



Human Rights Information  
& Training Center



## Comprehensive Assessment of Election Framework

Final Report

# Yemen

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## Executive Summary

Yemen was the first state on the Arabian peninsula to hold multi-party elections with universal suffrage and remains the only state holding elections at all levels (presidential, parliamentary and local council). There is a comprehensive legal framework for elections. However, while some legal provisions represent best electoral practice, others contain significant shortcomings.

Yemen has a tradition of resolving disputes between the government and the opposition through often last-minute political agreements, rather than through legislative amendments. This frustrates the development of a stable election framework based on lessons learned from previous processes.

A comprehensive reform of the legal and administrative framework is overdue. Reform should fully incorporate international standards for democratic elections such as Article 25 of the UN's International Covenant for Civil and Political Rights, as well as best practices. This would improve future elections and contribute to political stability. There is still time to address some legal shortcomings ahead of the parliamentary and local elections in spring 2009, and for the State Commission on Elections and Referenda (SCER) to clarify the implementation of legislation, for example by revising its electoral manuals.

Holding democratic elections in Yemen is challenging. The state is dominated by the President. The ruling General People's Congress (GPC) party enjoys a huge parliamentary majority. The GPC and opposition Joint Meeting Parties (JMP) umbrella grouping have failed to agree on electoral reforms and there is now a risk that the JMP will boycott the 2009 elections. Holding elections which are neither pluralistic nor inclusive would be a significant backward step. Time is running out for the government and opposition to come to an agreement. It may already be too late to improve some aspects of the process, for example registering voters.

## **Political Context: A Tribal Republic?**

The Republic of Yemen is sometimes described as the only representative democracy in the Arabian peninsula. It is the only state in the region with a directly elected head of state and parliament. Yet while opposition parties have been able to function openly, since unification the Republic has been dominated by President Saleh, around whom almost all political power has been concentrated. Parliament is a relatively weak institution, more a platform for patronage than a legislating body or forum to hold the executive accountable.

Yemen has many seemingly contradictory features. The GPC is the 'party of power', but is not a strong political institution. It has a huge parliamentary majority but many political decisions are taken outside parliament, sometimes on the basis of inter-party agreements. Elections are held routinely but without expectation of real political change.

Disputes within tribes, between tribes, and between tribes and the central government remain key to Yemeni politics. Tribal leaders are the most important constituents and the seemingly powerful president and a relatively weak government rely on their support. Yemen's political system has been described as 'pluralistic authoritarianism'<sup>1</sup>, but given the strong role of tribes behind the formal institutions, it could also be described as a 'tribal republic'.

In the south, with a previous tradition of its own government, there is a strong sense of political disempowerment in the face of strong central state authority. The civil protests in southern governorates against perceived discrimination by the ruling ('northern') power, which began May 2007, met with a forceful government response.

## **The 2009 Elections: A Potential Step Backwards?**

Elections for the 301 seats in parliament as well as local elections for 21 governorate councils and the 333 district councils are scheduled for April 2009. A new electoral commission has been appointed and election preparations are already underway yet there is still no political agreement on the rules for the election.

While the last parliamentary elections in 2003 and the Presidential elections in 2006 were pluralistic, there is a risk that the main opposition JMP will boycott the 2009 parliamentary and local elections, as it did in 1997. Although 'eleventh hour' agreements have generally been reached in the past, and some believe the 2009 elections will be no different, pre-election tensions are running higher than normal. The conflict with the Huthi rebels in the north may 'officially' be over, but resentment in the south remains palpable.

1 See the Carnegie Paper Evaluating Political Reform in Yemen, referencing the original use by Marsha Pripstein Posusney and Michele Penner Angrist: The Middle East's Democracy Deficit in Comparative Perspective, Authoritarianism in the Middle East: Regimes and Resistance.

Any prospect of early agreement on reforming the rules for the 2009 election was undermined by the temporary detention of many southern opposition leaders and the opposition has yet to decide whether to participate in the elections. The JMP believes electoral reform is essential and that their participation in a flawed process would undermine their credibility as a meaningful political force. Some in the GPC seem to believe that so long as the smaller 'National Strategic Alliance of Parties' (NSA) can be persuaded to participate in the 2009 elections there will be a pluralistic contest of sorts. However, holding elections without the main opposition, or postponing elections beyond their due date would raise serious questions about Yemen's political stability.

In July 2008 the President announced proposals to amend the Constitution by establishing a bicameral parliament according to which the Shura Council would become an upper house with full legislative power. 75 per cent of the Shura Council members would be indirectly elected by the two levels of local councils while 25 per cent would be appointed. If the President's proposals are accepted by the House and at a subsequent national referendum, the House elected in April 2009 will have to share its powers with a body that is partly indirectly elected and partly appointed by the President. The 25 per cent of Shura Council members appointed by the President, especially, give the ruling party a significant and unfair advantage in steering future legislation.

If the proposed constitutional amendments are adopted (and even if the House approves them, there will probably need to be a referendum on the issue) the next local elections become important because the new local councils will have a role in electing the Shura Council.

## **Enjoyment of Political Rights**

The Political Parties Law permits parties to function but contains a number of restrictions on parties' activity. While some of these restrictions are reasonable others hinder the effective organisation and development of parties, in particular regarding party funding, lessening parties' ability to conduct election campaigns.

There is concern about the general position of the media in Yemen. There is no clear provision against the censorship of the media. The Press and Publications Law is contradictory; while it seeks to guarantee freedom of expression it also grants the authorities powers to restrain the press. A new press law has been under discussion for many years but the 1990 law is still in force. There is no law regulating audio-visual and other electronic media and there is no privately-owned audio-visual media in Yemen.

Another concern is the political rights of women. While the law stipulates equal election rights for men and women, in practice women face significant obstacles to being elected. Women face considerable

difficulties in securing party nominations as candidates or complying with nomination procedures to run as independent candidates. The first past the post (FPP) election system also militates against women's representation. There has been vague discussion of adopting a 15 per cent quota for women, which is permitted under international law. Yet it is hard to see how the quota might work in practice, unless the election system is amended. An estimated 1.5 million women are not registered to vote.

Election monitoring is provided for in law. Observation by political parties, candidate representatives, non-partisan groups and international organisations does establish a measure of transparency.

### **The Legal Framework: Still Time to Reform**

While some provisions of the Election Law represent best practice, others are unclear. The following shortcomings are particularly noteworthy:

- Historically, the composition of election administration bodies in Yemen has been highly politicised and contentious.<sup>2</sup> While the Election Law establishes certain 'eligibility criteria' for SCER members, it does not establish any selection or composition criteria. Because the SCER and election committees are in practice composed of party nominees, and there is no legal obstacle to a party nominating a majority of committee members, a party can control the SCER or lower-level committees' decision-making.
- It is unclear whether the SCER has authority over all levels of the election administration. While the law appears to give the SCER supervisory powers, the Supreme Court ruled that lower-level election bodies are separate entities. Previously, this has allowed some election committees to take important decisions in an improvised and possibly partisan manner.
- Legal provisions on registering independent and party candidates in parliamentary elections leave scope for the arbitrary application of the law and the procedures for filing legal appeals against a refusal to register a candidate are also unclear. This could deny citizens effective legal remedy in the exercise of their fundamental rights. Registration procedures for independent candidates are onerous and could present a barrier to candidacy.
- Presidential nominees must gather the votes of 5 per cent of the House of Representatives (the Parliament) and the Shura Council to be approved as candidates. This may constitute an unreasonable restriction on the right to stand for election and transforms a supposedly direct election into a two-step indirect election.

<sup>2</sup> This issue recently led to months of political deadlock over the appointment of a new SCER.



- Neither the Constitution nor the Election Law sets out criteria by which MPs should select presidential candidates. Requiring support from MPs makes the candidate's political affiliation an issue.
- The law does not provide enough detail regarding the demarcation of electoral constituencies, meaning votes across the country are unequal. Voters in Sana'a, for example, are significantly underrepresented in terms of the number of voters to seats.
- There is no provision for the prompt publishing of election results at all levels. The EU mission to the 2006 presidential elections noted that: "it was not possible to have confidence in the accuracy of the final results".
- The law does not provide for a centralised register of voters or give the SCER the authority to correct known errors in the register. In the past the SCER has made large-scale corrections to the voter register with authorisation from the public prosecutor, but this process reportedly lacked transparency.
- While the Election Law grants candidates and parties the right to equal media access and requires a minimal level of media coverage of individual candidates, it does not require the state media to cover candidates neutrally or grant them a minimum amount of airtime. Some provisions on media coverage of elections are unclear or restrictive, for example local and provincial radio stations are prohibited from covering the campaigns of local election candidates. It is also unclear if candidates or parties can place paid advertising in the media.
- The Election Law is unclear on how election-related cases, such as a challenge to a decision of the election administration, can be filed with the courts, and which courts have jurisdiction. The election administration has no formal role in hearing complaints or resolving election disputes because the Constitution states that only the courts may judge all disputes and crimes. The right to challenge election results in court is also limited only to candidates. There is a general lack of clarity regarding the respective roles of the Supreme Court and the Parliament in ruling on challenges to the election results.

There is also concern about the challenges of holding parliamentary and local elections simultaneously, especially since the 301 parliamentary constituencies and 333 administrative districts do not coincide. Two parallel election administration structures may be needed in such case.

## Key Recommendations for the Upcoming Elections

- The governing and opposition parties should come to an agreement on the framework for the April 2009 elections. The opposition has little to gain from a boycott and the governing party would lose credibility if it won elections that were less competitive than the last parliamentary elections in 2003.
- A final effort is needed to amend the Election Law to ensure the SCER has sufficient authority to: impose decisions on lower-level election committees, remedy known errors in the voter list, improve candidate registration procedures, relax the hurdles for independent candidates, enhance candidates' and parties' opportunities for campaigning in the media, and establish clear complaints and appeals mechanisms to resolve election disputes.
- Detailed election results should be published promptly at all levels of the election administration, from polling stations to constituency level, with national results being published in the case of presidential elections.

Detailed recommendations are set out in the appropriate sections of this report. A list of all recommendations appears at the end of the report.

## Introduction to the Programme and Appreciation of Support

This report was prepared by Paul O'Grady and Ammar Abboud of Democracy Reporting International (DRI) in July 2008 and by Dr Abdo Ali Othman of the Human Rights Information and Training Center (HRITC). The report reflects the findings and conclusions of the authors.

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Electronic English and Arabic copies of this report can be downloaded from DRI's website.

### Political-Constitutional Context, Role of Elected Bodies

#### 1. Political Environment and Background:

##### 1.1 Introduction

Yemen is sometimes described as the only representative democracy in the Arabian peninsula. It is led by a president with strong executive powers and has an elected parliament - the House of Representatives - and an appointed upper chamber - the Consultative (Shura) Council. It is divided into 21 governorates<sup>3</sup> and 333 districts. Yemen is the only country in the Arabian peninsula that holds presidential, parliamentary and local elections.

The Constitution unifying North and South Yemen was approved by popular referendum on May 16, 1991. It was substantially amended after the victory of the north in a brief civil war, and again in 2001.

While opposition political parties have been able to function openly, since unification the Republic has been dominated by President Saleh, around whom almost all political power has been concentrated.

Yemen has many seemingly contradictory features: ostensibly there is political pluralism but the President and the ruling party control all institutions. The ruling General People's Congress (GPC) is the 'party of power', but is a fundamentally weak political institution. The GPC has a huge parliamentary majority but most dialogue takes place outside parliament in inter-party agreements. Elections are held routinely but without expectation of real political change.

The political system has been called 'pluralistic authoritarianism'.<sup>4</sup> It can also be described as a 'tribal republic', where a seemingly powerful president and a relatively weak central government rely on the support of a network of tribal alliances. The President also serves at times as the arbiter of conflicts among tribes. While the south possessed a strong central government, the remnants of tribal or other 'local networks' also played a pivotal political role, although less openly. Disputes within tribes, between tribes, and between tribes and the central government remain key to Yemeni politics.<sup>5</sup>

<sup>3</sup> Including Sana'a which has the status of capital city and an administration akin to a governorate.

<sup>4</sup> This term was used in the Carnegie Paper Evaluating Political reform in Yemen, referencing the original use by Marsha Pripstein Posusney in *The Middle East's Democracy Deficit in Comparative Perspective, Authoritarianism in the Middle East: Regimes and Resistance*, ed. Marsha Pripstein Posusney and Michele Penner Angrist (Boulder, CO: Lynne Rienner, 2005) p. 17, note 20.

<sup>5</sup> International Crisis Group: *Yemen: Coping with Terrorism and Violence in a Fragile State*, 8 January 2003.

## 1.2 Political History

Prior to 1990 Yemen had not existed as a unified state for many centuries. From the nineteenth century it had been divided between the north - largely under the control of the Ottoman Empire - and the south, increasingly under the control of the British after their establishment of a protectorate in Aden in the late 1830s.

North Yemen became independent in 1918 after the collapse of the Ottoman Empire. The religious leaders of the Zaydi Shi'ite sect established the Mutawakkilite Kingdom of Yemen. It was ruled by an Imam, who later also assumed the title of monarch. The Kingdom lasted until 1962, when the Imamate was overthrown by the military (the Yemen Revolution). The new rulers established the Yemen Arab Republic (YAR). For the next six years the north experienced a civil war between republicans and forces loyal to the Imamate. In 1970 the YAR adopted a constitution, which did not provide for a parliament and banned political parties. However, after 1982 elections were held to the General People's Congress, a 'representative assembly' which morphed into the ruling party after unification with South Yemen in 1990. The YAR was ruled by President Ali Abdullah Saleh from 1978 until unification. He has remained president of the unified state (the Republic of Yemen) to this day.

South Yemen saw the withdrawal of the British from Aden in 1967, after which the National Liberation Front (NLF) eventually gained control of the whole country, changing its name to the People's Democratic Republic of Yemen (PDRY). The PDRY was a Marxist-oriented state, in which the Yemeni Socialist Party (YSP) was the only legal party.

The allure of unification remained strong in both the YAR and the PDRY and in 1972 both sides declared their goal of unifying Yemen. However, little progress was made until 1988 when serious discussions on unification took place, resulting in agreement on the draft constitution of the unified state in November 1989.

Unification represented not only an opportunity to resolve differences between the two states, but a step both regimes thought would serve their political interests. The Marxist regime of the south needed to compensate for the loss of Soviet support after the collapse of the USSR as well as the negative effects of conflicts between the YSP and its constituent political groups. The military regime in the north needed the symbolism of unity to strengthen its hold on power.

The new joint state, the Republic of Yemen (RoY), was established on May 22, 1990 and its constitution adopted in May 1991. Ali Abdullah Saleh became President. Ali Salim al-Biedh President of the PDSY

and leader of the YSP - became vice president. This solution was known as 'collective leadership' and established a political balance, which was backed up by separate military forces in the north and south. There was also a 301-seat provisional parliament, consisting of 159 members from the north, 111 members from the south, and 31 independents.

The Constitution allowed the formation of political parties and during the years after unification a number of other political reforms were introduced. Multi-party elections were held in 1993 and all major political forces competed. In 1993 the GPC began advocating constitutional change to dispense with 'collective leadership'. Strong tensions between the political leaders of the former North and South Yemen resulted in a brief civil war in 1994, in which northern forces achieved a decisive military victory. Southern political leaders went into exile. In 1994 the Constitution was substantially amended. After the civil war the political culture of the north was increasingly 'imposed' on the south and the dominant political position of the GPC has not been seriously challenged since.

### **1.3 Yemeni Society**

Yemen's population has more than doubled since 1975. The last census of 2004 reported a population of 19.72 million persons, indicating a population growth rate of 35 per cent since the 1994 census (an annual growth rate of 3 per cent). The territory of the former YAR contains some 80 per cent of the population.

Yemen's population is largely rural (73.7 per cent) and those under 18 constitute a majority.<sup>6</sup> The ratio of males and females is broadly equal, although it is claimed that the census underreported the number of women in some areas.<sup>7</sup>

Virtually all of Yemen's citizens are Muslims; approximately 30 percent belong to the Zaydi sect of Shi'a Islam and about 70 percent follow the Shafii school of Sunni Islam. A few thousand Ismaili Muslims live in northern Yemen. Although Yemen is ethnically homogeneous, various potential lines of cleavage exist.

The adult literacy rate in Yemen in 2003 was 29 percent for females and 70 percent for males, according to the United Nations.<sup>8</sup> The literacy rate is some 10 per cent lower than the average for low-income countries. The UNDP's Human Dimension Index for Yemen is 0.508, ranking it 153<sup>rd</sup> of 177 countries.

<sup>6</sup> According to United Nations estimates, in 2006 about 46 percent of the population was aged under 15.

<sup>7</sup> See: CDF, Census Monitoring Project, Civic Democratic Initiatives (2004).

<sup>8</sup> Library of Congress – Federal Research Division; Country Profile: Yemen, December 2006.

Yemeni society is considered to be conservative and lacking in a long democratic tradition, with power resting in the hands of the tribe, the family and men.

### **1.3.1 North /South**

The north-south divide remains the most significant socio-political division. There is palpable resentment in the south that unification and the loss of the civil war led to a disempowerment of the formerly self-governing population. Some southerners say that they feel like 'second-class' citizens and claim they face discrimination. At times relations between the north and south have become polarised.

Even if the divide is largely political in nature, it also has an important sociological dimension. In the south the influence of 'the tribe' is less obvious than in the north, and the population is generally more educated, more open to different ideas, and less religiously conservative. It is also more homogeneous than the north in that virtually all southerners are Sunnis.

In May 2007 tensions in the southern governorates turned into a number of mass civil protests against discrimination by the ruling (northern) power. The government responded to the demonstrations with force and the resulting clashes between protesters and security forces left many injured and some dead. More than a dozen of the demonstrations' organisers, political leaders and prominent non-party political figures were arrested. These included members of the YSP and Islah - which broke away from the GPC after 1990. Some were charged with advocating secession, which is considered 'treason'. They have been released in the meantime.

### **1.3.1 Zaydi / Sunni**

Yemeni political discourse does not usually stress sectarian distinctions. However, the Zaydi population resides in the northern governorates and there exists a north-south 'sectarian divide' in the territory of the former North Yemen. This has been an important factor in Yemeni socio-political life. While the 1990 unification tilted the demographic balance in favour of the Sunnis, the ruling elite in its narrowest manifestation consists of a Zaydi 'tribal-military' network hailing from the central area of north Yemen.<sup>9</sup>

## **1.4 Major Political Groupings**

### **1.4.1 The General People's Congress (GPC)**

The GPC is the largest political party in Yemen. It is led by President Ali Abdullah Saleh. Originally established as a political assembly, it serves more as an umbrella for diverse interests than as an

9 Relevant in this context are the Huthis, originally a small and increasingly militant Zaydi political grouping, who fought a war with government forces from 2004 until July 2008.

ideologically coherent party. It is also said to provide a forum for patron-client relationships between the political centre and the periphery. Tribal leaders have considerable influence within the party and are well-represented in its parliamentary bloc. The President's role in the party is crucial. He provides a degree of coherence and functions as the ultimate arbiter of disputes.

After 1990, when political parties were permitted to exist, some former members of the GPC left the organisation to found or join new political parties and movements, for example Islah. After 1994 dissidents from the YSP and other parties, such as pro-Iraqi Ba'athists, joined the GPC. After the 2001 elections the GPC began to devolve more power to local party branches. The GPC has increased the number of seats it holds in parliament with each subsequent election. In the 2003 elections it won 58 per cent of the vote and 79 per cent of the seats (238 out of 301).

#### **1.4.2 Joint Meeting of Parties (JMP)**

In 2003 Islah, the YSP and four smaller parties began to form a political alliance. However, they were unable to agree on 'joint candidates' and Islah and the YSP fielded rival candidates in many constituencies in the 2003 election. Since then the alliance has become closer, despite the parties' different ideologies. The JMP is the main opposition grouping. It is composed of the following parties:

##### **Yemeni Socialist Party (YSP)**

Until unification the YSP was the unopposed ruling party in South Yemen. The YSP is Yemen's main leftist party and considers itself the main party and 'voice of the south'. From 1990 until 1994 it was Yemen's 'second party' and enjoyed a share of power in conjunction with the GPC.

After the civil war the party's significance diminished. While it has generally remained united, the party has been split on whether to participate in elections, with a 'hard-line' wing successfully calling for an election boycott in 1997, leaving it without seats in parliament from 1997-2003.<sup>10</sup> The party was also weakened by the assassination Assistant General Secretary Jaralla Omar in December 2002. Many of the party's leaders were involved in the demonstrations in the south that began in May 2007. In 2003 the YSP party gained 3.8% of the vote and currently has 8 deputies, according to official results.

##### **Yemen Congregation for Reform (Islah)**

The Yemen Congregation for Reform (Islah) was founded in 1990 by elements within the GPC (before the GPC morphed from an assembly into a party). Islah's founders were against the incorporation of southern Yemeni political ideas into the Constitution of the new unified state. Like the GPC it is more of an

10 The party did contest the 2001 and 2006 local elections, the 2003 parliamentary elections and supported the independent candidate Mr Bin Shamlan in the 2006 presidential elections.

umbrella organisation (Islah consists of Muslim Brotherhood, tribal leaders, jihadist and Salafist factions as well some conservative urban merchants). Unlike the GPC it has some ideological and program-based coherence. The majority of its members are moderate Islamists, and the party is 'ideologically pragmatic'.<sup>11</sup> Islah's move into the political opposition is fairly recent and part of its membership - notably the Salafist wing - remains on cooperative terms with the President. Islah is the largest opposition party, winning 22.6 per cent of the vote and 46 seats in the 2003 elections.

### **Nasserite Unionist People's Organisation and others**

Until 1990 the Nasserite Unionist People's Organisation existed as an underground political movement in the north. It is the largest of three parties in Yemen which claim to adhere to the Nasserite brand of Arab nationalism. It has three seats in parliament.

The other three members of the JMP are: the HAQ party and the Federation of Popular Unionist Forces, both of which are small moderate Islamist (Zaydi) parties, and the pro-Syrian Ba'ath Party, a small Arab nationalist party which joined the JMP in August 2008.<sup>12</sup>

### **1.4.3 National Strategic Alliance of Parties**

The National Strategic Alliance (NSA) is an alliance of thirteen small parties. The NSA was established in July-August 2008. Its members include the National Opposition Parties Council (NOPC), which itself comprises ten small parties; the Decembrist Organisation; the pro-Iraqi Ba'ath Party (two seats) and the Sons of Yemen League (RAY). Most of the NSA's constituent member parties are supportive of the GPC. With the exception of the Ba'athists and the RAY most of the parties are splinter groups of the main opposition parties. It is often claimed, especially by the JMP, that the NOC are GPC 'satellite' parties.

In addition to these parties and blocs, there are a significant number of independent MPs, many of whom are dissidents from existing parties.

## **2. The Role of Elected Institutions in the Constitutional Framework**

### **2.1 The Executive Branch (The President and Cabinet of Ministers)**

The President is the Head of State and enjoys wide-ranging executive powers. The President appoints the Prime Minister, who forms the cabinet in consultation with the President. The Cabinet of Ministers' responsibilities include preparing drafts of the national economic plan and the annual budget. It has the

<sup>11</sup> Yemen: Beyond the Myth of a Failed State, International Crisis Group, Middle East Report No TK, Amman/Brussels, December 2002, page 10.

<sup>12</sup> This angered the GPC which backed an attempt to take control of the party's headquarters and newspaper: see Al-Thawri 14 August 2008.



right of legislative initiative and prepares draft laws and resolutions, presenting them to the House or the President (according to the jurisdiction of each). The Prime Minister and ministers are collectively responsible for the actions of the government before the President of the Republic and the House of Representatives.

The President is the Supreme Commander of the Armed Forces. The President also appoints all members of the Shura Council, the Supreme Commissions for Elections and Referenda (from a slate of 15 nominees chosen by parliament), the Supreme Judicial Council (SJC), senior government officials, and military and police officers. The President promulgates laws passed by the House of Representatives, issues presidential decrees, proclaims states of emergency and has the right to request amendments to the Constitution. He has the power to dissolve the House of Representatives, but must call elections within sixty days.<sup>13</sup> Since 2001 presidents are elected to serve a maximum of two seven-year terms, under the terms of the 1991 Constitution.<sup>14</sup>

## **2.2 The Legislative Branch (Oversight, Legislative and Consultative Powers)**

Under the terms of the Constitution, the 301-member House of Representatives (Majlis al-Nuwwab) is the legislative authority of the state. It has the power to enact, amend or reject laws, sanction general state policies and the general plan for economic and social development as well as approve the state budget.<sup>15</sup> It also has the authority to oversee the activities of the executive branch. Members of Parliament and the government have the right to propose legislation. The House grants the Cabinet of Ministers a vote of confidence and may withdraw confidence from them and the government. It can initiate a process to impeach the President.<sup>16</sup> The President can dissolve the House in urgent circumstances but only after a nationwide referendum, and can in certain circumstances call for early parliamentary elections.

On paper the Parliament has consequential powers, but it is considered a weak institution in practice. The Parliament rarely initiates legislation and presidential decrees are issued frequently. Reliance on extra-parliamentary dialogue with the opposition has undermined the Parliament's constitutional prerogatives and: "the Parliament has not, as an institution, vigorously demanded [its] rights to be upheld"<sup>17</sup>

13 The president cannot dissolve parliament twice for the same reason and, since 2001, cannot rule by decree when parliament is dissolved.

14 While Ali Abdullah Saleh was President of the YAR from 1978-1990, this period does not count as he was president of a different state. From 1991-1999 the House of Representatives selected a five-member presidential council which then elected a chairman. This period does not count either, as the Chair of the Presidential Council was not elected under the terms of the 1991 constitution. The first popular election of the President was held in 1999, the second in 2006. President Saleh's mandate expires in 2013.

15 A vote shall be taken on each part of the budget. The House may not change the proposed budget without the approval of the government.

16 The process can begin if a majority of members agree, but the President can only be tried by the Supreme Court by a vote of two-thirds of the parliamentary majority.

17 Carnegie Papers; Evaluating Political Reform in Yemen; Sarah Phillips, February 2007.

The legislature's main function is its pivotal role in patron-client relations between nation figures and local elites. Thus MPs are part of the political establishment but can neither change it nor effectively run it.

The Constitution also provides for the 111-member Shura Council, which serves primarily as an advisory (consultative) body, has limited legislative powers and no role in holding the executive to account. It does have the right to approve socio-economic development plans and ratify agreements and treaties of defence, alliance, conciliation, peace and border concerns. However, changes to the Shura Council have been proposed (see below).

### **2.3 The Judiciary**

The Constitution grants citizens recourse to the courts to protect their rights and lawful interests (Article 51).<sup>18</sup> It also enshrines the supposed financial and administrative autonomy of the judiciary and invests it with ultimate power of legal adjudication.

Despite this the court system is underutilised as a means for citizens to seek redress, partly because it does not have a strong reputation for independence. In its concluding observations to Yemen's Fourth Periodic Report<sup>19</sup>, the UN Human Rights Committee reiterated its: "concern about the reported lack of efficiency and independence of the judiciary," and recommended that: "the State party should ensure that the judiciary is free from any interference, in particular from the executive branch, in law as well as in practice".

Until recently the President was also chair of the Supreme Judicial Council (SJC), a body with responsibilities including the appointment of judges. Following a change to legislation he no longer sits on the Council, but retains the right to appoint some of its members. Despite this change the SJC is still dominated by the executive branch. The judiciary's budget is set by the Ministry of Justice, lessening its financial independence.

### **2.4 Local Government (Governors and Elected Councils)**

Yemen is divided administratively into 20 governorates (provinces or Muhavazat), the city of Sana'a, and 333 districts (including municipal districts in urban centres). Each governorate is headed by a governor. According to the Local Authority Law (promulgated in 2000) local councils are elected at governorate and district level. Despite a longstanding commitment to the decentralisation of authority, the first local elections were not held until February 2001. Until recently the powerful governors were appointed by

<sup>18</sup> Citizens also have the right to submit complaints to the various government bodies.

<sup>19</sup> CCPR/CO/84/YEM.

the President. However, following an amendment to the Local Authority Law in May 2008, the governors were elected indirectly by members of local councils. The opposition boycotted these elections in protest against this election method, demanding that governors be directly elected. The Local Authority Law (Article 147) provides that governors report to the President and the Council of Ministers.

Effective decentralization has not been achieved because of obstacles facing the local councils, in particular the strength of tribal chiefs in decision-making, the powers of the governor over the councils,<sup>20</sup> and the absence of experienced councillors. Article 146 specifies that local authorities have the prerogative to propose plans, programmes and budgets for investment and to supervise and monitor all local institutions. This denies local authorities the power of decision-making and implementation. The law decentralizes the distribution and allocation of budgetary resources by allowing the authorities to keep locally collected revenues. However since these revenues are not sufficient councils remain dependent on money transfers from the national government.

### **3. Human Rights and Fundamental Freedoms**

Article 25 of the International Covenant on Civil and Political Rights (hereafter ICCPR) guarantees the right to freedom of expression and of the media, freedom to engage in political activity through political parties and the freedom to hold peaceful demonstrations.<sup>21</sup>

#### **3.1 Freedom of Association**

##### **3.1.1 Political Association**

Yemen was the first and remains the only state on the Arabian peninsula to hold multi-party elections with universal suffrage.

The 1991 Constitution mentions 'political parties', 'political organisations', 'pluralism', 'association' in a number of clauses, including Article 5 which provides that: "The political system of the Republic of Yemen is based on political and partisan pluralism in order to achieve a peaceful transfer of power"; and Article 58 which permits citizens to organise themselves on political lines (provided that they do not act contrary to the Constitution). It is worth noting that the Constitution provides that the objective of 'partisan pluralism' is the 'peaceful transfer of power' rather than 'the representation of citizens', which is the essential concept in Article 25 of ICCPR.<sup>22</sup>

<sup>20</sup> However, the Governorate Council can pass a motion of no confidence in the governor.

<sup>21</sup> See in more detail: General Comments on Article 25, UN Human Rights Committee, paragraph 25.

<sup>22</sup> According to the Constitution 'an MP represents the whole nation' once elected.

The rules and procedures required to form political organisations and parties, and the exercise of political activity, is set out in the Law Governing Parties and Political Organisations (Law 66) (hereafter, the Political Parties' Law – PPL), which was promulgated in November 1991. The PPL sets out obligations parties must fulfil to qualify for registration and permission to continue functioning.<sup>23</sup>

Within a few months of unification 45 political parties had been established, although due to tensions between the GPC and the YSP, the PPL was not fully implemented and non-registered parties functioned freely and participated in the 1993 election. However, after the civil war an executive by-law to the PPL was adopted by presidential decree and the Committee for the Affairs of Parties and Political Organizations (CAPPO) was constituted in 1995. Article 61 of the by-law required all new parties to register for legal status. In 1996 CAPPO announced that registration was a pre-requisite for participation in the 1997 parliamentary elections. At the time of the 1997 elections 17 parties were registered. Currently there are 19 parties.

The PPL regulates the recognition of political associations, stipulating a reasonable timeframe for a decision on registration to be taken and the right to appeal a decision of the CAPPO to a court.

The PPL also contains a number of restrictions on the membership of parties<sup>24</sup>, party activity<sup>25</sup> and other requirements.<sup>26</sup> While some of these restrictions are reasonable others are problematic and could curtail recognised political freedoms, particularly if implemented restrictively or in bad faith. These include:<sup>27</sup>

- The composition of the CAPPO; which includes three government ministers in its seven-member composition, thereby giving the executive a direct role in registering or recommending the disbanding of a political party.<sup>28</sup> This is particularly problematic in a context where one party dominates the political scene.
- A lack of clarity regarding which court hears applications by the CAPPO to disband a party, and whether it is possible to appeal a court's decision in this regard.
- Requiring that persons establishing a party must be born of a Yemeni father.

23 With the exception of the abrogation of Article 38 in 1995, which exempted existing political parties from the need to re-register, the PPL has not been significantly amended since its adoption.

24 The conditions for the formation of a political party state that party members must be Yemeni nationals and those establishing parties must also be born of a Yemeni father.

25 Specifically: not to contradict Islam; not to endorse any of the former regimes of the imam or the sultans (any actions contrary to the objectives of the Revolution, the Republic, unity and democracy are forbidden); not to disrupt the general order and security, or to be involved in plots or violence or to motivate others in them; not to use mosques, or educational and governmental facilities to promote or criticise any party or political organisation.

26 Further conditions include: a requirement to stand on a national basis and the impermissibility of limiting membership to any geographical region; proscribing the founding of parties on regional, tribal, sectarian, class, professional, or any other form of discrimination; having at least 75 founding members, requiring their headquarters to be based in Sana'a and having at least 2,500 members from most of the governorates.

27 See for more detailed analysis: Political Party Life, Huriya Mashhur in Building Democracy in Yemen, International IDEA and the Arab NGO Network for Development (ANNND), 2005

28 The CAPPO is composed of: the Minister of State for Parliamentary Affairs (Who by the nature of position is also the chair), the Minister of Interior, the Minister of Justice, and four non-partisan persons who must be nominated from among non-functioning judges or from among lawyers accredited to the SJC.

- Prohibiting the use of public space for political activities without prior ‘co-ordination’ with the relevant authorities. This could impinge on the right of all citizens to ‘assemble’ peacefully.
- A lack of provision on forming party alliances, election coalitions or fielding ‘joint candidates’.
- Requiring that new parties’ programmes: ‘do not replicate those of other (existing) parties and political organisations’. This is subjective and no party can claim monopolistic ownership of political ideas.

Some provisions hinder the effective organisation and development of parties, in particular provisions on party funding which lessen parties’ abilities to campaign for office.<sup>29</sup>

### **3.1.2 Civic Association (NGOs)**

The Constitution (Article 58) permits citizens to organise social associations and requires the State to enable citizens to exercise this right. Law 1 (2001) On Associations and Foundations regulates the registration and activity of civic organisations (non-governmental organisations – NGOs). The Law however, gives the impression that its objective is to create a framework for issuing government permission to associate rather than set criteria for exercising the right to associate freely and organise. For example, the founders of NGOs must submit their founding papers to the Ministry of Labour and Social Affairs, which has a month to accept or refuse the application, although a refusal may be appealed to a court.

The Ministry of Labour and Social Affairs has the right to organise the NGOs’ internal elections, and an NGO cannot gain legal status without the ministry’s recognition of these results. The Ministry also supervises NGO activity including their financial affairs and NGOs must reapply to the ministry for approval each year.

The current law does not guarantee NGOs’ independence nor grant them sufficient scope to conduct their activity freely.

<sup>29</sup> See section 9.3 of this report dealing with campaign financing.

## 3.2 Freedom of Expression and Opinion

The Constitution (Article 42) provides that: 'The state shall guarantee freedom of thought and expression of opinion in speech, writing and photography within the limits of the law'.

### 3.2.1 Media Freedoms

In 2007 Yemen ranked 143<sup>rd</sup> out of 169 countries/territories listed on Reporters Without Borders' Press Freedom Index and 174<sup>th</sup> out of 195 countries/territories on Freedom House's Global Press Freedom Index.

The Constitution does not contain provisions dealing explicitly with the media or press freedoms, although it charges the Consultative Council with the task of 'promoting press freedom', without assigning it any regulatory powers. There is no clear provision against the censorship of the media.<sup>30</sup> The legal parameters of press freedom are set in the Press and Publications Law of 1990 (hereafter, the Press Law). Its provisions are inherently contradictory; on one hand the law seeks to guarantee freedom of expression while on the other hand granting the authorities powers which could be used to restrain the press. A new press law has been under discussion for many years but the 1990 law is still in force. There is no law regulating audio-visual and other electronic media.

The Press Law provides freedom of 'knowledge', 'thought', 'the press', 'expression', 'communication' and 'access to information' granting all citizens the right to express their thoughts by any means, as well as rights to: access official reports and information; keep confidentiality of sources; freedom of conscience; freedom of opinion, and independence in coverage. However, the list of proscriptions is longer, with some vaguely-drafted Articles inviting arbitrary interpretation.<sup>31</sup>

The list of proscriptions includes a prohibition on: 'criticising of the person of the Head of State, or to attribute to him declarations or pictures unless the declarations were made or the picture taken during a public speech,' (Article 103.I).<sup>32</sup> Under the provisions of the Penal Code (Article 197), an offence can lead to a prison sentence of two years. The EU EOM of 2006 commented: "The prohibition clearly infringes on the freedom of expression of political opponents that is required in a democracy, especially during an election campaign".<sup>33</sup>

<sup>30</sup> Article 53 of the Constitution provides that: 'The state shall guarantee the freedom and confidentiality of mail, telephone, telegram and all other means of communication, none of which may be censored', but it is not clear this is applicable to the press or media.

<sup>31</sup> Article 103 prohibits printing, publishing, circulating or broadcasting 'anything' which 'might' cause tribal, sectarian, racial, regional or ancestral discrimination, or spread a spirit of dissent and division among the people; lead to the spread of ideas contrary to the principles of the Yemeni Revolution, prejudice national unity or distort the image of Yemeni, Arab or Islamic heritage; prejudice the dignity of individuals or the freedom of the individual by smears and defamation, or spread false data or information with the aim of influencing economic trends or of spreading chaos and confusion in the country.

<sup>32</sup> In its concluding observations to Yemen's third periodic report, (CCPR/CO/75/YEM) the UN HRC: 'expressed its concern about some restrictions under Yemeni legislation on freedom of the press and about the difficulties encountered by journalists in practicing their profession when they criticise the authorities (art. 19 of the Covenant) the State party should ensure that the provisions of Article 19 of the Covenant are respected.'

<sup>33</sup> European Union, Election Observation Mission, Yemen 2006, Final Report, page 8.

The law also lays down a licensing system for journalists, publishers and printers with strict requirements, for example that they be over 21 years of age and 'suitably qualified'. Owners of printing presses are required to provide information on the number and types of machines installed, and their location. They also have to maintain a register, stamped by the Ministry of Culture, containing details of all material printed on the press, including the names of authors and the number of copies printed. Political parties and organisations have the right to issue any number of newspapers without having to obtain a licence.

The print media has in recent years been able to criticise the government on issues previously considered taboo.<sup>34</sup> However, independent journalists complain of harassment after publishing news stories that were not to the authorities' liking and one media professional commented that there is: "a censor in every office". In 2006 three websites (napress; Al Sahwanet; Al Shuranet) and a newspaper (Al Shura) were closed. A number of journalists were assaulted or arrested. In 2007 one Yemeni NGO reported that there had been 112 violations against press freedom.<sup>35</sup>

### **3.2.2 Access to Information**

There are no privately-owned audio-visual media outlets in Yemen, despite attempts to establish them. Yemen has only one TV and radio network, the state-run Public Corporation for Radio and Television. It broadcasts two terrestrial TV channels and one channel by satellite. It runs two radio stations transmitting across Yemen and a number of radio stations located in governorates. The pan-Arab satellite channels such as al-Jazeera are popular and regularly include news items on Yemen. Several websites cover Yemeni politics. Radio and TV are the most accessible media forms and thus the most important.

According to the Ministry of Information, Yemen has 57 newspapers and 66 periodicals. They can be divided into three categories: state-run, opposition party newspapers, and independent titles.<sup>36</sup> The reach of the press is limited, and there are relatively low levels of literacy, particularly in rural areas and among women. The state maintains a print and distribution network, but it does not have a monopoly on distribution.

The public broadcaster seldom criticises the government and the opposition JMP claims that it has little access to the media outside official campaign periods, and that any coverage of them tends to be negative.<sup>37</sup>

<sup>34</sup> See Freedom of The Press, Yemen 2008 (Freedom House).

<sup>35</sup> Annual report on human rights and democracy in Yemen 2007; Yemen Observatory for Human Rights, 2008.

<sup>36</sup> Most of the non-state print media publish 'weeklies' rather than 'dailies'.

<sup>37</sup> Election observers' reports gave a generally positive assessment of the media's performance during the 2006 election. See for example EU Election Observation Mission, Final Report 2006, op.cit.

There is limited political debate in the audio-visual media, and government ministers rarely have to face difficult questions from journalists or defend the government's record. Instead the main news focuses on the activities of the President.

### **3.3 Freedom of Peaceful Assembly**

In Arabic the same word is sometimes used to mean both 'assembly' and 'association'<sup>38</sup> prompting confusion as to whether the right of 'peaceful assembly' is guaranteed in the Constitution. While Article 58<sup>39</sup> is sometimes used to claim that the right of assembly is protected in the Constitution, it is also used to claim constitutional protection for freedom of association. Yemeni confusion over the terms and concepts is also apparent in Yemen's third periodic report to the UN HRC; when commenting on legal protection of the right to peaceful assembly, the government actually discusses legal protection for 'free association'.<sup>40</sup>

Law 29 (2003) On Demonstrations and Marches allows for peaceful assemblies. However, the right is reportedly often violated in practice.

### **3.4 Right to Participate in Public Life**

While constitutional provisions and legislation guarantee citizens a number of fundamental rights, the application of the law or de facto obstacles prevent some people from exercising their right to participate in public life on equal terms.

#### **3.4.1 Women's Participation**

According to the UNDP's gender empowerment measure (GEM), Yemen ranks 93<sup>rd</sup> of 93 countries measured.<sup>41</sup>

The serious obstacles to women's participation in public life in Yemen have been reported by many organisations. In relation to elections, the EU EOM to Yemen noted: "Women were comprehensively excluded from the 2006 elections."<sup>42</sup> Where women held positions of responsibility, notably in the south before unification, the tendency has been to remove them from public life.

38 The ICCPR, Article 21 protects the right to peaceful assembly and Article 22 protects the right of free association.

39 This provides: 'In as much as it is not contrary to the Constitution, the citizens may organize themselves along political, professional and union lines [...]'

40 Document Reference: CCPR/C/YEM/2001/3.

41 The UNDP GEM measures whether women take an active part in economic and political life. It tracks the share of seats of female legislators, senior officials and managers and of female professional and technical workers – and the gender disparity in earned income, reflecting economic independence.

42 The EU Yemen final report – presidential and local elections (2006) Page 26.



Highly conservative social attitudes are partly responsible. This discrimination also has a legal foundation: 'women are the sisters of men [...]' (Article 31). This characterises the relationship between men and women not as one of equals but as one of subject and object. Until 1994 the Constitution provided: 'Equal treatment in the eyes of the law is guaranteed for *all citizens* who are *equal in rights and duties*, and no discrimination shall be practiced due to *sex*, colour, racial origin, language, occupation, social status, or religious beliefs,' (emphasis added). Instead of trying to counter deep-rooted discrimination, the Constitution was changed in a way that furthers it.

### **3.4.2 Women's Representation**

In electoral terms women face considerable difficulties in securing party nominations as candidates, complying with nomination procedures to run as independent candidates, or resisting pressures to withdraw their candidacies. In the 2003 elections only 13 of 1,707 candidates were women, of which only one was elected. In 2006 there were over 60 prospective presidential candidates of which two were women, neither of whom was approved as a candidate by the Parliament (comprising 99.7 per cent men). In the local elections of the same year, of 20,500 candidates 160 were women and 38 won seats. Women are also conspicuously absent from all election committees except the lowest level women's registration and election sub-committees. In 2006 an estimated 1.5 million women eligible were unregistered as voters. When they do vote many are reportedly under the direct influence of their male relatives.

The first past the post (FPP) election system militates against women's effective participation as candidates and election as representatives. Parties are unwilling to risk nominating women fearing they could lose winnable seats, and many women are hesitant to stand as candidates because of the frequently conflictive nature of constituency election contests (especially compared to an election system based on national party-lists).

There has been vague discussion of adopting a 15 per cent quota for women's representation, something permitted under CEDAW.<sup>43</sup> However, unless the Constitutionally provided for election system is amended,<sup>44</sup> for example to a party-list PR system, it is difficult to see how a quota would work in practice. Providing for a women's quota through specific 'women candidate only' constituencies could violate men's rights, and be legally challenged.<sup>45</sup> Even if it were feasible, instituting a constitutional

43 See Article 4, the Convention on the Elimination of Discrimination against Women (CEDAW) and the CEDAW Committee's General Recommendation No. 25, on Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures.

44 The Constitution provides 301 constituencies, of equal size, each of which elects a single MP.

45 Citizens may only stand as a candidate in the constituency where they are registered to vote. If this constituency were to be a women-only constituency, male candidates would not be able to seek election there. However, it may be possible to alter the law enabling candidates to contest any constituency.

change would delay the introduction of a women's quota until the next but one parliamentary election (in 2015).

Were the proposal for a women's quota translated into an obligation for parties to nominate 15 per cent women candidates, there would still be no guarantee these women candidates would win seats.

### **3.4.3 Naturalised Citizens**

In Yemen citizenship is generally conferred on children by their father. The Citizenship (Nationality) Law prohibits the transfer of Yemeni citizenship from mother to child if the mother is married to a foreigner. Children of such a marriage can acquire Yemeni citizenship, but only through a process with unreasonable conditions.<sup>46</sup>

Various Yemeni laws restrict naturalised citizens from exercising their political rights. Article 23 of the Law on Citizenship (Nationality) (Law 6, 1990) provides that: 'the Muslim foreigner who has acquired Yemeni nationality [...] shall not have the right to exercise political rights [...] until fifteen years have elapsed from the date of his acquisition of Yemeni nationality'. The Election Law By-Law (Article 3) provides that this applies to voting rights of naturalised citizens. The LPP requires that founders of political parties are born of a Yemeni father and that naturalised citizens do not have the right to make a donation to a political party.

General Comment 25 states: "No distinctions are permitted between citizens in the enjoyment of [...] rights on the grounds of [...] national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalisation may raise questions of compatibility with Article 25" (emphasis added).

## **4. Situation in Advance of the April 2009 Elections**

Yemen is used to political brinkmanship and last-minute deal making. On 18 June 2006 the GPC, the President and the JMP managed to reach agreement on various contentious issues prior to the September presidential and local elections (hereafter 18 June Agreement) avoiding a possible boycott by the main opposition, which would have undermined the credibility of the election. Although 'eleventh hour' agreements have generally been reached in the past, and some believe the 2009 elections will be no different, pre-election tensions are running higher than normal. The conflict with the Huthi rebels in the north may 'officially' be over, but resentment in the south remains palpable.

46 Such conditions include accusing the father of being mentally unstable. See Shadow Report on Children's Rights in Yemen, prepared By: Civil Society Organizations in Yemen, in cooperation and coordination with Sisters Arab Forum for Human Rights (SAF), member of the International Federation for Human Rights (May, 2005).

Any prospect of early agreement on reforming the rules for the 2009 election was undermined by the detention of many southern opposition leaders and the opposition has yet to decide whether to participate in the elections. The JMP believes electoral reform is essential and that their participation in a flawed process would undermine their credibility as a meaningful political force. Some in the GPC seem to believe that so long as the smaller 'National Strategic Alliance of Parties' (NSA) can be persuaded to participate in the 2009 elections there will be a pluralistic contest of sorts. However, holding elections without the main opposition, or postponing elections beyond their due date would raise serious questions about Yemen's political stability.

#### **4.1 Prospects for Electoral Reform**

The opposition have little confidence in the integrity of the election process. While there is a strong wish for legislative reform in their ranks, however, there is also the tendency to make 'political' agreements without formalising the detail in law.

After the 2006 elections the GPC and JMP agreed that the 35 Recommendations contained in the Final Report of the 2006 EU Election Observation Mission (EU EOM)<sup>47</sup> would provide a basis for reforming the electoral framework in advance of the 2009 elections.<sup>48</sup> The JMP also wanted discussion and agreement on other issues, in particular, (i) introduction of a new election system<sup>49</sup> (ii) the composition of the Supreme Committee for Elections and Referenda (SCER)<sup>50</sup> and (iii) reducing the scope for multiple voting and skewing the composition of the electorate in constituencies by requiring that all electors only register to vote in the domicile of their permanent residence. Vague proposals on introducing a 'women's quota' of representatives and nominations were also tabled.

Over the last two years there have been periods of GPC-JMP dialogue on electoral reform issues, but with little result. The JMP accuses the ruling party of not abiding by previous agreements and dragging its feet while the GPC claims that the JMP is asking too much. During 2008 progress was hugely complicated by the YSP's insistence on the release of party leaders as a pre-condition for discussions.

47 However, the EU Report on the 2006 elections concentrated on presidential elections and did not comment in any great detail on parliamentary elections.

48 Recommendations contained in reports of other international organisations were also to provide reference points (e.g. IFES: 'Election Law Reform in Yemen: Final Report on the public policy dialogues, January 2004 – January 2005', (March 2005), and 'Post-Election Report on the 2006 Presidential and Local Election in Yemen' (November 2006) and the reports on the 2003 and 2006 elections).

49 The opposition favours a new election system based fully or partly on the principle of proportional representation (PR), believing that this could help strengthen the role of parties in political life, lessen the influence of individuals (such as sheikhs) in parliamentary life, and facilitate the enhanced representation of women. Any change to the election system for the House of Representatives would require the approval of 75 per cent of the House of Representatives and the holding of a general referendum. Thus it is highly unlikely that even if there was agreement on changing the parliamentary election system, that change could be introduced before the next but one parliamentary election.

50 The term of office of the outgoing SCER expired in November 2007. Following the 18 June Agreement, the 9-member SCER was composed of 4 GPC, 4 JMP and 1 NOC nominees. The 18 June Agreement provided that the future SCER would be reformed such that: 'all its members should be judges who are known for their qualifications, and impartiality. The mechanism of nominating and choosing them shall be agreed upon... their rank should not be less than appeal court judge' (emphasis added). This provision was not implemented because the JMP and the GPC could not agree on the mechanism for nominating and choosing the judges. A decision on appointing the new SCER was repeatedly postponed, ostensibly to allow for more dialogue.

As the stalemate persisted the prospect of legislative reform receded and at the time of writing there has been no agreement on the implementation of the EU recommendations.

With time running out to complete the necessary preparations for the 2009 election within legal deadlines,<sup>51</sup> on 18 August 2008 the House of Representatives convened an extraordinary session and the GPC majority unilaterally selected 15 SCER nominees<sup>52</sup> including nine former SCER members.<sup>53</sup> On the same day the House failed to agree a package of amendments to the Election Law. While these were thought to reflect some of the recommendations made by international organisations between 2003 and 2006, there was no consensus on the content of the amendment bill.

Given the deadlines for voter registration it is unlikely that the rules for registering voters can be improved before the elections leaving these subject to the same serious shortcomings. Nevertheless, it may not be too late for the legislator to give the SCER enhanced powers to correct registration errors without having to act retrospectively. It is certainly not too late for the legislator to address other known weaknesses in the electoral framework when it reconvenes in advance of the 2009 elections, for example candidate registration.

## 4.2 Proposed Constitutional Changes

In July 2008 the President announced proposals to amend the Constitution. The proposed changes include:

- The establishment of a bicameral parliament, with the Shura Council becoming an upper house with full legislative power.
- Indirectly electing 75 per cent of Shura Council members, with the two levels of local councils having the right to elect members.<sup>54</sup>
- Reverting to a four-year parliamentary term of office and a five-year presidential term.
- Amending Article 31 (relating to women), by adding that: 'state institutions and society will strive to support women, especially their participation in representative institutions, in such a way to insure their participation in the progress of society'.

<sup>51</sup> The session of the House of Representatives was extended from late July to mid August to enable it to appoint the SCER and debate amendments to the Election Law. Had it not appointed the SCER at this time, it would not be possible to begin updating the voter registers by the appointed legal deadline, potentially leading to a postponement of the 2009 elections.

<sup>52</sup> The YSP boycotted the parliamentary session, and its JMP partners did not participate in the vote.

<sup>53</sup> On 26 August President Saleh appointed the members of the new SCER, including seven former members. Three appointees refused to take up their appointment (these members were considered to have been nominees of JMP in the SCER's previous incarnation). See Al-Istiraki net 26/08/2008.

<sup>54</sup> The President would retain the right to appoint 25 per cent of the Shura Council's members.

The proposed changes have far-reaching implications for the role of the House of Representatives. Currently it is the sole legislator (although the government has the joint right to propose legislation). If the President's proposals are accepted by the House and at a subsequent national referendum, the powers of the incoming House (that is, the one elected in April 2009) will be reduced. It would have to share its legislative powers and prerogatives with another body partly indirectly elected and partly appointed by the President.

The proposed change to Article 31 could conceivably pave the way for an eventual introduction of a women's representation and nomination quota. However, no change was proposed to Article 63 of the Constitution governing the electoral system. Thus it is not immediately clear how the legislature could adopt a law to implement any quota.

The GPC controls the great majority of councils. If the proposed constitutional amendments are adopted the timing of the next local elections become important.<sup>55</sup> In any event, the 25 per cent of Shura Council members appointed by the President gives the ruling party a significant and unfair advantage in steering future legislation.

If the House approves the Constitutional changes, a referendum on them will probably still need to be held. If it is held simultaneously with the April elections, changes would only occur thereafter.

55 If these elections take place in April, as the law suggests they should, then the opposition will have an opportunity to contest these and, through their representatives on the councils, also shape the composition of the 'new' Shura Council. If the elections do not take place when they should, the old councils will surely elect a large majority of persons sympathetic to the President and the party.

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

#### 1. Relevant International and Regional Standards

Yemen acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1987.<sup>56</sup> Yemen has ratified other UN instruments relevant to elections including: the International Covenant on the Elimination of Racial Discrimination (ICERD), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and the Convention on the Political Rights of Women (CPRW).

Article 25 of the ICCPR deals with citizens' rights to: participate in public affairs; universal and equal suffrage, a secret ballot, free expression of electoral will, and equal access to public service.<sup>57</sup> The UN Human Rights Committee (UN HRC) adopted General Comment 25 (1996) which provides state parties to the Covenant with an authoritative interpretation on the meaning of Article 25 and its implementation. Yemen indicated in its communication with the UN HRC that: 'the International Covenant on Civil and Political Rights is deemed to be part of Yemen's legal system,' and that: 'no provision of the law may be interpreted as conferring any right that violates the rights acknowledged in the Covenant'.

In its concluding opinion to Yemen's fourth periodic report, the UN HRC commented: 'The Committee notes with concern that the recommendations it has addressed to Yemen in 2002 have not been fully taken into consideration, and that the State party justifies the absence of progress on several important issues by the impossibility, in its view, of respecting at the same time religious principles and certain obligations under the Covenant. The Committee disagrees with such an interpretation and stresses the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.'

#### 2. Legal Framework of Elections

The 1991 Constitution provides the main rules for the election system for legislative and presidential elections. The General Elections and Referendum Law (Law 13 of 2001), (hereafter, the 'Election Law') was adopted in 2001 through a national referendum. The Election Law (Article 32) entitles the Supreme Commission for Elections and Referenda (SCER) to propose a By-Law. The By-Law was drafted by SCER, and adopted by presidential decree. Specific provisions of the Election Law require the SCER to 'regulate' aspects of the election process, for example by governing permissible election campaigning (Article 37). Under Article 146 the SCER has a general right to issue regulations and decisions.

<sup>56</sup> The People's Democratic Republic of Yemen (PDRY) acceded to the Covenant on 9 May 1987. The unified state of the Republic of Yemen has been a party to the ICCPR since unification.

<sup>57</sup> Other Articles are relevant to the holding of democratic elections, in particular: 2, 12, 14, 19, 21 and 22.

The SCER has issued a number of thematic ‘manuals’, which in some cases regulate issues not dealt with in primary legislation.

Other laws relevant to the holding of elections include: Law 66 (1991) on Political Parties; Law 29 (2003) on Demonstrations and Strikes; Law 4 (2000) Concerning Local Authorities, various by-laws and presidential decrees.

## **2.1 Election System**

### **2.1.1 Presidential**

Voting for the President takes place in a single countrywide constituency. In order to win the election, a candidate requires an absolute majority of votes cast.<sup>58</sup> If none of the candidates secures this number of votes, the two top-scoring candidates take part in a run-off election within 40 days of the announcement of the results. In the second round the candidate with most votes wins.

### **2.1.2 Parliamentary**

Article 63 of the Constitution stipulates that: ‘the House of Representatives has 301 members, who shall be elected in a secret, free and equal vote directly by the people’. It also provides that Yemen is divided into constituencies, with each electing a single MP. This establishes a single-mandate majoritarian election system for the legislature.

The Election Law (Article 53) provides that for legislative elections Yemen: ‘shall be divided into 301 electoral constituencies’. It also establishes that the majoritarian system is based on the ‘first past the post’ (FPP) principle whereby winning candidates require a ‘plurality’ (that means more votes than any other party) but not an absolute majority (i.e. over 50 per cent) of the votes. The President calls for legislative elections 60 days before the end of the House’s term.

### **2.1.3 Local Government**

The Constitution provides for the direct election of local administrative bodies and the President calls local elections at least 60 days before election day. The Election Law sets out the framework for local elections, including the election system, and tasks the SCER with adopting additional rules for their administration. As the election system for local elections is set out in primary legislation rather than the Constitution, it is easier to change than that for legislative elections.

<sup>58</sup> For example, establishing deadlines for filing petitions with courts concerning the counting of votes in referenda.

There are 21 governorates (Muhavazat) and 333 districts (including city districts). Councils are formed at both levels.<sup>59</sup> For electoral purposes, local government units and their sub-units (districts and wards respectively) can be considered as constituencies. There are 5,620 election wards, most of which elect one councillor on the plural-majority FPP election system. However, some 800 wards elect multiple councillors, although this is not clearly set out in the legislation.<sup>60</sup>

Until recently, governors were appointed by the President and the District Council Chairs were appointed by the higher executive authorities. In April 2008 the Local Authority Law was amended to allow the indirect election of governors and chairs of District Councils (Mayors) by local councils.<sup>61</sup> The main opposition bloc JMP and the National Opposition Council did not nominate candidates in protest that the governors were not elected directly by voters<sup>62</sup>

The legislation should clearly state the method for determining the number of council seats in wards where more than one candidate is elected.

#### **2.1.4 Referenda**

The Constitution foresees the holding of referenda, for example to approve amendments to certain constitutional Articles. The President has the authority to call for other types of national referenda, including (in extraordinary circumstances) the dissolution of the House. In all cases, the subject of a referendum requires an 'absolute majority' of votes to pass.

### **3. Periodic Elections**

Article 25 of the ICCPR indicates that citizens should have the right to vote and be elected in periodic elections. While there is no definitive international standard on the length of the terms of elected office holders, General Comment 25 states: '... elections must be held at reasonable intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors.' In 2001 the Constitution was amended extending MPs' terms from four to six years<sup>63</sup> and the President's term from five to seven years.<sup>64</sup> The current terms of the Parliament and the President are unusually long, raising questions about whether they are 'reasonable'.<sup>65</sup>

<sup>59</sup> The Election Law defines an 'absolute majority' of votes as: 'More than half the number of votes of those participating in the election'.

<sup>60</sup> Councils at the governorate level have between 15 and 30 elected members, while district councils have between 18 and 30 members – depending on the population size of the respective administrative unit.

<sup>61</sup> This sometimes occurs because districts contain too small a number of voters to sub-divide into wards.

<sup>62</sup> Under the Constitution, 'Governors are responsible before the President of the Republic and the Council of Ministers,' meaning they are not accountable per se to the Councils, despite the election method.

<sup>63</sup> Parliament's term commences from the date of its first session and the President's term commences from the date the President-elect swears allegiance to the Constitution.

<sup>64</sup> The amendments extended the term of the sitting legislature (elected in 1997) and the incumbent president (elected in 1999).

<sup>65</sup> The draft constitutional amendments propose to revert the terms of the legislature and the President back to four and five years respectively.



Other pertinent constitutional provisions here include Article 101 which allows the President to dissolve parliament in 'extraordinary circumstances' after holding a nationwide referendum, and to call early parliamentary elections in specific circumstances. This provision is rather vague.

The Election Law foresees the holding of 'supplementary elections'<sup>66</sup>, for example where the holding of elections in a constituency or constituencies is not feasible. Thus it is possible to hold legislative elections in part of Yemen's territory but not others. Supplementary elections are called by the SCER and must be held within three months from the general election date.

Yemen held its first local elections (district and provincial councils) in 2001. Article 13 of the Local Authority Law (2000) provides councils are elected for a three-year term. From 2004 to 2006 the mandate of local councils was extended twice. Elections were finally held in September 2006 together with the Presidential election.

The mandate of councillors expires in September 2009 (three years after the last election). However, Article 154 of the Local Authority Law provides that: 'local council elections shall be held to coincide with the general elections to the House or the Presidential election or a public referendum even if held earlier or later' (emphasis added). Thus it appears that the next local elections should be held together with the April 2009 legislative elections. Holding local elections when the next presidential election is due - in 2013 - would challenge the principle of holding elections periodically.

The timing of the local elections should be clarified by the competent authorities.

## **4. Election Administration**

### **4.1 Composition of the Supreme Commission for Elections and Referenda (SCER)**

The Constitution establishes 'a supreme, independent and neutral committee [to] administer, supervise and monitor general elections and general referenda,' and provides that the law shall regulate its composition, eligibility of members, the method for their nomination and appointment, and the jurisdiction and function of the committees. Article 19 of the Election Law provides that the SCER is composed of nine members, to be appointed by the President from among fifteen nominees proposed by two thirds of the members of the House of Representatives. SCER members are appointed for six years and may serve two terms.

<sup>66</sup> Article 108.

Historically the composition of election administration bodies in Yemen has been a highly politicised and contentious issue.<sup>67</sup> While the Election Law establishes certain eligibility criteria for SCER members, it does not establish any selection or composition criteria, for example that the SCER be formed from nominees of the various political parties or require members to have specific professional backgrounds such as jurists or judges. The right of the President to select nine members from fifteen nominees appears to grant him considerable latitude in appointing the SCER. In practice however, the SCER and lower-level election committees have previously been composed of nominees on the basis of political agreements between the ruling party and the opposition.

The election committees below the level of the SCER may not be formed exclusively from one party.<sup>68</sup> Thus it is implicit in the law that below the level of the SCER, the election administration can be composed of party nominees or ‘representatives’, although this does not appear to be a legal requirement. There appears to be no legal obstacle to a party nominating a majority of committee members.

The SCER is supported by a permanent General Secretariat with a central office in Sana’a and branch offices in the governorates. Its personnel are recruited through open competition. The Secretariat carries out administrative and technical tasks and is divided into functional departments.<sup>69</sup> It is headed by a Secretary General, who is directly responsible to the SCER for the Secretariat’s functioning. The Secretary General is selected by the President of the Republic from three candidates nominated by a majority vote of the SCER.

The Election Law (Article 24.g) requires the SCER to: ‘set the rules and issue the necessary instructions to ensure the required security measures for safe and free elections’. The Election By-Law (Article 23.a) specifically provides for a Security Committee to be formed under the SCER’s direct supervision (hereafter, Election Security Committee – ESC). Subordinate ESCs are formed at all levels of the election administration. The main ESC includes ‘representatives’ of the SCER, ministries, local government structures, and representatives from the state’s permanent Security Committees (the armed forces, the police and the intelligence services).

## **4.2 Structure of the Election Administration**

The Election Law provides the general structure for the election administration below the SCER. Supervisory Committees are formed at the governorate level (of which there are 21); Main Committees

<sup>67</sup> Recently this issue led to months of political deadlock over the appointment of a new SCER.

<sup>68</sup> Article 25.b of the Election Law requires that in the event that the SCER dismisses a committee member it must appoint a replacement from the same party.

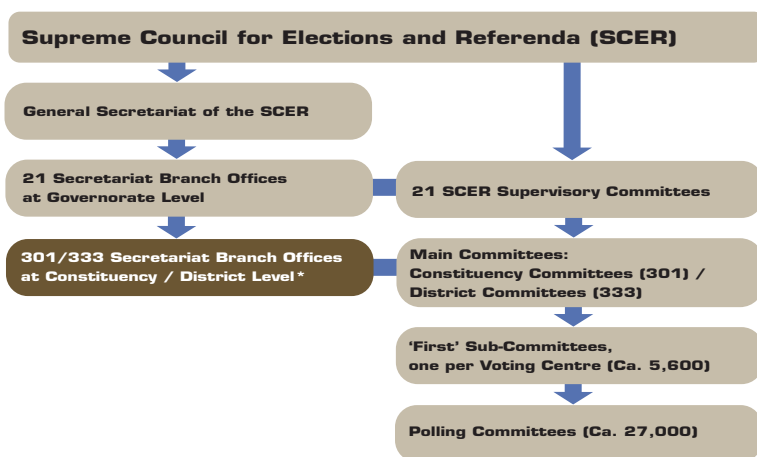
<sup>69</sup> Each SCER member is given responsibility for one of the functional departments, for example the legal department, technical department, external relations, et.c.

are formed at the level of constituencies in legislative elections (of which there are 301) or administrative districts for local elections (of which there are 333). Sub-Committees exist at two levels: the First Sub-Committee with responsibility for a Voting Centre and overseeing Polling Committees (second-level Sub-Committee). In addition to these committees, Voter Registration Committees are formed in advance of the election to prepare voter lists. Separate polling and voter registration committees exist for men and women.

The SCER is responsible for forming and appointing the various committees and their chairs, determining their jurisdictions, and setting the timeframe for their appointment. Each committee comprises a chair and two members. The formation of all the committees must be endorsed by a two-thirds majority of SCER members.

Although the Election Law establishes certain eligibility criteria for membership, the SCER is required to: ‘determine and announce the criteria governing the selection of the Chairmen and the members of the committees’. It also provides that; ‘the selection shall be in compliance with the [eligibility criteria] and its by-laws’. However, the By-Law states; ‘The selection shall be in compliance with the procedures stated in the Electoral Manual’. This appears to contradict the Election Law. However, while the SCER has the legal right to appoint lower-level committees, its effective function in this regard is little more than rubber-stamping the appointment of party nominees according to pre-agreed quotas. The election administration is structured as follows:<sup>70</sup>

### Structure of the Election Administration for Legislative and Local Elections <sup>71</sup>



\* The Election Law does not clearly provide for Secretariat Branch Offices at the district level although in practice they exist.

70 The diagram does not include the structure of ESCs. Voter Registration Committees mirror the structure of the Sub-Committees.

71 The number of Main (Constituency) Committees will vary if local elections are held simultaneously. As there are 333 administrative districts 333 such committees are formed.

### 4.3 Independence and Impartiality of the Election Administration

General Comment 25 stipulates 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’. It is also a recognised principle that elections should be administered ‘transparently’ to ensure the confidence of candidates and electors.

The Election Law requires the SCER to exercise its duties, responsibilities and powers: ‘with complete independence and impartiality’ and states that: ‘nobody shall be allowed to interfere in the SCER’s affairs and duties or to restrict its powers and jurisdiction’. Only the President may remove SCER members from office and only if the SCER member no longer meets the membership eligibility criteria.<sup>72</sup>

SCER members are obliged to suspend membership of political parties and may not contest elections or take part in a party or candidate’s election campaigns. However, because the SCER and election committees are composed of party nominees, it is possible for a party to have nominated a majority of members to any committee (including the SCER). In such cases, the party is in effect in a position to control the committees’ decision-making and have considerable influence over its functioning.<sup>73</sup> Nevertheless, having election commissions composed of political party nominees does bring benefits such as enhanced transparency, greater inclusivity in decision-making, and establishing ‘checks and balances’. Moreover, in Yemen there exists general scepticism about finding sufficient politically neutral persons to serve on committees.

The chair and vice-chair are elected by the commission from among its members. The Election By-Law confers on the chair the rank of deputy prime minister. Other SCER members have the rank and privileges of a cabinet minister.<sup>74</sup>

The Election By-Law provides that the ESC is responsible for submitting an elections security plan to the SCER. This must be approved by the SCER Chair, the Head of the (State) Security Committee, the Ministry of Interior, the Ministry of Defence and the President of the Republic. The establishment and functioning of ESCs has been controversial during previous elections, mostly because the security services are not regarded as being politically neutral.<sup>75</sup>

72 The Election Law allows cases to be filed against SCER members with the Office of the Public Prosecutor or a court against a SCER member who has: ‘committed an election offence ... or failed to carry out his obligations under the Election Law,’ yet the Election By-Law, drafted by the SCER, states that: ‘it is prohibited to take any investigation procedures or to arrest a SCER member or to put him in prison or to take any penal procedures except with the permission of the SCER, unless he is caught red-handed’.

73 The EU Final Report on the 2006 elections notes: ‘a clearly prevalent pattern of partisanship within the election administration towards the GPC and against the JMP’.

74 Some parties fear that their nominees would be co-opted by their status as ministers.

75 The By-Law provides that ‘security committees shall be encouraged to act with complete impartiality’.

Legally, the security committees are supervised by the SCER and election committees but it has been claimed that in practice they are also accountable to the Ministries of Interior and Defence.

#### **4.4 Jurisdiction of the SCER and Election Committees**

The SCER is in charge of ‘administering, preparing, supervising and overseeing’ elections and referenda.<sup>76</sup>

But considerable doubt exists as to whether there is a general mechanism enabling the SCER to instruct Main and Sub-Committees, and thereby ensure their actions are in compliance with the law.

The Election Law (Article 25.a) provides that: ‘all branches of the General Secretariat as well as the Supervisory, Main, Sub-Committees, and Polling Committees, Security Committees, Governors, Security Officials, Directors of Administrative Districts and all those who have an electoral duty or a responsibility shall submit to the supervision and instructions of the SCER *in order to ensure the neutrality of all local executive authorities who are called upon to assist the Commission*’ (emphasis added).<sup>77</sup> The Article appears to grant the SCER wide-ranging authority over lower-level committees and all bodies with a role in elections but a degree of ambiguity exists as to whether this authority is limited to *ensuring the neutrality of all local executive authorities who are called upon to assist the Commission* or is of ‘general application’.

The Election Law (Article 25.b) clearly provides that all election committees are responsible to the SCER for their assigned duties and the SCER has the power to hold them accountable and replace any committee member (with a nominee of the same party) if they do not undertake their duties according to the law. Notwithstanding the apparent clarity of this provision, the EU EOM 2006 reported that in 2003 the Supreme Court ruled that the SCER on the one hand, and the Main Committees on the other, are separate legal entities and that the ruling caused: ‘further legal inconsistency over the extent of the powers of the SCER to supervise the work of lower electoral commissions’.

The Supervisory Committees report to the SCER, and are responsible for: ‘overseeing the work of the Voter Registration Committees and the Polling Committees’. However, the Election Law does not give the committees clear authority over the Main Committees and Sub-Committees and in general, the legislation affords little information on the powers and authority of Supervisory Committees and Main Committees.<sup>78</sup>

<sup>76</sup> Election Law, Article 29.

<sup>77</sup> During election periods the local administration is expected to support the work of the election administration, although it should not interfere in its work.

<sup>78</sup> According to some interlocutors in past elections some committees conducted their duties as though they were an independent entity, and placed instructions from their nominating party above those of the SCER.

All decisions of the SCER must be made public. In a few instances the Election Law provides that some SCER decisions require a specific majority, for example a two-thirds majority is required to appoint lower-level election committees. However, neither the Election Law nor the By-Law provide any indication on the voting majority required for the SCER to adopt the Election By-Law, manuals, approve final results, or to take decisions on general issues arising.

#### **4.5 Transparency**

The SCER is required to: 'educate the public about the importance of elections'. However, the Election Law does not contain a specific provision requiring the election administration to conduct the election transparently and there are no guarantees that candidates and parties have a right to seek and receive information relevant to their status as election contestants. However, for the 2006 elections the SCER established a weekly forum for political parties, even though this is not foreseen in law.

#### **4.6 Preparations for the 2009 elections**

The preparations for the 2009 elections have been bedevilled by the GPC and JMP's inability to reach agreement on electoral reform, including the composition of the SCER. The mandate of the former SCER expired in November 2007 and a new SCER was not reappointed until August 2008. During the hiatus the SCER's General Secretariat continued to make planning contingencies for the 2009 elections, but was unable to make any formal decisions. No progress in re-drawing electoral boundaries or revising procedures of the SCER manuals could be made. Nor could much work be done to improve the quality and accuracy of voter registers. The Voter Registration Committees will probably also prove to have been appointed late, casting doubt on whether voter registration can be achieved within the legal deadlines.

The simultaneous holding of legislative and local elections may overtax the election administration, given that the 333 administrative districts and 301 parliamentary constituencies cover quite different areas. If a single Main Committee structure is formed problems could arise in determining their jurisdiction over territorial units covering both parliamentary and local elections, with Sub-Committees reporting to different Main Committees for the two types of election. Hence, it may be necessary to form two parallel structures at and below the level of the Main (Constituency / District) Committees.

The Election Law should:

Set out the criteria for determining the composition of the SCER and subordinate committees.

Prohibit any party or coalition from having a majority of members on the SCER or any election committee.

Establish that the SCER has jurisdiction to instruct Supreme and Main Committees to ensure their actions are in compliance with the law.

Require all election committee members to sign a declaration accepting the authority of the SCER and suspending all links with the party which nominated them to the committee.

State the voting majority required for the SCER to adopt the Election By-Law and manuals, approve final results, or to take decisions on general issues.

State the authority of the supervising committees over the registration committees and the Main Committees.

Contain a specific provision requiring the election administration to conduct the election transparently and guarantee that candidates and parties have a right to seek and receive information relevant to their status as election contestants.

Clarify the structure of the election administration and the jurisdiction of the Main Committees in the event that local and parliamentary elections are held simultaneously.

## 5. Election Districting

According to the Constitution, the electoral districts (for parliamentary elections) must have roughly equal populations, varying by not more than +/- 5 per cent. The Election Law provides that the SCER is responsible for dividing Yemen into constituencies and using census data to draw ward boundaries for local elections. According to the Election Law the district boundaries would then be adopted by presidential decree.<sup>79</sup> However, the Law does not set out in detail the criteria or procedures to be used for drawing boundaries.<sup>80</sup> Moreover, the Law does not stipulate how frequently election boundaries should be reviewed. According to IFES<sup>81</sup> the SCER revised some parliamentary constituency boundaries in 2002 in preparation for the 2003 elections.

The population size of the administrative districts varies from some 5,000 to over 350,000. Hence parliamentary constituencies cannot follow these administrative units and meet the Constitutional requirement to have constituencies with equal populations. Instead, constituencies are generally formed by agglomerating multiple small districts or dividing large districts. In some cases, constituencies are formed by combining part of one district with part of another – generally for ‘social reasons’, for example to avoid dividing a tribe.<sup>82</sup>

79 Article 53.

80 Article 24.a stipulates a general requirement that they should be delineated: ‘according to the principle of equal population while taking into consideration geographic and social factors.’

81 IFES, Election Law Reform in Yemen: Final Report on the public policy dialogues, January 2004 – January 2005, IFES, March 2005.

82 Some commentators have claimed that this practice leads to the institutionalisation of tribes as political entities.

Some 15 constituencies used in the 2003 elections contain districts or parts of districts located in different governorates.<sup>83</sup> A few constituencies contain non-contiguous territory.

General Comment 25 stipulates that: ‘... 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 ...’ There is no available data on population or voters per constituency, but the table below shows the number of constituencies allocated to the 21 governorates during the 2003 elections and the number of registered voters in each governorate, based on the 2006 presidential election.

### Equality of Votes

Governorate	Total Electors (2006)	Number of Constituencies (2003)	Average no. of voters per Constituency	‘Ideal’ no of Constituencies	Under / Over Representation
Sana’a City	831,056	19	43,740	27	-8
Aden	289,905	10	28,991	10	0
Ta’iz	1,169,983	39	30,000	38	+1
Lahj	350,110	12	29,176	11	+1
Ibb	1,005,738	36	27,937	33	+3
Abyan	228,313	8	28,539	7	+1
Bayda	265,062	9	29,451	9	0
Shabwah	205,327	6	34,221	7	-1
Mahara	52,952	2	26,476	2	0
Hadramout	499,691	18	27,761	16	+2
Hudaydah	940,379	34	27,658	31	+3
Dhamar	601,811	21	28,658	20	+1
Sana’a	496,450	14	35,461	16	-2
Mahwit	253,048	8	31,631	8	0
Hajja	680,660	20	34,033	22	-2
Saddah	306,463	9	34,051	10	-1

<sup>83</sup> For example, constituency 36 contains territory in Ibb and Taiz. Constituencies 63, 69 and 70 contain territory in Lahj and Taiz (as do constituencies 69 and 70), constituencies 127 and 128 contain territory in Shabwah and Al Bayda.



Jawf	132,126	5	26,425	4	+1
Marib	122,419	3	40,806	4	-1
Amran	437,187	15	29,146	14	+1
Dalah	217,026	7	31,004	7	0
Raymah	161,664	6	26,944	5	+1
<b>Total</b>	<b>9,247,370</b>	<b>301</b>	<b>30,722</b>	<b>301</b>	

It is apparent that Sana'a city is significantly underrepresented in the number of constituencies it was previously allocated.

The most recent census was conducted in 2004, with the data published in 2006, yet no alteration has been made to constituency boundaries since 2003. Reasons for this omission include a lack of progress since 2005 in re-drawing local administration boundaries and the delay in appointing the new SCER. It is unclear when the SCER appointed in August 2008 intends to redraw constituency boundaries, although time may be too limited to conduct an extensive review of constituency boundaries in advance of the 2009 parliamentary elections.

The Election Law should:

Detail the criteria and procedures to be used for drawing boundaries (for example regarding dividing and agglomerating districts to form constituencies).

Establish the frequency with which election boundaries should be reviewed.

Prohibit the formation of election constituencies with non-contiguous territory and agglomerating territories in different regions.

Ensure equality in the number of electors in each constituency, as far as possible.

## 6. Right to Vote

The Constitution guarantees universal suffrage to all Yemeni citizens who have reached the age of 18.<sup>84</sup> To vote citizens must first be registered (hereafter registered voters are termed 'electors') and their name must appear on a voter list. On election day voters are required to prove their identity by producing an ID card, a 'voter card' or any other official document bearing a photograph. Citizens who are resident abroad are permitted to vote, but only in presidential elections and referenda.

<sup>84</sup> The Election By-Law stipulates that a voter must full possess mental capabilities. This is consistent with international norms, but the restriction would be better placed in primary legislation.

The Election By-Law stipulates that a voter must possess full mental capabilities. This is consistent with international norms, but the restriction would be better placed in primary legislation.

## 7. Voter Registration

### 7.1 Framework for Voter Registration

Yemen does not yet have a national civil register from which a register of electors could be taken.<sup>85</sup> This limits the options available for compiling voter registers and necessitates the compiling of a specific register (or registers) of electors.<sup>86</sup>

The Election Law provides for the establishment of ‘permanent’ voter registers<sup>87</sup> (hereafter Voter Registers - VR) at the constituency level. Registers are ‘open’ only every two years.<sup>88</sup> This model can be adequate to provide reasonable quality voter registers when accompanied by appropriate legal safeguards and a public information campaign. However, the EU EOM noted: ‘there is a fundamental problem with the quality and accuracy of the voter register, which contains a sizeable number of ineligible voters caused by the inadequate implementation of the rules governing registration’.<sup>89</sup>

### 7.2 The Voting Domicile (see also Section 4.2 in Part A)

Citizens may only register to vote at one centre and may only vote at that centre. According to the Election Law (Article 4a) if a person has more than one residence (domicile) they choose where to register. Article 2.d of the Election Law defines domicile as: ‘The usual place of residence of a person, or where this person has his main place of work, or the residence of his family even if he does not reside in it’.<sup>90</sup> It is unusual to permit voters to register at their place of work. The JMP claim that this provision is abused by locating government employees (particularly military personnel) in specific constituencies to influence election outcomes. Permitting persons to choose their domicile creates other potential problems: for example unless all registers are cross-checked scrupulously, it increases the risk of multiple registrations in different constituencies, and makes it harder to ensure that electoral districts have an equal number of voters.<sup>91</sup>

85 The 18 June Agreement provided for: ‘finalising the process of making a civil record of all administrative units’ which should be a reference to voters’ lists’ after the completion of the 2006 elections.

86 Financial and capacity constraints may also limit the legislator’s options.

87 The VR is permanent in the sense that once an elector has their details entered into the register, they should remain on the VR register unless they change their residency, or their eligibility to be included on the VR is challenged, in other words it is not necessary for citizens to re-register for each election.

88 In some countries voter registers are ‘open’ on an almost continual basis. This method is possible when voter registers are maintained by a permanent cadre – usually within the staff of the local government administration.

89 EU EOM Final Report, 2006, op cit, page 17.

90 The IFES Final Report Election Law Reform in Yemen (April 2005) and the Supplementary Report (September 2005) elaborates at length on this ‘domicile issue’.

91 This is because voter registration and boundary demarcation are likely to take place at different times.

Military personnel have the right to vote. In most cases conscripts and ordinary soldiers reside and work in the same location (barracks).<sup>92</sup> However, the Election Law provides few details on voting by the military.

The Election Law requires electors to vote at the voting centre where they are registered. It also stipulates that: 'for purposes pertaining to presidential elections and public referenda a voter may cast his vote at any Voting Centre using a personal ID card, Voter Card, or any official document bearing the holder's photograph.'<sup>93</sup> This provision could create chaos on election day as the election administration would have no idea how many voters to expect at any given polling station and would not be able to plan appropriately, for example by providing sufficient ballots.

### **7.3 Procedures to Update and Correct the Voter Registers**

Procedures to review and update voter registers are set out in the Election Law, By-Law and a Voter Registration Manual. The review and update period must be scheduled at least six months<sup>94</sup> before the calling of elections.<sup>95</sup> 106 days are set aside to 'open' registers, to display updated lists and to allow for complaints and appeals to courts. Voter lists<sup>96</sup> are updated by registration sub-committees (hereafter registration committees) under the oversight of the Main Committees. Some 5,600 registration centres are set up at district ward level for this purpose, each of which has a committee for registering men and another for registering women.<sup>97</sup> Compiling voter lists at the district ward level allows registers to be consolidated into a 'constituency level' register for use in a parliamentary election or into a 'district level' register for a local council election.<sup>98</sup>

The registration committees should add to the registers persons who have become eligible (e.g. those turning 18) and the names of persons wrongly omitted previously, while removing the names of deceased persons as well as those 'wrongly included' in previous registers. Electors who have changed their domicile notify the registration committee in their new domicile and are re-registered there. The committee notify the SCER who instruct the committee maintaining the register at their former domicile to delete the corresponding entry. This is cumbersome.

<sup>92</sup> Withdrawing the entitlement to register at a place of work, as requested by the JMP, would have little effect on military voters because conscripts and soldiers' ordinary residences (barracks) are the same place as their place of work. Moreover, security reasons make it unlikely conscripts would be permitted to vote at their 'civilian' place of residence as this would require the mass issuing of leave passes.

<sup>93</sup> It is not clear if this provision entitles a voter simply to arrive at any polling station and vote, or whether they are still required to be registered at the voting centre (but not necessarily one that is their domicile). The EU EOM also found that this provision contradicted other Articles of the law (EU op cit, page 7).

<sup>94</sup> In an amendment to the Election Law of 2005, this period was changed from four to six months.

<sup>95</sup> It is understood that this is the date by which voter registration must commence. For the April 2007 elections, the process of updating the voter registers should have commenced by 28 August 2008.

<sup>96</sup> A voter list is a subdivision of a voter register. Once the voter register is compiled and finalised, voter lists are also extracted from the register for use on election day.

<sup>97</sup> These centres will become 'voting centres' on election day.

<sup>98</sup> This is important as the borders of constituencies and administrative districts do not necessarily coincide, hence the need to compile different registers for each election.

All registered voters are issued with a voter card bearing a photograph of the elector, personal data and information on the elector's registration and domicile. Registration committees are responsible for verifying the eligibility of electors, including the identity and age of those applying to be registered. This is ascertained by means of a personal ID card or any official document with the holder's photograph or the testimony of a village or neighbourhood chief (known in Yemen as the Akel or Amin) given under oath. Using the testimony of a trusted local person is not an uncommon practice in countries where local record keeping is not well-developed. However, the efficacy of the procedure is premised on the reliability and neutrality of the person concerned.

The law provides that: 'the voter list in each electoral constituency shall include the name and particulars of each citizen in that constituency who on 1 January of each year would have met the Constitutional requirements necessary to exercise his electoral rights.' This suggests that persons who may have turned 18 after 1 January of the year when the voter lists were updated but before the next election, may be excluded from the register. In cases of early elections or referenda the final voters lists used in the most recent elections - with the addition of those who are registered prior to the call for elections - shall be used. This provision also implies that persons reaching voting age since the last update would be unable to register to vote in the case of an early election or referendum.

#### **7.4 Composition of Registration Committees**

The law sets out eligibility criteria for membership of registration committees, but it does not provide any guidance regarding the recruitment procedure, for example whether this is done by open competition or through nomination, and which entities have the right to nominate. In 2002 - following discussions between the parties (and based on a subsequent SCER regulation) - registration committees were composed of party nominees. In 2006 the JMP decided not to nominate any committee members in protest against what it considered to be bias within the SCER.<sup>99</sup> The law makes no mention of training for any committee members. Reportedly persons appointed to committees have often been unfamiliar with their tasks.<sup>100</sup>

#### **7.5 Transparency**

The Election Law does not provide that the initial draft registers are displayed during the 30-day review period. However, updated registers are publicly displayed for five days after the end of the updating

<sup>99</sup> The appointed registration staff included GPC representatives and persons who had previously applied for civil service jobs. In some areas the SCER faced a recruitment shortfall and had to replace a relatively large number of committee members who resigned.

<sup>100</sup> IFES Post-Election Report on the 2006 Presidential and Local Election in Yemen (November 2006) states: 'The SCER's use of contracted personnel to train voter registration committees was not successful in many cases'.

period. Any additions and deletions arising from successful challenges during the claims period (after the updating and review phase) are also publicly displayed as are appeals against registration committee decisions.

Parties have the right to obtain a photocopy of the (preliminary) updated voter lists at their own expense. By law requests can only be made by parties' local branches during the five-day display period, upon submission of a formal request. Neither the Election Law nor the By-Law stipulates the timeframe in which the committee must provide the copies to the parties, nor their format (whether they include all the data included in the voter registers). The legislation is also vague about to whom the request should be made – the Main Committees (of which there are some 300) or the Sub-Committees (of which there are some 11,000).<sup>101</sup>

The 18 June 2006 Agreement includes the stipulation that upon request parties are entitled to receive electronic versions of the voter list records archived at the SCER. However the Law does not mention this right. The Court of Appeals in Sana'a ordered the SCER not to distribute the voter register in electronic form.

## **7.6 Complaints and Appeals**

After the end of the period when registers are open for updating, challenges can be filed with the Main Committees against any omissions and 'wrongful inclusions'. The law states that: 'Any registered voter shall have the right to demand the insertion of any name that may have been wrongfully omitted or the deletion of any name that may have been wrongfully listed therein,' (emphasis added). It is highly questionable whether one citizen should have the right to challenge the right of another to be included in a voter list. This suggests that registering to vote is not entirely a 'personal right'. Any elector can appeal against any decision of a Main Committee with the Court of First Instance, within five days of the decision being made, and can file an appeal against the decision to the Court of Appeal within ten days. The Appeal Court's verdicts are final.

## **7.7 Authority of the SCER**

The Election Law does not mention any requirement to centralise data into a countrywide registration database, but this occurs in practice and an electronic version of the register is created by the SCER. Among other benefits, this allows the SCER to search for potential duplicate or multiple entries and to make quality control checks. However, it is far from clear in law that the SCER has the right or the duty

101 The JMP commented that in 2006 it had experienced difficulty in receiving paper copies from registration committees at local level.

to conduct this activity. The Election Law does not grant the SCER the right to delete errors on its own initiative, even where known errors exist.<sup>102</sup>

NGOs and the JMP claim that the registers contain possibly hundreds of thousands of duplicates, underage persons, deceased, and 'phantom' entries.<sup>103</sup> However, notwithstanding limitations on the SCER's authority to instruct committees, during the registration update period in advance of the 2009 election it may be possible for some of the dubious voter registration entries to be checked and deleted where necessary. The SCER will need to identify the suspicious entries in advance of the update phase, and closely co-ordinate the voter registration committees' activities. This appears to be within their remit as the Election Law (Article 9) permits them to: 'determine the scope of functions of Main and Sub-Committees' and requires the committees to comply with relevant decisions and instructions. However, it may be that the SCER has to apply to the Public Prosecutor to delete entries.

Voter registers were updated in 2002 and 2006.<sup>104</sup> Some 9,250,000<sup>105</sup> electors were registered to vote for the 2006 elections. Registration as an elector is voluntary and citizens must register to vote in person in the electoral constituency that is their voting domicile. Consequently there are some citizens whose names do not appear on any voter list. The number of women electors is noticeably smaller than male electors (3,900,000 and 5,350,000 respectively). This suggests that at least 1,500,000 women were not registered to vote. Women's percentage share of the electorate did not rise as a result of the 2006 registration.

## Recommendations

The law should:

Set out the procedures for registering the military as electors and provide more detail on their voting arrangements, in particular clarifying whether the military are required to have been stationed in a location for 6 months prior to their registration as electors.

Seriously reconsider the provision that: 'for purposes pertaining to presidential elections and public referenda ... a voter may cast his vote at any Voting Centre using a personal ID card, Voter Card, or any official document bearing the holder's photograph'.

Set the selection criteria for the members of the registration committees.

Provide for the training of registration committee members.

<sup>102</sup> In 2006 the SCER did appeal to the public prosecutor to delete a significant number of underage and duplicate voters from the registers. However, according to observers this process lacked transparency.

<sup>103</sup> Their estimates range from some 450,000 to 1,000,000 entries although it is not clear if they are counting duplicates as one or two entries.

<sup>104</sup> Despite the legal requirement to update voter lists every two years, no voter registration occurred in 2004. This may be because a general census of the population was conducted that year.

<sup>105</sup> According to the SCER after the 2006 update of the voter lists, the number of registered electors rose by some 1,200,000.

In the case of early elections, provide for the registration of electors who have reached 18 years of age since the last election.

Provide for the public display of registers during the 30-day period when registers are updated and corrected.

Clarify which committee will issue a copy of the voter lists to parties and/or candidates and whether these have the right to receive an electronic version of voter lists.

Consider that electors should only have the right to appeal against a decision regarding their own entry in the voter register or the omission of their details, but not those of other citizens.

Make provision for a single nationwide register of electors.

Require the SCER to check the national register for duplicates.

Consider giving the SCER the right to appeal to a court to delete entries with known errors on condition that (i) the names of persons for which a deletion request has been made are publicly displayed at the location(s) of registration for a reasonable period before the case is decided by the court (ii) a right of appeal is provided for and (iii) the applicable deadlines are in conformity with other Articles of the Election Law.

Make a serious effort to achieve equal numbers of women and men registered as electors.

## **8. Right to Stand for Election and Candidate Registration**

### **8.1 Presidential Candidates**

The eligibility criteria for presidential candidates and the candidate nomination and approval procedures are set out in the Constitution. Regarding eligibility, candidates must be: (i) at least 40 years old (ii) a descendant of Yemeni parents (iii) at liberty to practice their political and civil rights (iv) of good character, practice Islamic duties and have no dishonourable criminal record and if so, to have been reprieved and (v) not to be married to a foreign spouse or to enter into such a marriage during their term of office.

The requirement that candidates be of Yemeni parents appears to conflict with General Comment 25 (point 15) which provides: 'Any restrictions on the right to stand for election, [...], must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as ... descent ...'

According to the Constitution, preparations for the Presidential election begin at least 90 days before the expiry of the incumbent's term. The Presidium of Parliament announces the opening of presidential nominations, after which prospective candidates have seven days to apply. Nominations are examined at a joint session of the House and the Shura Council – to ensure that candidates meet the eligibility requirements. Parliament then announces the names of accepted candidates. According to the Election Law every voter has the right to file a challenge against candidatures, and every person whose nomination is rejected has the right to complain to the House and the Shura Council within three days as well as the right to appeal to the Supreme Court.<sup>106</sup>

Within three days of the expiry of the contest and appeal period, the names of accepted candidates are presented to the joint session of parliament for approval. To be approved a prospective presidential candidate must secure the support of at least five per cent of the elected deputies of the House and Shura Council appointees.<sup>107</sup> Each elector may only vote for one candidate. The joint session is required to select at least three candidates. Presidential elections may not be held with fewer than two candidates. After the completion of the candidate nomination process, the President sets the election date.<sup>108</sup>

A citizen's right and opportunity to seek election, without distinctions or unreasonable restrictions, is an essential international standard and lies at the core of Article 25 of the ICCPR. General Comment 25 (point 17) states: 'if a candidate is required to have a minimum number of supporters for nomination this requirement should be *reasonable and not act as a barrier to candidacy*' (emphasis added). Requiring candidates to have the support of five per cent of deputies constitutes a considerable obstacle for prospective presidential candidates, particularly for 'independent' (non-party) and women candidates.

Neither the Constitution nor the Election Law sets out criteria by which MPs select presidential candidates, making this an entirely political process. The UN Human Rights Committee also noted that: 'Persons who are otherwise eligible to stand for election should not be excluded by reason of political affiliation'. Requiring support from MPs will most certainly make the political affiliation of a candidate an issue. The provision turns a nominal direct election into a two-step indirect then direct process.

If the intention of the law is to prevent unserious candidatures this is usually achieved by other means, for example by demanding a modest financial deposit for filing candidature or a reasonable number of

<sup>106</sup> According to the EU report, op cit, in 2006 over sixty persons submitted nominations as presidential candidates. Of these, 46 were deemed to meet the eligibility requirements. Five of the excluded nominees lodged legal complaints with the Yemen Supreme Court against the rejection of their nomination. Four of the challenges were upheld but the resolution of the cases only came after the conclusion of the registration process.

<sup>107</sup> The House has 301 members and according to the Constitution, the Shura Council has 111 members. Thus a candidate requires the votes of 21 deputies and council members.

<sup>108</sup> , the President continues his functions for a maximum of 90 days [...] (emphasis added).



supporting signatures. The pluralism and competitiveness of the 1999 election was seriously diminished when the Secretary General of the YSP and 20 other candidates were denied registration as candidates. The only rival to President Saleh was also nominated by the GPC. Of the 46 candidates deemed to meet the eligibility requirements in 2006, parliament selected just five to contest the Presidential election.

## **8.2 Parliamentary Candidates**

The Constitution sets out the eligibility criteria for candidates for election to the House; candidates must be: (i) a Yemeni (ii) at least 25 years old (iii) literate (iv) of 'good character and conduct', fulfil their religious duties and have no court convictions for 'crimes that contradict the rules of honour and honesty [...]'

Article 56 provides that: 'every voter shall have the right to nominate himself in the constituency that is his voting domicile'. Thus a candidate's choice on where they contest the election is restricted, although nothing prevents them taking up residence in a constituency where subsequently they wish to contest an election. Every candidate must pay a YER 5,000 (approximately €20) fee to the local council and present a receipt to the Main Committee when filing their nomination papers.

While the nominations period lasts for ten days the legislation does not fix when it should begin, for example, a certain number of days after the call for elections. According to the By-Law (Article 53) this is decided by the SCER. The decisions on the scheduling of the nomination period can affect the length of the campaign period, the eligibility to seek office for certain public officials<sup>109</sup> and the sufficiency of time for courts to hear appeals by prospective candidates whose application was rejected by a Main Committee.<sup>110</sup>

Candidates are required to complete their nomination form in person before the Main Committee – this is to ensure they meet the literacy requirement. The Main Committee has the responsibility to verify the information, but no deadline for this task is set out in law. Nothing in law requires the Main Committee to take and issue a formal decision on accepting or rejecting candidates' nomination applications.

Nominations of independent candidates must be endorsed by at least 300 voters drawn from the majority of electoral centres within the electoral constituency. The endorsing voters must meet the following conditions: (i) be registered in the voter list of the electoral constituency (ii) sign only one candidate's nomination papers. The Election Law does not provide any mechanism for the validity of signatures to be verified.

<sup>109</sup> See Article 60 of the Election Law.

<sup>110</sup> In 2003 the official candidate nomination period took place from 25 March to 3 April, therefore closing only 24 days before the election, leaving little time for filing appeals against decisions of the Main Committees on candidate registration before the ballots were printed.

The average number of voters per constituency is some 30,000. Thus independent candidates require the signatures of about 1 per cent of all electors in a constituency. This is a high figure, particularly in constituencies with fewer voters or in constituencies with a dispersed population. The additional requirement that the signatures be gathered from electors in the majority of electoral centres in the constituency is particularly burdensome for prospective candidates because of the time and travel potentially involved. The requirement that only registered voters may sign also means that candidates must know who is registered to vote, but the law does not grant them the right to receive a copy of the voter list. Moreover, the 10-day nomination period is a short timeframe for completing the signature collection process. These already challenging nomination criteria for independent candidates are made more onerous by the requirement that supporting signatures be notarised or confirmed by neighbourhood chiefs. Following the introduction of these requirements for independent candidates in 2001 the number of independent candidates fell from 3,700<sup>111</sup> (in the 1997 elections) to 571 (in 2003).

General Comment 25 (point 17) provides that: 'if a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy'. The legal requirements coupled with the additional procedural requirements may well constitute a 'barrier to participation' – particularly for female independent candidates, who have limited freedom of movement.

Any public official who nominates himself as a parliamentary candidate is deemed to have been suspended from their employment from the date of the beginning of the nomination period. The Prime Minister and his deputies, ministers, and various senior civil servants are prohibited from nominating themselves as candidates unless they have left their employment at least 3 months prior to the opening of the nomination period. A similar provision restricts certain local officials from contesting an election in the constituency of their employment.<sup>112</sup> These restrictions may be considered as 'unreasonable' and thus in conflict with international standards.<sup>113</sup>

The Election Law does not provide for legal appeals against decisions of the Main Committee (including appeals against the acceptance or rejection of a candidate's nomination).<sup>114</sup> Thus there appears to be no legal election-specific recourse against potentially arbitrary decisions taken on candidate registration.<sup>115</sup>

111 Of which 54 were elected.

112 The IFES Report (2005) op cit, states that regarding local officials: 'this provision was a major source of confusion and resentment at the 2003 elections, not least because it was applied to all public officials, whether or not they are in a position to influence others. It also discouraged competent public officials from seeking election to Parliament'. The NDI Report, op cit, states: 'There was ... suspicion that main commissioners were interpreting the law differently in different constituencies and for different individuals'.

113 General Comment 25 provides that: 'if there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b)'.

114 The 2005 IFES Report, op cit, notes that unlike the election law provisions allowing voters to challenge the eligibility of candidates for the presidency, there are no similar provisions in the law challenging the eligibility of candidates for parliament.

115 The 2003 NDI Final Report, op cit, states 'NDI received credible reports of local officials, judges and main commission members who were not fulfilling their responsibilities in an independent and professional manner with regards to nomination and candidacy withdrawal procedures'.

The right and opportunity to seek election is a fundamental universal right protected by Article 25 of the ICCPR, as is the right to an effective remedy against possible violations of rights.<sup>116</sup>

### 8.3 Local Council Candidates

The eligibility requirements and candidate nomination procedures for the registration of candidates for local elections are governed by both the Election Law and the Law on Local Authorities. These are similar to requirements for parliamentary candidates, although there appears to be no requirement for independent candidates in local elections to collect 300 signatures. As for parliamentary elections there are no clear legal provisions to challenge a Main Committee's decision not to accept a candidate's nomination.<sup>117</sup>

Requiring candidates to have the support of 5 per cent of deputies constitutes a considerable obstacle for prospective presidential candidates, particularly for 'independent' (non-party) and women candidates. Neither the Constitution nor the Election Law sets out objective criteria by which MPs should select presidential candidates. Abolishing this procedure should be considered. While legislation should set the timeframe for the start of parliamentary candidate nominations – for example, a certain number of days after the call for elections - ideally candidates should be registered at an early point in the process, enabling any appeals against registration to be heard by the competent judicial bodies.

The Law should require Main Committees to take and issue a formal decision on accepting or rejecting candidates' nomination applications. As the right to seek election is a fundamental right, the law should permit any candidate whose nomination is rejected to appeal to the Supreme Court.

The Election Law should set out the complete nomination and registration procedures for independent parliamentary election candidates and the mechanism by which the validity of supporting signatures are verified. Consideration should be given to reducing the burden on independent candidates to meet the nomination requirements. For example, the number of signatures required could be reduced, the requirement that the signatures must be drawn from the majority of electoral centres within the electoral constituency could be removed or amended, or the 10-day period could be increased, or the requirement that signatures be notarised be withdrawn.

116 Article 2 of the ICCPR provides that: 'Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.'

117 One Yemeni NGO informed DRI that in the 2006 local elections over 5,000 prospective candidates had their nominations rejected.

## **9. Election Campaigning**

### **9.1 Campaign Rules**

The Election Law sets out the general rules for election campaigning. The SCER adopted the Campaign and Election Promotion Manual in April 2003 (hereafter: the Campaign Manual). This permits a wide range of campaigning activity and lays out the media's responsibilities in election periods.

The law makes reference to a campaign period (Article 47), but does not stipulate when it starts. While it may be reasonable to provide for an official campaign period to 'time-limit' certain rights afforded to persons in their capacity as a candidate, for example regarding free media airtime, it is not reasonable to restrict their statutory rights (expression of opinion, association, assembly, freedom to publish<sup>118</sup> and disseminate information, et.c.) prior to the start of the campaign period as all citizens enjoy these fundamental rights on a continual basis.

### **9.2 Campaign Events and Campaign Advertising (outside the media)**

The Constitution does not provide guarantees regarding freedom of assembly. However, the Election Law specifically entitles candidates to hold electoral meetings to present their electoral programs. According to specific regulations issued by the SCER and the Law on Public Demonstrations and Strikes (Law 29 of 2003) candidates may hold public meetings, providing that the organisers inform the authorities in advance. However, it is prohibited to hold events in certain locations, such as mosques, government offices or barracks.

The law does not mention whether candidates are allowed to purchase private advertising space, such as billboards. However, the Election Law stipulates that: 'in general, any electoral advertising method for the benefit of any candidate may not be used except as provided for in this law and in accordance with the instructions of the SCER'. In practice, this provision does not seem to have unduly restricted parties and candidates rights or ability to engage in a range of campaigning in previous elections.

The Campaign Manual (Article 50) stipulates that all campaign materials shall be subject to the SCER's supervision. Article 184 requires that these must be submitted five days before their publication. In practice the SCER has required that they were 'approved' before use.<sup>119</sup> There seems to be no basis in law for this requirement, which could impinge on the right to free expression as set out in the Constitution and the ICCPR.

<sup>118</sup> The right to freely publish political information is protected by the ICCPR according to General Comment 25 (point 25).

<sup>119</sup> See EU EOM Final Report, 2006.

### 9.3 Campaign Financing

The Election Law prohibits state funding for electoral purposes and the use of state resources in campaigns. However it provides for public funding of presidential candidates' election campaigns. Each candidate should receive the same amount, which is set by the House of Representatives.<sup>120</sup> Presidential candidates can also accept donations from Yemeni individuals or corporations.<sup>121</sup> There is no legal obligation to disclose donations received, including non-monetary donations (so-called donations 'in kind') or campaign expenditure.

The Election Law is silent on how parliamentary and local candidates may finance their campaigns. The Law on Political Parties (PPL) permits parties to secure 'general' funding through: (i) subscriptions and contributions of members (ii) the subsidies allocated by the government (iii) return on the party's investments in fields other than commercial activities (including the party's newspapers or magazines) (iv) gifts and donations.<sup>122</sup> The CAPPO determines the total amount of the government subsidy to parties. The Law provides that 25 per cent is divided equally among all parties represented in the House and 75 per cent is allocated according to the share of the vote gained by the party's candidates in the previous legislative election; providing that this was not less than 5 per cent of the total vote. Only the GPC and Islah received more than 5 per cent in the 2003 elections.<sup>123</sup>

General Comment 25 provides that: 'reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party'. However, in Yemen there is no limit to what a candidate in any type of election may spend on their election campaign.

### 9.4 Election Campaigning in the Media

The UN Special Rapporteur on freedom of opinion and expression identified a number of principles to which the media should adhere during pre- election periods. He emphasize that: 'in pre-election periods, and in the interest of ensuring the most fully informed electorate possible, the State must ensure that media are given the widest possible latitude.'<sup>124</sup>

120 In the 2006 election each presidential candidate received about YER 25 million (approximately €100,000) from public funds.

121 On condition that such contributions are deposited in a bank account. Candidates must submit bank statements to the SCER on a regular basis.

122 Parties must record the names of all donors and the amounts donated and inform the relevant authority of any contribution exceeding YER 100,000 in a single donation or if the donations of a donor exceed YER 200,000 in a single year.

123 NDI reported that in 2003 the state provided YER 500 million (€1.7 million) for supporting parties, see NDI Report 2003, p.15.

124 Report of the UN Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, E/CN.4/1999/64, 29 January 1999, pages 6-7.

The law grants the SCER strong powers to regulate the media during election periods. Article 25c provides: 'official media shall submit to the supervision and instructions of the SCER in matters relating to general elections and referenda' and Article 38 provides: 'official media shall be banned from publishing or broadcasting any issue pertaining to elections and referenda except with the SCER's approval and supervision. Official media shall put all its resources at the SCER's disposal'.

The Election Law requires the SCER to adopt regulations concerning the state media's coverage of candidates during the official campaign period to guarantee all candidates 'equal media access to present their electoral programs'. However, the law does not provide for a minimum or maximum amount of airtime candidates should receive or stipulate that this airtime be granted free of charge.

The Election Law specifically grants presidential candidates the right to organise forums and press conferences to present their electoral programmes. The Campaign Manual clarifies that presidential candidates do not have to seek the SCER's permission to give media interviews although they must give 48 hours' notice of their intention to hold a press conference (Article 55, Campaign Manual).

In the 2003 parliamentary elections some 1,700 candidates sought election. Ensuring candidates receive equal media coverage presents a challenge in a country with few state media outlets. Previously state TV simply listed all candidates on a 'rolling information bar' and the state press simply printed lists of candidates' names. This told voters nothing about candidates' electoral programmes.

The Election Law (Article 39) grants political parties and organisations the right to present their electoral programs in visual, audio and printed official media on an 'equitable basis' in accordance with the regulations adopted by the SCER. This is an important provision as it establishes that in addition to candidates, parties have the right to address voters.<sup>125</sup> However, the Law makes no mention of candidates' or parties' rights to place paid campaign advertisements in the media.

The Campaign Manual specifically restricts provincial and local radio stations from covering the campaigns of candidates in local elections.<sup>126</sup> Consequently, in 2006 candidates for local councils had no access to the media. The law does not require state media to grant candidates or parties 'equal treatment'. The UN Rapporteur on the Freedom of Expression recommends that: 'government media are balanced and impartial in election reporting, do not discriminate against any political party or candidate in granting

<sup>125</sup> For the 2003 parliamentary elections the SCER allocated parties (with over 10 candidates) 30 minutes per day collectively, as well as space in government-controlled newspapers. Nevertheless, election observers noted that the SCER's control of content: 'was very restrictive and effectively undercut the spirit of the law. Any criticism of government policies (which by implication meant criticism of the GPC) was cut before airing and parties were not allowed to do anything other than read their platforms during their allocated times.' NDI Report on the 2003 elections, op cit (page 16).

<sup>126</sup> The EU Final Report, op cit, (page 23) stated: 'There was no basis for this instruction in the Election Law and, indeed, it appeared to be contrary to legal provisions which require the SCER to provide the State media with the complete list of local candidates so that their names and affiliations could be published or broadcast.'

access to airtime and ensure that news, interviews and information programmes are not biased in favour of, or against, any party or candidate'. Many countries require that this principle is respected at all times – not only during elections.<sup>127</sup>

The Election Law provides that if the President of the Republic is a candidate in a presidential election, the official media's coverage of his daily duties and activities shall not be considered as part of the election campaign. Despite the provision, confusion may still arise regarding whether media coverage of the President relates to his official duties or his campaign activity. Thus it is important to that the media distinguishes between the two to ensure that all candidates (of which the President is one) receive equal access to the media as required by law.<sup>128</sup>

The legislation does not set out any mechanism to enforce a candidate or party's right to equal media access. The Law does not designate any official body to receive and rule on media complaints related to election campaigning. However, it might be possible under general provisions (such as Article 138) for a citizen or candidate to file a petition with a court against the SCER, for failing in its duty to ensure the media's compliance with legislation or indeed if the SCER acts beyond its mandated powers.

The Election Law should state when the official campaigning period starts. Candidates should be granted a reasonable period to conduct their campaigns.

The Election Law should not restrict candidates' rights to associate, assemble, speak, publish and disseminate information freely prior to the commencement of the official campaign period.

The legislation should clarify whether candidates have the right to purchase advertising space, such as billboards.

The Election Law should elaborate on the means by which candidates may finance their election campaigns. There should be a legal obligation to disclose donations received, including non-monetary donations (so-called donations 'in kind'), and campaign-related expenditure. To ensure candidates' broad equality of opportunity, consideration should be given to fixing campaign expenditure limits.

The law should provide for a minimum or maximum amount of media airtime to which candidates are entitled and stipulate that this is granted free of charge.

In parliamentary elections the law should grant parties fielding over a certain number of candidates guaranteed access to the state media to campaign.

<sup>127</sup> In March 2006 the JMP published proposals for political reform. These included the formation of a National Media Council to ensure the political neutrality of state media.

<sup>128</sup> In its monitoring of news reports on Yemen TV (Table 3), the EU EOM noted "excessive coverage of the incumbent president and members of the government in comparison to that of other political parties and candidates that goes beyond the levels of benefit of coverage that an incumbent can expect".

The law should require state media to afford all candidates and parties 'equal treatment'.

The law should clarify local candidates' rights to media access stations and to campaign on the radio in general.

If paid advertisements are permitted, the law should require the media and owners of advertising space to treat all candidates equally, for example in terms of advertising rates, application dates et.c.

The requirement that presidential candidates must give the SCER 48 hours' notice of their intention to hold a press conference should be withdrawn.

## 10. Voting Procedures

Voting starts at 8am and continues until 6pm. The election is administered by Sub-Committees (one per voting centre) and Polling Committees (one per polling station for between 100-1000 electors) under the management of a Main Committee. There are separate voting facilities for men and women. Each committee has three members. Candidates have a statutory right to enter a polling station<sup>129</sup> and to nominate representatives to monitor polling. If a candidate fails to provide the Polling Committee with the name of their representative, or if the nominated person fails to attend polling, a person is appointed as the candidate's representative. This is an odd stipulation, as there is no guarantee that the appointed person will work in the candidate's interests.

Polling Committee members and candidate representatives are required to sign the official minutes. According to Article 103, at the vote counting stage a candidate (or his representative) can refuse to sign the minutes, and comments must be documented in the minutes. However, this does not affect the announcement of results.

Before the opening of polling, ballot papers received are counted and recorded. Ballot papers contain the names of candidates and candidate or party symbols.<sup>130</sup> There is no provision to link ballots to specific polling stations (such as by stamping the reverse side of ballots with a stamp unique to each polling station). This increases the chance of 'rogue' ballots from one polling station being used in another, or the use of pre-marked ballots.

Voters may generally only vote at the place of their registration.<sup>131</sup> Proxy voting is not permitted. Each voter

<sup>129</sup> The Election Law (Article 97) provides: 'no person other than voters registered in the list, candidates or their representatives shall be allowed into the Committee's premises'.

<sup>130</sup> General Comment 25 (point 12) provides: 'Positive measures should be taken to overcome specific difficulties, such as illiteracy. (...) Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.'

<sup>131</sup> Article 5 of the Election Law provides that for presidential elections and referenda, electors may vote at any polling station. The EU EOM noted this provision conflicts with the requirement in Article 99, which provides that: 'The Committee shall verify that the voter's name is registered in the Voters List'.



is required to present their voter card. The Committee makes a mark next to the voter's name to indicate he has received a ballot paper. The law does not detail the procedures for verifying the identity of veiled women.

After each voter casts their vote the Committee should mark one of the voters' thumbs with an indelible ink stain and the Committee should mark their voter card, in order to prevent multiple voting.<sup>132</sup> Voters are required to place a fingerprint mark next to their name on the voter list, to indicate that they have voted. There are no provisions regarding 'special voting' such as voting by the military at polling stations other than civilian polling stations, and hospitalised persons. Nor is there provision for voting by those unable to attend polling in person, such as the aged, infirm or sick. The law does not mention establishing any voting centres in detention centres and it is understood from Yemeni practice that no such voting facilities are established. This conflicts with international standards.<sup>133</sup>

With some exceptions the voting procedures as set out in law conform to international standards and best practice. However, international observer reports point to a failure to follow the legal provisions. It is particularly troubling that the Constitutional right to a secret ballot is inadequately respected.<sup>134</sup>

Consideration should be given to 'validating' ballots, linking them to a particular polling station, such as by marking the reverse with a unique committee stamp or appending a signature of the committee chair to the reverse of the ballot.

The law should provide more detail on voting by military personnel, the hospitalised, homebound persons, and those in pre-trial detention.

The Election Law should stipulate that accredited domestic and international observers, the media, and a member of a higher election commission or committee are permitted to enter the voting room of a polling station.

If they are required to sign the minutes, committee members and candidate representatives should be entitled to enter a comment, complaint or dissenting opinion on the voting and counting processes into the minutes. These should be adjudicated by the Sub- and/or Main Committees before the announcement of final results.

<sup>132</sup> Article 30 provides that the substance used to mark voters' thumbs is not removable for at least 24 hours. However, in most other countries an election stain is usually designed to remain visible for 3-4 days. If a stain is required to last for only 24 hours, it is unlikely to be sufficiently irremovable.

<sup>133</sup> General Comment 25 provides: '[...] Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote'.

<sup>134</sup> The EU EOM Report, op cit, (page 30) mentions that in 20 per cent of polling stations breaches of the secrecy of vote were observed, in 19 per cent of voting centres attempts to influence voters were observed and in 12 per cent there was intimidation of voters.

## 11. Counting, Tabulation, Aggregation

After the voting has finished the Polling Committee should seal the ballot boxes and record relevant data (votes cast, ballot papers received, number of used and unused ballots etc.). The Chair, committee members and candidate representatives should sign the minutes. Unused ballot papers should be sealed in an envelope.

The Polling Committees then deliver the ballot boxes and minutes to the First Sub-Committee (which becomes the 'Counting Committee') which counts the votes from all committees under its supervision. Votes are counted in the presence of Polling Committees and candidates (or their representatives). All members of the Counting Committee must be present for the count. In practice, this allows a committee member to obstruct the process by leaving the counting premises.<sup>135</sup> The Law does not clearly provide that NGO observers, international observers and 'party' monitors may also be present during the vote count.

The Committee should confirm that the numbers of used and unused ballot papers, and the numbers of valid and invalid votes counted, match the numbers stated in the Polling Committee minutes. It is best practice that the number of used and unused ballots is established (and entered into the minutes) before the opening of the ballot box, thereby avoiding a situation where a committee counting votes is tempted to 'fit' the number of used ballots to the number of ballots in the box. Indeed, the law fails to state what action the Counting Committee should take should these figures not match.

Each box is counted separately and the number of votes in each box is counted and recorded. Potentially, counting multiple ballot boxes and transferring material could take many hours, if not days, particularly when multiple elections are held simultaneously, as is likely for the April 2009 elections.<sup>136</sup> The law does not foresee any interruption in the process – although this is likely to occur in practice. Moreover, it does not establish any legal deadline for the Counting Committees to complete the vote count.

While the Election Law provides details on how the count should proceed, it does not provide for a proper sequence of steps.<sup>137</sup> The Law provides that: 'Once a ballot paper has been counted and recorded in the above-mentioned list, the Committee Chair shall mark it to that effect'. Adding a mark to a ballot is highly problematic as it could complicate any subsequent adjudication of whether a ballot is valid or invalid. The guiding principle should be that ballots 'expressing the will of a voter' shall be deemed valid. The law does not specify what should happen if there is a dispute regarding the validity of a ballot.

<sup>135</sup> This appears to have happened in the past, see IFES 2005, op.cit.

<sup>136</sup> EU observers noted that at several larger polling centres the counting of local council ballots took several days, EU EOM Report, op cit, (page 31). In April, Counting Committees may have to count 4 different types of ballot – parliamentary, governorate, district and referendum.

<sup>137</sup> It is best practice to separate ballots into piles of (i) valid votes; one per candidate (ii) 'invalid votes' and (iii) disputed ballots, that is, those whose validity needs adjudication. Afterwards, it is best practice that the committee count each vote pile separately and the enter figures into the minutes.

The Counting Committee enters the voting results into the minutes. These should be signed by the Chair and committee members and by the candidates (or their representatives). The minutes should be placed in a 'special' envelope and the envelope sealed and signed by all those present and stamped with the official committee stamp.

The counting process should continue without interruption until all ballot boxes have been counted. A candidate (or his representative) is not allowed to leave the counting premises without permission.

After counting the Committee Chair aggregates the results from all ballot boxes and makes a record of the votes for each candidate. The law does not require that the Committee records all relevant data - the total number of ballots received, the total number of used ballots, the total number of unused ballots, the total number of valid votes and the total number of invalid votes. The table of aggregated results should be signed by all Committee members and candidates' representatives, and stamped with the Committee's official seal. The Chair should announce the number of votes gained by each candidate. Candidates have the right to receive a copy of the table of aggregated results and there is no provision that the Committee must publicly display a copy of the polling results. These are major shortcomings.

Once the minutes have been completed the results are transferred to the Main Committee. There is no legal provision requiring that used and unused ballots and other election material be adequately secured, such as in a ballot box after the vote count and during transport to the Main Committee. The law does not provide candidate representatives and observers the right to accompany the balloting material to the Main Committee.

After receiving a table of results from a Counting Committee, the Main Committee should immediately enter the data into a constituency level table of aggregated results. After completion this should be signed by the members of the Main Committee, the Chair of each Counting Committee and by the candidates or their representatives.<sup>138</sup> The minutes should be prepared in five copies.<sup>139</sup> There is no provision permitting a candidate or his representative to request a recount of votes; either by the Counting Committee or the Main Committee.

The Main Committee announces winning parliamentary and local council candidates. The SCER shall receive the election results and announce them immediately upon receipt. The process of announcing

<sup>138</sup> Unlike the minutes of the Counting Committee the final minutes of the Main Committee must contain the names of all candidates in the electoral constituency, the total number of votes obtained by each candidate, the total numbers of valid and invalid votes, and the total number of unused ballot papers. However, the law does not require that the number of ballots issued or the number of used ballots are recorded.

<sup>139</sup> One copy is sent to the SCER, one to the Supervisory Committee, one to the Governorate administration, one copy shall remain at the premises of the Main Committee, and a copy shall be given to the winning candidate. All other candidates can receive a certified copy of the final results.

the final results should be completed no later than 72 hours from the end of the voting process. In view of the delays that may arise at the level of the Counting Committee (First Sub-Committee), the SCER may not be able to honour this deadline in all types of elections. The SCER issues parliamentary candidates with certificates of election, although this does not restrict the filing of a legal petition challenging the result before the House.

The Law contains no provision for any election committee to publish election results. The EU EOM Final Report (2006) was particularly critical of the counting and aggregation processes, stating: 'a series of fundamental and systemic weaknesses within Yemen's political and administrative structures [...] undermined the democratic nature of key aspects of the electoral process. In particular, the results process lacked credibility to the extent that it was not possible to have confidence in the accuracy of the final results.'

The Law should clearly provide that domestic NGO observers, international observers and 'party' monitors may also be present during the counting of votes.

It is best practice to separate ballots into piles of (i) valid votes; one pile for each candidate and (ii) clearly 'invalid votes' and (iii) ballots whose validity needs adjudication.

Adding a mark to a ballot is highly problematical unless the Law clearly states which mark should be used and where it should be placed, as it could complicate any subsequent adjudication of whether a ballot is valid or invalid vote. This provision should be reconsidered.

The law should provide detail on what should happen if there is a dispute regarding the validity of a ballot, for example a vote by the Counting Committee or decision by the Chair.

The law should require that the Committee records the total number of ballots received, the total number of used ballots, the total number of unused ballots and the total number of voters (registered and casting ballots) before the opening of the ballot box, thereby avoiding a situation where a committee counting votes may be tempted to 'fit' the number of used ballots to the number of ballots in the box.

The law should specify what course of action the Counting Committee should take in the event these figures do not match.

The law should establish a legal deadline by which Counting Committees must complete the vote count.

The law should provide a timeframe for certification of candidates as well as the right to request a recount of votes; either by the Counting Committee or the Main Committee.

The law should require election committees to display polling results at voting centres and require the SCER to publish election results for all levels from Sub-Committees upwards.

## 12. Electoral Offences

The SCER, Supervisory Committees, Main Committees and voters have the right to file a criminal case with the Office of the Public Prosecutor (OPP) or the Courts of General Jurisdiction against any individual. The Law (Article 125.a) provides: ‘such cases shall be reviewed in a timely manner’. Only the Judiciary can impose penalties.

The Election Law includes a wide range of election offences and penalties. These include harsh sentences for SCER officials who violate the law.<sup>140</sup> Some of the provisions on electoral offences are formulated vaguely and may be a deterrent to the efficient functioning of the SCER, for example the SCER’s General Secretariat staff can face a three-year prison term (or a substantial fine) for: ‘disclosing any information or data that may affect the election process’ (emphasis added). Moreover, the severity of the penalty does not seem proportionate to other offences, for example a member of an election committee may receive only one year in jail for tampering with election results, and there is no specific provision regarding penalties for not counting votes honestly. Similarly, voting more than once, impersonating a voter or stealing election documents (all of which relate to ascertaining the ‘true’ will of the people) is punishable by only six months’ imprisonment.

General Comment 25 calls for the strict enforcement of penal provisions regarding interference with voting as well as intimidation or coercion of voters. However, observer reports indicate a general problem with the enforcement of the penal provisions regarding election violations.

The penalties for election offences should be proportionate to the seriousness of the offence.

The provision that the SCER’s General Secretariat staff can face a three-year prison term (or a substantial fine) for: ‘disclosing any information or data that may affect the election process’ should be clarified or abolished.

There should be a specific penalty for failing to count votes honestly.

## 13. System for Complaints and Appeals

ICCPR (Article 2) provides among other stipulations that state parties shall undertake: ‘to ensure that any person whose rights or freedoms [...] are violated shall have an effective remedy’, and that: ‘the competent authorities shall enforce such remedies when granted.’

<sup>140</sup> A SCER member can be imprisoned for up to four years for offences including, rather vaguely, ‘violating [or refusing to enforce] the provisions of the Election Law, its by-laws and SCER decisions’.

General Comment 25 provides: 'There should be [...] access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes'.

The Constitution provides that citizens have the right of recourse to the courts to protect their rights and lawful interests (Article 51).<sup>141</sup> It also provides that the courts shall judge all disputes and crimes (Article 149). These general provisions establish that only the courts have jurisdiction, implying that the election administration can have no formal role in resolving formal election disputes. The Election Law elaborates procedures for courts to hear some types of election disputes and for the prosecution of election offences.<sup>142</sup> However, the Election Law gives no indication as to how citizens can seek legal remedy against administrative actions or decisions (such as those made by an election committee). In practice, voters are obliged to petition a court regarding all disputes, including those against administrative actions.

The Election Law (Article 138) provides: 'Each voter may file a petition before the Judiciary against the [SCER], for any procedures undertaken by it in violation of the Constitution and the law. Various levels of courts shall decide such contests within (30) days. Deliberations on such cases at each court level may not exceed (10) days'. However, the law does not state which courts have jurisdiction.<sup>143</sup> Other shortcomings include not establishing a deadline by which a legal challenge can be filed, and not setting reasonable deadlines for courts to issue rulings.<sup>144</sup>

With the exception of issues relating to voter registration, there are no legal provisions enabling a legal challenge of a decision, action or inaction by a Supervisory, Main, Sub- or Registration Committee, for example regarding the registration of candidates in parliamentary or local elections, its implementation of campaign related provisions, or its implementation of voting and counting procedures.<sup>145</sup> Article 128 provides that it is an offence for any committee to: 'Refuse to consider a legal application for a candidate (...)'. Nevertheless, according to reports in 2003 Main Committees rejected prospective candidates on numerous occasions and at times arbitrarily.<sup>146</sup> Faced with violations of citizens' rights, the SCER established a system whereby the 'appeals' could be filed with Supervisory Committees.

141 They also have the right to submit their complaints [...] to the various government bodies.

142 Part 2 of the Law sets out procedures to file complaints on issues related to voter registration and appeal election committee decisions in this regard to court. Part 7 specifically deals with contesting election results for presidential, parliamentary and local elections as well as referenda. The Law provides a means of appeals against decisions of the House of Representatives and the Shura Council on registering presidential candidates.

143 Although not set out in the Election Law, it appears that claims against the SCER can be filed at a First Instance District Court in Sana'a, with appeals possible to the Court of Appeal and ultimately to the Supreme Court.

144 While the law sets out when a court must issue its ruling and how long it may deliberate, the 30-day timeframe is inappropriate to an electoral process where it is frequently necessary to issue rulings within a compressed timeframe.

145 It is possible for a candidate: 'to contest the voting and counting results by filing a petition before the Supreme Court', but not for a citizen to challenge the action of a particular sub-committee for not following voting procedures correctly.

146 The JMP claimed that some of its candidates for the 2003 parliamentary elections were rejected for minor technical infringements.

However, such arrangements should be foreseen in law. Some persons whose nominations were rejected also filed petitions with courts, some of which were upheld.<sup>147</sup>

According to an SCER decision of 21/04/2006, every citizen and every candidate representative: 'shall be entitled to present a complaint to a Supervisory, main or sub-committee challenging any procedure or action which violates the Election Law, Electoral Manuals or SCER instructions.' The significance of this decision is diminished by the Supreme Court's ruling of 2003 that the Main and Sub-Committees have a separate legal personality to the SCER, because while it is possible to file a complaint with committees, a higher election committee (including the SCER) has no power to instruct a lower committee without a court order.

### **Contesting the Voting Process and Counting Results**

The Election Law permits the filing of petitions by persons with 'legal standing' against the voting processes and counting results in presidential, parliamentary, local elections and referenda. However, only candidates have 'legal standing' to file these petitions.<sup>148</sup> This is a denial of the electors' right to an effective remedy under Article 2 ICCPR and may well run counter to citizens' rights protected by Article 51 of the Constitution.

The Supreme Court has jurisdiction to hear petitions against voting and counting results in presidential and parliamentary elections. Petitions must be filed within 72 hours of the announcement of results and petitioners must pay the court a deposit of YER 100,000 (for a contest in a presidential election) or YER 50,000 (for a contest in a parliamentary election). The Court of Appeal hears petitions in local elections where petitions must be filed within 48 hours of the declaration of the result and a deposit of YER 10,000 must be paid. The Supreme Court must give its verdict no later than ten days from the date of receiving the advice from its assisting body.<sup>149</sup> For parliamentary elections, the Court must issue its decision before the elected house holds its first session.<sup>150</sup> For all three types of election there is a single instance appeal process, without the right of appeal.<sup>151</sup>

147 DRI was informed of one instance where a court took four years to rule on a candidate's eligibility.

148 Under Yemeni law, the right to seek redress is limited to those having 'cause and linkage' to an action or decision, that is to those who are the 'victim'. Voters are not considered to have 'cause and linkage'.

149 The court with jurisdiction forms an 'assisting body' from members of the chairs (or their representatives) from the next lowest tier of the judiciary, 'to investigate and advise on the validity of the contests', for example, the Supreme Court forms an assisting body from the Chairs of the Courts of Appeal.

150 The Election Law makes the same provision regarding presidential elections, even though this does not appear to be applicable to the election of the President. Article 64 of the Dispute Manual provides that the Supreme Court must: 'issue a verdict before the expiry of the period by which the President must take the Constitutional Oath before the House of Representatives.'

151 It is also possible to file petitions against voting and counting results in a referendum. Petitions relating to voting and counting can be filed with a Court of First Instance or with the Supreme Court where it relates to the 'general results'. The decision of a First Instance Court can be appealed to a Court of Appeal. This is the only example in the Election Law where an appeal to a higher court can be filed.

It is only in regard to local elections that the Election Law (Article 122) specifically mentions the possibility that a court may deem a voting and counting processes invalid. In this case, the SCER is responsible for undertaking the necessary procedures to re-run the elections within a maximum of 60 days.

When filing a petition regarding the voting or counting process, candidates must file it against the winning candidate (who becomes the respondent); even if the complainant claims a violation of the law by an election committee or one of the other losing candidates.<sup>152</sup> In all types of election, the submission of contests shall not prevent the election administration from announcing the names of the winning candidates or from awarding certificates of election. In the case of legislative elections, the submission of the contests does not prevent elected candidates from attending the sessions of the House of Representatives.

Article 68 of the Constitution provides that the House has competence to determine the legitimacy of its membership. An appeal should be submitted to the Supreme Court within 15 days of its delivery to the House. This provision clearly has some connection to an election process, not least because the Election Law reiterates the Constitutional provision and Article 106 makes reference to retaining election material until: 'contests are resolved by the House of Representatives'. However, it is not clear how this constitutional provision relates to Articles 111-114 of the Election Law, which gives the Supreme Court jurisdiction to hear petitions regarding the results of legislative elections.<sup>153</sup> Unlike petitions on voting and counting, any 'voters' may file petitions challenging the legitimacy of an MP's membership of the House.

Permitting the House to take a decision on the legitimacy of the election of one of its members is problematic because MPs have a direct political interest in the outcome of the decision. If a party enjoys a two-thirds majority – as is the case with the Parliament elected in 2003 – it is able to 'relieve' opposition MPs of their mandates.

It appears that most post-election petitions to the Supreme Court (relating to parliamentary elections) and to the Courts of Appeal (relating to local elections) concern complaints over the tabulation (aggregation) of polling results. Candidates do not use legal remedies as frequently as they might because of doubts concerning the independence of the judiciary and the expense involved.<sup>154</sup>

<sup>152</sup> in writing within four days.

<sup>153</sup> DRI was informed that Articles 111-114 relate only to the voting and counting process, and thus a petition regarding the 'validity' of any other aspect of an MP's election should be filed with the House.

<sup>154</sup> According to the NDI Report on the 2003 elections (op cit), in 2003, 62 petitions relating to voting and counting were accepted by the Supreme Court, of which 25 were filed by the GPC (21 were filed against Islah candidates and four against independents), 15 were filed by Islah (of which 14 were against the GPC and one was against an



The Election Law should:

Clearly establish citizens' right to file petitions with the courts for alleged violations of legal provisions at all stages of the election process, including during the election campaign and against the election results, in other words the right to challenge election results in court should not be limited only to candidates.

Establish how citizens can legally challenge administrative actions or decisions (for example, those made by an election committee).

Specify which courts have jurisdiction to hear these cases and establish a reasonable deadline for filing petitions and for courts to issue rulings.

The Election Law should clarify the applicability of Article 68 of the Constitution (which grants the House the jurisdiction to determine the legitimacy of its membership) in connection with Articles 111-114 of the Election Law, which gives the Supreme Court jurisdiction to hear petitions regarding the results of legislative elections.

## 14. Election Observation

In conformity with General Comment 25, Article 142 of the Election Law provides for observation of election and referendum processes on election day by international organisations and Yemeni NGOs. The SCER is charged with adopting the necessary regulations. Political parties may form monitoring committees and candidates are permitted to nominate representatives to voting centres.

The SCER has adopted a by-law on election observation (applicable to domestic and international observers), most recently in February 2006. This includes observers' rights and duties (including those relating to impartiality and non-interference in the process). Overall, it provides a reasonable basis for election monitoring and domestic and international media access to report on polling, although some details could be approved.<sup>155</sup>

While the regulation permits observers access to various documents, including information on the voter registers (Article 11), it does not entitle them to scrutinise relevant committee records or to receive certified copies of polling results at voting centres – this is a major omission.

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independent), 5 were filed by the YSP (all against the GPC), 3 were filed by the Nasserites (all against the GPC), and 1 by the Ba'athists (against an independent). All opposition and independent candidate challenges were rejected. Four petitions filed by GPC candidates were upheld, and the Supreme Court ordered the voting to be partially repeated at voting centres in constituencies 61, 63, 75, and 86. The EU Final Report on the 2006 elections notes 231 petitions filed regarding local elections.

<sup>155</sup> For example under Article 4(3): 'No more than one monitor (representing a political party or organization) shall be assigned to each constituency in local councils and parliamentary elections'.

Nor does it deal with the issue of whether domestic observers may file formal complaints about the process, and if so, with which body.

In 2006 the SCER accredited some 28,000 observers from Yemeni NGOs as well as 18,638 party observers. Some domestic observer groups reported problems in monitoring the registration of voters. Article 142 does not explicitly permit this as a recognised activity.

All observers should be granted the right to receive a certified copy of the protocols of election results.

Domestic observers should be entitled to enter their comments into the minutes and able to file a petition with the courts against observed violations of the law.

Observers should be granted the right to monitor the registration of voters.

### List of Recommendations

#### 1. SCER

The Election Law should:

Set out the criteria for determining the composition of the SCER and subordinate committees.

Prohibit any party or coalition from having a majority of members on the SCER or any election committee.

Establish that the SCER has jurisdiction to instruct Supreme and Main Committees to ensure their actions are in compliance with the law.

Require all election committee members to sign a declaration accepting the authority of the SCER and suspending all links with the party which nominated them to the committee.

State the voting majority required for the SCER to adopt the Election By-Law and manuals, approve final results, or to take decisions on general issues.

State the authority of the supervising committees over the registration committees and the Main Committees.

Contain a specific provision requiring the election administration to conduct the election transparently and guarantee that candidates and parties have a right to seek and receive information relevant to their status as election contestants.

#### 2. Electoral Districting/Equality of the Vote

The Election Law should:

Detail the criteria and procedures to be used for drawing boundaries (for example regarding dividing and agglomerating districts to form constituencies).<sup>156</sup>

Establish the frequency with which election boundaries should be reviewed.

Prohibit the formation of election constituencies with non-contiguous territory and agglomerating territories in different regions.

Ensure equality in the number of electors in each constituency, as far as possible.

<sup>156</sup> Article 24.a stipulates a general requirement that they should be delineated: 'according to the principle of equal population while taking into consideration geographic and social factors'

### **3. Rights To Vote**

The Election By-Law stipulates that a voter must possess full mental capabilities. This is consistent with international norms, but the restriction would be better placed in primary legislation.

### **4. Voter Registration**

The law should:

Set out the procedures for registering the military as electors and provide more detail on their voting arrangements, in particular clarifying whether the military are required to have been stationed in a location for 6 months prior to their registration as electors.

Seriously reconsider the provision that: 'for purposes pertaining to presidential elections and public referenda ... a voter may cast his vote at any Voting Centre using a personal ID card, Voter Card, or any official document bearing the holder's photograph'.

Set the selection criteria for the members of the registration committees.

Provide for the training of registration committee members.

In the case of early elections, provide for the registration of electors who have reached 18 years of age since the last election.

Provide for the public display of registers during the 30-day period when registers are updated and corrected.

Clarify which committee will issue a copy of the voter lists to parties and/or candidates and whether these have the right to receive an electronic version of voter lists.

Consider that electors should only have the right to appeal against a decision regarding their own entry in the voter register or the omission of their details, but not those of other citizens.

Make provision for a single nationwide register of electors.

Require the SCER to check the national register for duplicates.

Consider giving the SCER the right to appeal to a court to delete entries with known errors on condition that (i) the names of persons for which a deletion request has been made are publicly displayed at the location(s) of registration for a reasonable period before the case is decided by the court (ii) a right

of appeal is provided for and (iii) the applicable deadlines are in conformity with other Articles of the Election Law.

Make a serious effort to achieve equal numbers of women and men registered as electors.

## **5. Candidate Registration**

Requiring candidates to have the support of 5 per cent of deputies constitutes a considerable obstacle for prospective presidential candidates, particularly for 'independent' (non-party) and women candidates. Neither the Constitution nor the Election Law sets out objective criteria by which MPs should select presidential candidates. Abolishing this procedure should be considered.

While legislation should set the timeframe for the start of parliamentary candidate nominations – for example, a certain number of days after the call for elections - ideally candidates should be registered at an early point in the process, enabling any appeals against registration to be heard by the competent judicial bodies.

The Law should require Main Committees to take and issue a formal decision on accepting or rejecting candidates' nomination applications. As the right to seek election is a fundamental right, the law should permit any candidate whose nomination is rejected to appeal to the Supreme Court.

The Election Law should set out the complete nomination and registration procedures for independent parliamentary election candidates and the mechanism by which the validity of supporting signatures are verified.

Consideration should be given to reducing the burden on independent candidates to meet the nomination requirements. For example, the number of signatures required could be reduced, the requirement that the signatures must be drawn from the majority of electoral centres within the electoral constituency could be removed or amended, or the 10-day period could be increased, or the requirement that signatures be notarised be withdrawn.

## **6. Campaigning and Media**

The Election Law should state when the official campaigning period starts. Candidates should be granted a reasonable period to conduct their campaigns.

The Election Law should not restrict candidates' rights to associate, assemble, speak, publish and disseminate information freely prior to the commencement of the official campaign period.

The legislation should clarify whether candidates have the right to purchase advertising space, such as billboards.

The Election Law should elaborate on the means by which candidates may finance their election campaigns. There should be a legal obligation to disclose donations received, including non-monetary donations (so-called donations 'in kind'), and campaign-related expenditure. To ensure candidates' broad equality of opportunity, consideration should be given to fixing campaign expenditure limits.

The law should provide for a minimum or maximum amount of media airtime to which candidates are entitled and stipulate that this is granted free of charge.

In parliamentary elections the law should grant parties fielding over a certain number of candidates guaranteed access to the state media to campaign.

The law should require state media to afford all candidates and parties 'equal treatment'.

The law should clarify local candidates' rights to media access stations and to campaign on the radio in general.

If paid advertisements are permitted, the law should require the media and owners of advertising space to treat all candidates equally, for example in terms of advertising rates, application dates etc.

The requirement that presidential candidates must give the SCER 48 hours' notice of their intention to hold a press conference should be withdrawn.

## **7. Voting**

Consideration should be given to ‘validating’ ballots, linking them to a particular polling station, such as by marking the reverse with a unique committee stamp or appending a signature of the committee chair to the reverse of the ballot.

The law should provide more detail on voting by military personnel, the hospitalised, homebound persons, and those in pre-trial detention.

The Election Law should stipulate that accredited domestic and international observers, the media, and a member of a higher election commission or committee are permitted to enter the voting room of a polling station.

If they are required to sign the minutes, committee members and candidate representatives should be entitled to enter a comment, complaint or dissenting opinion on the voting and counting processes into the minutes. These should be adjudicated by the Sub- and/or Main Committees before the announcement of final results.

## **8. Counting and Aggregation of Votes**

The Law should clearly provide that domestic NGO observers, international observers and ‘party’ monitors may also be present during the counting of votes.

It is best practice to separate ballots into piles of (i) valid votes; one pile for each candidate and (ii) clearly ‘invalid votes’ and (iii) ballots whose validity needs adjudication.

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Domestic observers should be entitled to enter their comments into the minutes and able to file a petition with the courts against observed violations of the law.

Observers should be granted the right to monitor the registration of voters.

### **12. Specific Issues Related to Local Elections**

The legislation should clearly state the method for determining the number of council seats in wards where more than one candidate is elected.

The timing of the local elections should be clarified by the competent authorities.



## **Democracy Reporting International**

is a non-partisan, independent, not-for-profit group of experts. It was registered in March 2006.

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