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VOTER REGISTRATION  
IN THE MIDDLE EAST AND  
NORTH AFRICA: SELECT CASE STUDIES

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## ABOUT TOVA WANG

Tova Wang is a Senior Democracy Fellow at Demos and has more than 20 years of experience working on democracy and governance issues, focusing on electoral legal frameworks and reform, voting rights and election administration. She was consultant to the Lawyers' Committee for Civil Rights National Commission on Voting Rights and a staff member for the Carter-Ford Commission charged with developing recommendations for overcoming flaws in election law and administration uncovered by the 2000 U.S. presidential election. Ms. Wang has conducted analysis of election procedures and laws, as well as constitutional analysis, for the National Democratic Institute (NDI), Democracy Reporting International (DRI), The Carter Center and The ACE Project with respect to countries throughout the world. In 2012, The Carter Center published a report authored by Ms. Wang entitled *Voter Identification Requirements and Public International Law: An Examination of Africa and Latin America*. Ms. Wang has also done a great deal of work on issues related to greater political inclusion in the United States, including major studies on increasing voter participation rates among naturalized immigrants and Native Americans, and examinations of voting laws and procedures that tend to disenfranchise traditionally marginalized groups. Her critically acclaimed book, *The Politics of Voter Suppression: Defending and Expanding Americans' Right to Vote*, was published in 2012 by Cornell University Press.

## ABOUT THE NATIONAL DEMOCRATIC INSTITUTE

The National Democratic Institute (NDI) is a nonprofit, nonpartisan, nongovernmental organization that responds to the aspirations of people around the world to live in democratic societies that recognize and promote basic human rights. Since its founding in 1983, NDI and its local partners have worked to strengthen political and civic organizations, safeguard elections, and promote citizen participation, openness, and accountability in government. With staff members and volunteer political practitioners from more than 100 nations, NDI brings together individuals and groups to share ideas, knowledge, experiences, and expertise. Partners receive broad exposure to best practices in international democratic development that can be adapted to the needs of their own countries. NDI's multinational approach reinforces the message that while there is no single democratic model, certain core principles are shared by all democracies. The Institute's work upholds the principles enshrined in the Universal Declaration of Human Rights. It also promotes the development of institutionalized channels of communications among citizens, political institutions, and elected officials, and strengthens their ability to improve the quality of life for all citizens. For more information about NDI, please visit [www.ndi.org](http://www.ndi.org).

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# INTRODUCTION





# INTRODUCTION

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Since 2011, the countries of the Middle East and North Africa (MENA) have experienced a tremendous amount of upheaval. Although progress has been uneven, and accompanied at times by significant pushback, citizens across the region have demanded more responsive and accountable governments. In response, several MENA countries have held genuinely competitive elections either for the first time or for the first time in many years, and others have amended electoral frameworks and related legislation to encourage broader participation at the polls. Even in places that have seen little in the way of an “Arab Spring,” many political parties, candidates, and citizens alike are advocating for changes to the rules for electoral competition—and monitoring their implementation—so that citizens have a genuine opportunity to participate in credible elections.

Though often overshadowed by the events of election day, the voter registration process is critical to ensuring electoral integrity and, as such, is receiving increasing attention. A voter registration process that sets clear criteria for voter eligibility, guarantees citizens an opportunity to review and correct voters lists, and provides safeguards against electoral fraud can build public confidence in elections. Conversely, a registration process that erects barriers to participation or takes place out of public view can disenfranchise citizens, invite electoral manipulation, and erode confidence in electoral outcomes.

In light of the renewed focus on developing fair, transparent, and genuinely democratic elections in the MENA region, stakeholders—including political parties, citizens, civil society organizations, media, election officials, national and international policymakers, and others—have an opportunity to deepen their understanding of accepted international principles concerning electoral participation and voter registration, evaluate current voter registration systems in their countries, and identify areas for further improvement.

Through a series of case studies and a comparative analysis, this report explores the voter registration systems in eight MENA countries or territories. Each case study reviews the basic elements of the voter registration process as outlined in a country’s laws and regulations, as well as how it is implemented in practice. The voter registration systems of each country are then assessed in relation to the principles the states themselves are obligated to meet by international law and, in some cases, by regional treaties. For the most part, only international and regional obligations are used in this context. On a few occasions, NDI has referenced other documents that are not binding on the countries at issue, but provide examples of steps governments and election administrators might consider taking to improve the process.

A number of factors went into selecting the countries for the study. One is of a practical nature: for some countries there simply is such a dearth of accessible information that it is impossible to carry out a reasonable assessment. In other countries, the limitations on democracy and elections are so severe that a discussion of voter registration is not relevant. Moreover, given the extraordinary events of the last few years, there are some states where the election laws and the procedures by which elections might be carried out is in such a state of flux that it does not make sense to attempt to describe their present operation.

Given these limitations, the places under consideration—Algeria, Iraq, Jordan, Kuwait, Lebanon, Morocco, the Palestinian Territories, and Tunisia—represent a fair sampling of MENA countries; predominantly Francophone and Arabophone countries are both represented, and states of varying types of governmental structures and systems are included. It is further important to note that this document is very much a living one, and NDI is committed to continuing to explore this area as more information becomes available, or as transitioning countries adopt new electoral frameworks. It is our great hope that the process of assessing legal frameworks and practices relative to international standards can help citizens and governments across the MENA region ensure that elections generally, and voter registration systems in particular, embody the minimum principles of transparency, inclusiveness, and accountability.

To prepare each case study, NDI reviewed relevant laws and constitutions, national and international civil society reports and analyses, international and national election observation reports, election management body websites, manuals, directives and documents. This review was complemented by extensive interviews with election administrators, national and international civil society experts, and academics and other election experts.

The final section of the report provides a comparative analysis of the different countries' laws and procedures in a number of key thematic areas, and evaluates how well they are performing vis-à-vis each other in light of international law.

## MAJOR APPLICABLE PROVISIONS OF INTERNATIONAL TREATIES AND INTERPRETIVE DOCUMENTS

International treaties explicitly recognize the fundamental right of citizens to participate in genuine elections and establish a set of principles concerning the electoral process, notably: inclusion, transparency and accountability. Voter registration is both explicitly and implicitly referenced in these international agreements. All of the countries examined in this report, and indeed most of the countries of the world, have voluntarily signed on to United Nations treaties whose precepts they have pledged to uphold. As a result, one effective method for assessing states' implementation of registration systems is to measure whether the steps they are taking to effectuate the process comply with international obligations.

The legal foundation for universal and equal suffrage is provided by several international human rights documents, as well as within national constitutions. The **Universal Declaration of Human Rights (UDHR)** states in Article 21 that “everyone has the right to take part in the government of his [or her] country directly or through freely chosen representatives ... the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage.”

Among the many international documents that include provisions pertinent to voter registration and voting, the three most significant are the **International Covenant for Civil and Political Rights (ICCPR)**, **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, and the **International Convention on the Elimination of All Forms of Discrimination (ICERD)**.

The most important source of international law with respect to voting and elections is the ICCPR.

Most countries of the world are party to it, including all of the countries discussed in this report.<sup>1</sup> Several articles are relevant for present purposes:

**Article 2:** Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 3:** The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

**Article 19:** Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

**Article 25:** Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

**Article 26:** All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

General Comment 25, the UN's interpretive document regarding that provision of the ICCPR, further provides that:

States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed ... Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community.

CEDAW specifically addresses the issue of gender discrimination in all realms of life, including participation in elections. According to Article 7:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election

<sup>1</sup> "Ratification Status by Country or by Treaty," United Nations Office of the High Commissioner for Human Rights, accessed May 8, 2015, [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en).

to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Like the ICCPR, CEDAW has been very widely ratified.<sup>2</sup>

Similarly, according to Article 5 of the ICERD:

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

In addition, the **African Charter on Human and Peoples' Rights**, to which some of the countries in the relevant region are a party, requires equality, bans discrimination, and provides for freedom of thought and opinion, rights of association and the right of assembly. Article 13 of the Charter further states, "Every citizen shall have the right to participate freely in the government of his country."

The **Arab Charter on Human Rights** requires equality and bans discrimination. Under Article 24 of that document, every citizen has the right:

1. To freely pursue a political activity.
2. To take part in the conduct of public affairs, directly or through freely chosen representatives.
3. To stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will.
4. To the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity.
5. To freely form and join associations with others.
6. To freedom of association and peaceful assembly.

Article 32 further guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.

## OVERVIEW OF VOTER REGISTRATION SYSTEMS

The vast majority of countries require citizens to be on a voters list to vote. The manner in which names are added and deleted and information such as residence is changed on such lists varies from country to country. For present purposes, the most important differences among systems are that:

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<sup>2</sup> "Ratification Status," United Nations.

1. some voters lists are continuously updated, and a citizen or the government may register or update registration information at any time, while in other countries such activities are only undertaken during specific, limited time periods;
2. some registration systems are “passive” while others are “active.” In passive systems, the government takes responsibility for ensuring that citizens appear accurately on the voters rolls. Further, passive systems are either “state-initiated,” in which officials travel around and register people, or “state-created/automatic,” in which names are taken from a separate database and no contact between citizens and election officials is necessary for registering. In “active” or “individual-initiated” systems, the citizen bears the responsibility to take affirmative steps to register to vote and stay on the list with accurate information; and
3. some systems are compulsory, in which people are required by law to register to vote, while others are voluntary, in which people can choose whether or not to register.<sup>3</sup>

A number of advantages and disadvantages to various systems have been identified in previous research.<sup>4</sup>

In active voter registration systems, individuals who wish to participate in an election must somehow prove their identity, essentially demonstrating that they are who they say they are. They must also affirm their citizenship and age, and officials must ensure that each applicant is not already included in the registry. The ways in which voters are allowed to demonstrate who they are both during registration and during voting vary. As will be seen, some countries exclude groups of voters from the election process by virtue of unmanageably strict or poorly administered voter identification requirements.<sup>5</sup>

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3 Richard Klein and Patrick Merloe, *Building Confidence in the Voter Registration Process: An NDI Monitoring Guide for Political Parties and Civic Organizations*, National Democratic Institute, 2001, <https://www.ndi.org/node/12886>, 3, 12.

4 “Voter Registration,” The ACE Project, accessed May 8, 2015, <http://aceproject.org/ace-en/topics/vr/onePage>.

5 For a full discussion of this issue, see Tova Wang, “Focus on Voter Identification,” The ACE Project, accessed May 8, 2015, <http://aceproject.org/ace-en/focus/voter-identification>.



VOTER REGISTRATION CASE STUDIES  
FROM THE MENA REGION





# ALGERIA

## INTRODUCTION

Any analysis of the voter registration system in present day Algeria is a challenge given that no independent organization has been able to observe the voter registration process in any recent elections. A coalition of citizen groups came together to observe the May 2012 legislative elections, but too late to cover the registration process and without any formal access to the authorities in charge of the electoral process.<sup>6</sup> This gap is compounded by the refusal of the Ministry of Interior (MOI) to share the voter registration list with international observers, despite repeated requests by a European Union (EU) observation mission in 2012. Moreover, the role played by newly created entities purportedly designed to oversee the election process has been unclear. The laws and regulations are often similarly opaque.

However, some commentary and assessment can be made regarding the relevant provisions of the new 2012 election law, regulations, and rules promulgated by the MOI in the course of the election, and what missions organized by the National Democratic Institute (NDI) and the EU to observe the 2012 legislative and 2014 presidential elections were able to discover.<sup>7</sup>

## INTERNATIONAL AND REGIONAL AGREEMENTS

Algeria is a signatory to many international treaties related to elections, including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Political Rights of Women, the Convention on the Elimination of Discrimination against Women (CEDAW), and the African Charter on Human and Peoples' Rights.<sup>8</sup>

## LEGAL FRAMEWORK

After years of elections that opposition parties, some of the Algerian press, and other interested observers alleged to be fraudulent and manipulated by the government, the Algerian parliament passed a new electoral law in 2012, albeit with very little debate. While the elections were regularly scheduled for

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6 Sonia Lyes, "Un observatoire des élections composé d'ONG algériennes est né," *Tout Sur l'Algérie*, March 7, 2012, [http://archives.tsa-algerie.com/politique/un-observatoire-des-elections-compose-d-ong-algeriennes-est-ne\\_19781.html](http://archives.tsa-algerie.com/politique/un-observatoire-des-elections-compose-d-ong-algeriennes-est-ne_19781.html).

7 There were 21,645,841 registered voters for the legislative elections in May 2012. Of those voters, the officially reported voter turnout rate in the election was a relatively tepid 43.1 percent. The voting age population of Algeria is just over 24 million, and of that group only 38.7 percent cast a ballot. The percentage of invalid ballots was a high 18.2 percent. See *Final Report on Algeria's Legislative Elections*, National Democratic Institute, 2012, <https://www.ndi.org/node/19180>; "Voter Turnout for Algeria," International IDEA, accessed May 8, 2015, <http://www.idea.int/vt/countryview.cfm?id=66>. Reported turnout for the local elections in November 2012 was similar, with 44.27 percent of the registered 21,445,621 voters casting ballots.

8 *Compendium of International Standards of Elections*, European Commission, 2007, [http://www.needsproject.eu/files/Compendium\\_of\\_Int\\_Standards.pdf](http://www.needsproject.eu/files/Compendium_of_Int_Standards.pdf).

spring 2012, the revision of the law was interpreted by many as a response to the Arab uprisings of 2011 and presented by the government as part of a broad reform process. The difference between the new law and past ones, however, was marginal. The law remained vague on a number of issues, including those related to voter registration. A limited international observation mission organized by NDI for the 2012 vote observed this in interviews with key interlocutors. According to NDI,

Observers also repeatedly heard complaints about the ambiguity of numerous key articles within the legal framework. Some regulations or guidelines referenced in the electoral law were not promulgated or clarified until late in the process, complicating parties' efforts to manage effective campaigns and respect regulations. Poor efforts to educate parties and citizens on both existing and new regulations and procedures contributed at numerous points to differing interpretations and inconsistent application. Examples include regulations on the registration of military personnel, voter identification requirements, the handling of unused electoral materials, and the mandates of special political party and magistrates commissions.<sup>9</sup>

### *Voter Eligibility*

The law related to elections excludes a number of groups of people from registering to vote. Of particular note is Article 5, which prohibits “someone whose conduct during the revolution of national liberation contradicted the nation’s interests.” Prisoners are also denied electoral rights, as are people who are bankrupt and “someone imprisoned or banned.”<sup>10</sup> These types of exclusions have been criticized by some organizations as international obligations mandate that voter registration should be made available to the broadest pool of citizens possible to ensure that universal and equal suffrage are protected.<sup>11</sup>

As interesting as who is excluded is who is included. Unlike in many other countries, there is nothing explicit in the law barring persons with mental disabilities. Similarly, members of the army and personnel from the national security agency, civil protection agency, and many other government agencies are permitted to participate. This is in keeping with the concept of inclusive democracy in accordance with international documents such as the ICPPR. In addition, Algerian citizens can vote from abroad via proxy or, for most elections, directly at their nearest Algerian consulate; interestingly, residents abroad can choose to vote from their birthplace, their last residence *or* the birthplace of the voters' ancestors (Article 9). In other contexts, allowing people to vote from the area of their ancestors rather than a jurisdiction to which they have a current personal connection has been problematic in perpetuating voting on the basis of tribal or ethnic affinity.

9 National Democratic Institute, *Final Report on Algeria's Legislative Elections*.

10 “Code électoral,” Secrétariat Général du Gouvernement, 2012, <http://www.joradp.dz/TRV/FElect.pdf>.

11 General Comment 25 of the UN Human Rights Commission. See also, for example, “The Carter Center’s Study Mission Report on Jordan’s 2013 Parliamentary Elections,” The Carter Center, 2013, [http://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/jordan-2013-study-mission-eng.pdf](http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/jordan-2013-study-mission-eng.pdf), 15. NDI’s *Promoting Legal Frameworks for Democratic Elections* states that, “Restrictions on the right and opportunity to vote must be limited generally to requirements concerning citizenship, residency and minimum age (usually the age of majority) or to smaller categories of citizens relating to mental incapacity, criminal record or present service in the military or police. The trend concerning the latter categories is to broaden the franchise, for example, by requiring a court proceeding to determine that a person does not have the capacity to make an informed electoral choice, by allowing military and police personnel to vote, and by limiting restrictions on the voting rights of those convicted of crimes in accordance with the principle of proportionality of punishment to the nature of the crime” (*Promoting Legal Frameworks for Democratic Elections*, National Democratic Institute, 2008, <https://www.ndi.org/node/14905>, 12).

## Voters Lists

The voter registration system is ostensibly decentralized. According to the law, the voters lists are drafted and revised in each municipality under the control of an electoral administration commission composed of an appointed judge who serves as the president, the president of the Communal Popular Assembly, the municipality's secretary general, and two voters designated by the president of the commission (Article 15). While MOI officials verbally confirmed to NDI that they do possess national level voter registration data, there is no nationally consolidated voter registration list made available to stakeholders or the public. Lists otherwise are kept at the local level with commissions at the communal level responsible for annual revision.

The letter of the law provides that political parties can obtain a copy of the list (Article 18), though, as is explained below, this was at best inconsistently implemented in 2012 and no improvements were made prior to 2014. As is common practice in many countries, a citizen can file a complaint about his own omission or the inclusion of another voter believed to be ineligible (Articles 19 and 20).

## Voter Identification

All registered voters must also obtain a voter registration card. It is necessary to present this card in addition to a national identity card, passport or driver's license at the polls on election day. However, according to the MOI's voters' guide,

Voter's cards which have not been collected by election day will be made available to voters at the level of their usual voting center. In addition, an office will be open especially for the election day in each commune to inform and orient voters on which voting centers and voting offices they are registered to. In any case with cause, registered voters may, in conformity with the law, even if they do not have their voter card, exercise their right to vote at their usual voting office on the simple justification of their identity by the presentation of their National Identity card, passport, or driver's license. This facilitating measure is not applicable except to voters who are already registered in the relevant voting offices, and does not allow for any case of new registrations to the electoral lists.<sup>12</sup>

Similarly, the 2012 code also says that in the absence of the registration card the voter can still vote if he is on the list and can show a national identity card or other official document proving his identity (Article 24). This is significant because neither the law nor the guidelines are specific about how people are supposed to get the voter registration cards or what they must include; the code just says that successful registrants will be issued such a card and that a voter registration card issued by the *wilaya* (province) is issued to everyone on the voter registration list. The law goes on to say, "The procedure for drawing up, issuance, replacement and cancellation of the card and the duration of validity are defined by regulation." Yet extensive research and interviews with civil society representatives working in the country reveal that such regulations do not appear to be publicly available and that the distribution

12 "Guide de l'électeur," Ministère de l'Intérieur et des Collectivités Locales, 2009, <http://www.interieur.gov.dz/Dynamics/frmItem.aspx?html=85&s=23>.

process for voter registration cards appears to follow ad hoc practice.<sup>13</sup>

Given the significance of the national identity card in the process, it should be noted what is required to obtain it: a birth certificate, a certificate of nationality, a certificate of residency, four color photos, a tax receipt or excise stamp to pay for the service, and a copy of the blood group card.<sup>14</sup> This may be difficult for some citizens to comply with. NDI has heard anecdotally that obtaining such paperwork from the government in Algeria can be extremely challenging.<sup>15</sup>

### *Registration Oversight*

The Ministry of Interior, part of the executive branch of the government, continues to maintain overall control of the election process. Responsibility for registration, as noted above, lies with the local electoral administration commissions, albeit at the direction and with the resources granted by the MOI.

Otherwise, the structure of oversight of the election process is complex and not entirely clear. At the top, under Constitution Articles 163 and 164, the Constitutional Council oversees elections and proclaims the results. The Council has nine members, three appointed by the president, two appointed by the National Popular Assembly,<sup>16</sup> two by the Council of the Nation,<sup>17</sup> and one by the Council of State.<sup>18</sup> The Constitutional Council appeared not to play any role in the voter registration process in 2012 or 2014.

The 2012 law also established two entities responsible for oversight of the elections at the national level. They are both temporary bodies. Though the government presented them as a new means to provide transparency, similar commissions had existed during previous elections.

The first is a body of judges that is called the National Commission for Election Supervision (CNSEL).<sup>19</sup> The duties of this body are vague in the law; as described, it is responsible for making sure the law is implemented and assessing any transgressions. This body played no role in the voter registration process in the 2012 legislative elections, as it did not even begin functioning until after the voter registration exercise was completed. However, it did deal with complaints, resolving a number of issues on the spot during the course of the election. The EU recommended that this body be made permanent and that

13 Tova Andrea Wang, *Voter Identification Requirements and Public International Law: An Examination of Africa and Latin America*, The Carter Center, <https://www.cartercenter.org/resources/pdfs/peace/democracy/des/voter-identification-requirements.pdf>, 2013.

14 Wang, *Voter Identification Requirements*.

15 Author interview with Andrew Farrand, Senior Program Officer, National Democratic Institute, April 2, 2012.

16 The National Popular Assembly is the lower house of parliament and is elected by popular vote, most recently in May 2012. See “Chapter I: Control,” *Constitution of the People’s Democratic Republic of Algeria, 1989*, <http://www.conseil-constitutionnel.dz/indexAng.htm>.

17 Per Article 101 of the Algerian constitution, the Council of the Nation is the upper house of parliament. One-third of its members are designated by the President. The other two-thirds are elected indirectly by members of communal and *wilaya* assemblies (APC and APW, respectively).

18 The Council of State is a judicial body that adjudicates cases between the administration and citizens, following the French legal model.

19 The CNSEL is referred to as the CNSEP for presidential elections.

it be granted some oversight over the registration process.<sup>20</sup> For the local elections held in November 2012, the commission was re-established just after the extraordinary registration process was begun, approximately two and one-half months before election day; legal prerogatives for voter registration are not expressly provided to the CNSEL and no related complaints were reported by the commission during the time when its function overlapped with the extraordinary registration period. Not engaging such a body for the overall electoral process misses an opportunity for greater oversight. It was therefore positive to see the commission reconstituted just prior to the opening of the two-week extraordinary voter registration period for the 2014 presidential election, though greater lead-time could allow the commission to more effectively adjudicate complaints arising during this period.

The second entity is the National Commission for Election Monitoring (CNISEL). It is also a temporary body and is, according to the law, responsible for implementing the laws and regulations of the elections and monitoring the entire electoral process, including activities related to the voters list, though in recent electoral processes it did not appear empowered to exercise these functions. It is composed of a secretariat of national experts, and the governing committee includes representatives of political parties and of independent candidates. It is comprised of a president elected by the general assembly, the general assembly, a bureau of five vice-presidents elected by the general assembly, and regional branches composed of representatives of the parties and candidates contesting seats in each *wilaya*. For the 2012 legislative and local elections as well as the 2014 presidential poll, this national commission was not put into place until after the extraordinary voter registration period. It lacked the legal authority to play any major role in the elections. Similarly, the body was reconstituted for the November 2012 local elections, and observers and other stakeholders remained unclear about its intended role.

## THE 2012 VOTER REGISTRATION PROCESS

While there was a routine annual revision of the electoral list in October 2011, there was also a period of “exceptional revision of the electoral lists” in preparation for the regularly scheduled May 2012 legislative elections from February 12 to 21, and a short period of time thereafter for complaints and resolution of complaints about the lists. For the local elections held on November 29, 2012, a slightly longer extraordinary registration period also occurred, lasting from September 16 through October 31, though with a shorter timeframe between the close of the registration and election day.<sup>21</sup> In both instances, this was a relatively constrained time frame to ensure maximal inclusion on the voters list. It should be considered whether this infringed on international good practices since, as NDI has explained, to meet international norms for universal and equal suffrage, voter registration must provide a reasonable chance to inspect and correct the voters list.<sup>22</sup>

Interestingly, press reports indicated that for the 2012 legislative elections, the government revived a mechanism for updating lists and registering voters by dispatching “mobile brigades” of agents who went door-to-door. Originally introduced before the 2009 presidential election to target residents of new neighborhoods established after the previous census, the brigades that year reportedly registered

20 Author interview with Susanne Giendl, Legal Analyst for the 2012 European Union Election Observation Mission, May 31, 2013.

21 For the presidential election on April 17, 2014, after the usual month of regular registration from October 1 to 30, 2013, an exceptional pre-election registration period ran from January 23 to February 6, 2014.

22 National Democratic Institute, *Promoting Legal Frameworks*, 2008, 12.



125,000 additional voters after visiting some 580,000 households in nearly a dozen *wilayas*. National aggregates for 2012 could not be found, though the press reported at least one such effort in Oran.<sup>23</sup> However, the brigades were mobilized outside of the regular or extraordinary revision periods. Such proactive measures can facilitate registration for communities such as women who may find it difficult to travel to an administrative office during open hours, though they should be properly integrated within formal registration periods.

As referenced above, the voter registration process was decentralized, causing some challenges, including failures to provide the lists to the parties as is mandated by the law. According to the NDI observation report,

The voters list stood out as one of the most significant areas of concern for most political parties and civic groups with whom NDI observers met. Numerous interlocutors noted that the final registry for the 2012 polls had grown inexplicably by a dramatic four million people since 2009. Many highlighted concerns over the registration of security forces, noting that some soldiers were registered in their home districts as well as in multiple deployment sites, and were also given extra time to register. Others complained that deceased voters or voters who had moved to other cities and registered anew were not removed from the lists, raising the potential for fraud. While the electoral law allows any voter to confirm his or her place on local electoral lists and guarantees parties access to communal electoral lists, only a few parties that requested lists reported receiving copies in time for review and verification before the polls. Moreover, they noted that many of the lists they received contained only limited information, such as just the first and last names of voters, or were disaggregated only to the *wilaya* level and made available in a read-only electronic format that rendered them virtually useless for verification or electoral preparations.<sup>24</sup>

The EU also found fault with the registration process in 2012, especially “the absence of a national consolidation of the electoral list,” which is not contemplated in the electoral law; EU election observers believed the MOI to be in the possession of such a list in some format. The EU observation mission found that the inability of the parties and candidates to verify the electoral lists affected confidence in the integrity of the elections. The EU also criticized Algerian authorities for refusing to share voter registration data, finding this to be a breach of the authorities’ commitment to transparency.<sup>25</sup> The inability of international and domestic observers or political parties to observe voter registration proceedings, along with the lack of changes to registration procedures since 2012, suggest that many of the concerns over transparency and access expressed in 2012 remained valid for the presidential election as well.

## ISSUES UNDER INTERNATIONAL LAW

The ambiguity around the registration rules is problematic vis-à-vis international law and good practice regarding voters’ rights to be informed about and understand the electoral process, as well as the

23 J. Boukraa, “Actualisation des listes électorales: Des extraits de naissance à domicile,” *Le Quotidien d’Oran*, February 2, 2012, <http://www.djazairiss.com/fr/lqo/5163849>.

24 National Democratic Institute, *Final Report on Algeria’s Legislative Elections*, 18.

25 Rapport Final : Élections Législatives Algérie 2012, Mission d’Observation Electorale, European Union, 2012, 18.

requirement for equal and consistent application of the law under international law. According to the UN Human Rights Committee interpretative document on ICCPR Article 25, “Voter education campaigns are necessary to ensure an informed community is able to effectively exercise their Article 25 rights” (paragraph 11). NDI’s publication *Building Confidence in the Voter Registration Process* explains international norms in this respect, stating, “Providing the electorate and those seeking to be elected with sufficient, timely information about how, when, where and other requirements for candidate qualification, voter registration, voting and other electoral matters (whether referred to as “voter education” or by a broader term) is essential to ensuring the opportunity to freely exercise electoral rights.”<sup>26</sup> Article 19 of the ICCPR also requires “freedom to seek, receive and impart information”; this plays a critical role in elections as the voters cannot participate freely and equally without access to information about the rules and procedures necessary to follow in order to vote and make informed choices.<sup>27</sup>

The potential challenges some Algerians may face in accessing a national identity card, required for registration and voting, should also be noted. Identification requirements that are difficult or impossible for some citizens to meet may violate international norms. The UN Human Rights Committee’s General Comment 25, explaining obligations under ICCPR Article 25, establishes that, “The right to vote may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements.” Even more pertinent, the General Comment also says,

States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. Onerous documentation requirements can be found to be discriminatory, unreasonable and/or an obstacle to registration and thus in contradiction to Article 24 of the ICPPR, especially when such hardship falls particularly on certain groups of voters such as ethnic minorities, the poor or women.

Further, NDI guidelines state that,

The legal framework must address a myriad of issues to ensure a genuine opportunity to exercise the right to vote on the basis of equal and universal suffrage... The provisions must ensure, among other things, that: ...voter identification and related procedures that are nondiscriminatory concerning race, color, religion, language, national origin, other status or political or other opinion, that prevent disenfranchisement of eligible voters and avert illegal voting.<sup>28</sup>

This being said, Algerian officials have started taking small steps to respond to popular calls to reduce bureaucratic hurdles and paperwork burdens on citizens, including removing the requirement in January 2015 that all photocopies submitted with official requests for government service be legalized as true copies.

26 Richard Klein and Patrick Merloe, *Building Confidence in the Voter Registration Process: An NDI Monitoring Guide for Political Parties and Civic Organizations*, National Democratic Institute, 2001, <https://www.ndi.org/node/12886>, 14.

27 See Patrick Merloe, “Human Rights: the Basis for Inclusiveness, Transparency, Accountability and Public Confidence in Elections,” in *International Election Principles: Democracy and the Rule of Law*, ed. John Hardin Young, American Bar Association, 2008.

28 National Democratic Institute, *Promoting Legal Frameworks*, 50.

The Ministry of Interior has authority over elections in Algeria, including voter registration. That the overall authority over elections remains in the executive branch, and that the responsibilities of other, potentially more independent, agencies remain unclear, is not consistent with widely recognized international practices. For example, General Comment 25 states that there should be an independent electoral authority. That does not exist in Algeria today. Other regional documents, including the African Charter on Democracy, Elections and Governance (Article 17), to which Algeria is a signatory,<sup>29</sup> and the Organization of African Unity/African Union (OAU/AU) Declaration on the Principles Governing Democratic Elections in Africa,<sup>30</sup> support the idea that states should have an impartial, inclusive and accountable independent body managing all aspects of elections. The bodies established on a temporary basis beginning in 2012 have the potential to become independent authorities if organized and resourced to do so, but that idea has not yet been promoted by the government or raised in the national discussion.

Finally, the failure to facilitate access to the voter registration list and to provide a comprehensive list contradicted international obligations and good practices on the basis of several treaty provisions, including Articles 19 and 25 of the ICCPR. According to International IDEA,

The international standard for voter registration is that the register must be comprehensive, inclusive, accurate and up to date, and the process must be fully transparent... Transparency requires that voter registers be public documents that can be monitored and made available for inspection at no cost to the requester. Before finalizing voter registers, in addition to the general public, all registered political parties should also be given notice of and provided access to such registers so that they may verify, object to or seek to add such names as they wish.<sup>31</sup>

Scrutiny of these lists by political parties and others helps to ensure the registry is accurate and inclusive. Moreover, principles of electoral transparency include the voter registration process<sup>32</sup> and require the right of parties, observers, and the public to be able to view and review the voters list in an effective manner.

This concept is bolstered by the recommendations of the Organization for Security and Co-operation in Europe (OSCE) with respect to transparency of the voter registration list:

A transparent voter registration process is key to ensuring public confidence. . . . A transparent voter registration process allows public access to the voter register and voter lists for review prior to election day. It also allows political parties and civil society groups to observe the different stages of the voter registration process.

In countries where public access to the voter register and voter lists is not allowed or is obstructed, allegations about inaccuracies or attempted manipulation of voter lists may decrease public confidence in the integrity of the voter register as well as the election process as a whole. On the

29 See "AU: Ratification Status of the African Charter on Democracy, Elections and Governance," updated January 2012, Electoral Institute for Sustainable Democracy in Africa, accessed May 8, 2015, <http://www.eisa.org.za/EISA/aucharter.htm>.

30 Algeria is a member of the African Union.

31 *International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections*, International IDEA, 2002, [http://www.idea.int/publications/ies/upload/electoral\\_guidelines.pdf](http://www.idea.int/publications/ies/upload/electoral_guidelines.pdf), 45.

32 National Democratic Institute, *Promoting Legal Frameworks*, 17.



other hand, countries that allow voters and election stakeholders to check and verify voter lists prior to election day will generally enhance the level of public confidence in their integrity and improve the quality of the final voter register.<sup>33</sup>

The OSCE goes on to recommend the following:

A good practice is to provide the voter register to election stakeholders in a computerized format, with respect for privacy concerns and in line with data-protection regulations, so that the information can be easily searched. Authorities could consider posting a downloadable version of the voter list, with a search function, on the Internet. Following the processing of corrections, authorities should also provide the final voter lists to political parties and civil society groups as a measure of transparency.<sup>34</sup>

These practices were certainly not followed in Algeria in 2012 and no changes were made prior to 2014. Rather, local voters lists were made available at irregular times, in varying formats, and with various degrees of difficulty in accessing them depending on individual decisions in each of Algeria's 1,541 communes.

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33 *Handbook for the Observation of Voter Registration*, Organization for Security and Co-operation in Europe, 2012, <http://www.osce.org/odihr/92058>, 31.

34 Organization for Security and Co-operation in Europe, *Handbook for the Observation*, 33.



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## INTRODUCTION

Since the overthrow of Saddam Hussein in 2003, Iraq has had a relatively robust history of elections at multiple levels. Three national parliamentary elections have been held since then: one in 2005, a second in 2010 and the most recent in 2014. The latter two were managed by Iraq's independent election management body, called the Independent High Electoral Commission (IHEC). The election in 2005 was conducted by the Independent Electoral Commission of Iraq (IECI), the body set up by the Coalition Provisional Authority (CPA) before the transfer of power back to the Iraqis in 2004, with significant assistance from the United Nations, the United States and many other countries.<sup>35</sup>

To its advantage, Iraq opted to utilize a “passive” voter registration system whereby the authorities are responsible for using existing government-held information to populate the registration list, requiring the citizen only to verify that he or she has been included accurately on the list. Since 2005, the government has used the food ration card list—the Public Distribution System (PDS) database—as the basis for the voters list. The list is maintained by the Ministry of Trade. A citizen does not have to take any independent action to register to vote, but is requested to check the accuracy of his or her inclusion on the list during designated periods at voter registration centers run by the IHEC. The Ministry of Trade also receives updates on deaths and changes in eligibility status from the Ministry of Health and other departments within the Ministry of Trade. While the databases are not always completely up-to-date and accurate, by all available accounts this system has been mostly effective and inclusive. The entire population is included in the PDS system.<sup>36</sup>

## INTERNATIONAL AND REGIONAL AGREEMENTS

Iraq has ratified the major international conventions that reference elections, voting and the right to equal participation, including the International Covenant for Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

## LEGAL FRAMEWORK

The country also has several provisions in its constitution and electoral law that bear on the voter registration process, rights that must be respected in the process, and the duties that must be carried

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35 *Rebuilding Iraq: US Assistance for the January 2005 Elections*, Government Accountability Office, 2005, 1. Iraq also held a constitutional referendum in 2005. At other times, it has held parliamentary elections for the Kurdish region and local elections. Provincial elections, originally planned for 2008, were held in early 2009, except for in the Kurdish region. Local elections were held throughout the country, except for in Kirkuk, in 2013. See Kenneth Katzman, *Iraq: Politics, Elections, and Benchmarks*, Congressional Research Service, 2011, 1, 4.

36 Author interview with UN election assistance mission representative, December 9, 2013.

out. For example, Article 14 of the constitution states that “Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.” Moreover, Article 20 proclaims that “Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office.”

The Iraqi government passed an election law in 2005 that was then amended in 2009, both actions undertaken amidst great controversy. Of note in the 2009 amendments is Article 4, which provides for special voting for military and staff of security institutions based on special registration lists submitted by the relevant ministries and institutions within 60 days of the election. The names on these lists will be deleted from the regular voters registry. Similarly, for inmates, detainees and prisoners, voting is based on registration lists provided by the Ministries of Justice and Interior within 30 days of the election. Patients in hospitals and other health institutions are also put on special registration lists outside of their normal voting place.

Registration and voting for internally displaced persons (IDPs) and for voters abroad are both provided for in the law.

In a political compromise rendered necessary by disputes around the voters lists and how they should be comprised in the Kurdish areas, Articles 6 and 7 of the 2009 law provide for the elections there to be held on a separate date and establish that, where the voter registration records are in dispute, there will be a special challenge and review process by a committee of members of the governorate, the ministries of planning, interior and trade, and the IHEC, with the assistance of the United Nations. Furthermore, the results of the election shall not be used as a precedent for any future election in the region.

## 2013-2014 VOTER REGISTRATION

Requirements to register are very basic: one must be 18 years of age and a citizen. In October 2013, the IHEC reported that it was again using the database for food ration cards (PDS) from the Iraqi Ministry of Trade to update the registration list.<sup>37</sup> IDPs—approximately 40,000 citizens—are identified and added to the voters registry by the Ministry of Internally Displaced Persons. Adjustments are also made through the transmittal of data from the Ministry of Health concerning deaths and the Ministry of Defense regarding the location of members of the military. There is some concern among observers about the accuracy and timely updating of these databases, but they are considered to be largely reliable, and gaps are addressed through the public review period and meetings among the ministries. For voters living abroad, voting centers were established in certain locations, and Iraqi citizens were able to register and vote at these sites at the same time.<sup>38</sup>

Under the structure of the IHEC, there are 19 Governorate Electoral Offices (GEOs) overseen by the Electoral Administration, the implementing body of the IHEC. The GEOs oversee Voter Registration

37 “IHEC Analyzes the Database of Ministry of Trade with the Voter Register,” Independent High Electoral Commission, October 27, 2013, <http://www.ihec.iq/en/index.php/news/3960.html>.

38 Author interview with UN election assistance mission representative.

Centers (VRCs) where registration is conducted and lists completed.<sup>39</sup>

In 2013, the IHEC conducted an update of the voter registration list based on the 2010 list.<sup>40</sup> VRCs were open from November 10 to December 5, 2013, in all governorates from 8:00 am to 4:00 pm daily for citizens to check their registrations.<sup>41</sup> This period was later extended to December 9. Voter registration for the Kurdistan Region parliamentary elections was held from June 17 to July 7, 2013, at 190 VRCs in addition to the November/December period.<sup>42</sup> The IHEC sent mobile registration units to certain remote areas of the country. The IHEC also held a media campaign—including billboards, radio, television, newspaper and online ads—around the voter registration process.<sup>43</sup>

All citizens who come to the VRC need to bring identification in case there is a problem with their registration status. Although it depends on the type of transaction, most are required to have a civil status ID, an Iraqi citizenship card, a passport or, for a head of family, an information card that demonstrates residency and is obtained from the police every time a family moves. Depending on the addition or change that is being made, the voter may also have to provide his or her ration PDS card, retirement ID, information card, or, where applicable when removing a voter, a death certificate.<sup>44</sup> (See Appendix A, table of identification requirements from the IHEC). Iraqis almost universally have the necessary documentation.

If a person is not on the list and wishes to be, he or she must also fill out a form with several data points including information such as the father's name, the grandfather's name, the family PDS number, the name of the head of family, the name of the head of the family's father, and the name of the head of the family's grandfather.<sup>45</sup>

A voter determines where he or she will vote, which determines to which polling center he or she will be assigned. In a unique feature, a person may make changes for a family member by proxy by submitting a document that proves the relationship along with two other documents (an ID and another document noted above) for the person whose data is to be changed or corrected.<sup>46</sup>

At the end of voter registration update period in 2014, over 4 million voters out of the 21.5 million voters on the voters list had visited VRCs and checked their data. Among them, over 1.2 million voters had updated or changed their information.

39 "Electoral Administration," Independent High Electoral Commission, [http://www.ihec.iq/en/index.php/electoral\\_administration.html](http://www.ihec.iq/en/index.php/electoral_administration.html).

40 Operations Division Letter 1571, Independent High Electoral Commission, May 14, 2013.

41 Karwan Salhi, "People Do Not Check Their Voter Registration," *Kirkuk Now*, November 18, 2013, <http://kirkuknow.com/english/index.php/2013/11/people-do-not-check-their-voter-registration/#ixzz2lB3j6lC3>.

42 *Elections in Iraq: September 21 Iraqi Kurdistan Region Parliamentary Elections – Frequently Asked Questions*, International Foundation for Electoral Systems, September 20, 2013, [http://www.ifes.org/Content/Publications/FAQ/2013/-/media/Files/Publications/White%20PaperReport/2013/FAQ\\_IKR%20Parliamentary%20Elections\\_FINAL.pdf](http://www.ifes.org/Content/Publications/FAQ/2013/-/media/Files/Publications/White%20PaperReport/2013/FAQ_IKR%20Parliamentary%20Elections_FINAL.pdf).

43 "IHEC Launches its Media Campaign for Voter Registration Update Phase for the Upcoming Iraqi Council of Representatives Elections," Independent High Electoral Commission, November 3, 2013, <http://www.ihec.iq/en/index.php/news/3974.html>.

44 Independent High Electoral Commission, Letter 1571.

45 Independent High Electoral Commission, Letter 1571.

46 Independent High Electoral Commission, Letter 1571.

During the display period, it is also possible to challenge the eligibility of a voter to be on the registration list. Voters and party representatives may make such challenges. According to IHEC regulations, a challenge must be submitted to the VRC manager in writing and supported with documentary evidence. The VRC manager will transmit the challenge to the GEO manager who must make a decision about the challenge within two days. Challenges may be made on the basis that the registrant is not an Iraqi citizen, is deceased, or is not 18 years of age. Appeals may be made to the Board of Commissioners of the IHEC within three days “as of the next day of publication,”<sup>47</sup> and the decision of the Board can be appealed within three days “as of the next day of the last publication” to the Electoral Judicial Panel, a special body of judges appointed by the Court of Cassation with exclusive jurisdiction over appeals of Board of Commissioners decisions.<sup>48</sup> Anyone not included in the final voter registration list is not allowed to vote.<sup>49</sup>

In 2010, voter cards were purely informational, providing voters with their polling place location and other information. According to UN documents, dissemination of the cards in the run-up to the 2010 election was effective.<sup>50</sup> In 2014, the IHEC distributed electronic voter cards. According to IFES,

These cards were used to locate the voter’s record in the polling station verification device. Only voters who had an electronic card were able to vote, with the exception of internally displaced persons from Anbar and voters who were not able to collect an electronic card due to the security situation in Anbar. The electronic cards were active only on Election Day during voting hours (from 7:00 a.m. to 6:00 p.m.) and they could not be used to vote twice.<sup>51</sup>

Distribution took place at the governorates, specifically the VRCs. The first centers started distributing cards on February 21. On February 23, Premier Nouri al-Maliki received his voting e-card from one of the distribution centers in Baghdad. On February 27, the Secretariat General of the Council of Ministers announced adoption of the electronic voter card as a formal identification document. Distribution was stopped on April 22, after a week extension.<sup>52</sup>

A number of public appeals were made by both parliamentarians and religious authorities to encourage citizens to collect their voter cards and participate in the elections, along with other appeals against the

47 “Voter Registration Complaints and Challenges Procedures for the Iraqi Council of Representatives Elections 2014,” Independent High Electoral Commission. According to the IHEC website, “The Board of Commissioners [BoC] represents the legislative body of the commission. It consists of nine commissioners including the CEO selected by the CoR on the bases of nationality, efficiency, education, electoral experience, specialization, integrity and independence. Woman representation was ensured as well. The IHEC law stipulated that the BoC should have at least two legal members. In its first session, the BoC, with a five out of eight member’s majority vote, elects its chairman, deputy chairman, reporter and the non-voting CEO.” <http://www.ihec.iq/en/index.php/aboutihec.html>.

48 Created by CPA Order No. 92: *Elections in Iraq: April 20 Governorate Council Elections – Frequently Asked Questions*, International Foundation for Electoral Systems, April 15, 2013, 12; Independent High Electoral Commission, “Voter Registration Complaints and Challenges Procedures.”

49 “Exhibition and Challenge, and Voter List Update Regulation No. (7),” International High Electoral Commission, 2012, [http://www.ihec.iq/ihecftp/English/regulations/regulation%20no.%20\\_7\\_2012%20.pdf](http://www.ihec.iq/ihecftp/English/regulations/regulation%20no.%20_7_2012%20.pdf).

50 “Report of the Secretary-General Pursuant to Paragraph 6 of Resolution 1883,” United Nations Security Council, November 11, 2009, 6, <http://unami.unmissions.org/Default.aspx?tabid=4316&language=en-US>.

51 *Post-Election Q&A: Iraq’s 2014 Council of Representatives Elections*, International Foundation for Electoral Systems, May 14, 2014, <http://www.ifes.org/Content/Publications/Interviews/2014/Post-election-QA-Iraqs-2014-Council-of-Representatives-elections.aspx>.

52 Information provided by Roger S. Thord-Gray, Automated Voter Registration Consultant for the International Foundation for Electoral Systems in Iraq, May 2014.



sale of voter cards. According to final distribution figures, 17.1 million electronic cards were distributed prior to the election, reaching approximately 84 percent of the general population, and 900,000 electronic cards were distributed to special needs voters, approximately 92 percent of that population.

According to Iraqi interlocutors, to receive the new electronic voter card one had to present a personal identity card (*jinsiyah*), residency card and food ration card. Regardless of their status, voters—including refugees, IDPs, or those with a temporary address outside their hometowns—had to collect their voter cards at the place where they registered to vote for past elections. This might have been problematic for internally displaced Iraqis.

The IHEC opened a complaint office where IDPs or anyone else who has a reason to complain about issuing voter identification cards can file a complaint. According to current regulations, however, IDPs have to go back to their original place of residence to obtain voter identification cards.

### *Biometric Identification*

At the end of October 2013, the IHEC and the press reported that the IHEC entered into a contract with a company based in Spain for a biometric identification system that would be used in the 2014 election. According to reports, the company, Indra, will “implement electronic and biometric systems to register voters. This will consist of the issue of 22 million ID chips with voter details recorded on them.”<sup>53</sup> According to IFES, “Due to the lack of sufficient time, it was not feasible to register 21.5 million voters using biometric information prior to these elections. Therefore, the process will re-start in June 2014 and will continue until all Iraqi voters are registered using this method. The IHEC’s objective is to have this completed by the 2018 parliamentary elections.”<sup>54</sup>

While little is known about the details of this undertaking, implementing a biometric voter registration and identification system has proven highly problematic in many countries in recent years, especially when done within a short time frame.

## 2010 REGISTRATION PROCESS

The procedures in advance of the 2010 elections were not very different than the current ones, save the Kirkuk controversy. The voter registration list was updated on the basis of the voters list for 2008 and citizens were asked to go to VRCs to check that they were on the list accurately. Over 1, 000 VRCs were opened across all governorates in the country. The IHEC also used mobile teams to distribute voter information cards, which contained information about the voter and voting instructions. The cards allowed voters to review the information ahead of time and make any necessary changes. Similar to current procedures, identification documents were required for someone to be added to the list or make changes.<sup>55</sup>

53 Ramon Munoz, “Technology Firm Indra Wins Contract for Iraq Elections,” *El Pais*, November 11, 2013, [http://elpais.com/elpais/2013/11/11/inenglish/1384176420\\_583701.html](http://elpais.com/elpais/2013/11/11/inenglish/1384176420_583701.html); “IHEC Signs a Contract on Biometric and Authentication Electronic Registration in Spain,” Independent High Electoral Commission, October 30, 2013, <http://www.ihec.iq/en/index.php/news/3971.html>.

54 International Foundation for Electoral Systems, *Post-Election Q&A*.

55 “Voter Registration Update Procedures,” Independent High Electoral Commission, <http://www.ihec.iq/en/index.php/procedures.html>.

*Kirkuk*

Among several disputes around the 2009 election law passed in anticipation of the 2010 elections, one centered on voter registration. There was disagreement over how to implement the election in the Kirkuk province given Kurdish concerns about being adequately represented. At the urging of the Kurds, the version of the election law passed in November 2009 called for using 2009 food ration lists for the voter registration list. Sunni Arabs in this region vehemently disagreed, preferring to use the 2005 voters list, which would likely have fewer Kurds. A compromise was reached, as described above, allowing for a review of complaints of fraudulent registrations.<sup>56</sup> In the end, there were no contests brought.

## DOCUMENTATION

Technically, parents are supposed to obtain civil status ID cards for their children at birth. This requires the parent to register his or her marriage with the Civil Status Department and notify the Civil Status Department of the birth to receive a birth certificate. Even later in life, obtaining a birth certificate again requires presentation of the marriage certificate, which can be problematic for some Iraqis who have lost their documentation due to displacement.<sup>57</sup>

To receive a nationality certificate, one must submit an application form with a thumbprint and photos, along with copies of the applicant's, father's and mother's passport. It costs the equivalent of two U.S. dollars.<sup>58</sup> According to the Institute for International Law and Human Rights (IILHR), the process "may be cumbersome for applicants denaturalized under the Ba'ath regime, or who changed names when fleeing Iraq, or whose extended family has since left Iraq or passed away, or who fled without copies of identity documents."<sup>59</sup>

Neither Palestinians residing in Iraq nor Jews are allowed to be naturalized, hence they are unable to obtain citizenship documentation. According to the study by IILHR, regaining citizenship after having lost it for political reasons under the Hussein regime can be cumbersome and requires documented proof of Iraqi origins, which may be difficult for some to produce.<sup>60</sup>

In general,

IILHR interviews with members of minority components and discussions with UNHCR [(United Nations High Commissioner for Refugees)], IOM [(International Organization for Migration)], and international NGOs working with minority components reveal a mixed picture for access to documentation. Anecdotal evidence suggests that ease of access varies significantly

56 Katzman, *Iraq: Politics, Elections and Benchmarks*, 9.

57 *Iraq's Minorities and Other Vulnerable Groups: Legal Framework, Documentation and Human Rights*, Institute for International Law and Human Rights, 2013, [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/droi/dv/702\\_iraqminorities\\_/702\\_iraqminorities\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/702_iraqminorities_/702_iraqminorities_en.pdf), 41.

58 "Nationality Certificate," Republic of Iraq, Ministry of Foreign Affairs, accessed May 8, 2015, <http://www.mofa.gov.iq/en/consular-services/nationality-cert>.

59 Institute for International Law and Human Rights, *Iraq's Minorities*, 45.

60 Institute for International Law and Human Rights, *Iraq's Minorities*, 39.



from governorate to governorate, often depending on local policies or personalities within the local personal status and nationality offices.<sup>61</sup>

## ISSUES UNDER INTERNATIONAL LAW

Iraq fares better than most other countries in the region under international commitments in large part because it has a passive registration system in which the major onus is on the government to enroll the eligible population. For the moment, the PDS database appears to be a fairly reliable and inclusive basis for the list, supplemented by other government-held databases and the ability of citizens to check on their registration status at accessible locations during a public display and review period.

In earlier years, there were over a million IDPs, most of whom were unable to or did not register or vote.<sup>62</sup> That situation has been ameliorated, but there are still likely several thousand IDPs who have not been registered by the IHEC. Given the continuing violence, the plight of IDPs and their ability to obtain and maintain necessary documentation and participate politically should be monitored; in accordance with international obligations, all efforts should be made to facilitate this process. The ICCPR requires states to include all citizens in the process, and the United Nations' Guiding Principles on Internal Displacement Art. 22(d) specifically provides that "Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right."

For all of the population, documentation is required to make any updates to registration status, and now the new electronic identification card is also necessary. This can be a problem in any country as there is always some segment of the population lacking some documents, and reports do indicate that a small number of Iraqis face challenges in the process, especially the internally displaced. From the available information, however, it does not seem to be a major obstacle or systemic problem in Iraq. Further inquiry and monitoring of this matter is nevertheless necessary to ensure no part of the population is disenfranchised for lack of the proper identifying documents. The fact that there is a fee for some documents is also notable, as this is considered potentially discriminatory under the ICCPR, which prohibits discrimination on the basis of poverty. Indeed, the UN Human Rights Commission in General Comment 25 has stated that the government must take positive measures to ensure there are not discriminatory obstacles to voter registration.

It will also be useful for the government of Iraq to tread carefully with the implementation of a biometric voter registration and identification system. A number of countries have attempted to implement such a system, but—lacking adequate capacity, resources, long-term planning and other facilities—they have struggled to carry it out effectively and without great disenfranchisement.<sup>63</sup>

A more troubling area that is indirectly but nonetheless closely related to the inclusivity of the voter

61 Institute for International Law and Human Rights, *Iraq's Minorities*, 39.

62 Zainab Naji, "Voter Apathy among Iraq Displaced," Institute for War and Peace Reporting, September 26, 2008, <http://isn.ethz.ch/Digital-Library/Articles/Detail/?lng=en&cid=92044>.

63 See Tova Wang, "Focus on Voter Identification," The ACE Project, accessed May 8, 2015, <http://aceproject.org/ace-en/focus/voter-identification>.

registration process is the discriminatory nature of the citizenship law in Iraq. Neither Palestinians residing in Iraq nor Jews are allowed to naturalize, hence they are unable to obtain citizenship documentation and therefore cannot, of course, register to vote. This provision is in clear violation of the ICCPR's prohibition on discrimination on the basis of national origin or religion. ICCPR Article 26 states that, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

It is unclear whether women are disadvantaged in the registration system in any way, as there does not appear to be disaggregated data. Even in passive systems women can be excluded, for example, when their name or residence changes due to marriage and the change is not recorded. It is clear that while still low, turnout of women voters has been rising over the last eight years.<sup>64</sup> One issue that indirectly impacts the registration process is that there are no women on the IHEC.<sup>65</sup> This runs contrary to Iraq's own constitution and international commitments under the ICCPR and CEDAW.

The Iraqi system is to be commended for allowing registration for members of the military and other categories of citizens who are often not deemed eligible to participate in other countries in the region. There is also what appears on paper to be an effective right to appeal and remedy complaints, another important component of international law.

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64 See "Women in Iraq Factsheet," United Nations Assistance Mission for Iraq, March 2013, accessed May 8, 2015, [http://www.uniraq.org/index.php?option=com\\_k2&view=item&task=download&id=3\\_a0648978643576b1765216c6562b256b&lang=en](http://www.uniraq.org/index.php?option=com_k2&view=item&task=download&id=3_a0648978643576b1765216c6562b256b&lang=en). While participation has increased, about 15 percent of women still do not believe women should vote.

65 "Iraqi Lawmakers Promise Boycott over Women's Government Role," Al Monitor, September 19, 2012, <http://www.al-monitor.com/pulse/politics/2012/09/iraq-parliament-boycott-women-participation.html#ixzz2ndIPHtoD>.

## APPENDIX: VOTERS REGISTER UPDATE PROCEDURES FOR THE 2014 ELECTION OF THE IRAQI PARLIAMENT

- **Identity documents (necessary)**

To prove the identity of the voter who shall present at least one of the following documents:

1. Identity card (civil status identity).
2. Iraqi nationality certificate.
3. Applicable Iraqi passports.
4. Information card (for the heads of families).
5. Applicable Iraqi market certificate (shall not be used in Kurdistan Province as it does not contain the date of birth).

- **Iraqi official supporting documents (original documents)**

1. Retirement card (shall not be used in Kurdistan province as it does not contain the date of birth).
2. Ration card (issued in 2012-2013).
3. Information card.
4. Document for proving death.

- **Supporting foreign or international documents (original documents)**

1. Foreign passports or foreign identity cards.

Table of the cases with which the form number 222 deals, the required documents for each case and the cases in which proxy is authorized:

O	Cases	Applicant	Case to Be Proven	Required Documents (official documents accepted by the Commission)	Notes
1-A	Addition (voter in Iraq)	Exclusively for himself/herself	Identity, eligibility and residence	Ration card + one of the identity documents	Ration card issued in 2012-2013 by the governorate and the ration center where the registration center is
1-B	Addition (voters coming from outside Iraq)	Exclusively for himself/herself	Identity, eligibility and residence	Passport with the entrance visa that dates back to 3 months before the registration period and the information card (if voter is the head of the family) or the support of the municipal council to prove residency in the governorate	

2-A	Change the polling center inside the same center	for himself/herself or by proxy	Identity	One of the identity documents + one of the other required documents	In case of proxy, the applicant shall provide a document that proves kinship as in the register
2-B	Change the polling center from a registration center to another registration center in the governorate	for himself/herself or by proxy	Identity	One of the identity documents + one of the other required documents	In case of proxy, the applicant shall provide a document that proves kinship
2-C	Change from one governorate to another one	for himself/herself or by proxy	Identity, residence	One of the identity documents + ration card of 2012-2013	In case of proxy, the applicant shall provide a document that proves kinship
3	Data correction	for himself/herself or by proxy	Identity, evidence of correction	One of the identity documents + one of the other required documents	In case of proxy, the applicant shall provide a document that proves kinship as in the register
4	Deletion	A member of the family	Identity document that proves kinship + death certificate (for deceased persons)	Identity document of the applicant + death certificate (for deceased persons)	In case of proxy, the applicant shall provide a document that proves kinship as in the register
5-A	Absentee voting for the internally displaced persons.  A displaced person with an identity document issued by the Ministry of Displacement and Migration	for himself/herself or by proxy	Evidence of displacement + identity	One of the identity documents + identity document issued by the Ministry of Displacement and Migration + one of the other required documents	In case of proxy, the applicant shall provide a document that proves kinship
5-B	Absentee voting for the internally displaced persons.  A displaced person that does not have an identity document issued by the Ministry of Displacement and Migration	for himself/herself or by proxy	Identity, eligibility, evidence of displacement	One of the identity documents + one of the other required documents + a letter of support from the department of displacement and migration	In case of proxy, the applicant shall provide a document that proves kinship

Source: Independent High Electoral Commission of Iraq.

# JORDAN

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## INTRODUCTION

Jordan has held periodic parliamentary elections over the last 20 years, with varying levels of participation. In 2007, the election was perceived to be lacking in legitimacy, and, as a result, the parliament was dissolved in 2009. A new election was held in 2010 but was boycotted by the major opposition group the Islamic Action Front (IAF), the political wing of the Muslim Brotherhood.<sup>66</sup> Like many countries in the Middle East and North Africa (MENA) region, Jordan experienced its own version of the Arab Spring during the 2011-2012 period, including calls for major reform of the legal and constitutional framework affecting elections. Although two of the most controversial elements of the electoral framework were retained in the 2012 election law (including the single, non-transferrable vote system for district seats and a districting system that disadvantages voters in urban areas), Jordan did introduce some changes, including to the registration system. This new system was tested in parliamentary elections held in January 2013, which the Muslim Brotherhood again boycotted. Despite these improvements, there are still many steps that could be taken with respect to voter registration in Jordan that would make it more inclusive, accurate and fair and help it to meet international standards.

## INTERNATIONAL AND REGIONAL AGREEMENTS

Jordan is a party to various international agreements that address equal rights, suffrage and the right to participate in government and public affairs, including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Political Rights of Women, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Arab Charter on Human Rights.<sup>67</sup>

## LEGAL FRAMEWORK

### *The 2010 and 2012 Laws and Executive Instructions*

The 2010 Jordanian election law prescribed that the initial voters list start with the registry of holders of national identity cards. This list is maintained and managed by the Department of Civil Status and Passports (CSPD) under the Ministry of Interior. The law introduced an annual list revision and required that the provisional voters lists be made publicly available. Initially in 2010 there were fees

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66 Dr. Amer Bani Amer, *Assessing Current Public Perceptions of Political Activism Development in Jordan*, Al-Hayat Center for Civil Society Development, 2011, 2.

67 Study Mission Report for Jordan's 2013 Parliamentary Elections, The Carter Center, 2013, <http://www.cartercenter.org/news/pr/jordan-021413.html>, 9.

associated with registering to vote,<sup>68</sup> but subsequently such fees were waived, in part due to civil society advocacy.<sup>69</sup> Citizens on the list could vote anywhere in their electoral district.<sup>70</sup> It was observed that this “facilitated tactical voting and increased the risk of multiple voting.”<sup>71</sup>

The 2012 election law, passed in preparation for elections originally anticipated for that year, required the creation of a totally new voters list. The law created a voter card that was available to eligible voters with a national identity card (that included a national number), which would be necessary to present at a specific polling station in order to vote.

Under the new system, registration and the creation and distribution of voter cards is implemented by the executive branch, via the CSPD under the auspices of the Ministry of Interior—not the Independent Election Commission (IEC or Commission), which was created by legislation and constitutional amendments in 2012.<sup>72</sup> A citizen must be on the registry of national identity cards and register in person to receive the voter card. Under regulations later issued, anyone in a family book can register and obtain the voting card for someone else named in the family book<sup>73</sup>—personal presence is not required. This measure was extremely controversial (see below).

Everyone who acquires a voter card is put on the preliminary voters list. It is at this point that the list is handed over from the CSPD to the IEC.<sup>74</sup> It is anticipated that the final voters list compiled by the Commission in 2012 will form the basis for the new voters list in future elections. Going forward, the Commission will add newly eligible voters to the voters list every January 1 and July 1.<sup>75</sup>

Rather than being allowed to vote anywhere in the electoral district, the new law requires voters to choose at the time of registration a specific polling center in their district where they will vote.<sup>76</sup> This

68 “First Week Report on the Voter Registration Process 5th - 12th June 2010: Report Findings and Outcomes Related to, The Governmental Conduct Represented by the Staff of the Civic Status and Passport Directorate Offices,” Al-Hayat Center for Civil Society Development, 2010.

69 “Second Week Report of the Civil Coalition for Observing the Monitoring of the Registration Process, 2010 Parliamentary Election,” Al-Hayat Center for Civil Society Development, 2010.

70 See *Preliminary Statement of the NDI Election Observer Delegation to Jordan’s 2010 Parliamentary Elections*, National Democratic Institute, November 10, 2010, [https://www.ndi.org/files/Jordan\\_2010\\_Election\\_Delegation\\_Statement.pdf](https://www.ndi.org/files/Jordan_2010_Election_Delegation_Statement.pdf).

71 *Final Report: Assessment of the Electoral Framework*, Democracy Reporting International and Identity Center, 2013, [http://www.democracy-reporting.org/files/dri\\_jo\\_assessment\\_of\\_electoral\\_framework\\_v1\\_2013-04-04\\_1.pdf](http://www.democracy-reporting.org/files/dri_jo_assessment_of_electoral_framework_v1_2013-04-04_1.pdf), 44.

72 Independent Election Commission Law No. 11 of 2012; Election Law 2012, Article 4.

73 Family books are issued to the head of the household on behalf of his family—and the head of family is automatically a man. There are separate pages for the head of household’s wife and children. That the family card, which is necessary for many public purposes in Jordan, is in the control of the male head of household can be problematic. See Catherine Warrick, *Law in the Service of Legitimacy: Gender and Politics in Jordan*, 2009, 152. In order to get a voter card, it is necessary to have a national ID card; to get a national ID card, it is necessary to present a family book. The procedure for obtaining the family book involves many steps. One is required to provide proof of Jordanian nationality for the head of the family; submit an application to “open a new civil record” by the head of the family to the office situated where the family resides; complete the “personal data-form record” by both husband and wife in order to obtain a national number; and present Jordanian birth certificates for all family members, along with one recent color photograph for the head of the family and wife, the marriage certificate, and the “Yellow Card of Crossing Points (Bridges)” of the Jordanian head of family, the Jordanian wife and adult sons and daughters. A Jordanian woman widowed, divorced or married to a foreigner is entitled to obtain a civil record and family book in her name, although the children of a divorced woman or one married to a foreigner are not added to the book regardless of their ages.

74 Election Law 2012, Article 4.

75 Election Law 2012, Article 7.

76 The Carter Center, *Study Mission Report*, 15.



represents an improvement, as it does address the possibility of multiple voting by creating voters lists specific to each polling place on which the voter must appear in order to cast a ballot.<sup>77</sup>

The 2012 law does not define residency for the purpose of registration or voting. As a result, Executive Instruction 1 from the Commission established that if a voter's father or grandfather was born in another district, he or she can vote there. Voters from minority sects can also opt to vote in a district where a minority candidate was standing for election.

When a voter arrives at the polling place to vote, he or she has to present both the national identity card and the voter card.<sup>78</sup>

## 2012 VOTER REGISTRATION

### *2012 Voter Registration*

The original list based on the registry of national identification holders was 3,565,139. Of these, 2,272,182 registered and obtained voter cards. Fifty-six percent of registered voters turned out on election day.<sup>79</sup> Less than 40 percent of the eligible population, therefore, registered and voted in the 2013 election.

As will be discussed further below, some Jordanian observers raised concerns that, during the registration process, the government undertook a variety of measures to bolster the numbers of registrants in order to promote the credibility of the election in the face of an opposition boycott. Although international law encourages making voter registration as accessible as possible, some groups objected to the way in which the IEC extended the deadline for registration twice, which compressed the overall timeline for election preparations in the process.<sup>80</sup> To observers, changing the rules midway through the process possibly demonstrated a politicization of the election authorities, similar to what Jordanians had experienced in previous elections. In all, registration took place between August 7, 2012 and October 15, 2012.

### *Authority over the Process*

Although the newly created Independent Election Commission was given responsibility under the law to manage most aspects of the voting system, authority for creating the voters list and the voter cards continued to rest with the Ministry of Interior's CSPD. Article 4 of the new election law gives

77 Democracy Reporting International and Identity Center, *Final Report*, 44.

78 Election Law 2012, Article 39.

79 *Elections in the Hashemite Kingdom of Jordan: January 23 Chamber of Deputies Elections – Frequently Asked Questions*, International Foundation for Electoral Systems, January 16, 2013, <http://ifes.org/faqs/elections-hashemite-kingdom-jordan-january-23-chamber-deputies-elections>, 7-8; Hermann Thiel, "Jordan's First Election Under a New Commission," International Foundation for Electoral Systems, January 24, 2013, <https://www.ifes.org/news/jordans-first-election-under-new-commission>.

80 Khaled Neimat, "Voter Registration Period Extended Again, Elections Expected Early Next Year," *Jordan Times*, September 30, 2012, <http://www.jordantimes.com/news/local/voter-registration-period-extended-again>.

the Department these responsibilities.<sup>81</sup> Citizen monitoring organizations in Jordan were critical of the CSPD and found in some cases that it was biased. Observers had extra cause to be skeptical of the agency's neutrality given its actions in previous elections, including in 2007, when it was documented that the CSPD was involved in vote transfers.<sup>82</sup>

According to the final April report of the domestic Civil Coalition for Monitoring Jordan Parliamentary Elections (RASED), CSPD staff offered preferential treatment to some candidates and public figures that were seen by observers inside CSPD managers' offices. According to the report, CSPD staff in several cases helped these figures in expediting their registration procedures and even helped them in illegal group registration or relocation from one district to another.<sup>83</sup>

The European Union (EU) was further critical of the fact that "the Independent Election Commission lacked ownership over the voter registration process as it was not involved in recruiting, training and direct supervision of voter registration officers."<sup>84</sup>

It did not help perceptions of bias when, according to RASED, it was discovered that thousands of military personnel were impermissibly on the registration list. The IEC refuted this charge, but later backtracked and purged their names from the list. According to RASED, "The integrity of the voters lists came under question also due to the delay in announcing the final lists by the IEC, as they were announced (70) days after the closure of the voters' registration process on October 15, 2012."<sup>85</sup> Moreover, the voter registration list that was made available was in "password protected PDF files not allowing for copy or conversion of the data for purposes of review, audit and analysis."<sup>86</sup> RASED also reports that the IEC "took no action to prosecute perpetrators of electoral crimes during the voters' registration period, although documented violations were presented to the IEC involving public servants under its jurisdiction at the time. The IEC subsequently formed several investigative

81 Article 4; "When the provisions of this law and the regulation issued pertaining to it become effective:

A. Executive instructions shall determine the specifications and content of the election card.

B. The Commission shall ask the Department to prepare an election card for any person who is entitled to vote and who has a national identity card that includes the National Number, based on the eligible voter's place of residence as indicated in the Department's records, in line with the local electoral districts specified in accordance with the provisions of this law and the regulation issued pertaining to this law.

C. The courts shall provide the Department with all final rulings and verdicts related to sequestration and bankruptcy, provided they are inclusive of the full names and national numbers of persons against whom said rulings and verdicts were issued at the time that this law became effective and at the beginning of the months of January and July of every year or any other date specified by the Board.

D. The Department shall undertake the necessary procedures to remove the names of deceased persons from its records in order to ensure that election cards are not issued in their names.

E. The Department shall notify the Commission of the completion of the process of preparing the election cards. . . .

M. The Department shall register the name of all eligible voters who received the election card in lists prepared for this purpose, and these lists shall be considered as the preliminary voters lists."

82 *Report on the Conduct of the 2007 Parliamentary Elections*, National Human Rights Council, 2007.

83 *Conclusion of the Report on Monitoring the 2013 Jordan Parliamentary Election*, Civil Coalition for Monitoring Jordan Parliamentary Elections (RASED), 2013, 11.

84 *Final Report: Parliamentary Elections*, European Union Observation Mission to the Hashemite Kingdom of Jordan, 2013, [http://eeas.europa.eu/eucom/missions/2013/jordan/pdf/final-report\\_en.pdf](http://eeas.europa.eu/eucom/missions/2013/jordan/pdf/final-report_en.pdf), 15.

85 RASED, *Conclusion of the Report*, 5.

86 RASED, *Conclusion of the Report*, 3. "Transparency requires that voter registers be public documents that can be monitored and made available for inspection at no cost to the requester." *International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections*, International IDEA, 2002, [http://www.idea.int/publications/ies/upload/electoral\\_guidelines.pdf](http://www.idea.int/publications/ies/upload/electoral_guidelines.pdf), 46.



committees but with no output to the date of writing this report.”<sup>87</sup>

### *Proxy Registration*

Midway through the registration period, the Commission decided to allow “proxy registration,” whereby a family member could register and obtain the voter card for any other family member. In practice, as noted by citizen observers, even people who were not family members of the cardholder picked up voter cards in the name of other citizens, in violation of the regulations.<sup>88</sup> This proved to be the most controversial aspect of the administration of the election.

According to the National Democratic Institute’s (NDI) preliminary election statement, “NDI’s long-term observers heard few concerns about the accuracy of the voters list, but concerns were raised about the practice of allowing family members and, in some cases, non-relatives, to pick up multiple voter cards. There were also reports of a high number of voter cards being held by others, a practice that many believed would lead to potential voter fraud on election day.”<sup>89</sup>

Citizen observation groups estimated that 62 percent of cards were obtained by one person for other family members, not by the person to whom the card belonged. This, they and others alleged, opened the door wide to vote buying and intimidation, by letting one person control a number of voter cards.<sup>90</sup> Indeed, a former member of parliament (MP) was alleged to have thousands of voter cards; it was widely reported that this prominent tribal politician delivered a speech with thousands of voter cards displayed in front of him. The IEC referred the case to the attorney general.<sup>91</sup> After the politician was elected to parliament in the January election, he received parliamentary immunity and the court in charge of the case suspended hearings. He will continue to be immune to prosecution for the duration of his tenure in parliament and there is a three-year statute of limitations on the charge.<sup>92</sup>

RASED found that between 108,000 and 121,000 cards were held illegally. In addition, 57,000 to 68,000 cards were never received by the applicants, and 4,500 to 6,800 voter cards included incorrect information that could prevent a citizen from casting a ballot due to data mismatches. Beyond the former MP, RASED alleged that party representatives were also holding voter cards for the purpose of vote buying.

The Carter Center estimated that 85 percent of registrations were by proxy and that there was widespread vote buying as a result.<sup>93</sup> In its preliminary statement, the EU reported that candidates and others were detained for forging and withholding voter cards and offering money for them. Although observers found the lists to be largely accurate and the efforts of the IEC commendable, as the EU

87 RASED, *Conclusion of the Report*, 13.

88 Author interview with Lama Khateeb, Resident Program Officer, National Democratic Institute, March 12, 2013.

89 National Democratic Institute, *Preliminary Statement*, 5.

90 *Preliminary Statement of the Integrity Coalition of Election Observations on the 2013 Parliamentary Elections in Jordan*, Identity Center, January 24, 2013, <http://identity-center.org/en/node/154>.

91 Nicholas Seeley, “The Jordanian State Buys Itself Time,” Middle East Research and Information Project, February 12, 2013, <http://www.merip.org/mero/mero021213>; Khaled Neimat, “Former MP Implicated in Suspected Election Crime,” *Jordan Times*, December 10, 2012, <http://jordantimes.com/former-mp-implicated-in-suspected-election-crime>.

92 Lama Khateeb, Resident Program Officer, National Democratic Institute, email message to author, May 1, 2013.

93 The Carter Center, *Study Mission Report*, 16.

stated, “Extensive proxy voter registration affected the credibility of the voter registration process and contributed to a general perception of distrust about the accuracy of the final voters list.”<sup>94</sup> Proxy registration also led to the registration of people without their knowledge or consent.<sup>95</sup>

### *Government Involvement in the Registration Process*

Several organizations and observers suggested that part of the reason proxy registration was suddenly allowed was to artificially inflate the total number of registrants for political purposes.<sup>96</sup> This notion is bolstered by the observation that the government undertook a number of measures to encourage groups over which it has particular influence to register.

Jordanian observers expressed concern that the government pressured public employees to register to vote. CSPD representatives were sent to the offices of ministries to register people; it was speculated that ministerial staff had little choice in the matter. The government also targeted companies and organizations with ties to the government or reliant on the government, sending representatives to offices and factories to register people.<sup>97</sup> The Carter Center also “received reports that public liaisons were appointed in public institutions to facilitate and encourage registration of public sector employees.”

There were many reports of rumors circulating in Palestinian communities that if they did not register to vote, their national identity cards would be taken away from them.<sup>98</sup> There were reports that Palestinians in camps participated because they feared their identification documents would be withdrawn if they did not.<sup>99</sup> There were some reports that when the registration numbers were not deemed high enough, Palestinian refugee camps were specifically targeted by the authorities for registration.<sup>100</sup>

This conduct by the government may have been a violation of the ICPPR, as the authoritative interpretation of that document by the UN makes clear that “abusive interference,” intimidation or coercion in the registration process should be condemned by enforced laws.<sup>101</sup> While General Comment 25 also makes clear that the state is required to facilitate the process of voter registration and remove unnecessary obstacles, it is important that this not cross the line into undue government pressure. Whether this transgression occurred must be assessed according to the context. Though reports of coercion were common amidst reports of the government’s concern that the legitimacy of the election be bolstered by high registration numbers, it is not clear to what extent this was the case in Jordan.

94 European Union, *Final Report*, 2.

95 Democracy Reporting International and Identity Center, *Final Report*, 45.

96 Democracy Reporting International and Identity Center, *Final Report*, 44.

97 Author interview with Amer Bani Amer, Founder and General Director, Al Hayat Center for Civil Society Development, March 28, 2013.

98 The Carter Center, *Study Mission Report*, 16.

99 Nicholas Pelham, “Jordan: Democracy Delayed,” *New York Review of Books Blog*, January 25, 2013, <http://www.nybooks.com/blogs/nyrblog/2013/jan/25/jordan-democracy-delayed>.

100 Laurie Brand and Fayez Hammad, “Identity and the Jordanian Elections,” *Foreign Policy*, January 17, 2013, <http://foreignpolicy.com/2013/01/17/identity-and-the-jordanian-elections>.

101 General Comment 25 of the UN Human Rights Commission.

### *Location of Registration and Voting*

Voters were allowed to choose a polling center when registering to vote. As referenced, under the law, voters could choose for their electoral district to be their place of residence or the district where their father or grandfather was born. Members of minority groups could also register in an electoral district in which a minority was running for office. Approximately 400,000 citizens registered outside of their place of residence.<sup>102</sup>

According to NDI partner Al-Hayat Center for Civil Society Development, there were no specific rules about how to determine if someone truly had the option to vote in a district outside of his or her residence. There were no requirements to demonstrate that one's father or grandfather's birthplace was in another particular jurisdiction. In reality, for many voters, opting to vote in their "home" district meant the district of their tribe. In general, officials allowed voters to make this choice without any verification of whether they were even from a known tribe located in a known area of the country. This practice was criticized by some as reinforcing the practice of voting on the basis of family or tribal ties rather than party or policies.<sup>103</sup>

Citizen observers also reported problems caused by the distance people needed to travel to reach a registration center. NDI observed disorganization in the registration process, which involved many unnecessary forms, lengthy procedures, multiple visits, and long waits in crowded registration centers.<sup>104</sup> An inclusive, accessible registration system is essential to meeting the principle of universal suffrage, as has been noted in several international legal documents. These obstacles to registration need to be assessed in that light. Allowing people to register and vote outside of what they consider to be their residence can in some cases be problematic under international norms. While it is recognized that refugees should be afforded the right to vote from their place of origin and there is a growing body of support for voting rights for citizens living outside the country, the choices permitted by the Jordanian law have the potential to negatively impact elections. Enabling voters to choose in such a manner may allow candidates and parties to distort the electoral process by strategically placing voters in particular places, rather than requiring that voters vote for candidates to represent them where they truly have interests at stake. It encourages voting on the basis of tribal affiliation rather than on political and policy platforms, diminishing the positive democratic role of parties, also recognized by the international community. It is of note that international norms universally allow for residence to be one of the few restrictions that can be placed on citizens' right to register to vote.<sup>105</sup>

After the voter registration deadline passed, the Independent Election Commission took over and displayed the preliminary voters list widely throughout the country. The law provided for, and the commission oversaw, what was seen as a fair and efficient process for challenging the accuracy of the list.

102 The Carter Center, *Study Mission Report*, 16.

103 Democracy Reporting International and Identity Center, *Final Report*, 8.

104 Author interview with Lama Khateeb.

105 Richard Klein and Patrick Merloe, *Building Confidence in the Voter Registration Process: An NDI Monitoring Guide for Political Parties and Civic Organizations*, National Democratic Institute, 2001, <https://www.ndi.org/node/12886>, 7: ". . . There is agreement that it is appropriate to define voter eligibility based upon certain other characteristics: citizenship, residency and age." See also "Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report," Council of Europe, sec. I.1.1.c, <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282002%29023rev-e>; *Existing Commitments for Democratic Elections in OSCE Participating States*, Organization for Security and Co-operation in Europe, 2003, <http://www.osce.org/odihr/elections/13957>, 59.

## EXCLUDED GROUPS

The EU Observation Mission to Jordan expressed concern over the number and types of groups barred from registering to vote. The final report noted that, “The Election Law suspends the right to vote to the members of the armed forces, general intelligence, public security, gendarmerie and civil defense while in active service. Further, it denies the right to vote to persons declared bankrupt, retarded, insane or interdicted. Additionally, there was no provision for proxy voting; voting abroad; voting of prisoners; and persons in pre-trial detention.”<sup>106</sup>

The Carter Center was equally critical of the disenfranchisement of these groups, including in their recommendations:

In order to ensure that the widest possible pool of citizens can vote, mentally disabled persons should not be disenfranchised unless by a decision of a court or another competent authority. Further, while the Carter Center acknowledges the specific challenges related to granting the right to vote to active personnel of the army, gendarmerie and police, lawmakers should consider the possibility to grant them the right to vote in the near future.<sup>107</sup>

## IDENTIFICATION

The voter card was established by the 2012 law because of questions about the integrity of the national identity cards.<sup>108</sup> Nonetheless, to register to vote in Jordan and obtain a voting card, one must present a national identity card to the registrar. Although it is believed that the majority of Jordanians do have the national identity card, the process for obtaining one is not simple, as discussed above. Thus, identification requirements have the potential to disenfranchise some voters in limited circumstances.

## ISSUES UNDER INTERNATIONAL LAW

One matter of concern regarding the process and Jordan’s international obligations relates to the authority over the electoral process. It is widely accepted under the precepts of ICCPR Article 25 that independent and nonpartisan election management is key to fulfilling the promise of ensuring electoral participation. Critical to free participation in elections is trust in the authorities managing them. In Jordan, the Ministry of Interior’s control over a key part of the electoral process was seen as problematic for the credibility of the registration exercise, and was of concern under international obligations since the executive branch continued to oversee the bulk of the voter registration process. As mentioned above, allegations of government pressure in the registration period would also be problematic under international obligations as the ICPPR interpretation of that document makes clear that “abusive interference,” intimidation or coercion in the registration process should be condemned by enforced laws.<sup>109</sup>

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<sup>106</sup> European Union, *Final Report*, 14.

<sup>107</sup> The Carter Center, *Study Mission Report*, 28.

<sup>108</sup> The Carter Center, *Study Mission Report*, 15.

<sup>109</sup> General Comment 25 of the UN Human Rights Commission.

Another area in which compliance with international as well as regional treaty obligations comes into question in the Jordanian system is with respect to proxy registration. Universal and equal suffrage is a central pillar of international obligations in elections. By allowing irregularities in the registration process, opening the door to substantial voter fraud, allowing people to be registered by others without their knowledge or consent, and possibly denying the ability to vote to some citizens by holding their cards, proxy registration possibly jeopardizes equality of the vote. The Arab Charter to which Jordan subscribes also states that a citizen has the right to choose his representative in free and fair elections under conditions guaranteeing equality among all citizens and ensuring the free expression of the will of the electorate. The irregularities that occurred through the proxy registration system in 2013, changes to the rules midway through the process, and inconsistent application of rules and regulations threatened to violate this and related principles.

Allowing people to register and vote outside of what they consider to be their residence can in some cases be problematic under international obligations. While it is recognized that refugees should be afforded the right to vote from their place of origin and there is a growing body of support for voting rights for citizens living outside the country, the choices permitted by the Jordanian law have the potential to negatively impact elections. Enabling voters to choose in such a manner may allow candidates and parties to distort the electoral process by strategically placing voters in particular places, rather than requiring that voters vote for candidates to represent them where they truly have interests at stake. It encourages voting on the basis of tribal affiliation rather than on political and policy platforms, diminishing the positive democratic role of parties, also recognized by the international community.

Though international practice on what reasonable restrictions may be placed on who is eligible to register and vote varies widely, the exclusion of many groups in Jordan from registration also needs to be examined. As the EU stated in its report,

The universality of the right to vote was curtailed by the exclusion of large groups such as the members of the armed forces, general intelligence, public security, gendarmerie and civil defense while in active service and is against international commitments and the principal of universal suffrage enshrined in Article 25 of the International Covenant on Civil and Political Rights. Some 220,000 officers and employees of the state security apparatus were excluded from the right to vote including civil defense, fire fighters and other civilian disaster management staff. In addition, the suspension of the right to vote to persons in pre-trial detention is in contradiction with international commitments and the principal of presumption of innocence.<sup>110</sup>

Finally, while the issue of documentation does not appear to be a major one in Jordan, it has the potential to be burdensome. Identification requirements for voting that are difficult or impossible for some citizens to meet may violate international norms. Comment on Article 25 establishes that, “The right to vote may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements.” Even more pertinent, the Comment also says, “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed.” Onerous documentation requirements can be found to be discriminatory,

<sup>110</sup> European Union, *Final Report*, 14.

unreasonable and/or an obstacle to registration and thus in contradiction to Article 24 of the ICPPR, especially when such hardship falls particularly on certain groups of voters such as ethnic minorities, the poor or women.



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## INTRODUCTION

There have been several elections in Kuwait in the last decade due to the recurrent dissolution of the parliament by the courts and dismissal by the emir. Nonetheless, over the last several years it has often had one of the higher voter participation rates in the Gulf. In Kuwait's most recent parliamentary election on July 27, 2013, however, the turnout among registered voters decreased to 51.9 percent. The opposition called for a boycott of the election in response to a controversial change the emir made to the electoral process: in late 2012, the government changed the number of candidates for whom a voter can vote from four candidates per district to one candidate. This reform was seen by the opposition as a way of increasing the number of pro-government candidates winning office.

The law with regard to voter registration in Kuwait, however, has not changed since 1962. While the process for creating, updating and maintaining a high quality, accurate registration list appears to be generally effective, a lack of transparency and access to information makes it difficult to assess completely. Even observers close to the process are unclear on the details as to how the voters list is compiled and maintained. Rules around *eligibility* to register to vote, rather than about the quality of the list itself, are more clearly problematic under international legal obligations and good practices. As a result of the eligibility criteria, detailed below, only a small portion of people residing in Kuwait are allowed to register to vote and participate in elections. In 2013, only about 440,000 people were registered to vote in a country that has over 3 million residents.<sup>111</sup>

Though Kuwait did not experience the same levels of turbulence and demand for change witnessed in other countries during the Arab Spring of 2011, there have been a number of unprecedented protests in Kuwait in recent years, including in response to the change in the election law in 2012.

## INTERNATIONAL AND REGIONAL AGREEMENTS

Kuwait has not ratified all of the international and regional treaties that address elections, but it has ratified some of the most important ones: the International Covenant for Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Kuwait ratified the ICCPR with the following reservation to Article 25(b): "The provisions of this paragraph conflict with the Kuwaiti electoral law, which restricts the right to stand and vote in elections to males. It further declares that provisions of the article shall not apply to members of the armed forces or the police." Kuwait granted the right to vote to women in 2005, but it has not officially changed its position with respect to the ICCPR. However, Kuwait has withdrawn its reservation

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111 "Annual Statistical Abstract: Chapter 3," Kuwait Central Statistical Bureau, 2011; "Factbox: Kuwait's Political System and Voting Rules," *Reuters*, July 25, 2013, <http://www.reuters.com/article/2013/07/25/us-kuwait-election-system-idUSBRE96O0FN20130725>.

to Article 7(a) of CEDAW, which provides the right to women to vote and stand for election.<sup>112</sup> It continues to bar the military and the police from voting.

## LEGAL FRAMEWORK

Kuwait's own constitution states in Article 6 that the system of government shall be democratic, under which sovereignty resides with the people. It also provides for equality under the law without distinction to race, origin, language or religion - though gender is not included-- as well as freedom of expression and freedom of association within the parameters of the law.

According to Kuwait's Election Law No. 35, one must be 21 years of age in order to register to vote (one can register at 20 in order to be eligible for an election that will take place when he or she has reached the age of 21). In a highly unusual provision, naturalized citizens are only eligible to register if they have been naturalized for at least 20 years (Article 1). A Kuwaiti citizen who has been convicted of a felony or crime of "moral turpitude" may not register to vote until having been rehabilitated (Article 2). Members of the armed forces and the police are not eligible to register to vote (Article 3).

Under the law, two types of committees are formed: Registration Committees and Election Committees. The Registration Committee is composed of a president and two members. According to the law,

The Minister of Interior decides on the number of committees to be formed, their composition and the territorial areas in which they have jurisdiction. . . . The Election Committees are composed of one member of the judiciary (or public prosecution) appointed by the Minister of Justice, one member appointed by the Minister of Interior and up to 15 candidate representatives. The law stipulates that the persons appointed by the Ministry of Justice serve as presidents of the committees.<sup>113</sup>

Kuwaiti citizens must register to vote in the place where they permanently reside. In February of every year, the Registration Committees update the voter registration list. It is during this February period—and only this period—that one may also apply to be on the voter registration list for the first time. In order to be added to the list, one must present two documents, the nationality certificate and civil ID. Some civil society organizations have advocated for more time for registration or, ideally, that citizens should be added to the voters registry automatically upon eligibility.<sup>114</sup>

It should be noted that when the women's right to vote was introduced in 2005, women were automatically registered on the basis of civil registration data, while men continued to have to register themselves. As a result women had a higher voter registration rate than men in the years immediately

112 "Concluding Observations of the Committee on the Elimination of Discrimination against Women," United Nations Committee on the Elimination of Discrimination against Women, October 21, 2011, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-KWT-CO-3-4.pdf>.

113 *Final Report: Assessment of the Electoral Framework – Kuwait*, Democracy Reporting International and Kuwait Transparency Society, November 2008, [http://www.democracy-reporting.org/files/dri\\_kuwait\\_report\\_08.pdf](http://www.democracy-reporting.org/files/dri_kuwait_report_08.pdf), 34.

114 Author interview with Ghada Alghanim, board member of the Women's Cultural and Social Society and founding member of Sout Al Kuwait, October 5, 2013.



following their enfranchisement.<sup>115</sup> Since 2005, women have been required to actively register to vote according to the same rules as men. Some election observers report that, in some cases, women have been encouraged to register to vote by their husbands and fathers because they see it as a second vote for themselves.<sup>116</sup>

The list is then publicly displayed from March 1 to 15, during which time a citizen may advise the Registration Committee that he or she has been wrongfully omitted or incorrectly listed. Complaints against voter registration decisions can be brought to the Election Committees mentioned above. Appeals against their decisions can be lodged with the Supreme Court.<sup>117</sup>

## ADMINISTRATION OF VOTER REGISTRATION IN 2012 AND 2013

In 2012, by the same decree of the emir that led to the controversial change in the electoral system, an independent election committee composed primarily of judges was instituted to administer the election. This nominal step forward, however, was jettisoned in the July 2013 election because the Supreme Court ruled the establishment of such a commission unconstitutional.<sup>118</sup> According to press reports, in the same ruling that upheld the contested changes to the system, the Court ruled that “the state’s interest is ‘much greater than that of a committee,’ an argument based on which the emergency decree was issued.”<sup>119</sup>

Administrative implementation reverted once again to the Ministry of Interior. In accordance with the law, an update period was conducted by the Ministry in February 2013. In each election, as per the election law, voters were assigned polling locations according to residence, and voters lists were posted outside polling sites in alphabetical order.<sup>120</sup> It is unclear whether the government established registration and election committees as is described by the law.

In Kuwait, when the parliament is dissolved, a new election must be held within 60 days (although as with many other matters, the ultimate time frame is determined by the emir). While this short time frame can be problematic for some candidates, it does not appear to be a problem for the Ministry of Interior in terms of organizing the voters lists or other aspects of the voting process.<sup>121</sup>

115 Democracy Reporting International and Kuwait Transparency Society, *Final Report*, 32.

116 Author interview with Ghada Alghanim.

117 Democracy Reporting International and Kuwait Transparency Society, *Final Report*, 45.

118 Omar Hassan Abdulla, “Kuwait Scraps Parliamentary Poll with Final Court Decision,” *Middle East Online*, June 16, 2013, <http://www.middle-east-online.com/english/?id=59490>.

119 “Opinions Vary Amid Turmoil Over Landmark Court Ruling,” *Kuwait Times*, June 17, 2013, <http://news.kuwaittimes.net/opinions-vary-amid-turmoil-over-landmark-court-ruling-govt-advisors-blamed-tribes-return-to-polls/>.

120 Author interviews with Asma Ben Yahia, Resident Program Officer, National Democratic Institute, September 30, 2013, and Ghada Alghanim.

121 Author interview with Asma Ben Yahia.

## ELIGIBILITY

### *Naturalization/Citizenship Status*

There has been active discussion in the country about the citizenship status of the Bedoon community (see below). There has not been serious discussion of making the naturalization process easier for any of the millions of foreign residents of Kuwait, who are presumed to be in the country temporarily.

Kuwait is unique in that the great majority of people who live there are not citizens and are therefore not allowed to register to vote. Indeed, foreign nationals outnumber Kuwaiti citizens by at least a 2:1 ratio. It is not clearly discernible how many of these non-citizens are migrant workers who are truly temporarily in the country, Arabs from nearby states who have resettled in Kuwait, or people who have been living in Kuwait for many years, in some cases for generations, but have been unable to gain citizenship and hence voting rights. Even when one is able to naturalize in Kuwait, under the election law, he or she is not able to vote for another 20 years. Moreover, the number of foreigners living in Kuwait has increased in recent years.

According to press reports on Kuwaiti official statistics, “The total number of the Indian subcontinent’s nationals in Kuwait amount to 1.066 million people, which is almost equivalent to the number of Kuwaitis. Indians constitute the largest community, with 647,000 people who play a vital role in the labor market in industrial, service and business fields.” Hundreds of thousands more Pakistanis, Filipinos and Sri Lankans work in the country. Furthermore, “According to official figures, Egyptians are the largest Arab community in Kuwait, amounting to 453,000 people. They work in governmental departments, education and public services, medicine and other fields. An additional large segment of the Egyptian community are construction and maintenance workers.”<sup>122</sup>

The Nationality Act was amended several times between 1960 and 1985, making access to nationality increasingly difficult.<sup>123</sup> Kuwait does not allow any non-Muslims to naturalize as citizens.<sup>124</sup>

### *Bedoon*

The term “Bedoon” (also spelled “bidoon” or “bidoun”) is a term used for stateless people in Kuwait as well as Bahrain, Iraq and the United Arab Emirates. Bedoon do not come from a particular ethnic group. There are some 100,000 Bedoon in Kuwait as a result of its particular citizenship policies. Although most of these people have been in Kuwait for many years, even generations, sometimes going back further than some Kuwaiti citizens, their lack of citizenship rights also means they cannot register to vote. According to Refugees International,

Over the last 12 years more than 80,000 applications for nationality have sat before the Kuwait government’s “Bedoon Committee.” Bedoon with Kuwaiti mothers are included in this queue because, as is the case in a number of countries in the region, Kuwait’s nationality law does not

122 Hamad al-Jasser, “2/3 Kuwait Population Foreign, Half from Indian Subcontinent,” *Al Hayat*, March 30, 2012.

123 *Without Citizenship: Statelessness, Discrimination and Repression in Kuwait*, Open Society Institute, May 2011, <http://www.opensocietyfoundations.org/reports/without-citizenship-statelessness-discrimination-and-repression-kuwait>, 5.

124 Open Society Institute, *Without Citizenship*, 10.

permit a woman to confer nationality on her children or spouse. On rare occasions, the committee has conferred nationality on some Bedoon, a few hundred in 2006, 2007 and 2008, and 1,800 in 2005. Since 2009 the Bedoon Committee has not conferred nationality on any bedoon.<sup>125</sup>

Nevertheless, the government frequently makes promises to increase naturalizations. For almost three years, members of the Bedoon community have been publicly protesting their inability to acquire citizenship, most recently conducting a public march of 3,000 people in October 2013.<sup>126</sup>

Under a 1962 law dating from Kuwaiti independence, acquisition of Kuwaiti nationality “is based on a number of criteria, most significantly residential ties to the country prior to 1920—the year of the Battle of Jahra, a victory over Saudi expansion, a very significant event in Kuwaiti history.”<sup>127</sup> For a variety of reasons, the people now considered Bedoon failed to register as citizens at the time of independence more than 50 years ago, and they and their descendants are now stateless. As a result of the 1962 law, there are actually classes of citizens in Kuwait and only the first two of five can register to vote—original Kuwaitis who were settled in the country before 1920 and descendants of these original Kuwaitis, if that descent is through the father. One can naturalize with some difficulty, but even then cannot register to vote until 20 years after naturalization. Naturalization decisions are entirely up to the Minister of Interior.<sup>128</sup> Moreover, in 1986, the government began to apply the Alien Residence Act to Bedoon, re-classifying them as “illegal residents.”<sup>129</sup>

## DOCUMENTATION

A national civil identity card and nationality certificate are required to register to vote. On election day, voters are required by law to present a voter card or, if one was not issued, a citizenship certificate.<sup>130</sup>

Obtaining such identification seems not to be a problem for the few hundred thousand Kuwaiti-born citizens. Interestingly, for the municipal elections held on September 28, 2013, the Ministry of Interior issued temporary nationality documents, valid for one day only, for citizens who lost theirs so they could cast a ballot.<sup>131</sup> It is unclear why this measure was implemented for this particular election.

Although most citizens in Kuwait evidently have documents, obtaining the documentation could be a challenge if one was not registered at birth. According to the Ministry of Interior, a person who was not registered at birth must personally apply to register and obtain a civil identity card by providing the

125 “Kuwait: Bidoon Nationality Demands Can’t Be Silenced,” Refugees International, March 5, 2012, <http://refugeesinternational.org/policy/field-report/kuwait-bidoun-nationality-demands-cant-be-silenced>.

126 “3,000 Bedoon Protest for Citizenship Rights,” Bedoon Rights, October 7, 2013, <http://www.bedoonrights.org/2013/10/07/3000-bedoon-protest-for-citizenship-rights/>.

127 Open Society Institute, *Without Citizenship*, 2.

128 Open Society Institute, *Without Citizenship*, 3-4.

129 Open Society Institute, *Without Citizenship*, 5.

130 Democracy Reporting International and Kuwait Transparency Society, *Final Report*, 42.

131 “MoI Completes Preparations for Municipal Elections,” *Kuwait Times*, September 25, 2013, [http://news.kuwaittimes.net/moi-completes-preparations-municipal-elections/?cat=3&output=html&androidapp=1&webapp=1&cap=1&wizi\\_ver=2.0.9](http://news.kuwaittimes.net/moi-completes-preparations-municipal-elections/?cat=3&output=html&androidapp=1&webapp=1&cap=1&wizi_ver=2.0.9).

following documentation:<sup>132</sup> a birth certificate or, if there is none, a special record from the Ministry of Interior; two photographs; fingerprints; proof of residence; a nationality certificate if the person was born outside of Kuwait or is over eighteen years old; and a letter of no objection from the Ministry of Interior if the applicant is an adult. A fee must be paid of two Kuwaiti Dinars (KD, approximately US\$9), plus 0.250 KD for the envelope.<sup>133</sup>

To receive a birth certificate as an adult, the applicant must come in person to provide a civil ID, nationality certificate or passport. As a result, someone without a birth certificate could be caught in a loop in which he or she cannot obtain one because he or she does not have a civil ID, and cannot get a civil ID because there is no birth certificate. A fee of two KD is also required. Notably, to get a birth certificate for a newborn baby, the father or the grandfather must attend the issuance, and the parents must present a nationality certificate and their marriage contract. Similarly, one needs a civil ID to obtain a nationality certificate, potentially creating a similarly endless cycle for the few people for whom this might be an issue.

## ISSUES UNDER INTERNATIONAL LAW

### *Eligibility*

The deprivation of rights among the Bedoon in Kuwait is the most glaring transgression of international obligations and good practices. Though the issue of the Bedoon is far broader than voting, the ability to participate in public life is important. The problems start with the Nationality Law, which discriminates on the basis of religion, gender and ethnicity and defines citizenship to exclude many Kuwaitis. This makes it particularly difficult, if not impossible, for Bedoon to become citizens and attain the right to register and vote. More importantly, the ICCPR, by which Kuwait has agreed to abide, specifically says that a state cannot discriminate on the basis of social status, birth or other status when it comes to voting and participation. The treatment of the Bedoon would certainly give rise to questions as to whether it is violating the treaty. Because the Bedoon are not of a common ethnic or racial origin, other treaties, such as ICERD, do not apply, but its policies would certainly call into question Kuwait's compliance with the spirit of their ideals.

The other conspicuous transgression is the provision in the law that requires naturalized citizens to wait 20 years before they can register to vote. This too is contrary to ICCPR Article 25, which explicitly says, "Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with Article 25." A 20-year waiting period is a significant distinction.

Moreover, the ICCPR says, "any conditions which apply to the exercise of the rights protected by Article 25 should be based on objective and reasonable criteria." It is difficult to surmise the justification for a 20-year waiting period after naturalization, making its reasonableness questionable. It is particularly conspicuous given that the large majority of people in Kuwait are not citizens and this has been the case

132 "First Time Registration of Kuwaiti Individuals," Kuwait Government Online, accessed May 8, 2015, [http://www.e.gov.kw/PACI\\_en/Pages/ServiceContent/521KuRegistrationForTheFirstTime.aspx#](http://www.e.gov.kw/PACI_en/Pages/ServiceContent/521KuRegistrationForTheFirstTime.aspx#).

133 Kuwait Government Online, "First Time Registration."

for some time. The norm across the world is to grant citizens voting rights at the time of naturalization. This provision also raises questions under ICERD, as naturalized citizens are likely to be of a different ethnic origin than “original Kuwaitis.”

Apropos of the situation of the Bedoon and naturalized citizens, the UN Human Rights Commission has stated quite definitively with reference to Kuwait, “The State party should confer its nationality on a non-discriminatory basis and ensure that those who are granted Kuwaiti nationality are treated equally with other Kuwaiti citizens with regard to voting rights (Articles 25 and 26).”<sup>134</sup>

Although it is not unheard of, it is also very unusual for the age of registration eligibility to be 21. The norm internationally is for the age of eligibility to be 18.<sup>135</sup> It has been noted that, “It is not clear if there are objective reasons for this voting age, because Kuwaitis can marry, drive cars and are criminally liable at the age of 18.”<sup>136</sup> The policy of excluding members of the military and police from eligibility is also increasingly considered in contradiction to Article 25’s mandate for universal suffrage and good international practice.<sup>137</sup>

### *Election Management*

General Comment 25 of the ICCPR specifically states in paragraph 20 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.” Most of the time, Kuwait’s elections have been run directly by the government through the Ministry of Interior. Even in 2012, the independent election committee may not have been fully independent. Elections run by the persons in power with an interest in the outcome are not in keeping with international obligations.

### *Lack of Transparency*

The voter registration process in Kuwait is opaque even to Kuwaitis. There is a lack of clarity around how the voter registration list is compiled and maintained.

Under Article 19 of the ICCPR and numerous other international and regional agreements, citizens have the right to seek, receive and impart information. UNHCR’s General Comment 34 regarding Article 19 is quite explicit about the responsibility of government agencies in this regard: “To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest.” In conjunction with Article 25, citizens clearly have a right to know how the registration system works so that they can ensure they are able to fully and effectively exercise their right to vote and participate in public life.

In order to comply more fully with its international obligations, Kuwait officials need to do more to educate the public about the voters list and how it is compiled and maintained.

<sup>134</sup> Democracy Reporting International and Kuwait Transparency Society, *Final Report*, 31.

<sup>135</sup> See “What Is the Legal Voting Age in the National Elections?” The ACE Project, accessed May 8, 2015, <http://aceproject.org/epic-en/CDMap?question=VR>.

<sup>136</sup> Democracy Reporting International and Kuwait Transparency Society, *Final Report*, 31.

<sup>137</sup> *Final Report: General National Congress Elections in Libya*, The Carter Center, May 6, 2014, 27; *Free and Fair Elections: International Law and Practice*, Inter-Parliamentary Union, 2006, 128.





## INTRODUCTION

Although Lebanon was by no means immune to the winds of the Arab Spring, the response there was certainly not as dramatic. Some observers have attributed this to the sectarian nature of the governmental system, as well as the ongoing strife in that country coming from actors outside its borders, particularly Syria. Under the Lebanese constitution, the parliament must feature equal representation between Christians and Muslims, proportional representation among the confessional groups within each religious group, and proportional geographic distribution. There has been some protest against the sectarian political system, but the schisms this system has sown have made organizing any kind of unified protest activity less likely.<sup>138</sup> As NDI has described it, “Unique among Arab countries, Lebanon’s political system is characterized by a sectarian power-sharing formula that concentrates power in the hands of a small number of political and religious leaders, resulting in a weak federal government that struggles to take even the most basic actions.”<sup>139</sup>

Originally, parliamentary elections were due to be held in June 2013, when members’ four-year terms expired. However, in May of that year, the parliament voted to delay the election until November 2014 because of the political deadlock in the country and complications stemming from the civil war in neighboring Syria.<sup>140</sup> Even as some civil society organizations and elected officials continued to debate and push for reforms to the electoral law,<sup>141</sup> in early November 2014, the parliament again overwhelmingly voted to postpone the election as a result of ongoing instability.<sup>142</sup> According to the Ministry of Interior and Municipalities (MOIM), the term of the parliament is now extended to 2017.<sup>143</sup>

In the past, Lebanon held regular multi-party elections, except during its own civil war period from 1975 to 1990. Turnout in the 2009 parliamentary election was about 54 percent of registered voters, and about two-thirds of the voting age population was registered.<sup>144</sup> The most recent registration update was conducted in February and March 2014.<sup>145</sup>

138 See Somdeep Sen, “Lebanon: The ‘Lee-Side’ of the Arab Spring,” *Open Democracy*, November 15, 2011, <http://www.opendemocracy.net/somdeep-sen/lebanon-lee-side-of-arab-spring>.

139 “Lebanon,” National Democratic Institute, accessed May 8, 2015, <https://www.ndi.org/lebanon>.

140 “Lebanon’s Deadlocked Parliament Postpones June Election,” *Reuters*, May 31, 2013, <http://www.reuters.com/article/2013/05/31/us-lebanon-parliament-election-idUSBRE94U0N420130531>.

141 See Civil Campaign for Electoral Reform (CCER), <http://www.ccerlebanon.org>.

142 Hugh Naylor, “Lebanese Lawmakers Delay Elections, Sparking Dismay, Anger Among Voters,” *The Washington Post*, November 5, 2014, [http://www.washingtonpost.com/world/middle\\_east/lebanese-election-delay-sparks-dismay-anger-among-voters/2014/11/05/8bf1a5e0-8dc5-435e-bc89-ec8024861da4\\_story.html](http://www.washingtonpost.com/world/middle_east/lebanese-election-delay-sparks-dismay-anger-among-voters/2014/11/05/8bf1a5e0-8dc5-435e-bc89-ec8024861da4_story.html).

143 “قانون التمديد للمجلس النيابي كما صدر اليوم في الجريدة الرسمية” Ministry of the Interior and Municipalities, November 11, 2014, <http://www.elections.gov.lb/news/التمديد-للمجلس-النيابي-كما-صدر-اليوم-في-الجريدة-الرسمية.aspx>.

144 See “Global Database on Elections and Democracy,” International IDEA, May 18, 2015, accessed May 8, 2015, <http://www.idea.int/uid/countryview.cfm?id=128#Voter Turnout>.

145 “جهوز القوائم الانتخابية الاولى ودعوة الناخبين المقيمين وغير المقيمين الى الاطلاع عليها” Ministry of the Interior and Municipalities, accessed May 8, 2015, <http://www.elections.gov.lb/news/الجهوز-القوائم-الانتخابية-الاولية-ودعوة-الناخبين-الم-الم.aspx>.



## INTERNATIONAL AND REGIONAL AGREEMENTS

Lebanon has signed on to all of the major agreements relevant to voting and elections. These include the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Political Rights of Women. Lebanon is also a party member to the Arab Charter for Human Rights.

## LEGAL FRAMEWORK

Two provisions of the Lebanese Constitution apply to voter registration:

**Article 7:** All Lebanese are equal before the law. They equally enjoy civil and political rights and equally are bound by public obligations and duties without any distinction.

**Article 21:** Every Lebanese citizen who has completed his twenty-first year is an elector provided he fulfills the conditions laid down in the electoral law.

The main law governing elections in general, and voter registration in particular, is Law No. 25, passed in 2008. In addition to not allowing anyone under the age of 21 to vote (the more usual age globally is 18), the Lebanese election law excludes from registration and voting a great number of groups of citizens, including persons convicted of various transgressions. These include “burglary, fraud, issuing of uncovered checks, breach of trust, misappropriation of funds, bribery, perjury, rape, intimidation, falsification, forgery, false testimony, immoral crimes as stated in the seventh chapter of the penal code, and crimes related to the planting, production and/or trade in illicit drugs.” It also includes persons who are bankrupt.

In a rather unusual provision, under Article 5, “Naturalized Lebanese individuals may not vote before ten years after the naturalization decree is issued.” It is more common internationally for naturalized citizens to become eligible to register and vote immediately upon naturalization, and as will be discussed below, this is contemplated by international treaties to which Lebanon is a party. In another unusual twist, the provision relating to naturalized citizens does not apply to a noncitizen woman who attains Lebanese citizenship through marriage. The law is silent with respect to a foreign man who marries a Lebanese woman.

Also excluded from voting are military personnel, including members of the army, Internal Security Forces, Public Security, State Security, and Customs Police. This could potentially amount to a great number of citizens as the Lebanese Armed forces is estimated at 72,000 members and the security forces alone at 30,000.<sup>146</sup>

The 2008 law creates a commission called the Supervisory Commission on the Electoral Campaign, comprised of Lebanese citizens from various professional backgrounds—such as the media and bar associations—but overseen by the MOIM. This commission does not oversee or implement the voter

<sup>146</sup> *Thematic Information Report: Sectarian Violence in Lebanon*, Australian Government Department of Foreign Policy and Trade, December 18, 2013, 14-15, <http://www.immi-gv-au.net/media/publications/pdf/dfat-tir-lebanon.pdf>.

registration process, but rather primarily media issues and campaign financing.<sup>147</sup> Indeed, under the law the MOIM is responsible for implementing registration and elections, with the Directorate General of Political Affairs and Refugees responsible for operational and logistical preparations.

Voter registration is mandatory, but the system is passive—the government maintains the list, updating it periodically, though citizens are responsible for checking that their information is accurate. The Directorate General compiles and updates the registration list according to personal status records. According to analysis by Democracy Reporting International (DRI), “Administrative changes to people’s status are countersigned by *mukhtars* [elected village council leaders] on the basis of certificates issued by doctors (relating to death and birth) or religious authorities (marriage).”<sup>148</sup> The heads of regional MOIM offices supply information about changes to citizens’ eligibility status to the Directorate General, as do the police and the courts. A voter cannot make a voluntary change within a year of the revision of the list, except, unusually, for a woman whose status changed due to a marriage.

Under the law, the Directorate General must disseminate the registration lists to various public places in the country for voters to check for accuracy by February 10, and publish it on the Internet. Copies of the list are also available for a fee. It is during this period that voters can submit changes or corrections until March 10. It is also possible during this period to ask the registration committee<sup>149</sup> to add or delete the name of another voter from the rolls. The criteria for doing so, such as any evidentiary requirements or notice to the voter, are not explained in the law. Voters rolls are closed as of March 30 for the entire following year.

Registration committees are tasked with much of the initial decision-making, but they too are under the auspices and primarily appointed by the MOIM. Voters can file complaints with the registration committee, and appeals of their decisions can be made to the Higher Registration Committee.<sup>150</sup> There is no further legal recourse, and the law does not specify the procedures by which the Higher Registration Committee is to make its determinations.<sup>151</sup>

## 2009 ELECTION

The MOIM was responsible for preparing the voters list, training poll workers, creating elections materials, organizing the polling stations and coordinating security.<sup>152</sup> Although international law indicates that an independent election management body is preferable to executive branch control,

147 *Lebanon: Assessment of the Election Framework, Election Law of 2008*, Democracy Reporting International, 2008, 25, [http://democracy-reporting.org/files/assessment\\_lebanon.pdf](http://democracy-reporting.org/files/assessment_lebanon.pdf).

148 Democracy Reporting International, *Lebanon: Assessment*, 27.

149 Democracy Reporting International, *Lebanon: Assessment*, endnote 41. According to DRI, “Registration Committees are composed of a judge as chairperson, a member of a municipal council in the electoral district and an employee of the Personal Status Directorate as rapporteur. The number and composition of the registration committees is fixed by decree.”

150 Democracy Reporting International, *Lebanon: Assessment*, endnote 42. “Higher Registration Committees are composed of the President of an Appeal Chamber in the Muhafazat as chairperson, a judge and an inspector from the Central Inspection Bureau as members, assisted by a rapporteur from the Personal Status Directorate of the MoI.”

151 Democracy Reporting International, *Lebanon: Assessment*, 28.

152 *Final Report on the Lebanese Parliamentary Election*, National Democratic Institute, 2009, <https://www.ndi.org/node/16115>, 17.

Interlocutors from across the political and confessional divide repeatedly commended the consistent neutrality and commitment shown by the person of the Minister of the Interior and Municipalities and recognised the extent to which these elections were, in effect, impartially administered. The Ministry thus retained the confidence of the public and contending parties alike, in terms of its impartiality and its ability to administer the elections in an organised manner. Nonetheless, it is not possible to assume that this degree of neutrality could necessarily be upheld in future electoral processes in the current institutional set up, as the Minister himself has acknowledged and it therefore remains crucial that an independent election administration body be established.<sup>153</sup>

There have been questions about the MOIM's neutrality in the past,<sup>154</sup> and reformers in the country have strongly advocated for an independent, impartial commission, possibly building on the Supervisory Commission on the Electoral Campaign.<sup>155</sup>

For the 2009 election, the update of the voters roll began on December 5, 2008 with the registration committees submitting to the Directorate General of Personal Status the names of eligible voters, including those attaining the right to vote for the first time since the last update. Significantly, as in past elections, citizens registered to vote in their ancestral villages, not where they resided.<sup>156</sup> Registration is conducted this way to maintain the confessional electoral system, but it also means voters often have to travel far distances to vote.<sup>157</sup> In fact, there were concerns that traffic problems due to the volume of travelers would deter some citizens from even trying to get to their home polling place. Candidates and campaigns even resorted to arranging carpools to try to get their supporters out to vote.<sup>158</sup> Indeed, Lebanese election reformers have expressed concern that this practice has facilitated manipulation of the vote by political parties and candidates, also jeopardizing the secrecy of the vote.<sup>159</sup> It is also problematic in that it distorts the distribution of voters geographically, impacting the equality of electoral districts.<sup>160</sup>

Married women were required to register in their husband's ancestral village, not their own nor where they actually lived.<sup>161</sup> In this regard, it is also notable that women who marry foreign men cannot transfer citizenship to their husbands or children, meaning they will never be able to register to vote.<sup>162</sup>

153 *Final Report on the 7 June 2009 Parliamentary Elections*, European Union Election Observation Mission to Lebanon, 2009, 11.

154 Democracy Reporting International, *Lebanon: Assessment*, 25.

155 See *Booklet of Reforms*, Civil Campaign for Electoral Reform, accessed May 8, 2015, <http://www.ccerlebanon.org/Modules/Resources/Resources/UploadsAr/%202013%20الانتخابات%20الجملة%20تقترحها%20النبي%20الإصلاحات.pdf>.

156 This is not in the law, but is rather a longstanding administrative practice. See Democracy Reporting International, *Lebanon: Assessment*, 38.

157 European Union, *Final Report*, 14.

158 "Heavy Traffic May Keep Voters from the Polls," *NOW*, June 3, 2009, [https://now.mmedia.me/lb/en/reports/features/heavy\\_traffic\\_may\\_keep\\_voters\\_from\\_polls](https://now.mmedia.me/lb/en/reports/features/heavy_traffic_may_keep_voters_from_polls).

159 *Report on the 2009 Election*, Lebanese Association for Democratic Elections, 2009, 20, <http://www.lade.org.lb/getattachment/a4c92bf4-84be-42fe-bb90-57bc8c8a4a40/2009-تقرير-مراقبة-الانتخابات-النيابية.aspx>.

160 Democracy Reporting International, *Lebanon: Assessment*, 27. One scholar has observed that the Ministry of Interior clusters districts to achieve certain political ends. For example, the districting of Muslim-majority areas in Beirut, Mount Lebanon, Zahle in the Beqaa, Marjeyoun in the South, and Bsharre in the North has a decisive influence on the outcome of the Christian polls. Arda Arsenian Ekmekji, *Confessionalism and Electoral Reform in Lebanon*, The Aspen Institute, 2012, 2.

161 National Democratic Institute, *Final Report*, 17.

162 Doreen Khoury, "Women's Political Participation in Lebanon," Heinrich Böll Foundation, July 25, 2013, <https://www.boell.de/en/2013/07/25/womens-political-participation-lebanon>.

Only registration location changes made before December 7, 2007 were included in the update.<sup>163</sup> In keeping with the law, the lists were distributed for public inspection from February 10 to March 10. For the first time, the list was published on the Internet. The MOIM took a number of steps to educate the public about the need to check that the information on the lists was accurate, including sending 250,000 fliers, 2 million emails, and one million text messages. They also aired television and radio ads and held public forums. The rolls were completed and closed on March 30, also in accordance with the law.<sup>164</sup> International observers found that the MOIM performed election preparations in a transparent manner.<sup>165</sup> Data showed that at the end of the registration period, there were approximately 3,258,000 eligible voters on the list. This was an 8.5 percent increase from the 2005 election.<sup>166</sup> However, because the list is compiled by the Directorate General of Personal Status based on its records, there is some question as to whether it is fully up-to-date regarding citizens who have migrated or joined the military.<sup>167</sup>

### *Documentation*

Under the new law, the 2009 election was the first to require a national identification card or passport at the polls instead of voter cards disseminated by the MOIM. Because there were concerns about voters having the necessary identification, international organizations assisted in the issuance of additional national ID cards ahead of the election, among other tasks. The ID cost 5,000 LBP to obtain, or approximately US\$3. It was estimated that 600,000 to 700,000 Lebanese citizens did not have the requisite documentation. As with the registration process, the MOIM took a number of steps to educate the population about the need for the ID card and how to obtain it. The initial application deadline of February 29 was extended several times when it became clear that not everyone had what he or she needed to vote. There were a number of administrative problems, especially in the fingerprinting process.<sup>168</sup>

More troubling, however, were allegations that the process for dissemination of the cards was politicized. According to NDI,

NDI observers were told that *mukhtars* were intimidated by political parties, or were political themselves. There were cases of *mukhtars* or municipalities that were known to be affiliated with a particular party or to be corrupt and likely to take bribes. Furthermore, observers heard instances of “flying *mukhtars*,” *mukhtars* who were flown abroad at the behest of political parties to facilitate the processing of national ID cards for eligible voters abroad. The MOIM cancelled approximately 600 applications for the national ID card of voters in Zghorta because voters’ fingerprints were obtained abroad. . . .

Parties themselves also sometimes played a significant role in voters’ access to ID cards. In Chouf, for example, parties not only provided the application documents, but used their political connections to expedite the application and approval process ensuring that their voters received ID cards in time for election day and helping resolve any problems that would cause a delay,

163 European Union, *Final Report*, 14.

164 National Democratic Institute, *Final Report*, 21.

165 European Union, *Final Report*, 12.

166 National Democratic Institute, *Final Report*, 21.

167 European Union, *Final Report*, 15.

168 National Democratic Institute, *Final Report*, 22.

such as illegible fingerprints. A wide range of parties facilitated home delivery of ID cards. For example, NDI was informed by a credible source that Hezbollah carried out door-to-door visits in Baalbeck to assist voters with the application for the national ID. NDI observers were informed that a candidate's campaign was confiscating voters' ID cards, making a payment of \$200 for receipt of the card. On election day members of the party would return the ID to voters with a prepared ballot including the names on their list, and make a second payment of \$100 to the voters once they cast the ballot. Reports from domestic observers echoed this observation.<sup>169</sup>

On election day, not all eligible voters had the required identity card, in part due to the problems with fingerprinting. It is likely that a number of Lebanese citizens were disenfranchised as a result.<sup>170</sup>

## ISSUES UNDER INTERNATIONAL LAW

### *MOIM Authority over Elections*

General Comment 25 of the ICCPR specifically states in paragraph 20 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." Lebanon's elections have been run primarily by the government through the Ministry of Interior. Although the MOIM is considered to have done an effective job in 2009, its neutrality has been questioned in the past and it is unlikely its fairness will not face skepticism in the future. Generally, elections run by the persons in power with an interest in the outcome are not in keeping with international obligations.

### *Documentation*

The inability of thousands of Lebanese to obtain the documentation required to vote, and the political manipulation of distribution of national identification cards, are highly problematic under international law. Identification requirements that are difficult or impossible for some citizens to meet may violate international norms.

The UN Human Rights Committee's General Comment 25, explaining obligations under ICCPR Article 25, establishes that, "The right to vote may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements." Even more pertinent, the General Comment also says,

States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. Onerous documentation requirements can be found to be discriminatory, unreasonable and/or an obstacle to registration and thus in contradiction to Article 24 of the ICPPR, especially when such hardship falls particularly on certain groups of voters such as ethnic minorities, the poor or women.

<sup>169</sup> National Democratic Institute, *Final Report*, 23.

<sup>170</sup> European Union, *Final Report*, 15.



Further, NDI guidelines state,

The legal framework must address a myriad of issues to ensure a genuine opportunity to exercise the right to vote on the basis of equal and universal suffrage... The provisions must ensure, among other things, that: ...voter identification and related procedures that are nondiscriminatory concerning race, color, religion, language, national origin, other status or political or other opinion, that prevent disenfranchisement of eligible voters and avert illegal voting.<sup>171</sup>

If Lebanon is to meet its international obligations, the technical problems that prevented some citizens from obtaining identification, and partisan politics that may have manipulated who was able to get necessary cards, require urgent attention going forward should Lebanon maintain the existing requirements.

### Exclusions

Although it is not unheard of, it is also very unusual for the age of registration eligibility to be 21. The international norm is for the age of eligibility to be 18.<sup>172</sup> Active efforts to reduce the voting age have not met with success. Once again, sectarian interests under the confessional system seem to have blocked any progress. As the *Daily Star* reported, “Analysts estimate that lowering the voting age would add more than 50,000 Christians to the electorate, mainly Maronites, and about 175,000 Muslims, roughly equally split between Shiites and Sunnis.”<sup>173</sup>

If the voting age is...	21	18	% increase in registered voters
<b>Muslim</b>	<b>1,941,031</b>	<b>2,115,726</b>	<b>9</b>
Sunni	875,930	953,206	8.82
Shia	855,663	938,583	9.69
Druze	183,068	194,986	6.51
Alawite	26,370	28,951	9.79
<b>Christian</b>	<b>1,289,407</b>	<b>1,347,667</b>	<b>4.52</b>
Maronites	703,912	738,886	4.97
Orthodox	246,811	257,584	4.36
Catholic	163,235	170,329	4.35
Armenian Orthodox	98,849	96,478	2.8

Source: Rabih Haber

From [https://now.mmedia.me/lb/en/reportsfeatures/with\\_lower\\_age\\_how\\_many\\_new\\_voters](https://now.mmedia.me/lb/en/reportsfeatures/with_lower_age_how_many_new_voters)

171 *Promoting Legal Frameworks for Democratic Elections*, National Democratic Institute, 2008, <https://www.ndi.org/node/14905>, 50.

172 See “What Is the Legal Voting Age in the National Elections?” The ACE Project, accessed May 8, 2015, <http://aceproject.org/epic-en/CDMap?question=VR>.

173 “Parliament Fails to Lower Voting Age,” *The Daily Star*, February 23, 2010, <http://www.dailystar.com.lb/News/Lebanon-News/2010/Feb-23/55868-parliament-fails-to-lower-voting-age.ashx>.

Under Lebanese law, naturalized citizens must wait ten years to be eligible to vote. This runs contrary to Article 25 of the ICCPR as General Comment 25, paragraph 3 states, “Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25.” Moreover, the ICCPR says, “any conditions which apply to the exercise of the rights protected by Article 25 should be based on objective and reasonable criteria.” It is difficult to surmise the justification for a ten-year waiting period after naturalization, making its reasonableness questionable.

Moreover, a great many groups of citizens are excluded from the franchise, more than in many countries. The Lebanese government should consider making the vote accessible to a broader range of the population to comply with international obligations. This especially applies to those who have been convicted of minor offenses and those who have been bankrupt. General Comment 25 establishes that the right to vote can only be limited by reasonable restrictions, based on objective and reasonable criteria, and specifically says, “If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.” The policy of excluding members of the military and police from eligibility is also increasingly considered in contradiction to Article 25’s mandate for universal suffrage and good international practice.<sup>174</sup>

### *Registering in “Ancestral Village” Rather Than Residence*

While the requirement that citizens register in their ancestral village rather than where they currently reside is problematic under principles of representation, it also presents a potentially sizable obstacle to voter registration, especially in those cases where the place of family origin is a distance away.<sup>175</sup> Requiring citizens to spend such time and resources in order to be able to register to vote can be seen as a violation of those provisions of international treaties that specifically prohibit undue obstacles to registration, and require the state to indeed facilitate the ease of registration. Specifically, General Comment 25 regarding the ICCPR says, “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed.”

### *Gender Discrimination*

In contravention to several international treaties, including CEDAW, under Lebanese election law married women are required to register in their husband’s ancestral village rather than their own.<sup>176</sup> This denies women their individual voice in their village of origin, and thus is discriminatory. Moreover, women who marry foreign men cannot transfer citizenship to their husbands or children, meaning their spouse and offspring will never be able to register to vote.<sup>177</sup> This, too, is discriminatory in that a Lebanese man can confer citizenship to his foreign wife and their children, and they will become full citizens of Lebanon able to cast a ballot.

174 *Final Report: General National Congress Elections in Libya*, The Carter Center, May 6, 2013, 27; *Free and Fair Elections: International Law and Practice*, Inter-Parliamentary Union, 128.

175 CCER has recommended voters be able to vote at the polling place of their residence for candidates in their ancestral village. See *Booklet of Reforms*, Civil Campaign for Electoral Reform, accessed May 8, 2015, <http://www.ccerlebanon.org/Modules/Resources/Resources/UploadsAr/%202013%20الانتخابات%20الجملة%20تقترحها%20التى%20الإصلاحات.pdf>.

176 National Democratic Institute, *Final Report*, 17.

177 Doreen Khoury, “Women’s Political Participation in Lebanon,” Heinrich Böll Foundation, July 25, 2013, <https://www.boell.de/en/2013/07/25/womens-political-participation-lebanon>.



### *Periodic Registration*

Although many countries have periodic rather than continuous registration, it is problematic here because of the compressed time frame for registration and the amount of time that can lapse between the registration process and an election, prohibiting citizens from making necessary changes or additions. This has become an even bigger problem given the political stalemates and security concerns that have resulted in postponements of elections. The consequence can be that people who have become eligible to vote or whose name or status has changed may end up being disenfranchised because their circumstances have changed during this gap. This is problematic under all of the international obligations that ensure the right to vote and the facilitation of voter registration under the ICCPR.

### *Complaints Procedure*

The procedure for filing and appealing complaints related to the registration process is unclear in the law. For example, the law contains no guidelines on how the Higher Registration Committees should deal with complaints, what the timeframe for decisions to be rendered should be, or how complaining citizens will be notified.<sup>178</sup>

This may be construed to be contrary to the ICCPR. In addition to generally being a barrier to exercising the right to vote, specifically under Article 2.3, each state party to the 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 States, and to develop the possibilities of judicial remedy.

The lack of specificity in the law about complaints also violates principles of transparency and access to information embodied in both Article 25 of the ICCPR and Article 19, regarding the need for voter education and the right to receive information, respectively.

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178 Democracy Reporting International, *Lebanon: Assessment*, 28. There is a complaints form and a directorate regarding one's own registration status on the website of the Personal Status Directorate.



# MOROCCO

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## INTRODUCTION

Morocco has increasingly been seen as among the most democratic and progressive states in the region, having held regular elections for many years.<sup>179</sup> Despite this reputation, Morocco was not immune to the Arab Spring in 2011, when there were unprecedented protests in the country, leading to a revision of the constitution and a constitutional referendum, as well as changes to the electoral law. For many activists the constitutional reforms did not go far enough, and many Moroccans continued to be skeptical and cynical. Legislative elections under the new constitution and election law soon followed in November 2011. The voter registration system, which was part of the broader 2011 legal reform, was a central area of confusion and, in some cases, disenfranchisement in the previous parliamentary election in 2007 and again in 2011. Voter registration rates, and voter turnout in the country, are also quite low.

## INTERNATIONAL AND REGIONAL AGREEMENTS

Significantly, Morocco has acceded to all of the international treaties relevant to democratic elections. These include the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the United Nations Convention Against Corruption.

## LEGAL FRAMEWORK

### *Moroccan Constitution*

The new constitution contains several provisions that apply to the voting process. Article 2 provides for free, sincere and regularly held elections. Significantly, Article 11 states, in part, “Free, fair and transparent elections are the bedrock of the legitimacy of democratic representation. . . . The law shall define rules for . . . full exercise of the fundamental rights and freedoms relating to election campaigns and voting. . . . Public authorities shall use all means deemed necessary to promote the participation of citizens in elections.” It is somewhat unusual for such proactive language to be in a constitution; having included such a provision, the government is bound to uphold it.

The constitution goes on to provide the right to vote for Moroccans abroad. Article 30 provides explicitly for this right to vote and adds, “The law shall make provisions to facilitate equal access of women and men to elected office. Voting is a personal and a national duty.”

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179 However, there do continue to be problematic restrictions and human rights issues, especially with respect to freedom of expression and association.

### *2007 and 2011 Election Laws on Voter Registration*

In Morocco, there is a 30-day registration period, the dates of which are determined by decree. New registration applications and changes to registration, such as a new address, are accepted during this period. Moroccans abroad can register in the municipality (referred to as a *commune*) where they have property or a professional or commercial activity.

The 2011 law, Bill no. 36.11 “on renewing and computer processing of the definitive general voters lists in view of their updating,” changed how registration is administered. Now, it is implemented by administrative committees composed of a judge designated by the first president of the court of the appeal in the commune or district, a representative of the commune or district council, and the “Pasha, Caid, Khalifa or their representatives,” which are appointed positions. This committee reviews registrations to ensure that the applicants live in the district, establishes a list of those who lost the right to register, marks errors in the list, invites people who registered without the national identity card (CIN) to provide identification before the deadline, and receives request to correct addresses. After this process, the committee is responsible for cleaning the list for accuracy and ensuring only those eligible are on the list. It must notify anyone it removes from the list in writing within three days.

The committee creates a provisional list, a list of deletions and a list of rejected applications. These lists are available for public review for five days and, according to the law, are provided to political parties upon request. There is a process for objections regarding inclusion or exclusion from the list to be made to the committee, and the decisions of the committee are made available for public review for five days. These decisions can be challenged in the administrative court or court of first instance.

A new process was established in the 2011 revision of the law for the computer processing of the list at this stage. Under Article 20, review is to be carried out by a committee composed of the president of a chamber of the Supreme Court, who serves as its president; a representative of each of the political parties; and a representative of the Ministry of Interior (MOI). This committee processes the data at a national, central level to ensure there are no duplicate registrations or other errors. Such problems are sent back to the administrative committees. The new list created by this “national technical committee” is made available for public review at the commune or district level for five days. According to the law, complaints about the list may be made to the administrative committee.

In 2007, the electoral law required election authorities to send registered voters postal notification slips, which included the assigned polling station and voter registration number. Registered voters also received voter cards with their registration number, which they could collect before election day or at the polling station on election day. When they went to vote, voters were required to present: 1) the voter card and 2) picture identification—either a CIN, passport, hunting permit, driver’s license, civil status booklet or professional card.

Under the 2011 law, the process was revised so that the national identity card alone was required for voting. No other documentation was needed or accepted. Notification slips were still sent to registered voters, but no voter cards were issued. When voting, voters were required to present only their CIN.<sup>180</sup>

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180 *Final Report on the Moroccan Legislative Elections, November 25, 2011*, National Democratic Institute, 2012, <https://www.ndi.org/files/Morocco-Final-Election-Report-061812-ENG.pdf>, 16.

Certain articles of the 2007 Law no. 9-97 forming the Electoral Code remained applicable. Article 2 makes registration mandatory (though as will be seen below, registration rates are nonetheless low). Moroccans who are 18 years of age at the time of registration should register in the commune where they have lived for three months—hence providing for a three-month residency requirement. However, the law also says that “in exceptional cases” one can register where they were born. Government workers may register where they work.

The 2007 law sets out the rules around eligibility; a great number of citizens cannot register to vote. For example, under Article 5, “Members of the military of any rank, officers of public force (gendarmerie, police, and auxiliary forces)” and certain other civil servants cannot register. Naturalized citizens cannot vote for the first five years of their citizenship. Others disenfranchised for five years are those with: a criminal sentence; a prison sentence for many different types of crimes, including such matters as public drunkenness; misdemeanors, including for such matters as undercover storage of products; and certain suspended sentences. In addition, individuals deprived of the right to vote by legal decision, condemned by a judge in absentia, subjected to or having undergone court-ordered liquidation of assets, or sentenced to a loss of national rights cannot register to vote for five years unless they have been amnestied or the condemnation has expired.

Article 19 allows citizens to register to vote outside the exceptional registration period that takes place by decree near elections. Given this regular open period from April 1 to December 31, the Moroccan process is virtually a continuous voter registration system.

### *2014-2015 Voter Registration*

In anticipation of local elections expected in 2015, the Moroccan parliament amended the electoral law in late 2014. The changes now allow third parties to help voters register, and the MOI allows individuals to register online as well as in-person. A special registration was conducted between December 22, 2014 and February 19, 2015, bolstered by a public awareness campaign by the MOI and political parties with particular emphasis on encouraging young Moroccans who recently turned 18 and Moroccans living abroad to register. Although no formal independent monitoring took place, no significant issues were noted in the press or by casual observers. According to the MOI, immediately after the registration period, 1,767,280 new registrants were recorded, with over 30 percent of applications coming through the online interface.

## 2011 VOTER REGISTRATION PROCESS

As has been noted, the MOI is in charge of organizing elections, including the voter registration process. In 2011, it opened the 30-day registration period from September 28 to October 27, with a two-day extension after an initial public display. The ultimate registration list included 13,475,435 voters, representing 67 percent of the total eligible population, a rather low proportion compared to most other countries. According to NDI, “This number represented an overall decrease of approximately

two million voters from the 2007 registry, despite an increase in total population since 2007 and lowered eligible voting age from 21 to 18 years.”<sup>181</sup> Indeed, although the government touted a 45 percent voter turnout for the election, the percentage of the voting age population that voted was a mere 28.65 percent, up less than one percentage point from 2007,<sup>182</sup> when the turnout of registered voters was only 37 percent.<sup>183</sup>

In a positive step, the Ministry released voter registration numbers disaggregated by gender, location and age online. Voters could also look up their registration information online and get text messages about their registration status (though it should be noted that while mobile phone technology is widespread across the country, internet penetration remains more limited).<sup>184</sup>

The biggest administrative problems in the election revolved around the registration process. Despite increased efforts by parties and civil society and to some extent the government to promote voter registration, there was tremendous confusion due to insufficient public voter education about the process. Much of the confusion stemmed from the change in rules around documentation. According to NDI,

In the absence of publically available information about the changes in eligibility and identification requirements, many voters expressed confusion about the process for voter registration. Some were unsure whether they would have to register again after having registered for the constitutional referendum. Some citizens who knew that the CIN, rather than a special voting card or notification, would be required for voting indicated to observers their understanding that they did not need to register because they already possessed their CIN. Other citizens told observers that they did not know where to register or that the closest registration site was too far away.<sup>185</sup>

This indicates a failure to provide broad and understandable voter education in Morocco’s most recent election.

Another problem was that the lists at the polls presented voters in the order of their registration number. The only way a voter would know his or her number would be if he or she had his notification slip, which voters were not required to have. This substantially slowed the voting process.<sup>186</sup> Moreover, in this and other elections, although the administrative committees are required by law to provide the voter registration list to political parties, the parties have found it a challenge to actually obtain the list in final form and in a usable format.

181 National Democratic Institute, *Final Report*, 15.

182 The European Union observation report noted that there were 100,000 more voters on the list than there were for the 2009 local elections, but participation in local elections is normally lower across the globe. See *Rapport Final: Mission d’Experts Electorale de L’Union Européenne au Maroc*, European Union, 2012.

183 “Voter Turnout Data for Morocco,” International IDEA, October 5, 2011, <http://www.idea.int/vt/countryview.cfm?CountryCode=MA>. The European Union posited that this might have been because of the legitimate cleansing of the list or the boycott by several organizations and parties. However, there was also widespread cynicism across much of the population, and the structural barriers outlined here may also have been factors. See European Union, *Rapport Final*.

184 European Union, *Rapport Final*, 27.

185 National Democratic Institute, *Final Report*, 15.

186 National Democratic Institute, *Final Report*, 21.

## 2007 VOTER REGISTRATION AND ELECTION

The MOI made a major push to increase voter registration in 2007, though it fell short of its goal of 3 million new registered voters, registering 1.5 million. There were complaints throughout the process about the lack of transparency in the revising and updating of the list, including computerized processing, a matter that may have been improved by the 2011 law.<sup>187</sup>

The major problem was that voters were required to pick up voter identification cards either prior to election day or at the polling place on election day; however, many polling places were too disorganized to distribute the cards effectively, causing some voters to be disenfranchised. This practice was abolished in 2011, but as referenced above, the new rules led to different problems.

## OBTAINING THE NATIONAL IDENTITY CARD

It is now required under Moroccan law to have a national identity card, the CIN, to register and vote. Thus it is important that all Moroccan citizens eligible to vote have access to this document. The system for acquiring the card has become more important as Morocco has moved to a biometric identification system.<sup>188</sup>

Normally, a citizen must go to the police department where he or she lives to apply for a CIN at the age of eighteen. He or she must present a number of different documents: a birth certificate, proof of residence (such as a certificate of residence, ownership or rental agreement, or an electricity or telephone bill), two small identity photographs, and a receipt stamp in the amount of 75 Moroccan dirhams (MAD, approximately US\$8).<sup>189</sup>

There have been some concerns raised in the press about access to the new biometric identity cards that may be required for upcoming elections. One issue that has been raised is that one needs to provide the version of the birth certificate that can only be obtained at the office where one's birth was registered, which may of course no longer be anywhere near where one currently lives. Additionally, some Moroccans may never have had their births registered.<sup>190</sup>

187 National Democratic Institute, *Final Report*, 16.

188 Mark Rutherford, "Morocco Issues Biometric ID Cards," CNET, December 1, 2008, [http://news.cnet.com/8301-13639\\_3-10110050-42.html](http://news.cnet.com/8301-13639_3-10110050-42.html). Originally scheduled to conclude by the end of 2013, the process was extended by the authorities until December 31, 2014, but most observers suggest that the process was completed in early 2014: "Morocco Issues More than 20 Million Biometric ID Cards," *News 24*, January 13, 2014, <http://www.news24.ma/morocco/story/2014/01/13/morocco-issues-more-than-20-million-biometric-national-id-cards-0213813.html>.

189 *Morocco: The National Identity Card, Including the Information on It and the Process for Obtaining the Card and a Replacement Card*, Immigration and Refugee Board of Canada, January 22, 2007, <http://www.refworld.org/docid/469cd6d01e.html>.

190 Hind Soubai Idrissi, "The Curse of Moroccan Bureaucracy," *Talk Morocco*, trans. Hisham, August 29, 2010, .



## ISSUES UNDER INTERNATIONAL LAW

### *Insufficient Public Education about the Voter Registration Process*

International law regarding the state's obligation to make the voter registration process understood by the citizenry could not be more clear. The UN interpretive document regarding Article 25 of the ICCPR says, "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required it should be facilitated and obstacles to such registration should not be imposed. . . . Voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community."

Given the widespread lack of understanding regarding the registration process and documentation requirements in recent elections, Morocco cannot be said to be adequately fulfilling its obligations under Article 25. The government, in conjunction with civil society, needs to engage in broader and more robust efforts to ensure citizens have the information they need to exercise their voting rights, beginning with the registration process.

### *Documentation Problems*

Identification requirements for voting that are difficult or impossible for some citizens to meet may violate international norms. The UN Human Rights Committee's General Comment 25, explaining obligations under ICCPR Article 25, establishes that, "The right to vote may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements." Even more pertinent, the General Comment also says, "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed." Onerous documentation requirements can be found to be discriminatory, unreasonable and/or an obstacle to registration and thus in contradiction to the ICCPR, especially when such hardship falls particularly on certain groups of voters such as ethnic minorities, the poor or women. Further, NDI guidelines state that,

The legal framework must address a myriad of issues to ensure a genuine opportunity to exercise the right to vote on the basis of equal and universal suffrage. . . . The provisions must ensure, among other things, that: . . . voter identification and related procedures that are nondiscriminatory concerning race, color, religion, language, national origin, other status or political or other opinion, that prevent disenfranchisement of eligible voters and avert illegal voting.<sup>191</sup>

The confusion and disorganization around the documents needed to vote in the most recent election cycles may have been associated with revised regulations, but nonetheless represent obstacles to voting in contradiction to the ICCPR. Moreover, now that the CIN is the only document accepted for voting, it is necessary that all eligible voters have easy access to it. The fact that there is a fee for the CIN could be construed as an additional unacceptable barrier. General Comment 25 makes clear there can be no property requirements and that poverty should not be an impediment to exercising voting rights.

191 *Promoting Legal Frameworks for Democratic Elections*, National Democratic Institute, 2008, <https://www.ndi.org/node/14905>, 50 .

### *Eligibility Restrictions*

Under Moroccan law, naturalized citizens must wait five years to be eligible to vote. This runs contrary to Article 25 of the ICCPR, as General Comment 25, paragraph 3 states, “Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with Article 25.”

Moreover, a great many groups of citizens are excluded from the franchise, more than in many countries. To comply with international obligations, the Moroccan government should consider making the vote accessible to a broader range of the population. This especially applies to those who have been convicted of minor offenses and those who have been bankrupt. General Comment 25 establishes that the right to vote can only be limited by reasonable restrictions, based on objective and reasonable criteria, and specifically says, “If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.” Under Moroccan law, members of the military, police and “certain other civil servants” cannot register to vote for general elections, though they can do so for national referenda.

### *Authority over the Process*

Under the Moroccan system, the MOI has authority over the registration process. This runs contrary to the increasing practice of states around the world of establishing election management bodies that are wholly independent from the executive branch of government. General Comment 25, paragraph 20 states, “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.”



# PALESTINIAN TERRITORIES

## INTRODUCTION

In the first Palestinian elections in 1996, held in pursuance of the Oslo accords, the civil registry “served as the principal but flawed means of identifying potential voters”<sup>192</sup> and the Palestinian Central Election Commission (CEC or the Commission) conducted a door-to-door canvass to compile a voters list. An estimated 75 percent of the electorate in the West Bank and Gaza turned out to elect a president and an 88-member Legislative Council.<sup>193</sup> In 2004, the CEC conducted its first voter registration drive, during which all Palestinians were invited to appear personally to register to vote.<sup>194</sup>

Palestinians voted in several elections between 2004 and 2006 and again in 2012, including for president in 2005. Overall, Palestinians and the international community largely accepted the results of the elections. Nevertheless, observers

identified a number of shortcomings including: inadequate arrangements for voting by East Jerusalemites . . . the continuing use of the civil registry—widely viewed as an unreliable means of verifying voter eligibility—alongside and despite the creation of a new and improved voters register . . . and last minute changes in election procedures that led to confusion among voters, candidates, observers and election officials.<sup>195</sup>

Since 2004, there have been several successful registration updates in the West Bank, albeit with few elections and with efforts in Gaza and Jerusalem seriously curtailed by the rivalry between Fatah and Hamas and by the Israeli authorities, respectively. In general, the efforts of the CEC have been challenged by security concerns, restrictions on freedom of movement as a consequence of the occupation, tensions over how to register Palestinians living in East Jerusalem, and internal political fights between and among Palestinian political factions. As most recently noted:

The impact of the Israeli occupation on the electoral process and democracy building within the OPT [Occupied Palestinian Territories] cannot be underestimated, as it profoundly impedes the exercise of Palestinian rights of assembly, association, speech, movement and other fundamental freedoms. Moreover, the impasse within the Palestinian political system, particularly the conflict between Fatah and Hamas, cannot be disconnected from this wider framework of disempowerment and the lack of the right to self-determination.<sup>196</sup>

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192 *Final Report on the Palestinian Legislative Council Elections*, National Democratic Institute, 2006, <https://www.ndi.org/node/13641>, 8.

193 Aref Jaffal, Director, Arab World Democracy & Electoral Monitor, email message to author, February 4, 2014.

194 Hisham Kuhail, Chief Elections Officer (CEO), Palestinian Central Election Commission (CEC), email message to author, February 3, 2014.

195 National Democratic Institute, *Final Report*, 5.

196 *Palestine Electoral Study Mission Urges Political Reconciliation*, The Carter Center, October 21, 2012, <http://www.cartercenter.org/news/pr/occupied-palestinian-territory-102112.html>, 1.

Despite this challenging context, as of the last voter registration exercise in March 2015, the CEC reported the total number of registrants in the West Bank and Gaza Strip as 1,951,799, making up 78.6 percent of the total eligible population. There are now 1,144,832 registrants (74.9 percent) in the West Bank and 806,967 registrants (84.6 percent) in Gaza.<sup>197</sup>

## INTERNATIONAL AND REGIONAL AGREEMENTS

Evaluation under international law needs to be made within the parameters of this unique context. Technically, the non-state status of the Palestinian Territories precludes the government from officially ratifying international treaties. However, the Palestinian Liberation Organization (PLO) and the Palestinian Authority (PA) have voluntarily committed to a series of international and regional human rights treaties, the provisions of which are relevant for the electoral process and are considered binding on Palestinian institutions in this sense. These treaties include the Arab Charter on Human Rights, the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESC), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>198</sup> With respect to CEDAW, the Palestinian Authority has pursued efforts to increase the participation of women, although given its current status it is, unfortunately, not compelled to submit a state report to the CEDAW committee.<sup>199</sup>

## LEGAL FRAMEWORK

Elections in the Territories are governed by the Basic Law of 2003, considered the basis for a future constitution, and the Election Law by Decree of 2007. Previous elections were held in accordance with the Election Law of 2005, the Election Law of 1995 (meant only to be used once), and very early on, officially, the Palestinian-Israeli Interim Agreement on the West Bank & Gaza Strip Annex II, Protocol Concerning Elections.

Notably, the CEC was established in October 2002 under the General Elections Law of 1995. The 2005 law went further and made clear that the CEC is “the supreme body that undertakes the management, supervision, preparation and organization of elections and to take all necessary measures to ensure its integrity and freedom.” Article 22 of the law further clarified the CEC as “a permanent body with corporate personality and administrative and financial independence.”

A key provision in the Basic Law is Article 9, which provides that “Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, color, religion, political views or disability.” Article 26 states that “Palestinians shall have the right to participate in political life, both individually and in groups. They shall have the following rights in particular: . . . To vote . . . in order to have representatives elected through universal suffrage in accordance with the law.”

197 “The CEC Publishes the Updated Voters List,” Central Election Commission, May 18, 2014, <https://www.elections.ps/tabid/40/language/en-US/Default.aspx?IDL=560>.

198 The Carter Center, *Electoral Study Mission*, 3.

199 See *National Situation Analysis Report: Women’s Human Rights and Gender Equality, Occupied Palestinian Territory*, EUROMED Gender Equality Programme, 2010, <http://www.enpi-info.eu/library/content/national-situation-analysis-report-women%E2%80%99s-human-rights-and-gender-equality-palestinian-terr>.

The presidential decree of 2007 overrides the 2005 law and sets out the election and voting system in the Territories, including with respect to registration, as follows.

*Administration:* The nine commissioners of the CEC are chosen by the president of the Palestinian National Authority.<sup>200</sup> In a change criticized by some international elections analysts,<sup>201</sup> the commissioners of the CEC can also be changed at will by the president. Article 9 of the 2007 election decree further says that the Commission “shall be composed of nine members to be selected from the Palestinian judiciary, academics and experienced lawyers and others.” No further criteria are suggested. Under Article 13, the Commission is responsible for appointing members of the registration centers, approving registration centers, and adjudicating challenges related to registration.

*Eligibility:* According to Article 27 of the Election Law, a person can register to vote if he or she was born in Palestine as defined by the borders of the British Mandate or was entitled to be a citizen during that era; if he or she was born in the Gaza Strip, the West Bank or Jerusalem; if his or her ancestors fall into one of these aforementioned categories regardless of where he or she was born; or if he or she is a spouse of a Palestinian. Significantly, Article 28 provides that every Palestinian in the West Bank, Gaza and Jerusalem who meets these requirements shall enjoy the right to vote regardless of religion, political affiliation or social, financial or social status. However, this provision does not include gender, or ethnic or national origin.

Among those not eligible to register are those “deprived of that right by virtue of a final judicial decision throughout the term of such a ruling.” It is unclear what types of acts might be punishable by disenfranchisement. Also ineligible are those judicially declared incapacitated. Article 29 states that anyone “convicted of a felony which violates honor and integrity and not reinstated as per provisions of law” is ineligible. It is not evident what felonies violate “honor and integrity” and how this is determined. Finally, Article 29 states that anyone who has acquired Israeli citizenship may not register to vote. There is nothing to say that acquiring a second nationality other than Israeli citizenship is disqualifying; such a provision could be considered discriminatory under international obligations.

*Registration Process:* The voter registration process in the Palestinian Territories is an active one—citizens must initially take active measures to get on the voters list and continuously ensure their information is accurate and up-to-date. A voter registers to vote in a center based on residency and votes in the same place where registered. Registration must be in person, though it also may be done by a proxy or through a relative up to the second degree—a brother, sister, grandfather, grandmother or grandchild.<sup>202</sup> According to the language of Article 30, a Palestinian who has lived in the Territories for a year but was not part of a registration exercise may request to be added to the list by the Commission.

In order to register, a Palestinian citizen must appear at the registration center closest to his or her home during the designated registration period and with the necessary documents that prove age, identity,

200 “About the CEC,” Central Elections Commission, 2015, <http://www.elections.ps/tabid/709/language/en-US/Default.aspx>.

201 Vladimir Pran, Jarrett Blanc, Richard Atwood and Ammar Dwaik, “Notes on the New Elections Law,” International Foundation for Electoral Studies, September 2007, <http://www.ifes.org/-/media/Files/Publications/Election%20Law/2007/1350/Notes%20on%20the%20new%20Palestinian%20Elections%20Law.pdf>.

202 Hisham Kuhail, email message to author.



Palestinian citizenship and place of residence.<sup>203</sup> Most Palestinians in the West Bank and Gaza today have a national identity card issued by the PA that can be used as proof. If a Palestinian does not have such a card, he or she can use a foreign passport with a birth certificate that proves a right to Palestinian citizenship, pursuant to a 2004 CEC by-law.

The Commission must update the voters list annually and/or preceding every election. An update is effected by “auditing the registry, opening the registry for new voters and declaring the registry for challenge.” Article 31 allows for a practice whose use in earlier laws and elections was criticized by election observers (further discussed below): the use of the civil registry to supplement the voter registration process.<sup>204</sup> Article 31 also mandates that the registration process be “public and open to the scrutiny of international and local observers, to journalists and representatives of the media.” Other measures that support a transparent process are the requirement that the final registry be published at the electoral area office seat (Article 35) and that copies of the voters list be posted in the polling center and made available to voters, observers and candidates (Article 75).

According to the Chief Election Officer of the Commission, to ensure the process is as inclusive as possible, the CEC conducts registration drives at refugee camps and sends mobile units to schools, city centers and remote areas to conduct door-to-door registration.<sup>205</sup>

The practice is different for Palestinians living in Jerusalem. According to the 1993 Oslo Agreements, only 6,000 Jerusalem ID holders can vote and they must do so at designated post offices; however, the CEC considers all Jerusalem residents to be registered. Therefore, all residents are put on the voters list and permitted to vote on election day in any designated voting center in the suburbs of Jerusalem, which Israel considers part of the West Bank. They must, however, have the “blue” Jerusalem ID card<sup>206</sup> (see below) and proof of residency, such as an electricity bill.<sup>207</sup>

*Challenges and Adjudication:* Under Article 32, a person whose name has not been included or was recorded incorrectly may appeal to the registration center staff; anyone can object to the inclusion of a voter to the staff as well. Such appeals must be filed within five days of publication of the list, and the center staff must decide within three days thereafter. There is a three-day window for appeals to the electoral area office, which must decide within three days. The decision of the electoral area office is appealable to the Commission.

Under Article 17, a voter has three days to challenge a decision by the Commission regarding registration, and the Commission must decide upon that challenge within three days of its filing. The decision can then be appealed to the court. Under Article 20, the Election Cases Court is composed by presidential

203 “Article 16: The Registration,” Election Law no. 15, Central Elections Commission, 1995, <http://www.elections.ps/tabid/1089/language/en-US/Default.aspx>; “Where Do I Vote?” Central Elections Commission, 2015, <https://www.elections.ps/tabid/887/language/en-US/Default.aspx>.

204 Pran et al., “Notes.”

205 Hisham Kuhail, email message to author.

206 Hisham Kuhail and Aref Jaffal, email messages to author.

207 “Jerusalemites Are Automatically Registered in the Voters List,” Central Elections Commission, February 17, 2013, [http://www.lfd.ps/documentsShow.aspx?ATT\\_ID=6844](http://www.lfd.ps/documentsShow.aspx?ATT_ID=6844).



decree of a president and eight judges, upon the recommendation of the Supreme Judicial Council.<sup>208</sup>

The CEC allows Palestinians living abroad to register to vote. The voter's father, mother, daughter, son, husband or wife, or a certified power of attorney, can register him or her by proxy by sending the CEC a copy of the voter's identification. However, one must vote in the Palestinian Territories on election day; there is no voting from abroad.<sup>209</sup>

## RECENT VOTER REGISTRATION UPDATES

### 2013

Although the CEC updates the voters registry periodically,<sup>210</sup> its most recent significant registration initiative was undertaken in 2013<sup>211</sup> and included both the West Bank and Gaza Strip. Registration was conducted in hopeful anticipation of elections for parliament and president. Technically, the law requires elections to be held within three months of registration.<sup>212</sup> This, however, has not come to pass.

The Commission conducted the voters registry update between February 11 and 20. According to official news reports,

The CEC said a total of 1,861,211 people, of which 1,090,575 were in the West Bank, not including East Jerusalem Palestinians, and 770,636 in Gaza Strip, have registered to vote, increasing the percentage of registered voters in all the Palestinian Territories from 69.1% to 82.1%. . . . The percentage of registrants now stands at 77.7% in the West Bank and 89.1% in Gaza, said the CEC, of which 52% are males and 48% females.<sup>213</sup>

These are remarkable numbers, especially given the circumstances, and the gender balance in the registration rates is also notable. That the CEC actually disaggregates the data by gender at all is unusual and commendable.

The CEC opened 373 registration centers in the West Bank.<sup>214</sup> The 2013 exercise was particularly remarkable because the CEC was also able to operate in Gaza. In earlier exercises, Hamas had blocked

208 The Supreme Judicial Council is the highest body of the Palestinian Judicial Authority. "The council was established in accordance with the provisions of the Law of the Judicial Authority No. (1) of 2002. The council's membership is as follows: 1. Head of the High Court 2. High Court Senior Judge 3. Two judges from the High Court 4. President of the Court of Appeals in Gaza, Jerusalem, and Ramallah 5. The Attorney General 6. The Undersecretary of the Ministry of Justice." Supreme Judicial Council, Second Annual Judicial Conference "Toward an Independent Judicial Authority," July 16-18, 2009.

209 "Voter Registry Update 2013," Central Elections Commission, <http://www.elections.ps/tabid/1089/language/en-US/Default.aspx>.

210 "The CEC Announces the End of Voter Registry Update for 2015," Central Elections Commission, March 5, 2013, <https://www.elections.ps/en-us/home.aspx?IDL=576>.

211 Ahmad Melhem, "Palestinian Elections on Hold until Further Notice," *Al-Monitor*, October 28, 2014, <http://www.al-monitor.com/pulse/originals/2014/10/palestine-presidential-parliamentary-elections-on-hold.html>.

212 Nidal al-Mughrabi, "Hamas Allows Gaza Voter Registration in Step to Heal Palestinian Split," *Reuters*, January 30, 2013, <http://mobile.reuters.com/article/idUSBRE90T0WM20130130?irpc=932>.

213 "Elections Commission Completes Voters Registry," Palestinian News and Information Authority, April 10, 2013, <http://english.wafa.ps/index.php?action=detail&id=22103>.

214 Central Elections Commission, "Voter Registry Update 2013."

such operations as a result of political disputes with Fatah. The Gaza operation included an effort to register 350,000 citizens, many for the first time, by 351 CEC staff at 256 schools based upon lists provided by the Ministry of Interior. It was the first time since 2006 that voter registration was conducted in Gaza.<sup>215</sup> At the end of the process, it was estimated that more than 300,000 Gazans did indeed register to vote. According to the CEC at the time, “Registration centers witnessed an unprecedented registration turnout, especially in Gaza Strip. The CEC deployed mobile registration teams to universities and schools to register youth.” As of February 19, 422,000 Palestinians—of which 90,000 are in the West Bank and 332,000 are in the Gaza Strip—have participated in the voter registration process. The lowest registration turnout was in Hebron, where only 66 percent of the eligible population registered.” The registration period was indeed extended for two days due to heavy turnout.<sup>216</sup> There was some criticism of the process as too slow.<sup>217</sup>

## 2012

Although voter registration preparations were initially undertaken in the hopes of preparing for presidential and parliamentary elections in May 2012, the process became ensnared in divisions between Fatah and Hamas; in early July, Hamas suspended the work of the CEC in Gaza, the day before it was set to start registering voters.<sup>218</sup> Hamas claimed it made this move because Hamas supporters were being repressed and Hamas representatives were not allowed to supervise the process.

Registration did take place in the West Bank in August 2012 in preparation for municipal elections.<sup>219</sup> According to the CEC, 754 voter registration centers were open for five days, from 9 a.m. to 2 p.m. Sunday through Thursday. The last time the registry had been updated was in March 2011.<sup>220</sup>

Voters elected representatives in 98 municipal councils, 245 village councils, and ten local councils in the West Bank. The Jerusalem district was also included but the voting centers had to be located on the outskirts of city, not in East Jerusalem itself.<sup>221</sup> Although Hamas boycotted the polls, these were nonetheless the first elections in the Territories since 2006.

Despite the political challenges and the practical complications of implementing registration in the context of occupation, the CEC was praised for its performance. Nonetheless, it was also noted by observers that participation in registration was lower than expected, “possibly due to reduced working hours of the registration centers during the month of Ramadan.”<sup>222</sup>

215 “Voter Registration Starts in Gaza, West Bank,” *Agence France-Presse*, February 11, 2013.

216 Mohammad Suliman, “Gazans Hope Elections Will End Palestinian Stalemate,” *Al-Monitor*, February 20, 2013, <http://www.al-monitor.com/pulse/tr/originals/2013/02/gaza-street-reacts-elections.html>.

217 Suliman, “Gazans Hope.”

218 See *Implementation of the European Neighbourhood Policy in Palestine, Progress in 2012 and Recommendations for Action*, Joint Staff Working Document of the High Representative of the European Union for Foreign Affairs and Security Policy, March 20, 2013, [http://eeas.europa.eu/enp/pdf/docs/2013\\_enp\\_pack/2013\\_progress\\_report\\_palestine\\_en.pdf](http://eeas.europa.eu/enp/pdf/docs/2013_enp_pack/2013_progress_report_palestine_en.pdf), 5.

219 Fares Akram and Isabel Kershner, “Hamas Suspends Voter Registration Process in Gaza,” *The New York Times*, July 12, 2012, <http://www.nytimes.com/2012/07/03/world/middleeast/hamas-suspends-voter-registration-in-gaza.html>.

220 The Carter Center, *Electoral Study Mission*, 4.

221 “CEC: Voter Registration Opens in West Bank,” *Maan News*, August 5, 2012, <http://www.maannews.net/eng/ViewDetails.aspx?ID=510110>.

222 The Carter Center, *Electoral Study Mission*, 4.

## REGISTRATION PROCESS AND RESULTS 2004-2006

### *Presidential Election*

The presidential election of January 2005 was administered in accordance primarily with the Basic Law, a protocol between Israel and the PLO concerning elections, and the 1995 Election Law. The 2005 law, which was much more expansive, had not yet been passed. However, existing law did establish the independence of the CEC and charged subordinate District Election Commissions to supervise voter registration and Polling Station Commissions to conduct voter registration.

With respect to voter registration more specifically, the election law of the time, similar to later versions, allowed registration to Palestinians born in Palestine as defined by the British Mandate; born in Gaza, the West Bank or Jerusalem; who had ancestors born as such; or were the spouse of a Palestinian. Those with Israeli citizenship were not permitted to register. Voters were required to be 18 years old on election day, enrolled on the voters list, and not deprived of the right to vote by a court.<sup>223</sup>

In September and October 2004, the CEC held a six-week voter registration exercise, and a further six days of registration after the death of President Yasser Arafat. A total of 1,282,524 people, between 71 and 78 percent of the eligible electorate, registered to vote. This was an impressive rate given that no election was necessarily imminent; there was minimal party mobilization, including in refugee camps and in big cities; and numerous military clashes in Gaza during this period “result[ed] in the closure of dozens of registration centers.” The early shutdown in East Jerusalem also severely depressed the registration rate, although just before election day the CEC was permitted to undertake door-to-door registration of voters for a week.<sup>224</sup>

In December 2004, against the wishes of the CEC, the Palestinian legislature passed a bill allowing the use of the civil registry as a supplement to the voter registration list, enabling 700,000 people not on the voters list to cast a ballot on election day. This led the CEC to institute use of an inking procedure at polling places to ensure against multiple voting and to set up special polling stations for voters just on the civil registry, which greatly complicated the CEC’s tasks.<sup>225</sup>

A major challenge to the system was that, under the terms of the arrangements between Israel and the PLO, all elections activities in Jerusalem were required to be conducted by Israeli postal officials in five post offices, severely limiting the opportunity for Palestinians in this area to participate. For example, because of disputes among the authorities and an Israeli prohibition on Palestinian election officials making preparations until just before the election, the “final voters lists for Jerusalem were only completed on the day before the election, and were incorrectly delivered to polling places.” The registration of voters was closed down very early in Jerusalem on September 13 after a series of raids by Israeli authorities.<sup>226</sup>

NDI commended “the CEC for the high level of proficiency with which the new register was compiled,” noting that voter registration centers were established throughout the area mostly at schools, which

223 *Final Report on the Presidential Elections*, European Union Election Observation Mission to West Bank and Gaza, 2005, [http://www.eods.eu/library/FR%20WEST%20BANK%20AND%20GAZA%202005\\_en.pdf](http://www.eods.eu/library/FR%20WEST%20BANK%20AND%20GAZA%202005_en.pdf), 22.

224 European Union, *Final Report*, 22.

225 European Union, *Final Report*, 23.

226 European Union, *Final Report*, 17.

would then be used as polling stations. However, NDI criticized the last minute change to the election law mentioned above that allowed the use of the civil registry as a basis for allowing people to cast a ballot, commenting that “the registry, a document compiled for purposes unrelated to voting, was known to be inaccurate and to contain the names of hundreds of thousands of people who had died or emigrated.” The 2005 law, passed after the election, did eliminate the use of the civil registry as an alternate source of identifying and allowing voters to vote.<sup>227</sup>

In the end, according to the European Union (EU) Election Observation Mission (EOM), given the circumstances, the CEC conducted a “highly credible exercise, and the resultant preliminary Final Voter List was proven to be reliable.”<sup>228</sup>

### *Legislative Elections*

Palestinian Legislative Council (PLC) elections were held in 2006 under the provisions of the new 2005 election law. The CEC undertook a number of voter registration drives in anticipation of the election, earning high praise from observers:

A total of 1,332,499 voters were registered for this election, an impressive increase of over 240,000 (21 percent) on the number of voters registered for the January 2005 presidential election. The increase reflected a range of effective steps taken by the CEC to improve the accuracy of the voter register. These included a process of running “rolling” registration of voters, sustained levels of excellent voter education and a number of “registration drives” that targeted non-registered voters, the last taking place in December 2005.<sup>229</sup>

Registration did require proof of identity, including an address in the West Bank, Gaza or Jerusalem, and the EU did express some concern about the under-registration of minority groups, especially of the Bedouin, while noting that the CEC did attempt to run mobile registration in these communities.<sup>230</sup>

The biggest challenge was again Jerusalem:

The registration of an estimated 130,000 eligible voters in East Jerusalem was not permitted by the Israeli authorities. The EU EOM was informed by the CEC that attempts to implement voter registration in May 2005 were blocked and had led to the temporary arrest of CEC registration staff. Following the late decision by the Israeli authorities to allow voting for some Palestinian voters in certain post offices, it was not feasible to create a realistic voter register of those voters eligible to vote. Ahead of election day, an innovative system of issuing “voter allocation tickets” was devised in lieu of a voter register to ensure that 6,300 eligible voters could be allocated to specific post offices. The allocation of tickets was undertaken over three days by voluntary groups at a series of locations, such as schools, with tickets being issued to voters showing proof of eligibility, i.e. an Israeli identification card showing a Palestinian aged over 18 resident in Jerusalem. All available tickets were issued. All other eligible non-registered voters resident in East

227 National Democratic Institute, 8.

228 European Union, *Final Report*, 23.

229 European Union, *Final Report*, 16.

230 European Union, *Final Report*, 16.

Jerusalem were able to vote in special polling stations in the West Bank areas of Jerusalem district upon proof of identity as a resident of East Jerusalem.<sup>231</sup>

## ISSUES UNDER INTERNATIONAL LAW

The inability of Palestinians living in Jerusalem to register to vote is an ongoing problem, and another casualty of the larger ongoing Israeli-Palestinian dispute. The CEC has certainly handled the situation in the best way possible in the last several years, but it is still far from ideal. The CEC is confident that despite the fact that one can register and vote on election day with an identification card, the protections in place—including the use of indelible ink to prevent double voting—will prevent fraud, and this is not widely disputed. As a general matter, voter registration in advance of the election can be advantageous in providing information on who is on the registry and where they will be voting, and some believe it is necessary to verify voter eligibility, including through challenges to eligibility by members of the public. In this instance, it seems that the system put in place under difficult circumstances is more or less working. The more challenging issue seems to be the obstacles such a system places on the ability of Palestinian Jerusalemites to vote, as most of them must do so in suburban polling sites that are not necessarily in close proximity to their homes. Moreover, given that it does take place in the West Bank and Gaza, Jerusalemites' exclusion from the voter registration process, which is a very central element of the Palestinian election system, is unfortunate from the perspective of the election principles described in numerous international treaties.

While the EU has expressed some concern over the full registration of some minority groups such as the Bedouin, the EU itself remarked and the CEO of the CEC has confirmed that it makes use of mobile registration to try to address these needs. The extent of these operations, and how successful they are, remain unclear.

There are some questions around some of the eligibility requirements. Article 28 provides for the right to vote regardless of religion, political affiliation, social, financial or social status, but as noted, this provision does not include gender, or ethnic or national origin. This becomes more interesting when paired with the bar on anyone with Israeli citizenship registering to vote. As a practical matter, it is unlikely this arises as a major problem. In principle, however, the ICCPR bars discrimination on the basis of birth or national origin.

Under Article 29 of the Palestinian law, among the disenfranchised are those who are “deprived of that right by virtue of a final judicial decision throughout the term of such a ruling.” Given the need for consistent application of the law, it might be clarified what types of acts are punishable by disenfranchisement. Similarly, Article 29 states that anyone “convicted of a felony which violates honor and integrity and not reinstated as per provisions of law” is ineligible. It is not evident what felonies violate “honor and integrity” and how this is determined.

International observers have cited obstacles to free movement as a problem and the CEC has complained strenuously about barriers to freedom of movement due to the Israeli occupation and the impact they have on preparing for and implementing registration and elections. The CEC has reported road closures

<sup>231</sup> European Union, *Final Report*, 17.



that have prevented Palestinians from reaching centers to register to vote and that have blocked election workers from bringing necessary materials to registration centers.<sup>232</sup> This is potentially a violation of international law, though it is difficult to apply when dealing with a state of occupation. Both the UN Declaration of Human Rights and the ICCPR recognize a general right to freedom of movement, and one would think this would especially apply in the context of the conduct of elections, with all due consideration given to security needs.

While the idea of proxy registration is not unique to the Palestinian Territories in the region, and there is no proxy voting, allowing any number of relatives to register another relative to vote could create theoretically create problems. It could open the door to manipulation and the registration of a person who does not wish to register, registration under an incorrect name or address, or more than one person making an application for registration. It is unclear whether this has been a problem in practice.

Another matter worth mentioning is the manner of appointment and composition of the CEC, even though it has done well under difficult circumstances, especially in achieving high registration rates in the West Bank and Gaza. Currently, although the Commission is independent, CEC members are appointed by presidential decree. Increasingly, many countries are opting for complete independence with a form of appointment that provides greater impartiality, resulting in stronger public trust. That is not the process in the Territories. As NDI has suggested in the past,

The procedures should provide for broad input on potential CEC members and incorporate adequate checks and balances in the process. On balance, the appointment system must guarantee the impartiality and competence of the individual members and a body that warrants public confidence in its independence and effectiveness. In accordance with general practice elsewhere, once appointed, Commissioners should be allowed to elect their own chair from among their members. The procedures for the recruitment of the Chief Electoral Officer and the necessary qualifications should also be regulated by law.<sup>233</sup>

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232 “Elections Under Occupation,” Central Elections Commission, 2015, <http://www.elections.ps/tabid/732/language/en-US/Default.aspx>.

233 National Democratic Institute, *Final Report*, 19.

# TUNISIA

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## INTRODUCTION

From its independence in 1956 until 2011, Tunisia held legislative and presidential elections at relatively regular intervals.<sup>234</sup> Despite their democratic trappings, the exercises were generally fraught with irregularities and served to maintain the rule of the incumbent party and serving president. In elections run by the Ministry of Interior (MOI), first President Habib Bourguiba and then President Zine El Abidine Ben Ali ran unopposed, or virtually unopposed, and were routinely reelected with over 90 percent of the vote. The ruling party similarly dominated elections for the Chamber of Deputies, with the activities of genuine opposition parties severely restrained.

The flawed system and the questionable results undermined citizens' trust in the reliability of the electoral process in Tunisia and its legal and institutional framework, even before the Arab Spring of 2011. In January 2011, massive citizen protests—which in turn inspired uprisings across the Middle East—forced Ben Ali from office and threw political space open. In the transition that followed, the country voted in October 2011 to elect a National Constituent Assembly (NCA) charged with formulating a new constitution. As a result, new election laws were passed between 2011 and 2014 that significantly transformed the electoral process.

## INTERNATIONAL AND REGIONAL AGREEMENTS

Tunisia has ratified the major international and regional conventions related to elections, voting, and the right to equal participation. These include the International Covenant for Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Political Rights of Women, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the African Charter on Human and Peoples' Rights.

## LEGAL FRAMEWORK

In January 2014, Tunisia adopted a new constitution, viewed as relatively progressive for its stances on gender equality, freedom of expression, and the right to information. Article 34 states that, “The rights to election, voting, and candidacy are guaranteed, in accordance with the law. The state seeks to guarantee women’s representation in elected bodies.” The language here is not quite as strong as it is in other constitutions that provide an absolute right to vote as a constitutional matter, with eligibility conditioned on the laws.

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<sup>234</sup> Presidential elections ceased between 1975, when President Habib Bourguiba acquired the title “president for life,” and 1987, when he was deposed in a bloodless coup by his prime minister, Zine El Abidine Ben Ali.



Ahead of the NCA elections, the interim government passed a new election law in 2011, affecting the authority over the election process as well as specific election procedures, and subsequently passed additional laws between 2012 and 2014 updating and clarifying a number of matters in anticipation of the 2014 elections.

### *Authority over Elections*

Under the original electoral law from 1969, the MOI was given complete authority to administer elections. The register of voters was prepared by the municipalities, which were run under the MOI's authority, and voters obtained elector cards from these same authorities. Given the autocratic nature of the regime, many voters questioned the impartiality of the MOI.

As the country adjusted to the post-revolution opportunity for freer elections, the 2011 electoral law laid the groundwork for independently administered elections. The first transitional government empowered a High Commission for the Fulfillment of Revolutionary Goals, Political Reform, and Democratic Transition—comprised of a 150-member political committee and a 16-member technical commission and led by one of the country's most respected legal scholars, Yadh Ben Achour—to oversee the election process. This Commission drafted several election-related decree laws that were approved by the interim government and signed into law by the interim president. One such decree law established an independent election body called the High Independent Authority for Elections (*Instance Supérieure Indépendante pour les Elections* or ISIE), comprised of 16 members appointed by the High Commission.<sup>235</sup>

After the election of the NCA in October 2011 and the dissolution of the original ISIE, the Assembly passed laws in 2012 and 2013 changing the selection process for members of the ISIE to a vote of the NCA. The legal revisions also changed the composition of the ISIE, which is now composed of nine members representing particular specialties:

1. A legal judge (a judge who rules on privately brought cases);
2. An administrative judge (a judge who rules on cases involving a public authority);
3. A lawyer;
4. A notary or a bailiff (a notary may witness the signature of documents; a bailiff in this context may also be someone with authority to enforce the implementation of certain rulings);
5. A university professor;
6. An engineer specialized in the field of systems and computer security;
7. A specialist in communication;
8. A specialist in public finance; and
9. A member representing Tunisians residing abroad.

This process was not without some controversy. Judicial challenges to the ISIE selection procedures—centering on the NCA's system for reviewing and evaluating candidacies—and political stalemate resulted in a number of halts in the process. Some organizations alleged partisanship in the candidacy process, as opposition parties were boycotting the NCA during part of the proceedings. The nine members of the

235 *Final Report on the Tunisia National Constituent Assembly Elections*, National Democratic Institute, 2012, [https://www.ndi.org/files/tunisia-final-election-report-021712\\_v2.pdf](https://www.ndi.org/files/tunisia-final-election-report-021712_v2.pdf), 12; *Elections in Tunisia: The 23 October Constituent Assembly – Frequently Asked Questions*, International Foundation for Electoral Studies, 2011, 1.

new ISIE were ultimately elected by the NCA in January 2014. The ISIE was also made a permanent body under the 2014 law, with members serving for fixed terms of six years. In addition to the ISIE, 33 sub-national Regional Independent Election Commissions (*Instances Régionales Indépendantes pour les Elections* or IRIEs) supervise the electoral process at the constituency level.

### *Voter Eligibility*

Under the 2014 law, a voter must be a Tunisian citizen, 18 years old, and have full civil and political rights. Among groups excluded from registering and voting are certain prisoners incarcerated under Section 5 of the penal code,<sup>236</sup> military personnel and national security forces agents, and persons under supervision for dementia.

### *Establishment of the Voters Registry*

The 2014 law creates an active voter registration process. It dictates that the ISIE establishes the voters lists, according to a calendar of deadlines “set by the Commission,” and continuously maintains and updates them. The new electoral law also allows for registration online and via SMS message.

The 2011 law, by contrast, combined active and passive voter registration. Article 6 required the ISIE to conduct automatic registration of voters using the national identity card database. At the same time, Article 3 allowed for active registration, primarily to update information. In 2011, the ISIE also used the national ID database to allow voters to register and vote on election day at special voting centers, an option that was not made available to voters in the 2014 elections.

### *Posting of Electoral Lists*

The 2014 law mandates that “the lists shall be made available to the public in the headquarters of the Commission, municipalities, delegations, sectors, and the headquarters of diplomatic or consular missions abroad. These lists shall be published on the website of the Commission, or other means of guaranteeing the information is shared with the public.” Unlike the 2011 law, which stipulated that voters be allowed to access lists at least 30 days before the vote, the new law does not establish specific deadlines or timeframes for posting the lists, leaving that calendar to the discretion of the ISIE.

The requirement that voters lists be published online, as well as made available in hard copy in a broader set of locations, represents an improvement upon the 2011 law, which required only that printed copies be displayed at the locations of the regional sub-commissions, delegations, municipalities and diplomatic posts under the control of the ISIE. In 2014, citizens could also register and verify their assigned polling center on the ISIE’s website or via SMS, an option of which many new registrants took advantage (see below).

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<sup>236</sup> Individuals sentenced to more than six months of imprisonment for committing honor-related felonies or misdemeanors. See Final Report: Observing the October 23, 2011, National Constituent Assembly Elections in Tunisia, The Carter Center, 2012, [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/tunisia-final-Oct2011.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/tunisia-final-Oct2011.pdf).

## Complaints Process

The 2014 law gives jurisdiction over objections to the voters list to the ISIE. A decision of the ISIE can be appealed to the Court of First Instance responsible for the relevant geographic area. Appeals to those decisions can be made to the appellate court with territorial responsibility.

## VOTER REGISTRATION IN THE 2014 ELECTIONS

With the completion of the constitutional process in early 2014, a series of elections was eventually set for later in the year, with legislative polls scheduled for October 26, a presidential vote on November 23, and a presidential run-off that took place on December 21. Although there were a number of problems with voter registration ahead of the 2014 elections, international observers determined that these stemmed primarily from administrative shortcomings rather than systematic attempts to disenfranchise voters. Observers generally considered the ISIE's overall efforts to have been competent and transparent.<sup>237</sup>

### Establishment of Voters Lists

In 2014, Tunisians who had actively registered to vote in 2011 were automatically maintained on the registration list and needed to take no further action. Citizens who registered at special centers on election day in 2011 and all new registrants needed to undertake active registration during the designated registration period. As mentioned above, election day registration was not available in 2014.<sup>238</sup>

The original registration period took place in June and July 2014, but political leaders requested that the ISIE add a second period in August due to low participation earlier in the summer.<sup>239</sup> In addition to 33 voter registration centers, the ISIE established 597 fixed registration offices throughout the country in municipality offices, IRIE offices and other public locations, supplemented by 275 mobile registration offices.<sup>240</sup> Observers witnessed some administrative inconsistencies in these offices, including with respect to voters' presentation of proper identification, but no systemic problems and no deliberate attempts to disenfranchise voters.<sup>241</sup> According to figures released by the ISIE, about 57 percent of new voters registered via SMS message, 39 percent at voter registration offices, and four percent on the ISIE website.<sup>242</sup>

The efforts of the ISIE resulted in nearly one million voters added to the list, bringing the total number

237 *Preliminary Statement of the NDI Observer Delegation to Tunisia's 2014 Legislative Elections*, National Democratic Institute, October 27, 2014, [https://www.ndi.org/files/NDI%20Tunisia%202014%20Legislative%20Elections%20Preliminary%20Statement%20\[EN\]%20\(2\)\\_0.pdf](https://www.ndi.org/files/NDI%20Tunisia%202014%20Legislative%20Elections%20Preliminary%20Statement%20[EN]%20(2)_0.pdf), 4.

238 National Democratic Institute, *Preliminary Statement*, p. 4

239 "The Carter Center Commends Tunisia's Electoral Authorities for Successful Voter and Candidate Registration and Encourages Increased Communication," The Carter Center, September 19, 2014, <http://www.cartercenter.org/news/pr/tunisia-091914.html>, 2.

240 The Carter Center, "Commends Electoral Authorities," 2.

241 "Long-Term Election Observer Summary of Findings," National Democratic Institute, June 19-August 22, 2014.

242 "Tunisia Elections Dispatch No. 2: Voter Registration," International Republican Institute, 2014.

of registered voters to 5.3 million, about two-thirds of the eligible electorate.<sup>243</sup> Approximately 45 percent of newly registered voters were between the ages of 18 and 30 and 50.5 percent were women. While the ISIE's efforts to register new voters were commendable, there was significant criticism both locally and by international observers that the ISIE had not done enough to educate the public about who needed to register and how, especially given that the option of registering on election day was no longer available.<sup>244</sup> On election day, the most significant issues with the voters registry arose in overseas constituencies (see below).

### *Posting of Voters Lists*

After the second voter registration process closed in August, citizens had a three-day window in September in which to submit appeals regarding the voters registry. Despite the legal requirement, preliminary voters lists were only sporadically publicly posted in the districts,<sup>245</sup> and a final list was never published.<sup>246</sup> This prevented political parties, observers and citizens from verifying the lists to be used on election day.<sup>247</sup> Moreover, observers found that the ISIE undertook insufficient efforts to educate voters about the process for checking the lists. Despite this shortcoming, approximately 3.3 million voters—more than 60 percent of the electorate—confirmed their data on the ISIE's website.<sup>248</sup>

Observer groups raised concerns about the accuracy of the voter registration lists in some overseas districts, where some voters found that they were absent from the registry or assigned to the wrong polling station.<sup>249</sup> Attempting to address this issue and improve the voter registry after legislative elections, the ISIE opened a week-long period in November during which voters who were unable to find their names on voters lists at polling centers, but held receipts from registration in 2011 or 2014, were permitted to add their names to the registry or to change their polling station. This initiative resulted in 1,618 additions and changes to the registry.

## VOTER REGISTRATION IN THE 2011 ELECTIONS

### *Establishment of Voters Lists*

With NCA elections set for October 23, low turnout rates for voter registration during the initial registration period in July 2011 led to an extension of the registration timeframe. Even with this extended period for active registration, only slightly more than half of eligible voters had registered by mid-August. As a result, the ISIE announced that it would use the country's national identity card database to allow unregistered citizens to vote on election day.<sup>250</sup>

This announcement created a certain amount of confusion. Many voters were unsure whether they

243 National Democratic Institute, *Preliminary Statement*, 5.

244 National Democratic Institute, *Preliminary Statement*, 5.

245 The Carter Center, "Commends Electoral Authorities," 3.

246 *Final Report on the 2014 Legislative and Presidential Elections in Tunisia*, National Democratic Institute, 2015, 26.

247 National Democratic Institute, *Preliminary Statement*, 5.

248 The Carter Center, "Commends Electoral Authorities," 1.

249 National Democratic Institute, *Preliminary Statement*, 8.

250 National Democratic Institute, *Final Report on Constituent Assembly Elections*, 13.

needed to take any affirmative action to register and vote. On election day, some voters found themselves registered not at the closest polling station but, instead, at a polling station in accordance with the existing—and in some cases outdated—national identity card database. Other voters were absent from the list entirely. To mitigate this problem, voters could send an SMS message to an ISIE-sponsored service to confirm their polling station details, though the system crashed due to volume on election day. Voters who had not registered and thus did not have an assigned polling station, or who were unable to confirm their polling station via SMS, were able to vote at special centers.

For the active registration exercise, the ISIE set up 901 registration centers, in addition to operating mobile registration offices that moved into rural areas and weekly markets.<sup>251</sup> In the end, 84.1 percent of actively registered voters took part in the vote,<sup>252</sup> while the participation rate for those passively registered was only 12.8 percent.<sup>253</sup>

The ISIE's own report after the 2011 elections identified problems with the registration system, including challenges in coordinating databases and relaying information among agencies, as well as duplication of identity cards.

### *Posting of Electoral Lists*

The registration list was made available to citizens from August 20 to 26 in a variety of locations. The lists were also published on the website of the ISIE. Few Tunisians, however, actually inspected the lists.<sup>254</sup> The ISIE did not sufficiently educate the public about the necessity of or process for doing so, and the timeframe for reviewing the lists was very limited.<sup>255</sup>

### *Documentation Issues*

NDI heard anecdotally that some citizens who received national identity cards in the months leading up to the NCA elections were not included in the voters registry when they went to vote on election day. According to NDI's final report on the elections, "such exclusions likely affected the youngest eligible voters, as well as those whose national ID cards were replaced after being confiscated by security forces in protests during the revolution, though the extent to which this affected potential voters is unclear."<sup>256</sup>

251 *Rapport relatif au déroulement des élections de L'Assemblée Nationale Constituante*, Instance Supérieure Indépendante Pour Les Elections, February 12, 2012, <http://aceproject.org/ero-en/regions/africa/TN/tunisie-rapport-relatif-au-deroulement-des>, 102.

252 Instance Supérieure Indépendante Pour Les Elections, *Rapport*, 176.

253 Instance Supérieure Indépendante Pour Les Elections, *Rapport*, 176. NDI reported a rate of 86 percent of registered voters and 16 percent of voters added to the list by the ISIE. National Democratic Institute, *Final Report on Constituent Assembly Elections*, 15.

254 "The Carter Center noted with concern that the low turnout in the initial phase of the voter registration was even more discernable during the exhibition and challenges period, when few voters inspected the provisional list. Voter information by the ISIE was barely visible and the lists showing unregistered voters were displayed with one or two days delay. Exhibition venues were officially open the same hours as the Baladiyas, only from 8:30 a.m. to 2:30 p.m. and often closed on Sunday, thus leaving little time to the public to inspect the list." The Carter Center, Final Report, 31.

255 The Carter Center, Final Report, 31.

256 National Democratic Institute, *Final Report on Constituent Assembly Elections*, 16.



## ISSUES UNDER INTERNATIONAL LAW

Improvements to Tunisia's election law after the 2011 elections resulted in a more effective and inclusive voter registration process in 2014. Drawing on an improved legal framework, the ISIE worked effectively in collaboration with other actors to conduct a comprehensive voter registration process for the 2014 elections, resulting in one of the most inclusive and transparent processes in the region. Nevertheless, there remains room for improvement to bring Tunisia's voter registration processes in line with international standards.

A number of issues arose with respect to the conduct of the 2011 voter registration process. One concern under the 2011 law and, to a lesser extent, under the 2014 law, is the exclusion of several groups from eligibility. It is positive that the 2014 law omits exclusion of persons who have had property confiscated and clarifies the disenfranchisement of voters who have been sentenced to a crime. The law nevertheless still excludes the military and police; though common practice in the region, this provision is increasingly considered incompatible with universal suffrage under the ICCPR and other treaties.

In both the 2011 elections and pursuant to legal decrees implemented afterward, the voter registration process is undertaken by an independent election commission that is elected by a supermajority of the legislative body and is composed of representatives from a variety of communities. This is very much in accordance with international principles, and the method of appointment and composition of Tunisia's independent election commission might even be considered for some countries an exemplary model. General Comment 25 regarding the ICCPR indicates a preference for independence in the administration of elections, and the ISIE would seem to provide that.

The confusion in 2011 and in the 2011 law itself regarding whether the registration system was active or passive was problematic for ensuring enfranchisement, as all parties have acknowledged. There were questions about whether voters were sufficiently apprised of the new registration rules in 2014 as well, especially the change in the ability to register on election day. The failure of the ISIE to provide necessary guidance and to properly educate voters about how to register, or whether they even needed to actively register, was in conflict with its obligation under the ICCPR to provide voter education about the registration process. As General Comment 25 makes clear, "Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community." Despite concerns that insufficient communication regarding this change to the registration process would result in unregistered voters mistakenly thinking they were registered, NDI observers noted few such incidents, and poll workers were generally able to redirect voters to the correct polling station or center.<sup>257</sup>

Posting of the voters lists presented issues in both elections as well. On both occasions, the ISIE did not adequately educate citizens about the need to check their information. Moreover, the timeframe for the public posting in 2011 was short, which may have prevented improvements to the list's accuracy and inclusivity; a final list was never posted in public places in 2014. The new law's elimination of a deadline by which the ISIE must publicly post the voters lists could be problematic. The public availability of final voters lists is essential to ensure the registry is accurate and does not leave out eligible voters. The posting of the registration list in due time is also a necessary condition for the type of transparency that international principles ICCPR articles 19 and 25 demand.

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257 National Democratic Institute, *Final Report on 2014 Elections*, 45-46.

In 2011, the use of the national identity databases from the Ben Ali era may have led to inaccuracies in the voters list. Particularly concerning was that many voters were listed according to old addresses and assigned to polling places on the basis of those inaccurate locations. Despite concerns that those voters would be disenfranchised as a result, observers noted that many such voters visited special centers where they were, in fact, able to cast their ballots.<sup>258</sup> Moreover, it is estimated that several hundred thousand citizens were not included in the database to begin with, leading to the possibility that voters were disenfranchised in contradiction to international obligations of suffrage.

The new law clarifies that the registration process is an active one. Where there are reliable and complete government databases, a passive system can be more inclusive. However, given that the Tunisian national identity card database seems to be incomplete and possibly inaccurate, an active registration process is likely preferable under international obligations for an inclusive, equal electorate—but only if the ISIE and its partners engage in outreach and education to ensure that the entire populace has full access to the voter registration system, has the documents needed to register, and understands the need and process for registration. These caveats apply to all sectors of the population, including groups that may be more marginalized or remote.

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258 National Democratic Institute, *Final Report on Constituent Assembly Elections*, 7, 16.



# COMPARATIVE ANALYSIS



# COMPARATIVE ANALYSIS

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In other places in the world, such as parts of Africa and much of Latin America, a dire lack of resources and infrastructure, challenging physical environments, tribal and ethnic divisions, and years of armed conflict have led to major problems in organizing the voter registration process. At the same time, on paper, the process is often fairly inclusive and administered in a nonpartisan manner. The difficulties that occur in the Middle East and North Africa (MENA) region are quite different. Indeed, looking across the case studies included in this report, it would appear that the most significant problems are structural rather than procedural: first, that a number of groups are formally excluded by law; and second, that most of the countries have the Ministry of Interior in charge of elections rather than an independent authority. As an agency of the political party in power—including in countries with more repressive regimes—this presents varying degrees of concern about bias, pressure tactics, and partisanship.

Second-tier issues that are common across the region include: 1) compressed time frames for registering, updating registration information, and verifying information, which can both disenfranchise voters and lead to inaccuracy; and 2) documentation issues, related less to people lacking it, as may be the case in other regions, but more to the fact that requirements for documentation are confusing and often not understood. Of significant note is that, with a few exceptions, registration and turnout numbers in the region are relatively low compared to the rates of participation in other countries.

At the same time, very broadly speaking, the countries examined here actually get fairly high marks in several aspects when compared to other regions: conducting outreach efforts, such as the use of mobile units to reach more remote or marginalized communities; ensuring citizens have identification, whether for voting purposes or other reasons; providing access to the registration process, whether passive or active (there are a few exceptions, such as Lebanon, where registration is at the ancestral village); publicizing voters lists; and having fairly complete voters lists in many countries, if the reports can be believed. Below is a comparative examination of some of the general themes related to the registration process.

*Registration Rates and Turnout*<sup>259</sup>

Country (Year)	Registered Voters	Estimated Voting Age Population (VAP)	Turnout of Registered Voters	Turnout of VAP	Type of System
Algeria (2014)	22.9 million	26.0 million	49.2%	43.6%	hybrid (must get voter card)
Iraq (2014)	21.5 million	16.9 million	60.5%	76.8%	passive
Jordan (2013)	2.3 million	3.8 million	56.5%	34.1%	hybrid (must get voter card)
Kuwait (2013)	440,000	1.9 million	51.9%	12.2%	active
Lebanon (2009*)	3.3 million	2.65 million	54.0%	66.3%	passive
Morocco (2011)	13.5 million	21.0 million	45.4%	28.7%	active
Palestinian Territories (2006)	1.3 million	1.8 million	77.7%	57.7%	active
Tunisia (2014 legislative)	5.3 million	7.9 million	67.4%	45.4%	active
Tunisia (2014 presidential)	5.3 million	7.9 million	60.35%	40.45%	active

\*The EU 2009 observation mission cautioned that “Inasmuch as the Voter Register is passive, deriving directly from the Civil Registry offices which continue to list many Lebanese who no longer reside in Lebanon and who would not normally have registered to vote, and that it also includes those who are not allowed to vote, such as the military and the internal security forces, the number of registered voters does not reflect the actual number of voters” (p. 14). This may account for the registered population being greater than the voting age population for this country.

As is evident from the above chart, registration and turnout rates vary throughout the region. With the possible exception of the Palestinian Territories and Tunisia very recently, rates are not impressive from an international perspective. There can be a multitude of reasons for this beyond structural issues, procedural problems within the system, or efforts to intentionally exclude some parts of the population. Such issues include, most prominently, wide-reaching cynicism in the region about governance, politics and the value of elections. The number of citizens who consciously opt out of the voting process cannot be ignored as a factor.

Another part of the problem may be that virtually all of the countries employ periodic rather than continuous registration, and many have long periods of time prior to elections where information cannot be updated. This means that newly eligible voters may not be able to register in time for an election, while people who have moved or changed their names may also be disenfranchised if they have

259 Reported data cannot be independently verified. Based on International IDEA Voter Turnout website data, accessed May 5, 2015, <http://www.idea.int/vt/>.

not been able to change their information on the list in time.

For example, in Kuwait, the registration list is updated in February every year and this is the only time one may apply to be on the voters list. Jordan also uses an annual list revision. In Lebanon, no changes can be made within a year of revision of the list, and voters rolls are closed as of March 30 for the entire following year. In Iraq and the Palestinian Territories, the system and timing are not entirely clear. Only Morocco comes close to a continuous registration system, with citizens able to register during a 30-day period determined by decree prior to an election, as well as between April 1 and December 31 every year.

While continuous registration may be labor- and resource-intensive, it is advisable for the registration periods to be as close to elections as logistically possible, and for citizens to be able to update their data on a continuous basis to ensure that the principle of universal suffrage is respected.

Low levels of participation must be further investigated. That such large numbers of citizens are not taking part in the decision-making process indicates a failure by the state to meet basic tenets of democracy, which demands an inclusive and broad-based electorate to ensure legitimacy. This analysis attempts to dissect some of the practical measures that may be inhibiting full participation, but cultural and social factors, as well as autocratic tendencies in some places that remove incentive among some citizens to participate, must also be taken into account to gain a full picture of the state of democracy vis-à-vis international commitments in these countries.

### *Authority Responsible for Voter Registration*

Country	Ministry of Interior	Independent Election Management Body
Algeria	X	
Iraq		X
Jordan	X	
Kuwait	X	
Lebanon	X	
Morocco	X	
Palestinian Territories		X
Tunisia		X

As has been noted throughout this report, international obligations, including the International Covenant for Civil and Political Rights (ICCPR), indicate a strong preference for independence in the administration and implementation of elections. The majority of systems in the MENA region are run by Ministries of Interior, which is essentially the government itself. Because it has a stake in the outcome of the election, it therefore may not be trusted to carry out the registration process in a fair, accessible and even-handed manner. While a Ministry of Interior (MOI) in a country may on occasion be given the benefit of the doubt based on a recent competent performance, in the long run it is unlikely such a situation can be sustained.

Iraq, the Palestinian Territories and Tunisia stand out as having truly legitimate independent entities to run the registration and election process, although in the Palestinian Territories it must be noted that the appointments are made by presidential decree, an aspect that has come under criticism. Oddly, Jordan has an independent entity running many aspects of the election, but not the voter registration process, in which observer groups indeed found bias. The latest construction of the ISIE in Tunisia, established in 2014, is particularly promising for the principles of independence, experience, equity, inclusion and competence.

### *Groups Excluded from Eligibility*

Country	Military	Police	Naturalized Citizens	18- to 21- year-olds	Criminal Conviction	Bankruptcy	Ethnicity/ Nationality
Algeria*					X	X	
Iraq							X
Jordan	X	X			X	X	
Kuwait	X	X	for 20 yrs	X	X		X
Lebanon	X	X	for 10 yrs	X	X	X	
Morocco	X	X	for 5 yrs		X	X	
Palestinian Territories					X		X
Tunisia	X	X			X	X	

\*Also excludes “someone whose conduct during the revolution of national liberation contradicted the nation’s interest.”

Broadly inclusive elections are a requisite under a number of international agreements. These documents recognize some room for discretion, but exceptions from the rule must be reasonable and justified. Many of the countries studied here have laws excluding large swaths of society from the democratic process. This is harmful not only because it is contrary to international commitments, but also because it can threaten to undermine the legitimacy of an elected government. Such exclusion creates a reservoir of citizens that feels alienated from the political system, which can lead to cynicism or apathy at best, and sow civil dissension at worst.

For example, at the extreme, although Kuwait is somewhat unique in that it has so many migrant workers, in 2013 only about 440,000 people were registered to vote in a country of over 3 million residents.<sup>260</sup> That means that an uncharacteristically large number of people lives and works in a society and under a government they have no connection to, and a government that is accountable to a very small number of residents.

Moreover, Kuwait disenfranchises young people by making the age of voting eligibility 21, whereas in most countries it is 18. The same is the case in Lebanon.

260 Annual Statistical Abstract: Chapter 3,” Kuwait Central Statistical Bureau, 2011; “Factbox: Kuwait’s political system and voting rules,” *Reuters*, July 25, 2013, <http://www.reuters.com/article/2013/07/25/us-kuwait-election-system-idUSBRE96O0FN20130725>.

Military and other security staff are excluded from the electorate in countries throughout the region. For example, disenfranchisement of members of the armed forces and a wide range of other public sector workers means some 220,000 Jordanians are excluded from the right to vote.<sup>261</sup> While international public law is not wholly settled on this issue, it is widely deemed ill-advised from the perspective of universal suffrage. Algeria, which enfranchises its armed services, is an exception in this regard.

Citizenship issues also are problematic in terms of full suffrage. In Kuwait, the election law excludes naturalized citizens from registering and voting for 20 years. This is contrary to international obligations and creates a two-tiered society. Even more problematic, Kuwait also does not allow any non-Muslims to naturalize, another contradiction of international principles. As a result of another part of Kuwaiti citizenship laws, there are some 100,000 Bedoon, who may have been in Kuwait for many years, in some cases going back further than some Kuwaiti citizens, who cannot register to vote. In Morocco, naturalized citizens cannot vote for the first five years of their citizenship.

Most countries disenfranchise some sector of citizens who have been convicted of a crime. In Algeria, the law prohibits registration to anyone “whose conduct during the revolution of national liberation contradicted the nation’s interests.” Although similar provisions have been debated in other countries in the region, they have been resisted as potentially fomenting resentment in the future.

Of the countries examined here, Iraq is the most inclusive in terms of the law. Inmates, detainees and prisoners are allowed to vote on the basis of registration lists provided by the Ministries of Justice and Interior within 30 days of the election. The law also provides for registration and voting for both internally displaced people and for voters abroad. Internally displaced persons—approximately 40,000 citizens—are identified and added to the voters registry by the Ministry of Internally Displaced Persons.<sup>262</sup> The Iraqi system allows registration for members of the military and other categories of citizens who are often not deemed eligible to participate in other countries in the region.

### *Access to the Registration Process*

The legal right to register to vote is not meaningful unless the registration process is actually accessible to all eligible voters. This requires that registration is active, the process is simple, voters are educated about the process, registration centers are close and easy to reach, and election administrators conduct sufficient outreach to ensure all eligible citizens have the opportunity to participate. If the system is passive, citizens must have reasonable opportunities to update their information and make sure they are included on the list. In this area, most of the MENA countries under review do a better job than many other countries of the world.

For example, in the Palestinian Territories, voters must simply appear at the registration center closest to their home with documentation during the prescribed period, and this has not seemed to be a barrier for most citizens. Tunisia has done well in setting up a large number of voter registration facilities and utilizing mobile voter registration offices to reach rural areas.

261 *Final Report: Parliamentary Elections*, European Union Observation Mission to the Hashemite Kingdom of Jordan, 2013, [http://eeas.europa.eu/eucom/missions/2013/jordan/pdf/final-report\\_en.pdf](http://eeas.europa.eu/eucom/missions/2013/jordan/pdf/final-report_en.pdf), 14.

262 Author interview with UN election assistance mission, December 9, 2013.



Jordan and Lebanon seem to be more troublesome in this area. The problem in Lebanon is plain and results from official policy, not from any failure in procedural implementation: Citizens must register to vote in their ancestral village, which may be very far away from where they currently reside. In Jordan, there have been procedural problems of accessibility in the registration process, which requires voters to travel long distances and involves unnecessary forms, lengthy procedures, multiple visits, and long waits in crowded registration centers.<sup>263</sup>

### *Efficiency and Accuracy*

Differences in time frames and resources, as well as political issues, have led to varying levels of efficiency and accuracy by the entities conducting voter registration in recent elections in the region. Moreover, levels of efficiency have, unsurprisingly, corresponded to assessed levels of accuracy in the eyes of international and citizen observers.

In Kuwait and Iraq, the process has been relatively smooth, although in Kuwait it is undertaken, problematically, by the national government and not an independent authority. Iraq's list is more accurate because it is based on a passive system that uses a relatively reliable and updated database while at the same time allowing for citizens to ensure their registration status is accurate. Voter registration in the Palestinian Territories has been greatly complicated by the political situation. Nonetheless, in 2013, the Central Election Commission (CEC) was able to mount an impressively well-conducted registration exercise in both the West Bank and Gaza, followed by updates in 2014 and 2015; even in 2006, the CEC was praised for its outreach efforts and education.

Jordan and Algeria have had more problems. Jordan garnered criticism for not following up on allegations of elections crimes, thousands of military personnel were impermissibly on the voters list, and there were tremendous issues with voter cards that may have led to disenfranchisement and fraud. Moreover, allowing for proxy registration and for people to choose their own polling place introduced complications that may have compromised the integrity of the list in ways contrary to international obligations.

In Algeria, although outreach has been well done during various electoral periods, the lack of transparency with respect to the list prevented the process from being as effective as possible, and the level of decentralization that the MOI reports to maintain with the lists can lead to inefficiencies and inaccuracy. Indeed, NDI discovered numerous instances of inaccuracies in the list.

In Lebanon, unlike in other countries, the process has been considered to be relatively efficient, but the data being used is out of date. For example, only registration location changes that had been made before December 7, 2007 were included in the update for the 2009 election.<sup>264</sup> It is highly likely that there was inaccurate information in the voters lists.

Tunisia saw a number of complications in 2011 and disappointing registration rates as a result. There was considerable confusion over the process that year, possibly leading to disenfranchisement. Although there is ongoing concern about the ability of the electoral commission to maintain an accurate list from a technical standpoint, the legislature has made attempts to clarify procedures under new laws.

263 Author interview with Lama Khateeb, Resident Program Officer, National Democratic Institute, March 12, 2013.

264 *Final Report on the 7 June 2009 Parliamentary Elections*, European Union Election Observation Mission to Lebanon, 2009, 14.

## Transparency

Principles of transparency and access to information are embodied in both Article 19 and 25 of the ICCPR, which relate to the right to receive information on the voting process and the obligation of the election authority to provide it. The voter registration process, and data regarding the list, can be especially opaque and inaccessible in the MENA region.

For example, even observers close to the process in Kuwait are unclear on the details about how the voters list is compiled and maintained. The voter registration list in Jordan was only provided in password protected PDF files. In Algeria, there is ambiguity in the laws and practices, and the government in the last election would not share the national registration list with outside organizations. In that country, lack of transparency and clarity are among the biggest problems with the election system.

However, especially in comparison with other parts of the world, many of the MENA region countries are taking steps to increase transparency. In the Palestinian Territories, the law is strong, guaranteeing an open registration process and a widely accessible list. Lebanon has made progress in disseminating the registration lists publicly and in educating the voting public about the need to check one’s registration status. In the last election, international observers found that the Ministry of Interior and Municipalities (MOIM) performed election preparations in a transparent manner.<sup>265</sup> Morocco has also improved by making registration status available online and through text messaging, and, unusually, providing data that is demographically disaggregated. There is opportunity for public review of the registration list and some party involvement in the computer processing of the registry.

Although Internet access is not as widespread in this part of the world as in some others, usage is widespread and growing in the countries examined. As a result, it now should be customary for the authorities in charge of elections to put the most important election-related information on their websites. This is the case in some of the countries studied, but not others. Below is a chart of information made accessible to voters online in the countries.

Online Availability of Voter Registration Information									
Country Name	Registration Deadlines	How to Register	Where to Register	When to Register	How and Where to Review the Voters List	How to File a Complaint	Data on Voter Registration Rates	How to Contact the MOI or EMB	Voter Education
Algeria	X	X	X	X	X	X	X	X	X
Iraq					X			X	
Jordan		X	X		X	X	X	X	X

265 European Union, *Final Report*, 12.

Kuwait	X	X	X	X	X	X		X	X
Lebanon	X	X	X		X	X	X (2009) X (2012)	X	X
Morocco	X	X	X	X	X	X			
Palestinian Territories		X	X			X	X	X	X
Tunisia		X	X		X	X	X	X	X (pres.) X (leg.)
Yemen							X	X	X

All sites re-accessed April 2015, except Iraq and Yemen, accessed June 2014; some discrepancies in registration dates and locations may have been related to electoral cycles and pending updates.

Most of the websites lack key information, although it should be noted that Algeria’s site is surprisingly organized and accessible despite the MOI’s lack of transparency in other ways.<sup>266</sup> Jordan’s site<sup>267</sup> is also quite good in terms of access to voter registration statistics, procedures and locations; however, it does not provide relevant dates or deadlines for voter registration. It also provides instructional and educational materials. The Palestinian commission’s website is also very informative, and Tunisia’s ISIE website undertook a significant update prior to the 2014 elections. This is an area in which it is easy for the governments to improve, and doing so will bolster their adherence to essential transparency principles.<sup>268</sup>

### Documentation Issues

As has been pointed out repeatedly in this report, identification requirements for voting that are difficult or impossible for some citizens to meet may violate international norms under Article 25 of the ICCPR. Indeed, states must take affirmative measures to facilitate getting eligible voters the documentation they need to register and vote, including voter education on the registration process.

The problems with identification are not, broadly speaking, of the same nature as one finds typically in developing countries in Africa and Latin America. Many communities in those regions are completely undocumented and have no means to access identification papers necessary to participate in voting or other aspects of life, such as health care and education. In the MENA region, although there are a few cases of these types of problems, such as requiring a fee for documents, the issue is not that people lack identification. It is more that election authorities are often ineffective at communicating how and

266 Ministry of the Interior and Municipalities of Algeria, 2009, <http://www.interieur.gov.dz/Default.aspx?lng=ar>.

267 Independent Election Commission, accessed May 8, 2015, <http://www.entekhabat.jo/public/DefaultAr.aspx>.

268 See National Democratic Institute, “Electoral Transparency, Participation and Accountability,” in *Opening Government*, ed. Transparency and Accountability Initiative, 2011, <http://www.ogphub.org/wp-content/uploads/2013/02/Opening-Government.pdf>.

when identification is to be used, and can even manipulate the dissemination and use of identification cards for political ends. With the confusion around which documents are to be used when, there is potential for disenfranchisement as well as fraudulent practices.

For example, in Lebanon the 2009 election was the first to require a national identification card or passport at the polls to vote instead of a voter card disseminated by the MOIM. It was estimated that 600,000 to 700,000 Lebanese citizens did not have the requisite documentation. Despite the best efforts of the MOIM, there were a number of administrative problems<sup>269</sup> and allegations that the process for dissemination and delivery of the cards was politicized and manipulated by the political parties. There were even reports of parties buying ID cards.<sup>270</sup>

2011 was the first election in which Morocco required the national identity card to vote. Lack of information from the MOI about this change led to widespread confusion about what was required to register, who was required to register, and what one needed to bring on election day.<sup>271</sup> Further, an identity card costs 75 Moroccan dirhams, or US\$9.

On the other hand, because of the strength of certain institutions in some MENA countries, most citizens have identity cards. This is by and large the case, for example, in Kuwait, though it must be noted that if one does require an ID there is an approximately US\$9 fee. Moreover, although the system appears complex, Iraqis almost universally have the necessary documentation for voting, as do Palestinians. It is believed that the majority of Jordanians do have a national identity card, though the process for obtaining one is not simple.<sup>272</sup> Given that these countries, like some others around the world, make possession of a particular identity document a pre-requisite to voting, it is notable that the governments do by and large ensure citizens actually have them, even if for reasons other than elections. This is not necessarily the case in other places where ID is necessary to vote but difficult to obtain, sometimes leading to issues of disenfranchisement.

Another problem worth noting here is the interaction between documentation for voting and citizenship laws. Though a thorough discussion of this issue is outside the parameters of this paper, it is important to understand how rules around citizenship, especially with respect to women and certain ethnic groups, can be used to deny voting rights without strong justification.

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269 *Final Report on the Lebanese Parliamentary Election*, National Democratic Institute, 2009, <https://www.ndi.org/node/16115>, 22.

270 National Democratic Institute, *Lebanese Parliamentary Election*, 23.

271 *Final Report on the Moroccan Legislative Elections, November 25, 2011*, National Democratic Institute, 2012, <https://www.ndi.org/files/Morocco-Final-Election-Report-061812-ENG.pdf>, 5.

272 As noted, according to the website of the Department of Civil Status and Passports (CSPD), to obtain a national identity card, among other requirements, one must present a family book. As also discussed, to get the family book one must present a whole host of documents. The rules require that in order to obtain the family book, one must have birth certificates for all family members, yet another layer in the documentation process. There is one additional problem to this process: A Jordanian woman widowed, divorced or married to a foreigner is entitled to obtain a civil record and family book in her name, although the children of a divorced women or one married to a foreigner are not added to the book regardless of their ages. Hence, the children of a woman married to a non-Jordanian will never be eligible to be voting citizens of Jordan. To register a birth, one must apply in person with the family book and proof from the hospital. Birth registration is required within 30 days under penalty of a fine. Data suggests that nearly all births in Jordan are registered, though 1.2 percent of births are not reported. Though it has not been a major area of complaint, the many layers of required documentation are a potential barrier to full and inclusive participation in Jordan.

## *Gender Equality*

The two countries in which issues around gender come up in the registration process in a more poignant way are Kuwait and Lebanon. Women in Kuwait have been allowed to vote for less than a decade. Some election observers report that women have since been encouraged to register to vote, in some cases by husbands and fathers who see it as a second vote for themselves.<sup>273</sup>

Contrary to several international treaties, including CEDAW, under Lebanese election law married women are required to register in their husband's ancestral village rather than their own.<sup>274</sup> This denies women their own individual voice in their own village of origin, and thus is discriminatory. Moreover, women who marry foreign men cannot transfer citizenship to their husbands or children, meaning their spouse and offspring will never be able to register to vote.<sup>275</sup> This, too, is discriminatory since a Lebanese man can confer citizenship to his foreign wife and their children, and they will become full citizens of Lebanon able to cast a ballot.

Although it was not examined specifically here, it should be noted that it is also important that women play an equal role in the election administration process, including at the registration stage by acting as registrars, serving as members of commissions and holding high-ranking positions within ministries.

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273 Author interview with Ghada Alghanim, board member of the Women's Cultural and Social Society and founding member of Sout Al Kuwait, October 5, 2013.

274 National Democratic Institute, *Lebanese Parliamentary Election*, 17.

275 Doreen Khoury, "Women's Political Participation in Lebanon," Heinrich Böll Foundation, July 25, 2013, <https://www.boell.de/en/2013/07/25/womens-political-participation-lebanon>.

CONCLUSION





# CONCLUSION

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Given the dynamic nature of events in the region, this report necessarily is a snapshot of where governments and election administrators are at this moment in time. The development of democratic laws and procedures in the MENA region continues to be in flux. Politics in the region remain highly fluid as election administrators, civil society and citizens search for peaceful ways of fairly and equally expressing the public will through genuine elections, often under very challenging circumstances.

A central element in enhancing electoral frameworks has been working to improve the voter registration process and make it more inclusive. In this regard, some states have made progress, while others have struggled due to political developments and challenging environments; most have had both moments of advancement and periods of regression. Despite the uneven progress in the region toward more meaningful and genuine elections, NDI's research suggests that in aggregate the trajectory for the region with respect to voter registration is moving in an encouraging direction.

A major purpose of this report is to assess the extent to which various countries' voter registration practices align with commitments they have made under international law. By taking an inventory of current practices and experiences, it is hoped that this study can be a tool for citizens, political parties, election officials and other decision makers in the region to use as they work to build democratic systems that are consistent with internationally accepted principles and, more importantly, that are fully representative of a country's population and deserving of citizens' confidence.





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