article 24 of the Constitution (see below 2.2.4.) by creating inequalities in the value of vote: a seat in a redrawn Christian district is elected by fewer voters than in a Muslim area, making a Muslim vote worth less than a Christian vote.

Table 3

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

According to the Ta'if Agreement, a second chamber should be introduced allowing for a non-confessional lower house of Parliament and an upper house or Senate representing confessional communities. The Senate would only have competence in matters of major national interest. This reform was integrated into the Constitution (Article 22), but never implemented.

²⁵ Proportional representation within the Christian and Muslim communities is generally respected, except for a slight under-representation of the Sunni and Shi'i communities to the benefit of the Druze and the small Alawite community.

2.2.2. The Electoral System under the New Law

The New Electoral Law did not change the electoral system itself, but increased the number of electoral districts, of which there are now 26, each of which is represented by between two and ten seats (see annex for detailed overview of electoral districts). Each voter can vote for as many candidates as there are seats, with the candidates winning the highest numbers of votes gaining seats. However, the distribution of seats is subject to the limits on the number of seats reserved for each confession in the district.

For example, in a single district with three Sunni seats and one Maronite seat, only the three highest-polling Sunni candidates and the highest-polling Maronite candidate can win a seat. In theory, this electoral system leaves a voter with the choice of a combination of preferred candidates.²⁶ Until 2005 voters tended to make use of this opportunity to vote for the most appealing local personalities across the parties and confessions; indeed so important was the voter's assessment of the individual local candidates and issues in their decision that these elections were sometimes dubbed 'super-local elections'.

This changed in the 2005 elections, which were run for the first time on almost entirely 'national' issues with voters' choices of candidates dominated by the list bloc with which they identified. Voting for individual candidates gave way to partisan voting for one bloc for all available seats.²⁷ The electoral system now worked in favour of well-organised parties or groups of candidates, enabling them to win all seats in a constituency, excluding other groups from any seats at all and blocking minorities in a constituency from electing any of the representatives they desired.

This clean sweep of seats by blocs in 2005 was made even easier by the lack of any official ballot paper (see below: chapter B.2.9.), allowing political parties to hand out prepared ballots, which include all their candidates in one 'list'. Such prepared ballots are often printed in such small fonts that it is difficult to strike off one name and enter another. The absence of campaign and media regulations further contributed to the dominance of certain political groups in specific districts in 2005. The net effect of these flaws was a lack of competition in many areas. More than 20% of the seats were won uncontested, because strong parties grouped together as 'bulldozer lists' meant that potential opposition candidates were unwilling even to try to compete against them.²⁸ Voter turn-out was also lower in such 'bulldozed' districts: in

26 This electoral system is known as the 'bloc vote' system. However, this name can be misleading, because voters actually have a lot of choice under the system and do not have to vote for entire blocs.

27 Shi'i voters had tended to vote for Hezbollah in this manner even before 2005, but the assassination of Rafik Hariri also rallied Sunnis behind a common cause.

28 The candidates to seats ratio in 2005 was relatively low: 3.5 candidates per seat. When taking account of the number of candidates who withdrew before election day, the ratio is only 2.2.

Beirut, where 9 out of the 19 seats were uncontested, the turnout in the three constituencies was 32%, 31% and only 21% in Beirut III, where five out of seven seats were uncontested. At the other end of the spectrum, in the four constituencies of Mount Lebanon where electoral competition was more open, the turnout ranged from 49% to 56%.

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

In many electoral districts, because of the above-mentioned effect of the electoral system, the results were distinctly un-proportional. For example, in the election district of North II the 'March 14' list won all 17 seats with 52% of the votes, while General Aoun's 'People's Will' list won some 39% of votes but no seat.²⁹ It was results such as these in the 2005 election that led to general agreement in Lebanon that the electoral system was no longer tenable and that an alternative should be sought, prompting the Boutros Commission and the New Electoral Law.

2.2.3. Equality of Votes and Confessional Representation

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

This equality requirement is problematic in Lebanon, because it can conflict with the idea of confessional representation. Already the requirement that 50% of the seats should be filled by Christian candidates is a challenge to equality, given that Christian voters represent only 40% of the electorate.³⁰ However, this is not in itself a violation of the equality of votes as long as each seat represents a similar number of registered voters (or population).

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

30 According to the voters' lists, approximately 60% of registered voters belong to one of the Muslim confessions (see Table 3 above)

Equality under Article 25 ICCPR therefore seeks to regulate not who is elected (their confession or other affiliation), but that each seat should represent a similar number of voters:

*“The principle of one person, one vote, must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.”*³¹

Indeed according to the Lebanese Constitution (Article 27) members of the Chamber of Deputies represent the whole country, rather than a confession. In that sense, the confessional quotas could be compared to a women’s quota under which women are not elected to represent women specifically.

The distribution of seats under the 2000 law was relatively equal with the ratio of registered voters per seat ranging from 19,471 in the district of Bekaa III to 23,115 in the district of Beirut I (see Annex for a district-by-district overview).³² Yet under the New Electoral Law, the gap between the ratio of voters per seat in different areas has increased, widening to the point where a significant inequality has been created between the value of a vote in some areas compared with others.

2.2.4. Christian electorates for Christian seats?

After the 2005 elections Christian representatives from across the political spectrum complained that while there was confessional equality in Parliament, many Christian seats were effectively ‘controlled’ by majorities of Muslim voters, e.g. in the electoral district of North II some 65%³³ of Christian voters cast their vote in favour of Souleiman Franjeh who ran for a Christian seat in the district. However, given that some 65% of Muslims, who are the majority in the district, voted for the Sunni Muslim Hariri bloc, the Hariri bloc’s Christian candidate, who enjoyed only 37% Christian support, was elected to the Christian seat.³⁴ Under the previous electoral law, a total of 38 out of 64 Christian seats were in electoral districts where there was a majority of Muslim voters, while eight Muslim seats were in majority Christian districts.

³¹ UN HRC General Comment on art.25, point 21

³² Some variation in the numbers tends to unavoidable in order to respect existing administrative boundaries or geographic features. The UN Human Rights Committee has not determined a specific limit beyond which variations would be unacceptable. In the European context, the Council of Europe indicated that variations up to 15 per cent are acceptable.

³³ The Lebanese Parliamentary Encyclopedia by Kamal Fghally, August 2005, Beirut.

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

It is in principle a positive feature of Lebanon's electoral system that candidates have to appeal to voters across the confessional spectrum. However, it is true that in 2005 various electorates tended to maintain a confessional voting pattern with the Sunni and Shi'i electorates particularly cohesive in their votes. The New Electoral Law addressed this problem by increasing the number of electoral districts, creating 13 districts where all seats now represent only one confession; eight of these districts are only represented by 'Christian seats', while five only have 'Muslim seats.' Christian criticism has been addressed – 47 Christian seats are now in Christian majority districts as opposed to 37 under the former electoral law – but in doing so the law has created a serious problem. The increase in 'Christian control' of 'their seats' has necessarily come at the expense of the equality of the vote.

Where fewer voters control more seats, their voting power is higher than that of the other groups. While under the former electoral system the number of registered voters per seat varied between 19,471 to 23,115, the New Law's changes mean much larger differences in voting power: seats in predominantly Muslim Beint Jbeil district each represent 38,873 registered voters, while in predominantly Christian Kesrwan a seat represents only 17,656 voters. This conflicts with international standards and Article 24 of the Lebanese Constitution, which stipulates that there should be equal geographic representation.

There is no international standard on which electoral system to use. The change to the electoral system to increase the number of electoral districts is likely to increase the competitiveness of the elections and the proportionality of the results.

On the other hand, one half of the electoral districts are now 'mono-confessional'. This may affect the nature of electoral campaigning: where candidates do not have to attract voters of other confessions, they may be more prone to extreme confessional discourse. Furthermore, the new electoral districts have resulted in significant inequalities between voters. At its most extreme, in one district a seat represents fewer than 18,000 voters (Kesrwan) while in another a seat represents more than 38,000 voters (Beint Jbeil). Christian voters are overrepresented. This conflicts with international standards and the Lebanese Constitution.

The issue of the electoral system should be reviewed in line with ensuring the equality of votes and to revive the spirit of the Ta'if Agreement, which aimed at reducing the role of confessions in political life.

2.3. Periodic Election

According to the election law, the parliamentary term is four years (Article 1). The Constitution contains no provisions on the length of the term.

2.4. Election Administration

Elections are organised by the Ministry of the Interior (MOI), which co-operates with governors (Muhafez), who are appointed by the Minister, and 'sub-governors' (Qaimmakam).

The MOI manages the voter rolls, registers candidates for the elections, organises polling, counting and publication of the results and deals with complaints against the process. The MOI can suggest the adoption of government decrees to regulate the implementation of the electoral law, in cases where the law does not stipulate the relevant provisions (Article 115).

ELECTION ADMINISTRATION - OVERVIEW

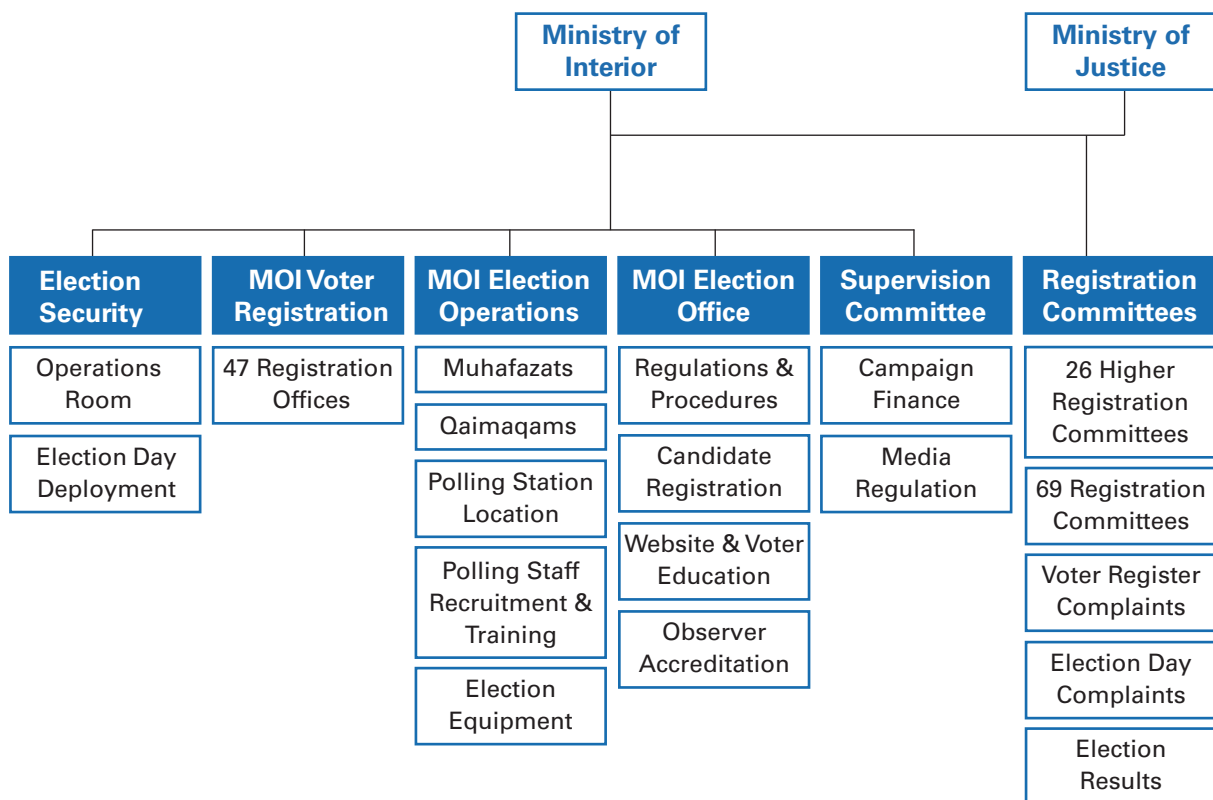


Diagram courtesy of IFES (Chambers/Sarkis)

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

The New Electoral Law also establishes a 'Supervisory Commission on the Electoral Campaign'. This Commission is appointed by the Council of Ministers after proposal by the Minister of the Interior. It is composed of ten members including three judges, two former Presidents of Bar Associations, two media experts and three electoral experts. The Minister of the Interior has the responsibility for the Commission and can chair its meetings without having a voting right. The Commission is thus a hybrid body, neither fully integrated into the executive branch of power nor independent from it. The functions of the Commission are limited to media issues and campaign financing (for a detailed analysis see below 2.7. and 2.8.).

While there is no international standard on the form that election management bodies should take, it is recognised that independent election commissions play a useful role in many transitional democracies. Indeed the UN Human Rights Committee interprets Article 25 ICCPR as meaning that "an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant."³⁵ The Boutros Commission had proposed the establishment of a fully independent electoral commission to manage all aspects of the elections, but this was not retained in the New Law.

There have been no significant changes to the structure of the electoral administration, which is largely run by the Ministry of the Interior. The only novelty is the establishment of a 'Supervisory Commission on the Electoral Campaign' with some functions related to media conduct and campaign financing. The Commission is not fully independent.

Given a history of mistrust in the electoral administration's impartiality it would be advisable for the Ministry of the Interior to consult stakeholders before making important decisions and ensure their wide and prompt publication afterwards.

³⁵ UN HRC, General Comment on art.25, point 20.

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

2.5.1. Eligibility/ Restrictions to Vote

As regards the voting age, the New Law refers to the Constitution, which sets the voting age at 21 years or older (Article 21 Constitution). The Boutros Commission had recommended lowering the voting age to 18, but this was not retained. The issue of the voting age has a political dimension in that some people assume that a lower voting age would benefit the Muslim electorate, because of its higher birth rates.

There is a list of exclusions for persons with convictions for specified felonies or misdemeanours (Article 4). Non-retired military personnel are not allowed to vote. This includes among others the army, public security forces and the customs police (Article 6). Under Article 25 ICCPR the notion of 'reasonable restrictions' on the right to vote is understood narrowly, thus the exclusion of military personnel or persons declared to be bankrupt appears to be unreasonable.³⁶ Ensuring that members of the security forces are able to freely and secretly exercise their constitutional rights should be regarded as a matter of proper procedure rather than a question of principle.

Naturalised persons are only allowed to vote ten years after naturalisation (Article 5). This conflicts with the UN HRC's interpretation of the obligations under Article 25 ICCPR.³⁷

There are no provisions for housebound, hospitalised or detained citizens to vote. Arrangements should be made to enable such citizens to vote, although this would need careful handling given the history of vote buying and lack of secrecy in Lebanese elections.

The law contains unreasonable restrictions of the right to vote, for example the exclusion of security forces from voting or the granting of voting rights to naturalised citizens only ten years after naturalisation. These restrictions are not in line with international standards and should be abolished.

³⁶ The leading commentary on the ICCPR considers the exclusion of the military from the vote to be unreasonable. See M.Nowak, ICCPR, Second Edition 2005, art.25, point 27.

³⁷ "Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25." UN HRC, General Comment on art.25, point 3. In the case of Kuwait the UN HRC recommended that a similar discrimination be abolished, see Paragraph 29, Concluding Observations by the UN HRC on Kuwait's State Report, 27 July 2000.

2.5.2. Voter Registration

The Ministry of the Interior (Mol) produces the voters' lists using the civil registry, which records people's personal status. Administrative changes to people's status are countersigned by Mukhtars on the basis of certificates issued by doctors (relating to death and birth) or religious authorities (marriage). This information is recorded at registration offices of the Mol.³⁸ The role of Mukhtars raises concerns since as elected representatives neither their neutrality nor their qualification for this work is necessarily guaranteed.

Citizens are usually registered in the place of their family's origin, which, in many cases, differs from their place of actual residence.³⁹ Changing one's place of registration is difficult. Procedures are not transparent and require approval from the Council of Ministers, which has substantial discretion. This question is politically sensitive as the transfer of registration can affect the number of voters of different confessions in each electoral district.⁴⁰ Thus the distribution of voters on the voters' list does not reflect today's demographic realities: for example, the electoral districts of Beirut have a relatively small number of voters, despite significant urbanisation over recent decades. According to estimates, half the country's population lives in Beirut, but there are only some 430,000 voters registered there.

The voters' lists are permanent and updated once a year between December 15 and March 30. The Mol updates the list using its own personal status records (including persons who have reached voting age or who may have died) and information sent by the courts and governorates on citizens convicted of crimes or declared bankrupt. On 10 February every year, the Mol sends an updated voters' list to each municipality, Mukhtar, Qaimmakam and Governor, where the list will be published for public inspection. The Mol also publishes the updated voters' lists on its website and a copy of the preliminary national voters' list is available to anyone for a fee.

Voters can complain about mistakes and omissions to a Registration Committee⁴¹ in their area and complaints against decisions of these committees may be made to the election district's Higher Registration Committee.⁴² The law contains no procedures on how the Higher Registration Committees

³⁸ There are 47 registries across the country.

³⁹ The system does not aim to register 'actual residence' in the civil registry. Citizens are registered at their places of residence separately (for paying local taxes, etc.) with no connection to the civil registry.

⁴⁰ Changing the place of registration is also difficult because of concerns that, following population movements during the civil war, changes in the places of registration could result in a bureaucratic form of 'ethnic cleansing'.

⁴¹ Registration Committees are composed of a judge as chairperson, a member of a municipal council in the electoral district and an employee of the Personal Status Directorate as rapporteur. The number and composition of the registration committees is fixed by decree.

⁴² Higher Registration Committees are composed of the President of an Appeal Chamber in the Muhafazat as chairperson, a judge and an inspector from the Central Inspection Bureau as members, assisted by a rapporteur from the Personal Status Directorate of the Mol.

should deal with these complaints (for example, concerning the timeframe in which a ruling should be made and the notification of concerned voters). This could be clarified through government decrees.

After changes are made, the voters' lists are sent to the Mol, which can refer any possible omissions or mistakes back to the registration committee. The final voters' lists are eventually adopted by the Mol on 30 March and will apply to any election taking place before 30 March of the following year. There is no provision in the electoral law for the publication of the final voters' lists.

The law does not provide for any exceptional revision of the voters' lists prior to elections occurring between the updating periods. Individuals becoming eligible for registration between 30 March and election day are simply not added to the list and are effectively disenfranchised until the next update period. Similarly, individuals who lose their eligibility remain recorded until their names are removed during the next annual registration. These problems should be resolved either by including in the update all those who will reach voting age before the next year's update (polling stations would then need to verify that each young voter had indeed reached the voting age by election day), or by an exceptional update of voters' lists before election days.

A voters' list includes each voter's name and surname, family registration number,⁴³ gender, father's name, date of birth and confession. In the past voters received a voter card but this has been abandoned in the New Law. Voters now identify themselves only with IDs or passports when they vote. Given irregularities with voter cards in the past, this is a positive development.⁴⁴ However, significant efforts are required to ensure that all citizens receive IDs; the Ministry of the Interior estimates that it needs to produce 700,000 IDs.

The New Law introduces out-of-country voting, although this will come into effect only for the elections after the upcoming June 2009 election. This is significant, because Lebanon has a sizeable diaspora.⁴⁵ Each voter who is registered in Lebanon will be able to register with embassies and consulates abroad, which will pass this information on to the Ministry of the Interior.⁴⁶ The Ministry prepares specific voter

⁴³ There is no specific individual registration number for each citizen. Persons are registered under a number given to their family, but these numbers are not unique. Registration is sub-divided into confessions and villages. The same numbers may be used in different sub-categories (e.g. a village may have a Maronite family with the number 20 and a Sunni family with the number 20).

⁴⁴ The EU EOM 2005 was highly critical of the voter card procedures, because voter cards were often organised by proxies, sometimes connected to candidates, who would bus voters to polling stations and hand out the voter cards only at the last moment. Final Report, p.46-47.

⁴⁵ Many political players believe there is a higher proportion of Christians in the diaspora than in the resident population and that out-of-country voting would increase the political power of Christians. In this vein it is sometimes suggested that there should be a trade-off between establishing out-of-country voting and a lowering of the voting age to 18, which is believed to be beneficial to Muslims because of higher birth rates. However, the debate is largely based on speculation in the absence of reliable statistical data.

⁴⁶ Due to an administrative glitch, it is unclear if young voters living abroad will be able to use these procedures for the first election in which they become eligible to vote; by the time they have ensured they are registered in Lebanon it will probably be too late to register with their embassy or consulate.

rolls for each embassy or consulate and indicates in the regular voters' lists that a person has registered abroad in order to prevent double voting.

Voter registration is based on the peculiar concept of registration at the place of family origin. This ignores that many people do not live at the place of family origin. However, any reform of voter registration would be politically sensitive, because it could change the distribution of the electorate across the country, including the confessional make-up, with consequences for the electoral system.

There appear to be some gaps in the law (for example no deadline for decisions of the Higher Registration Committee; no provision that the final voters' lists be published), which should be addressed by government decrees or guidelines from the Ministry of the Interior.

Voters who reach voting age after the end of the annual registration update but before election day are not currently allowed to vote. This should be changed - either voters' list updates could include all those reaching voting age before the next update (polling stations would then need to verify that the voter has indeed reached the voting age by election day), or there could be an exceptional update of voters' lists before election days. These measures would require changes to the electoral law.

2.6. Right to Stand: Registration of Candidates and Lists

All seats are reserved for specific confessions. In the past this meant that a candidate could not stand for election in a district if their confession had no seats there. Curiously but positively, the New Law is much more vague on whether candidates must be of the same confession as the seat for which they are running. Of course, it is highly unlikely that someone not matching the confession of a seat would win it.

A problem with confessional representation has been that candidates who are not affiliated to any of the 11 confessions represented in Parliament⁴⁷ (because they follow another religion or have no religious belief) are unable to stand for elections. The UN Human Rights Committee has considered these provisions to be in violation of Article 25 ICCPR:

*"The Committee notes with concern that every Lebanese citizen must belong to one of the religious denominations officially recognized by the Government, and that this is a requirement in order to be eligible to run for public office. This practice does not, in the Committee's opinion, comply with the requirements of article 25 of the Covenant."*⁴⁸

⁴⁷ One of the seats in Beirut is reserved for 'Christian minorities'.

⁴⁸ Point 23, Concluding Observations of the Human Rights Committee: Lebanon. 01/04/97. CCPR/C/79/Add.78

Registered voters who are at least 25 years old, literate and in possession of full civil and political rights are allowed to run for elections. Naturalised Lebanese are eligible only 10 years after they gain citizenship. The UN HRC has expressed concerns about discrimination between citizens by birth and those who are naturalised.⁴⁹

A candidate can only run for election in one electoral district. The law restricts military personnel, public personnel of the first and second rank, judges, chairmen or board members of public institutions as well as directors of these institutions and presidents and vice-presidents of municipal councils from standing as candidates. In some of these cases, a period must elapse after retirement or resignation from these posts before the right to stand is recovered.⁵⁰

While seats are attached to a specific electoral district, the law neither requires candidates to be resident nor registered as voters in the constituency for which they are running.

Prospective candidates have to register with the Mol at least 60 days before election day. The law does not specify when the Mol can start registering applications; it would therefore appear that applications could be made once elections have been called (at least 90 days before election day, see Article 44).

Candidates have to pay a fee of two million Lebanese Pounds (around €1,000) and a deposit of six million Lebanese Pounds. These are significant amounts, which bar poorer candidates from standing in elections. While deposits can be useful in deterring frivolous candidatures, the payment of a registration fee is unusual. The state should not charge citizens for exercising a fundamental right.

The deposit is returned if the candidate is elected or receives at least 20% of the votes cast.⁵¹ Candidates can withdraw up to 45 days before polling day. In this case they receive half their deposit back. In the past, persons often registered as candidates in order to then negotiate their inclusion in a promising 'list', or to be paid to withdraw their candidature.⁵²

49 See above footnote 37

50 Six months before the expiry of the Parliament's mandate in the case of public employees of first and second rank and for board members and director generals of state companies; two years in the case of presidents or vice-presidents of municipal councils (see art. 10).

51 Given the confessional pattern of voting, the requirement to win at least 10% of the vote appears challenging for candidates running for seats on behalf of small minorities and benefits those representing a large bloc.

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

Candidacy applications that do not comply with the provisions of the law are considered 'null' (Article 51). This provision is not entirely clear: it makes sense to deem an application lodged after the deadline 'null', but a faulty application lodged in time should not be considered 'null'; it should rather be rejected, leaving the applicant the option to revise or appeal.

Table 4

	Registration of individual candidates	Extension of deadlines if no candidate has registered (art.50)
E – 60	Deadline for submitting candidacies	
E – 55	Deadline for decision by the MoI	
E – 53		Extended deadline for submitting individual candidacies to still uncontested seats at E - 60
E – 50	Deadline for introducing petitions to the State Council against a rejection	
E – 48		Deadline for introducing petitions to the State Council.
E – 47	Deadline for State Council's final decisions (fast track procedure)	
E – 45	Deadline for withdrawing candidacies	Deadline for State Council's final decisions
E – 7	Deadline in case cancellation of candidatures hinders the election of the number of deputies needed.	

The right to stand for election is restricted because all seats are allocated to specific confessions; citizens with other or no beliefs cannot run in elections. The UN Human Rights Committee has declared this a violation of Article 25 ICCPR. The Ta'if Agreement's plan to create a second chamber to represent confessional groups could solve this problem.

The costs of candidate registration, consisting of a deposit and an administrative fee, are high. Standing in elections is a fundamental right and should not be subject to an administrative fee.

The law repeatedly mentions 'lists' of candidates, which have electoral rights and responsibilities. However, the law is silent on how a list is formed and how the rights and duties of candidates relate to those of a list they may choose to form. This should be clarified before the next elections by government decree.

2.7. Campaign Rules and Campaign Financing

The New Law fails to specify when the national electoral campaign begins, although it starts for potential candidates when they submit their applications (Article 54). Given that persons can register for candidature once elections are called (at least 90 days before elections), there remains a significant period (at least 30 days) until the registration deadline (60 days before the election), giving an unfair advantage to those who register first and creating confusion for other stakeholders. For example, the media need to know when campaign coverage rules come into force. The Ministry of the Interior should address this gap.

Local authorities must assign locations for campaign posters and other printed advertising material. Candidates are only permitted to advertise on these designated spaces. Given that in Lebanon election campaigning tends to be intense, involving widespread poster advertising, it remains to be seen if this provision is realistic. While the law is not explicit (Article 70), presumably each candidate has the right to equal advertising space.

Public buildings, private universities, schools and houses of worship may not be used for campaigning. In the past campaigning in mosques and churches was common. The law also prohibits the distribution of ballot papers or flyers in or near polling stations on election day. Traditionally candidates' agents beleaguer Lebanese voters at polling station entrances and it would mark progress if this practice were now prevented.

In the past money has played a major role in election campaigning and observers have criticised a lack of regulation.⁵³ The New Law contains detailed provisions on campaign financing (chapter five of the law). Candidates now have to open a single bank account for all donations and campaign expenditure, and each candidate may now spend no more than 150 million Lebanese Pounds (approximately €80,000) per election, plus an additional sum based on the number of voters in their electoral district and fixed by the Council of Ministers acting on the recommendation of the Ministry of the Interior. A candidate may spend their 'own money' (including family resources) and may receive donations from Lebanese citizens (natural or legal persons). Gifts in kind, cash or 'subscriptions' (party dues) are considered campaign contributions, with the exception of the work of volunteers.

53 The EU EOM to the 2005 elections noted: "the absence of adequate campaign finance regulations contributed to the creation of an uneven playing field during the election campaign. It has reduced the number of possible choices available for the electorate by preventing a number of candidates, who did not have the necessary financial resources, to run or by pushing them to withdraw." EU EOM final report, p. 38-39

Candidates may not give donations to voters or organisations during the election campaign period. The Supervisory Commission can form a committee to supervise candidates' adherence to campaign financing regulations and can check candidates' campaign accounts at any time.

Within one month of the elections candidates must submit detailed campaign accounts to be audited by the Supervisory Commission (Article 19 no.4). Intentional breaches of the campaign financing provisions incur a fine or a prison sentence of up to six months.

However, it will be difficult to prove intentional breach of these provisions. The New Law fails to specify how the Supervisory Commission can enforce accountability of candidates for their accounting. The Law includes no sanctions for false accounting, if no intent can be proven. Furthermore there are no deadlines by which the Commission should review accounts and no requirement to publish accounts of candidates. The new regulations risk irrelevance unless the Supervisory Commission resolves these failings in its internal regulations.

It is unclear when the campaign period starts. This should be clarified through sub-legal acts (government decrees).

The New Law adds more details to the rules on campaigning, some of which prohibit longstanding practices in Lebanon (for example widespread poster campaigns are now forbidden) and it remains to be seen if these will be implemented.

The New Law also includes new rules on campaign financing. However, apart from a penalty for intentional breaches law fails to stipulate when the Supervisory Committee should review the candidates' campaign accounts and any consequences for mistakes in the accounts or a requirement that candidates' accounts and the Commissions' auditing reports be published. The Supervisory Commission should address these deficits in its internal rules and regulations.

2.8. Media/Campaign

The Lebanese media landscape is as characterised by confessionalism as are the political institutions.⁵⁴ By convention the head of the Journalists' Union is a Christian while the head of the Publishers' Union is a Muslim. Confessionalism and the power of political families also determined the licensing of private TV stations under the 1994 audio-visual media law. These stations included⁵⁵ :

- Future TV, owned by the Hariri family
- The National Broadcasting Network, owned by the family of Parliamentary speaker Berri
- Al Manar TV, controlled by Hezbollah
- LBC Television (now LBCI), formed originally by the Lebanese Forces. A major shareholder is former Deputy Prime Minister Issam Fares (Greek Orthodox). It is now considered to be more neutral
- New TV (NTV), originally formed by the Lebanese Communist Party, but later controlled by
- Tahsin Khayat, who supported the 'People's Movement' (Arab nationalist, Greek orthodox)
- Orange TV owned by the Aoun family
- In January 2009 Murr TV will be re-launched. It is co-owned by FL and former MP Gabriel Murr

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

The New Law contains detailed provisions on media conduct during elections. This is positive, given that the earlier law contained only one article on the issue, which was violated by almost all media.⁵⁶ Analysts had raised concerns about the strong bias of much private media: "In general, the TV channel owners were clearly promoting one candidate or party over another and did not provide all of the candidates with equal access or fair coverage."⁵⁷

The New Law introduces regulation for paid media advertising by obliging all media companies intending to sell electoral advertising to report to the Supervisory Commission, including specifics of the advertising space or time they will sell and their price list. These submissions must be made 'ten days before the beginning of the electoral campaign' (Article 66), although this again raises the current law's failure to define the beginning of the campaign period, only mentioning the 'starting date of application for

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

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

56 See EU EOM, Final Report, p.52

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

candidacy' (Article 65). Even this is vague: it could refer to the application by a specific candidate or the date from which applications are generally open. Given that persons can apply for candidacy immediately after elections are called, the provision that the media should submit their intention to run electoral ads ten days before the campaign would require outlets to act before elections are called, which is of course impossible. Either the law is amended to clarify this situation or a government decree needs to fix the date when the campaign begins (Article 115).

The media is also now required to sell political advertising space to all candidates and at the same price. Electoral ads must be marked as such and indicate the advertising party. Requests for advertising and the relevant material (videotape, or print ad) should be submitted not only to the media company but also to the Supervisory Commission at least three days before the desired publication. No candidate should spend more than 50% of their advertising budget with any single media company. This is an important provision, given that many candidates tend to be closely linked to certain media.

The new advertising provisions are a novelty in Lebanese elections and would constitute significant progress if implemented. Some provisions may be too restrictive, for example obliging candidates to submit any ad three days before publication to the Supervisory Committee. This might prevent advertising reacting quickly to developments. It should be sufficient for a copy of any advertising request to be shared with the Commission without a specific deadline. After all, the New Law does not task the Commission with reviewing all ads before they are published.

The New Law also regulates election coverage (in addition to advertising), requiring the public media to remain impartial. They may not: "carry out any activity that might be considered to favour any candidate or list at the expense of another candidate or list" (Article 67). These provisions may stifle the work of the public media, because any comment on political platforms could be considered as partial. In other countries the public media are only required to provide an overall balance and fairness in their coverage of election campaigns. Such a standard allows the airing of critical or positive opinions, since it only requires overall balance in reporting.

All audio-visual media, including private media, are required to respect the freedom of expression, so that: "fairness, balance and impartiality among candidates and lists would be guaranteed" (Article 68). This seems to set a similar standard for private media as Article 67 sets for public media, with the only discernible difference being that private media should distinguish factual reporting from opinion and

comment (Article 68 paragraph 3). Presumably this means that they can express opinions that are not necessarily 'impartial'.

Article 68 paragraph 4 obliges media to refrain from libel, slander, defamation and from broadcasting: "anything that might trigger religious, confessional or ethnic sensitivities or acts of violence", as well as from "distorting, screening, falsifying, omitting, or misrepresenting information".

This paragraph raises a number of concerns: it is unclear whether it also applies to public media (Article 68 appears to be aimed at private media, but paragraph 4 is not clear on this). The obligations are sweeping and vague, for example 'omitting' information is arguably unavoidable for journalists whose very task it is to make editorial choices on what to report and what not. While the objective of preventing confessional violence is laudable, the notion of 'triggering ethnic sensitivities' is unclear and could be applied to anything said on confessional issues. Furthermore, it obliges media to screen paid advertisements provided by political groups before broadcasting, leaving considerable scope for controversy.

Article 68 paragraph 5 indicates that the Supervisory Commission: "shall ensure balance in media access (...) among competing lists and candidates by binding media companies to host all competitors – list representatives or individual candidates – under the same conditions in terms of timing, duration and program types." This represents a significant degree of control over all audio-visual media, including private media. The Supervisory Commission should consult all audio-visual media before determining its guidelines.

Article 75 states that the Supervisory Commission can decide whether candidates' access to foreign satellite media should be part of the "advertising and media spaces allocated by the Commission to each list or candidate." This is important given the influence of Al-Jazeera, for example. However, this provision raises a number of questions: the law gives no authority to the Commission to 'allocate' advertising space. The Article could therefore only mean that the Commission may decide that foreign channels have the same obligations as Lebanese media regarding paid advertising. This would be difficult to enforce, although the Commission could try to negotiate such obligations with foreign channels. It is also unclear what the article means by allocation of 'media spaces to each list'. Is each list to be given a maximum amount of media space during the campaign? However, the relevant Article 68 paragraph 5 says that media companies should be bound by the Commission to host all competitors under the same conditions in terms of timing, duration and programme types. Thus the Commission is tasked with pre-determining the degree of access of competitors in each media outlet.

The provisions on media are prescriptive and give significant authority to the Supervisory Commission. Yet many of these provisions are vague or unclear, risk deterring vigorous reporting and may prove too ambitious to be enforceable. The Supervisory Commission will have to clarify many issues left unclear by the law. The chapter on media conduct should also be reviewed and reformed after the next elections.

Candidates or lists can file complaints with the Supervisory Commission. The Commission must decide within 24 hours whether to raise the case with the Court of Publications. Where it finds a breach of the electoral law on media conduct, the Commission can issue a warning to the media outlet, oblige it to publish an apology or require its official response to the allegation. The Commission can also take the case to the Court of Publications, which has the power to fine the media outlet, partially suspend it for up to three days or in case of recurrent violation completely suspend it for three days. As well as complaining to the Commission, aggrieved parties may also file a request with the public prosecutor who can sue the outlet concerned at the Court of Publications. The Court of Publication normally renders its judgement within 24 hours. Its decisions can be challenged at the Court of Appeals.

The New Law's provision of speedy deadlines for the resolution of media-related complaints is to be welcomed. However, the existence of different channels of complaint - through the Supervisory Commission as well as the public prosecutor - may cause confusion. Both organs might also initiate cases on their own initiative, potentially giving rise to a situation where, for example, the Commission issues a warning while the prosecutor or the Court of Publications do not find a violation. This should be clarified when the law is reformed. In the short term the Supervisory Commission and the public prosecutor should agree on how to co-ordinate their media regulation during the forthcoming election, in order to avoid conflicting decisions and 'forum-shopping'.

There are detailed provisions on media conduct during elections, but many issues are unclear and need to be clarified by the Supervisory Commission ahead of the elections.

Positively, complaints about media conduct will have to be dealt with rapidly. Yet it is problematic that several public bodies can adjudicate media cases in parallel, potentially making conflicting rulings. The law should be amended to clarify a single channel of complaint. In the short term the Supervisory Commission and the public prosecutor should agree on a common policy to avoid 'forum-shopping' by complainants and conflicting decisions.

2.9. Voting

The law sets out objective criteria for the establishment of polling stations:

- A village with 100 – 400 registered voters should have a polling station
- Generally polling stations should not represent more than 400 voters, but if necessary for a smooth running of the elections the limit can be increased to a maximum of 800 voters
- There shall be a maximum of 20 polling stations in one polling centre

The list of polling sites has to be published at least 30 days before election day.

In the 2005 elections there were 5875 polling stations for 3,007,261 registered voters, an average of 512 voters per polling station. No specific provision regulates the choice of the buildings to be used as polling sites. In 2005 EU observers noted that several inappropriate locations (police stations or places of worship) were being used as polling sites.⁵⁸

The practice of registering voters with their families in their 'district of origin' is a longstanding administrative practice and is not enshrined in the election law. Voters are further allocated to polling stations by confessions, family and gender. This is unpractical, necessitating significant amounts of travel on election day and not following the real population distribution (see above 2.5.2. 'Voter Registration'). Combined with the use of ballots distributed by the candidates (see below), it also makes it easier for candidate agents to oversee the choices of voters and indeed of entire families gathered together in one district.

Under the New Law polling is to take place on one Sunday, from 7am until 7pm.⁵⁹ Polling on one day is a novelty in Lebanon, where past elections were held in different regions on consecutive Sundays. Polling on one day is preferable to grant all voters the same conditions, yet for the electoral administration this will be a challenge.

Voters are entitled to vote with their ID or their passport, which are checked against data in the voters' list in each polling station.

The New Law increases the security and integrity of the polling process by introducing transparent ballot boxes and indelible ink to mark the fingers of those who have voted.

⁵⁸ EU EOM, Final Report, p. 57

⁵⁹ The closing time can be extended in order to allow voters present at 7pm to cast their ballots (art. 93). Where this occurs, it must be mentioned in the minutes.

Each polling station is composed of a head and one or more clerks, appointed by the governor from civil servants; these are often teachers.⁶⁰ They are informed of the location of their polling station only three days before election day. In addition to the staff appointed by the governor ahead of election day, four assistants are added on election day morning: two are chosen by the head of the polling station and two by the voters present at the opening of the polling station from among themselves. The EU EOM in 2005 observed that assistants were mostly candidates' representatives.⁶¹ In 2005 no specific training was given to the appointed staff prior to the elections. According to EU observers this resulted in their poor performance and led to many inconsistencies in implementing voting procedures.⁶²

There is no requirement to use official ballot papers. When voters enter the polling station they are: "supposed to discretely hold a paper containing the names of candidates they wish to elect" (Article 87). Alternatively voters can write the desired names on the 'blank papers' inside the polling booth. The law is not explicit, but there is no reason why the Ministry of the Interior should not make the 'blank papers' official ballots, for example by stamping them or by printing official blank ballot papers.

The practice of using ballots prepared by anybody is permitted almost nowhere else in the world.⁶³ Voters can write their choice on any piece of paper, even a napkin as has happened in the past. Usually parties or lists give voters prepared ballots, which often not only prevent a voter from making any changes (for example, the print fills the whole paper so it is impossible for a voter to strike through one name to enter another one), they also allow a party or candidate representatives to trace a vote back to a specific voter (for example, slightly different fonts are used for each voter or group of voters, such as a family). This practice undermines the secrecy of the vote and furthers clan and confessional control of voting blocs.

The shortcomings of a vote without official ballots are well known and have been amply discussed in Lebanon.⁶⁴ The EU's first recommendation after the 2005 elections was to abolish this practice. The Boutros Commission also urged the adoption of a uniform pre-printed official ballot. Yet, when Parliament voted on the New Law in September 2008, fifty MPs (out of 70 present) rejected the introduction of such a ballot. These MPs were from the major parliamentary groups of '14 March' and '8 March'.

60 A special poll is arranged for these civil servants ahead of election day (art.80)

61 EU EOM, final report, p.44.

62 Ibid, pp. 56-57.

63 In some countries political parties can print ballots and give them to voters; however, they have to print the ballots according to uniform specifications. In Lebanon, there are no specifications.

64 As well as numerous interventions by Lebanese civil society on this issue, see also the EU EOM 2005 Final Report, which identified this as a serious shortcoming. Final Report, p.43

Voters place their ballots in official envelopes before casting them. The New Law introduces transparent ballot boxes and the inking of fingers of those who have voted, in order to avoid double voting. Physically impaired persons unable to vote without help can be assisted to vote by another voter of their choice, although where this occurs it is to be mentioned on the voters' list. The New Law obliges the Ministry of the Interior to take all measures to allow physically impaired voters to cast their ballots. This is a positive innovation of the New Law.

The New Electoral Law retains the globally unusual practice that voters can write their choice of candidate(s) on any piece of paper. This allows political parties and groups who produce most of the ballots to undermine the secrecy of the vote. Despite significant lobbying by civil society and the international community a majority of MPs decided to maintain this outdated practice, which opens the door to electoral corruption.

However, the New Law foresees that for the first time there should also be blank ballots in each polling booth. The Ministry of the Interior should consider giving these blank ballots an official seal and the polling station officials should encourage voters to use these blank ballots in the interest of keeping their choice secret.

Otherwise the New Law has introduced a number of positive changes, such as the use of transparent ballot boxes and the inking of voters' fingers to avoid double voting.

2.10. Counting, Tabulation, Aggregation

Votes are counted in polling stations in the presence of candidate agents and authorised observers. Discrepancies in the number of envelopes used and voters checked on the voters' list must be noted in the minutes. Envelopes are to be opened one at a time with names of the selected candidates being read out. At the same time each ballot is projected on a screen so that everybody can see it.

If a ballot contains too many candidates, the relevant confessional candidates first mentioned are counted. Ballots or envelopes containing marks or insults are considered invalid. The New Law stipulates that misspelt names – even one misspelt name in a list of several – invalidates a ballot. Better practice would be only to invalidate the misspelt candidate(s) and not the whole ballot as long as the other name(s) can be identified (Article 96).

Results are posted immediately on the polling station door and candidate agents are given certified copies upon request.

The minutes together with all relevant materials are forwarded to the Registration Committee Office (RCO). The RCOs review the polling stations' decisions and announce the figures for each polling station, drawing up a record with the aggregation of all results. These are signed by RCO members and passed on to the Higher Committee of the Electoral District.

The Higher Committee then aggregates the results for the electoral district. It can correct tabulation mistakes. It announces the results to all candidates and their agents.

The Higher Committee passes the final minutes and the table of results to the governor (Muhafez) or the district commissioners (Qaimmakam). They send the information immediately to the Ministry of the Interior, which announces the final results for all candidates and the names of the winning candidates.

The law leaves some gaps in this process of aggregation, which should be addressed by government decrees. While the results at polling station level are posted on the door of the premises, results aggregated at all the intermediary levels until the national level are not publicly posted. The law should require the public posting of results at all levels of the count to increase transparency and allow any interested person to follow the process. Furthermore, while the law provides that polling stations and Higher Committees announce the results to everybody present, no such announcement is foreseen at the intermediate level of the Registration Committees. The law also fails to specify what 'announcement of final results' by the Ministry of the Interior means. It should mean that the Ministry of Interior announces results to the media and candidate agents and publishes them in the Gazette and newspapers, and the law should make these steps a requirement. In the interest of transparency and confidence in the process the Ministry should also publish complete and detailed results on the Internet, right down to polling station level. This would allow all interested parties to see how the overall results break down.

In contrast with past practice ballots are not destroyed after counting. This is a positive measure in the New Law, because it allows for recounts. It also puts an onus on the electoral administration to safeguard ballots to avoid any post-election tampering. While the law states the Central Bank of Lebanon must store used ballots for three months after the announcements of results, there is no provision of how the

ballots should get there from the polling stations. Article 98 lists the items that are to be passed from the polling stations to the Registration Committees, but the list does not mention the valid ballots. This omission should be rectified by government decree or instructions from the Ministry of the Interior.

The New Law's arrangements for counting and aggregating ballots appear adequate, but a number of sensitive issues are not regulated.

There is no requirement for announcing and publicly posting results at all levels of the process of aggregation. Furthermore there is no obligation that detailed results be published at the end of the process. This is regrettable since only a detailed publication of results down to polling station level allows interested persons to see how the overall results break down.

There is also no provision on how valid ballots should be transferred to the Central Bank (where they are to be stored for three months).

These omissions should be rectified when the law is reformed. In the short term they should be addressed by government decree in line with Article 115.

2.11. System for Complaints and Appeals

The New Electoral Law provides for only two specific instances where complaints or appeals may be made: complaints against decisions on voter registration by registration committees can be lodged with the higher election committees - but only until March 30 each year (Article 39). This leaves no possibility of making a later complaint should voters discover before an election that they have since been deleted from the voters' list. Secondly, refusals by the Ministry of the Interior to register a candidate can be appealed to the Council of State (Article 49).

However, according to the administrative code (Article 63), all decisions by the public administration can be appealed to an administrative court. This should provide a basis for appeals on issues other than those explicitly mentioned as open to appeal in the Electoral Law. According to the Constitution (Article 19), the Constitutional Council shall arbitrate conflicts arising from Parliamentary or Presidential elections. It seems that this provision relates to disputes over election results.⁶⁵ However, at the time of writing the Constitutional Council is not yet functional; its judges were only recently appointed after years of

65 Art.30 Constitution indicates "deputies alone have the competence to judge the validity of their mandate," but adds: "this clause is automatically cancelled as soon as the Constitutional Council is established".

paralysis due to disagreements over appointments. The ICCPR requires (article 2) that there should be an effective remedy against any potential violations of ICCPR rights, including the violations of the right to vote and to stand in elections.

Given the role of the Constitutional Council in providing remedies against potential electoral violations it is vital that it functions properly during the election period.

2.12. Election Observation

Each candidate or list can delegate representatives to each polling station in their electoral district to witness polling and the counting of votes (Article 83). The law indicates that these observers be authorised by the Ministry of the Interior, but does not detail procedures such as deadlines; this should be regulated by the Ministry of the Interior.

As far as non-partisan election observation is concerned the law permits Lebanese organisations to 'accompany and observe' the elections (Article 20) provided they fulfil a number of conditions (non-profit status, three years since lodging articles of incorporation, no connection to any political party, no fewer than 100 members, etc). The law indicates that the organisation's 'administrative board shall comply with a Code of Ethics established by the Ministry of the Interior'. Usually codes of ethics or conduct apply to all election observers, not just the boards of the relevant organisations.

Non-partisan election observation has become a global practice. The UN Human Rights Committee interprets Article 25 ICCPR in the sense that "there should be independent scrutiny of the voting and counting process (...) so that electors have confidence in the security of the ballot and the counting of the votes."⁶⁶

As far as international election observation is concerned, the law indicates that the Ministry of the Interior should study international requests on the basis of conditions that it will specify. The current Minister has already made clear that the Council of Ministers will need to decide on requests by international organisations.⁶⁷ When drawing up guidelines for international observers, the Ministry should draw on the UN-sponsored 'Declaration of Principles for International Election Observation',⁶⁸ which includes a

⁶⁶ UN HRC General Comment on rt.25 (1996), point 20.

⁶⁷ „Carter fleshes out offer to monitor Lebanese elections;”The Daily Star, 12 December 2008

⁶⁸ The declaration can be downloaded at: http://www.accessdemocracy.org/library/1923_declaration_102705.pdf

list of guarantees that are required for meaningful international election observation, as well as a code of conduct for international election observers.

The media can receive written authorisation from the Supervisory Commission if they wish to cover polling or counting procedures (Article 68). The law provides no details on how they may acquire such authorisation. The Supervisory Commission should provide media with relevant guidelines.

The current law allows for the observation of elections by representatives of candidates, non-partisan domestic observers and international observers. In all cases however, there is a need for regulation by the Ministry of the Interior to set out the conditions and procedures in greater detail.

2.13. Representation of Women

Women are underrepresented in Lebanon's political institutions. There is only one female minister and in 2005 only six women were elected among the 128 MPs (4.7%), some uncontested and largely thanks to their family backgrounds. This is far below the global average of 17.2%. The current election law contains no specific provisions to increase women's representation. Generally electoral systems with large election districts are more favourable to women's representation, because the larger a district is, the higher the possibility for a woman who is part of a bloc or list to win a seat. Therefore the new electoral system with its greater number of small districts (2-10 seats) militates against the election of women to Parliament. In addition, the cross-confessional set-up of most lists makes it even more difficult for women, because political leaders may consider it advantageous to present men in cases where a particular confession only has one or two seats.

Women are likely to be particularly disadvantaged as voters by the insufficient secrecy of the vote; the lack of exclusive official ballots facilitates family voting.⁶⁹ The fact that voting takes place in the 'district of origin' may also disadvantage women voters who may not be able to travel on election day because of family duties.

Women are significantly underrepresented in the Lebanese Parliament (4.7%). The electoral system and administrative arrangements present barriers both to female candidates and female voters.

⁶⁹ Women could choose to use official ballots, but the reality of family voting is that there is pressure to use the ballot prepared by the list that a family has 'decided' to support.

3. Local Elections

The only elected local bodies are municipal councils⁷⁰ and Mukhtars. There are currently 771 municipalities, but not all have municipal councils. The terms of municipal councils are six years and they elect presidents and vice-presidents for six-year terms with a possible recall in the third year. The municipal councils' competencies cover local development issues, excluding national infrastructure, national taxation, national security⁷¹ and national education.⁷²

The local electoral system traditionally used is the same 'bloc vote' system used in national elections: a voter can vote for as many candidates as there are seats.⁷³ The candidates with the most votes win the seats. However, there are significant differences between the national and local electoral systems:

- Municipality seats are not reserved for confessions
- Candidates for municipal seats (and Mukhtar) have to be registered voters in the district where they are running, unlike in the parliamentary elections where a candidate can run for a seat where he is not a voter
- Family members (up to three degrees of relation⁷⁴) cannot be elected in the same municipality

The institution of Mukhtars, with its roots in the Ottoman Empire, has some local prerogatives, including: maintaining the civil register and dealing with all kinds of proof of residency (necessary for bank loans, passports, etc).⁷⁵

Historically, municipal elections were considered to be relatively competitive because in small municipalities, in particular, social control made manipulation more difficult. Local elections were stopped in 1964⁷⁶ and only reinstated in 1998 following a civic campaign.⁷⁷ With the exception of big cities, turnout tends to be higher in local elections than in national elections.

While the former electoral law mentioned municipal elections, the new one does not. It would therefore seem that the old election law is still in place in relation to municipal elections, but this cannot be a tenable solution. The New Electoral Law itself notes that "all texts opposing the provisions of the present

⁷⁰ The first law was issued on 27 November 1947; a new legislative decree (number 118) was issued in 1977.

⁷¹ They can appoint unarmed municipal police for traffic circulation and other limited duties.

⁷² They can help with the infrastructure of public schools.

⁷³ Nine seats for 2000 voters; 12 seats for up to 4000 voters; 15 seats for up to 12000; 18 seats for up to 24000; 21 seats for those with more than 24000 voters. Beirut and Tripoli each have 24 seats.

⁷⁴ If two family members are elected, only the oldest gets to keep their seat.

⁷⁵ This is regulated in the law of 27 November 1947.

⁷⁶ Beirut municipal council elections were already stopped in 1959.

⁷⁷ The campaign was initiated by LADE in a coalition named 'Balladi, Baldaty, Baladiyati' ('my home, my town, my municipal council').

law (...) shall be deemed null; particularly, law no.171 issued on January 6, 2000 (Article 117)". Although the wording leaves some room for interpretation it appears that the legislator intended to abrogate the former electoral law in its entirety. This leaves a requirement for legislation on municipal elections.

There currently appears to be no law in force on the holding of municipal elections. The legislator should address this gap. While it may be useful to apply the New Law to local elections as well, there should also be a thorough review of the history and context of local elections to ensure that new legislation is tailor-made for local elections.

Recommendations

1. The delimitation of electoral districts should be reviewed in order to ensure the *equality of the vote* and to seek ways to limit the role of confessionalism in political life, rather than enhancing it.
2. Unreasonable restrictions of the *right to vote* should be abolished, namely: security forces should be allowed to vote and naturalised citizens should enjoy the same voting rights as other citizens.
3. The equal *right to stand* for election is violated by the fact that all seats are allocated to specific confessions: by law citizens with other or no beliefs cannot run in elections. The implementation of the Ta'if Agreement's provision to create a second chamber to represent confessional groups would solve this problem. This solution is foreseen in the Constitution (Article 22).
4. Given historic mistrust of the *electoral administration's impartiality* and in the interest of transparency, the Ministry of the Interior should consult stakeholders before important decisions are made and ensure wide and prompt publication of all relevant decisions.
5. There should be a discussion on a comprehensive *reform of voter registration*, which is now based on a peculiar concept (registration at the place of family origin), taking no account of the actual residence of many voters. This is politically sensitive, because a reform would change the electoral map of Lebanon. Furthermore:
 - The law does not regulate a number of aspects of voter registration (for example no deadline for decisions of the Higher Registration Committee; no provision that the final voters' list be published). In the short term, these should be addressed by government decree.
 - The law should be changed so that voters who reach voting age after the end of the annual registration update but before election day should be allowed to vote.
6. The costs for *candidate registration*, consisting of a deposit and an administrative fee, are high. The right to stand in elections is a fundamental right and should not be subject to an administrative fee.
7. The law repeatedly mentions '*lists of candidates*' which can have electoral rights and responsibilities. However, the law is silent on how a list is formed and how the rights and duties of candidates relate to those of a list they may choose to form. This should be clarified before the next elections by government decree and in the long term the law should be amended.

8. The provisions on *media conduct* during elections need to be clarified. In the short term the Supervisory Commission should issue guidelines. Positively, complaints related to media conduct will have to be dealt with rapidly. It is however problematic that several public bodies can be involved in parallel in dealing with media related cases: this could result in conflicting decisions. The law should be amended to clarify the complaints channels. In the short term the Supervisory Commission and the Public Prosecution should agree on close co-operation in these cases to avoid 'forum-shopping' by complainants and diverging decisions.
9. It is unclear when the *campaign period* starts. This creates significant legal uncertainty and should be addressed in the short term by government decree in the long term by amending the law.
10. While there are detailed rules on *campaign financing*, these provisions are inconsequential. Apart from penalties for intentional breaches of the rules there are no consequences for submitting incorrect accounting and no explicit requirement that candidates' accounts be published. In the short term the Supervisory Commission should decide to publish these accounts. In the long term the law should be amended in these respects.
11. The *secrecy of the vote* is not guaranteed because there is no uniform, exclusive official ballot; voters can write their choice on any piece of paper. In reality candidates and lists often prepare ballots that allow them to track ballots cast by certain voters or families. In the short term voter education campaigns should encourage voters to use the blank ballots, which according to the New Law are to be available in each polling booth. The Ministry of the Interior should give these blank ballots an official seal. In addition, polling station officials should explain to voters that the blank ballots are best suited to ensure the secrecy of their vote. Beyond these provisional measures the law should be amended and official exclusive ballot papers be made available in each polling booth and marked with an Interior Ministry official seal.
12. A number of sensitive aspects of the *counting of votes and the aggregation process* are not regulated in the law, including: there is no requirement for detailed results to be announced at all levels of the process of aggregating results; there is no requirement that detailed results down to polling station level be published at the end of the process; there are no provisions on how valid ballots should be transferred to the Central Bank for storage. In the short term these deficits should be rectified by government decree. In the medium term the law should be amended to specify these aspects.

13. Procedural details of *election observation* (accreditation procedures, rights and duties of observers, etc.) should be regulated by government decree. These procedures should be based on the UN-sponsored 'Declaration of Principles for International Election Observation' and the related code of conduct.
14. *Women's representation* in Parliament should be increased. In the short term political groups should consider this issue. In the longer term, the negative effects of the electoral system and the electoral procedures for women's representation should be addressed.
15. There should be a new local election law in place for the *local elections* in 2010. While the New Law for parliamentary elections may be declared the basis for local elections, there should first be a detailed review of the specific aspects and requirements of the local election process.

ANNEX 1

**Electoral Districts/ Registered Voters/ Equality of Votes/ New Law of 2009
Based on 2008 Data from the Ministry of the Interior**

[Table courtesy of IFES - Chambers/Sarkis]

Registered Voters by District and by Confession									Parliamentary Seats by District and by Confession							Number of voters per seat	As % of average
District	Maronite	Greek Orthodox	Greek Catholic	Armenian Orthodox	Armenian Catholic	Minorities	Evangelical	Total Christians	Sunnite	Shia	Druze	Alawite	Total Muslims	Others	Total		
Akkar	28,084	36,605	2,255	51	19	33	706	67,047	140,479	2,050	0	10,534	153,063	7	220,823		
	1	2						3	3			1	4		7	31546	128,2%
Minnieh Dinnieh	6,255	7,773	57	0	2	3	0	14,090	79,785	50	0	16	79,851		93,941		
								0	3				3		3	31314	127,2%
Tripoli	4,281	12,220	1,213	1,873	258	870	558	20,715	149,466	1,375	10	14,211	165,062	42	186,377		
	1	1						2	5			1	6		8	23297	94,7%
Zgharta	58,594	2,405	166	33	71	13	46	61,282	7,865	66	0	16	7,947	1	69,276		
								3					0		3	23092	93,8%
Koura	10,956	37,200	188	46	1	64	159	48,455	7,164	1,104	2	368	8,638	2	57,254		
		3						3					0		3	19085	77,5%
Batroun	41,998	9,081	1,574	193	53	172	12	53,071	3,070	871	0	40	3,981	4	57,068		
								2					0		2	28534	115,9%
Bcharreh	44,413	253	93	26	0	30	0	44,815	6	0	0	0	6	3	44,824		
								2					0		2	22412	91,1%
Kesrwan	79,026	1,054	2,900	1,510	662	1,339	126	86,491	253	1,391	3	9	1,656	5	88,278		
								5					0		5	17656	71,7%
Jbeil	53,350	2,427	469	1,025	46	161	78	57,478	1,767	13,982	0	9	15,758	13	73,327		
								2		1			1		3	24442	99,3%
Metn	74,391	24,157	16,223	25,608	7,092	7,523	2,578	154,994	2,742	4,192	2,208	191	9,333	15	166,920		
		2	1	1				8					0		8	20865	84,8%
Baabda	56,352	11,296	7,608	1,443	711	2,258	499	79,668	8,254	33,796	24,744	10	66,804	19	146,990		
								3		2	1		3		6	24498	99,5%
Aley	28,058	14,873	3,804	670	110	584	902	48,099	1,500	3,365	59,983	0	64,848	52	113,901		
		1						3			2		2		5	22780	92,6%
Chouf	52,077	945	12,145	41	51	121	608	65,380	49,325	3,667	53,898	0	106,890	11	172,889		
			1					4	2		2		4		8	21611	87,8%
Saida	1,290	216	1,744	196	20	138	121	3,604	43,215	4,412	42	0	47,669	1	51,395		
								0	2				2		2	25698	104,4%
Zahrani	9,899	154	12,140	8	23	22	422	22,246	2,450	64,312	37	0	66,799	1	89,468		
			1					1		2			2		3	29823	121,2%
Nabatieh	3,631	36	1,042	0	9	3	0	4,721	892	109,403	2	5	110,302		115,023		
								0		3			3		3	38341	155,8%
Jezzine	33,187	88	8,195	29	14	40	22	41,553	955	10,375	474	0	11,804	1	53,380		
			1					3					0		3	17793	72,3%
Tyre	2,264	514	6,690	1,074	119	232	474	10,893	12,209	127,860	0	0	140,069	38	151,474		
								0		4			4		4	37869	153,9%
Beint Jbeil	11,336	0	2,967	47	16	0	41	14,366	187	102,024	0	0	102,211		116,618		
								0		3			3		3	38873	157,9%
Marjeyoun-Hasbay	6,216	10,448	3,619	63	30	281	1,235	20,657	22,586	72,204	15,264	0	110,054	13	131,959		
		1						1	1	2	1		4		5	26392	107,2%
W. Bekaa-Rachaya	9,467	9,644	10,096	30	41	150	350	29,428	55,747	15,992	17,522	0	89,261	5	119,044		
	1	1						2	2	1	1		4		6	19841	80,6%
Zahle	24,546	14,675	29,413	8,360	1,858	6,640	1,273	85,492	37,422	21,373	740	9	59,544	68	146,377		
	1	1	2	1				5	1	1			2		7	20911	85,0%
Baalbeck-Hermel	19,946	2,108	15,400	153	4	60	33	37,671	33,155	178,190	0	94	211,439	0	249,143		
			1					2	2	6			8		10	24914	101,2%
Beirut 1	15,275	23,882	12,027	15,486	4,485	9,828	2,044	80,983	6,150	1,793	258	30	8,231	67	91,325		
	1	1	1	1	1			5					0		5	18265	74,2%
Beirut 2	3,627	2,270	2,153	27,353	3,443	3,103	2,238	41,949	29,136	24,785	130	28	54,079	461	98,727		
				2				2	1	1			2		4	24682	100,3%
Beirut 3	5,410	15,978	5,327	5,004	1,066	8,461	2,869	41,246	157,071	33,874	4,623	44	195,612	4,885	244,612		
		1				1	1	3	5	1	1		7		10	24461	99,4%
Total Voters	683,929	240,302	159,508	90,322	20,204	42,129	17,394	1,236,394	852,851	832,506	179,940	25,614	1,890,911	5,713	3,150,413		
Total Seats	34	14	8	5	1	1	1	64	27	27	8	2	64	0	128	24613	100,0%
1)	20115,6	17164,4	19938,5	18064,4	20204	42129	17394	19319	31587	30834	22493	12807	29545		24613		
2)	81,7%	69,7%	81,0%	73,4%	82,1%	171,2%	70,7%	78,5%	128,3%	125,3%	91,4%	52,0%	120,0%		100,0%		

1) Number of voters per confession per seat 2) As % of average of voters per seat

ANNEX 2

Electoral Districts/ Registered Voters/ Equality of the Vote/ Old Law of 2000

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

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The Lebanese Association for Democratic Elections

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