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## The Dilemma of Human Rights In Lebanese Electoral Laws

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Issam Fares Institute for Public Policy and  
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## The Dilemma of Human Rights In Lebanese Electoral Laws

**Research, Advocacy and Public Policy-making in the Arab World (RAPP)** studies the effectiveness of think tanks and research policy institutes in influencing public policy in the region. It aims to establish a permanent network of self-financed think tanks and research centers across the Middle East that are better able to impact public policy in their respective countries.

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# Executive Summary

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The continuous search of the Lebanese polity for a proper electoral law able to achieve the simple tasks of any electoral law<sup>1</sup> has failed repetitively. There have been nine different electoral laws for fourteen different parliamentary elections since the independence. Beside the normal political competition and manipulation, one of the main reasons for this failure, this paper argues, is the fact that the law aspired for is expected to achieve two very different forms of representations both enshrined in the Lebanese constitution: representing all Lebanese citizens equally and fairly; and representing the two Lebanese religions equally and the different Lebanese sects / confessions fairly. Each of these forms of representations have their own aims, approaches, tools, and criteria, that may be incompatible and even contradictory at times, especially with a political equilibrium that does not reflect the demographic realities exactly. So far among the two incompatible and even contradictory representations, the Lebanese polity has given priority to the confessional representations, at the expense of proper equal representation of all the Lebanese citizens, which is a very clear violation of a range of basic human rights including equality before the law, participation in government, freedom of association, freedom of belief and others.

Today, and for the past two years the Lebanese are once again looking for consensus over a new law which meets all their different aspirations for civil peace and democratic rotation of power. Their failure to agree on such a law has led to the latest postponement of parliamentary elections under the pretext of inappropriate security circumstances. This

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1 Mohammed Al-Majzoub, *The constitutional law and political system*, Halabi legal publications, Lebanon, 2002, p. 385, identifies these tasks as: to peacefully and democratically reflect the will of the Lebanese public and its right to determine the form of government and its choices in issues, let alone the aim of providing the authorities and institutions with the popular and legal legitimacy.

paper is a timely attempt to add a proper human rights dimension to the political debate around electoral laws, trying to identify the basic criteria that guarantee equality of all citizens before the law, and also to explore whether there is any possibility of combining the two forms of representations and where the balance lies between them.

To do that it was necessary to perform the following: first, to review the management of the electoral process according to universal human rights principles; second, to study the social construction of Lebanese society in addition to the electoral component in order to compare them with different electoral systems that have been applied in different societies with a diverse make-up similar to that of Lebanon; third, to compare the current proposed draft laws by referring to international principles and best practices which respect human rights.

With these three elements in mind, the broad subject of Lebanese electoral laws has been divided into several main themes which crosscut between the lack of consideration for human rights principles in the electoral law and its interference with political and confessional realities, in addition to the structure of the Lebanese political system. It is worth noting that this study will focus on subjects and challenges either currently being debated in the political sphere and have yet to be resolved or were not raised in a serious manner. It examines different aspects of the electoral law that relate to human rights, particularly the right to run for elections and the right to vote, the representation of marginalized groups and minorities, transparency in the management of elections before, during and after election day, explaining the problem and suggesting possible solutions.

This study concludes with a number of recommendations with respect to the issues that need to be introduced to the debate and that can strengthen advocacy efforts by the different stakeholders involved. Reflecting on all of the above, and in light of the current political

realities in Lebanon, including present sectarian demographics and political structure, the study concludes that the standards imposed on the new electoral law is impossible to meet, as no law, which this study has reviewed, has been able to deliver complete equality between citizens. Alternative possibilities, however, do exist and are included in the constitution: the creation of two chambers, a senate in addition to the existing Parliament, wherein the latter would represent individual citizens, and the senate would represent the different sectarian groups. On the other hand, and regardless of that major change, a wide range of necessary adjustments need to be taken into consideration to strengthen democracy, and improve citizen participation in the political process.

# Introduction

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French philosopher Raymond Aron considers electoral laws as the legitimate heirs of the political system. Electoral laws reflect the image of the existing political system.<sup>2</sup> From this perspective, a strong and essential bond between the electoral law and the political system can be seen. In theory the electoral system reflects the advantages and disadvantages of the political system by ensuring and respecting the rights and freedoms of individuals and groups at the collective level. Accordingly, the progressiveness of a political system can be determined through the principles upon which its electoral system is based.<sup>3</sup> A defective electoral system, and therefore, the political system from which it results, will cripple the democratic process, and will expose it to series of disorders pushing those actors who are not represented to seek out other means of expression, outside the parliamentary structure. This central role that electoral laws play in all societies becomes even more significant and even critical in plural societies, where the challenge of finding a proper and functioning democracy is exacerbated by the fact that the polity is made of different groups that all require a political role and share in the decision making process.<sup>4</sup>

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2 Mohammed Al-Majzoub, *The constitutional law and political system*, Halabi legal publications, Lebanon, 2002, p. 385.

3 Mohammed Al-Majzoub, *The constitutional law and political system*, Halabi legal publications, Lebanon, 2002, p. 386.

4 Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty One Countries*, Yale University Press, 1984; see also by the same author, *Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice*, Routledge Chapman & Hall, 2008



Lebanon has followed a parliamentary democratic system as its form of government.<sup>5</sup> The system entails dynamic political participation, however in order to guarantee such a system certain conditions need to be met, which are not always automatically present. According to the Lebanese constitution, the people – through elections – are the source of all powers, and they exercise this power by their representatives in the parliament.<sup>6</sup> The preamble of the constitution along with other articles, namely article 29, set the framework of any Parliamentary elections. The parliamentary election is supposed to provide all the Lebanese citizens with their right to vote, equally, and to form the government they desire. However the parliamentary election is also supposed to provide all the Lebanese sects with their fair share in the political system that is consociational by nature and that relies on a very delicate balance of power to which any disruption can cause serious damages to the whole system and to national peace and security. Article 29 provides the details of the latter task clearly stating that the parliamentary seat should be distributed in a way to ensure equality between Christians and Muslims, proportional representation of the different sects within the seats of each religion and fair representation of the different regions within the seats of every sect. In short, any Lebanese electoral law needs to be customized to guarantee the fair representation of individuals, regions, sects and religions, and all this is before taking into consideration the proper representation of the usual social groups like gender, classes, vulnerable groups, etc.

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5 Paragraph (c) of the preamble of the Lebanese Constitution “Lebanon is a parliamentary democratic republic ...”

6 Article (d) of the preamble of the constitution

## Historical Background

The failure of electoral laws between 1943 and 1972 to ensure such a complex representation can be considered one of the major factors that paved the way for the outbreak of the Lebanese Civil War in 1975. Some Lebanese constituents (mainly the Muslim leaders) felt poorly represented in the Parliament and consequently in the power sharing system, and failing to change the system from within the democratic institutions, they addressed these shortcomings using other, more violent methods to change the balance of power from outside the constitutional institutions. The electoral laws that were supposed to secure proper representation of individuals and communities, and to strengthen social cohesion between individuals and constituencies and their connectedness with public institutions, failed to play this role. Alternatively, electoral laws induced fragmentation and promoted divisions, eventually becoming tools used by those in power to fulfill their political and personal interests.<sup>7</sup>

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7 Farid Khazen El, *tafakuk awasel al dawla (The Dismantling of the State)*, Dar Annahar, Beirut 2002 notably pp. 313-356; Fawaz Traboulsi, *tarikh lubnan al hadith min al imara ila al Taef (The Modern History of Lebanon from the Emirate to the Taef)*, Rayess publishing, Beirut, 2008

The five different electoral laws used during that period drew customized political maps of the regions and constituencies that ensure the consolidation of political power in the hand of the ruling elite rather than the aspirations of citizens and their representation in the decision-making process. Systemic gerrymandering led to the creation of electoral districts and a distribution of seats that eventually secures the victory of a specific political group. The reoccurrence of such unaccounted gerrymandering in every election distorts popular representation and allows certain actors to enjoy political control while weakening the democratic process. This explains the consecutive crises that have plagued Lebanon, and also explains how certain political actors retain their prominent positions. The Parliament which was elected in 1972 remained in place during the war, renewing its mandate consecutively (1976, 1980, 1983, 1984, 1986, 1988, and 1990) as it was impossible to organize elections.<sup>8</sup>

The same parliament, that had lost 31 of its 99 members by natural death or assassination, ratified the Taef Agreement in 1989, which outlined general guidelines on elections and the political system to be in place.<sup>9</sup> The Taef Agreement increased the number of Muslim representatives from 45 to 54 seats, putting Muslims on par with Christian representatives. Post-Taef, the manipulation of the electoral laws and consequently of the consecutive parliaments resulting from them enabled the new regime supported by the Syrian “guardianship” authority to control political life and decision-making in Lebanon. The manipulation of the law of the early elections of 1992 was obvious, as the number of representatives increased

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8 Lahd Khater, *Parliamentary Elections in the Lebanese History*, Dar Lahd Khater, Lebanon 1996; Information International, *The Parliament 1920 – 2000*, in series: *On Lebanon*, no 3, 2003.

9 Mainly through article 24 of the constitution along with other arrangements that were not translated into constitution article like II.A.4. that stipulated that the Mohafaza should be adopted as an electoral district, knowing that it later stipulates in III.A.3 that the borders of administrative regions (Mohafaza and Caza) shall be reviewed with the process of introducing decentralization which is yet to be done.

to 128, clearly contradicting the Taef Agreement; additionally the seats and representatives were distributed to the benefit of the new regime and its local allies, both compliant to the guardianship of the Syrian regime. Three different electoral laws were enacted for three consecutive elections in 1992, 1996 and 2000, and they were characterized by inefficiency and manipulation.<sup>10</sup> The electoral law for the year 2000 was comparatively the worst from many perspectives; from the creation of the ballots to the division of electoral districts, monitoring and oversight.<sup>11</sup> In addition, “the Global Information Network” has confirmed the corruption in Lebanon is the result of corruption within the political class, which was obvious in the results of the elections, and it estimated that non-governmental expenses during the electoral process ranged between 160 and 240 million USD.<sup>12</sup> The 2000 electoral law was used again for the 2005 elections because the parties failed to agree on a new one. As for the election law for the 2009 elections, it was agreed upon after the military clashes in Beirut in May 2008 and the different Lebanese leaders met in Qatar and came up with the Doha agreement. The 2009 law was practically a return to the 1960 law with minor adjustments on the districts and the technical process which made it a step forward from the 2000/2005 law but far from being a good one.

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10 Mohammed Al-Majzoub, *The constitutional law and political system*, Halabi legal publications, Lebanon, 2002, p. 399; The law of 1996 for example, was appealed before the Constitutional Council by some of the opposing representatives, but the Parliament quickly met in secrecy and adopted an appealed law under the slogan of “Exceptionally, for one time only”. In addition, 17 losing candidates appealed to the Constitutional Council challenging the results of the elections presenting evidences of violations, manipulations, bribery and mis-counting. Four of these appeals were accepted.

11 See *Safir* newspaper, 31 August, 2000; Ghassan Matar, *El Lewaa* newspaper, 17 January, 1999 for Prime Minister Salim el-Hoss’ opinion whose government should have enacted the law; *Annahar* newspaper, 21 September 2000 for the opinion of the Council of Maronite Bishops; *Annahar* newspaper, 11 December, 2001 for Patriarch Mar Nasrallah Boutros Sfeir

12 The report was published in *Annahar* newspaper, 23 January, 2001

# Constitutional and Legal Framework

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What adds to the complexity of the situation in Lebanon is the nature of the Lebanese parliamentary system which is designed according to a consociational system rather than a simple democracy. This consociational system aims to simultaneously provide proper representation time for both individual citizens and the different socio-religious groups which constitute Lebanese society (the eighteen sects). This dual representation is often used by pluralistic countries in order to achieve a rights balance between individuals and groups. However, in Lebanon, these two representative levels were merged in a single chamber (since the abolition of the Senate in 1927), while most other countries that have adopted such a system house them in two separate chambers. The merge led to a discrepancy in the role of the electoral system, which is supposed to promote the Lebanese consociational system and provide electoral duality, a task that remains impossible within the current set up. The parliamentary system itself became a victim of the demographic composition of the country, as Lebanese society is composed of eighteen different confessions, none of which constitute a majority and all of whom seek to manage their own affairs and participate in political decision-making.<sup>13</sup> The Lebanese system seeks to ensure a balance among these religious groups by determining a fixed number of parliamentary seats and positions for each. The Constitution, formulated after the Taef Agreement, stipulates that parliamentary seats should continue to be distributed according to the

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13 Al Hindy E. 2009, *Self Determination for minorities: An Arab Perspective*, unpublished PhD Thesis, University of Sydney, p. 166.

confessional political system (Art 24) until confessionalism is abolished.<sup>14</sup> The Constitution (Art. 22) also stipulates that upon the election of the first parliament outside the sectarian limitations and distribution of seats,

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14 The Lebanese Constitution, Article 24: “The parliament is composed of elected representatives whose number and method of electing them should be in accordance with the election laws in force. Until the parliament enacts an election law that lies outside the sectarian limitation, the parliamentary seats will be distributed according to the following rules: a- Equally between Christians and Muslims. b- Proportionally between the sects of the two categories. c- Proportionally between regions. The vacant parliamentary seats at the date of publication of this law and the seats added in the elections law are, exceptionally, even for once, filled by appointment, all at once, with a two-thirds majority by the government of national reconciliation, in application of the equality between Christians and Muslims, according to the Charter of National Reconciliation. The elections law shall determine the details of the application of this article.”

a Senate should be formed. However, the lack of agreement over such an electoral law and over the timeline and sequence of these steps has allowed the different political groups to evade the obligations of the Constitution.

On the other hand, the preamble of the Lebanese Constitution specifies, in paragraph (B), that Lebanon is committed to the Universal Declaration of Human Rights considers them to be an obligation of the state to embody its principles in all fields without exception.<sup>15</sup> Therefore, the participation in the management/government of the country's political affairs is considered to be a fundamental human right for all citizens.<sup>16</sup>

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15 The Lebanese Constitution, preamble, article (b): "Lebanon is of Arab identity and belonging, and is a founding and active member in the Arab League and is committed to its charters. Lebanon is also a founding and active member in the United Nations Organization and is committed to its charters and the Universal Declaration of Human Rights and the state embodies these principles in all of the rights and regions without exception."

16 Universal Declaration of Human Rights, Article 21 (1).

Former Secretary-General of the United Nations, Boutros Boutros Ghali affirmed that, elections are “an essential step on the road to the democratization of societies and gaining the individual’s right to participate in the governance of his country as declared in the main international instruments on human rights”.<sup>17</sup> Accordingly, the electoral process and its democratic meanings and norms become an indispensable step in embodying the right to participate in governance and decision-making and a prerequisite for the protection of human rights. The Constitution also requires the incorporation of other essential rights and freedoms necessary to the provision of dynamic participation. Among these the constitution enumerates the freedom of opinion, expression and association, and the right of peaceful assembly as well as the right to hold public office.<sup>18</sup>

In addition to the above mentioned rights, enshrined in the constitution, the research identified several principles and key factors that are also needed to secure proper participation, such as non-discrimination on the basis of race, religion or political opinion, or any other form of discrimination, and to be free from intimidation. In order to emphasize the inalienability of rights and its importance in the proceedings of democratic elections, the United Nations General Assembly confirmed that the participation of every individual in the governance of his country “is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights”.<sup>19</sup> Lebanon’s commitment to the UN Charter and the UN Resolutions makes it also confined to the application of these principles along the ones directly mentioned in the constitution.

Below, the paper will look at each of the key elements identified and measure its applicability in the different Lebanese Electoral Laws used so far and the different suggestion currently presented.

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17 Report of the UN Secretary-General, A/46/609, and Corr.1, para 76.

18 Lebanese Constitution, articles 8,12,13.

19 General Assembly resolution 46/137 dated 17 December 1991, paragraph 3.



# Proper Representation

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Perhaps the most debatable issue is related to the adoption of an electoral system and the proper division of electoral districts/constituency that can provide the best representation. However, as mentioned before, the problem is that proper representation in a pluralistic society, like that of Lebanon, does not only encompass the representation of individual citizens and parties, but also the groups that constitute Lebanese society, i.e. the confessions that constitute an intermediate identity between the individual and the national. According to the Constitution and the National Pact, these confessions play an integral role in the Lebanese political fabric, and therefore the electoral law has to reflect this reality. However, the Lebanese system has become a captive of the altered demographics over the years, while the electoral ratio remained fixed between 1926 and 1989. This fixed ratio was one of the reasons that led to the civil war. Today, in spite of the amendment done in the Taef, the ratios specified by the Constitution still don't reflect the demographic reality of the country, specifically the equal ratio between the Christian and Muslim representatives does not correspond to the social reality, as the demographic ratio is actually 60% - 40% in favor of Muslims.<sup>20</sup> While Lebanese political leaders insist on implementing equal repartition between Muslims and Christians this raises a dual problem: the proper representation of each sect in the seats reserved for it and that are supposed to reflect its reality and public opinion, and on the other hand the provision of justice and equality among individual citizens, with equality among all citizens and equality in the weight of their votes.

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20 In the absence of any official comprehensive census in Lebanon since 1932, the ratios remain based on the estimations and expectations, while the percentage of 40 to 60 is calculated on the basis of the numbers of voters in the lists of write-offs (electoral lists) as they were in the elections of 2009 and therefore they are closer to the current situation, but they exclude those who aren't registered and those who are under 21 years (voting age).

In fact, proper representation is based on several factors, chief among them is the adopted electoral system, as well as the division of electoral districts, respecting the right to run for elections, the formation of coalitions unhindered by pressure, freedoms during the electoral campaign and providing equal opportunities to all candidates.

In that regard, the study will begin by analyzing and exploring the principles and standards required to ensure a proper electoral system. The international standards do not indicate the presence of an electoral system (majoritarian, proportional or mixed) which it considers to be universally better; however the standards support that the selection of an electoral system depend on several factors, such as the historical developments, political developments, cultural developments and the preponderance of certain groups or religious beliefs in each country. The adopted system must result in a parliament that represents all the parties without exception and provides equality between citizens before the law, as democratic parliamentary elections requires an electoral law that satisfies the desires of voters and their choice of candidates who truly represent them in the Parliament. This system can be proportional, majoritarian or a combination of both.<sup>21</sup> The majoritarian system is known to provide the best results if applied in small electoral districts (even single members districts), as it is applied in many countries such as Britain, Australia and France. On the other hand, the proportional system is known to provide good results with larger districts, where smaller groups also acquire a parliamentary voice by gathering their voters dispersed all around in small numbers.

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21 The universal values and obligations concerning the right to democratic elections: A Practical Guide to Democratic Elections - The Best Practices, the Office for Democratic Institutions and Human Rights, 2002, p. 8.

The proportional system includes several modes of application; closed lists, open lists, preferential vote, and the arrangement of names on a list. In Lebanon, only one system has been adopted till now. In all previous electoral laws the majoritarian system was used in large and/or medium-sized electoral districts, which runs contrary to proper representation and scientific reasoning. However, the ongoing current debate has increased the possibility of adopting a proportional or a mixed system. The draft law Interior Minister Marwan Charbel proposed in 2011<sup>22</sup>, called for the adoption of the principle of proportional representation with complete open lists. Proportionality according to Charbel, could guarantee electoral seats for all lists, and not only the ones which obtain 51 percent of the total vote, as the current law would have,<sup>23</sup> while the draft law of the Boutros Commission<sup>24</sup> called for a mixed electoral system that combines both proportional (for the election of 51 representatives) and majoritarian systems (for the election of 77 representatives).

The critics of the majoritarian system believe that it marginalizes large groups of the Lebanese community which are unable to form a majority in most or any of the electoral districts, which would have serious consequences with respect to the proper representation of some sects. In addition, attempting to use any single member electoral districts would be very difficult (drawing the borders of each district) and would damage even more the proper representation of sects, namely in religiously mixed regions. While the critics of the proportional system believe that the system definitely improves individual representation, it comes however at the

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22 Marwan Charbel, Draft Parliamentary Elections Law for the Elections of 2013, Ministry of Interior and Municipalities, September 2011

23 The Lebanese Ministry of Interior, Bill of Parliamentary Elections for 2013, the Lebanese Republic, 2012, p. 43.

24 The Boutros Commission is the commonly used name for the committee of experts that was formed in 2005 and was commissioned to find the most suitable Electoral Law for Lebanon. After long consultation and after receiving and studying hundreds of proposals, the committee presented its findings to the council of Ministers.

expense of proper confessional representation. Another major concern with the proportional system is the problematic formation of electoral lists in the absence of proper political parties.<sup>25</sup> Moreover, the proportional system could lead to further fragmentation of the Lebanese polity and this will render the decision making process in the Parliament very difficult and the formation of coherent governments an almost impossible task.

The human rights perspective does not favor one system over another, but it believes the adoption of any electoral system must provide dynamic participation to all individual citizens. In that regard, several principles are in place such as the logical division of electoral districts, as well as a system that guarantees representation for all in the form of parliamentary seats.

Concerning the **division of the electoral districts**, it has a significant impact on the formation of the electorate and therefore on the results of the elections as a whole. By considering divisions in some countries, we find that the majoritarian electoral system is often associated with small electoral districts, with a preference for individual districts. On the other hand the proportional system is usually associated with large electoral districts that enable smaller parties to gather the votes of their supporters and guarantee representation in this way. So far, Lebanon has adopted variously sized electoral districts including a Caza (the main administrative unit) or a Mohafaza (Governorate that includes many Cazas). But in some instances electoral laws have set districts that are smaller than a Caza (Caza of Sidon in the law of 2000); districts that combine two governorates (Nabatieh and the South in the elections of 1992 and 1996) or two Cazas (West-Bekaa & Rachaya or Marjeyoun & Hasbaya in most electoral laws) and even districts that combine a Caza to half of another (separating Minieh from Donniyeh and combining it with Tripoli).

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25 Chahine Ghais, *Electoral Laws: A Mold for which Product?*, in the Conference on: *Renewing the Lebanese system in light of Lebanon's mission and role in the region*, Notre Dame University Press, May 2012

The divisions that are most probable in the current debate seem to be medium-sized electoral districts (smaller than a governorate and larger than a Caza) if the proportional system is adopted, or small electoral districts (a Caza or smaller, in the electoral districts that include more than four seats) if the majoritarian system continues. The major challenge ahead is to provide equality between citizens, and fairness in the vote count. Currently a certain voter can give his vote for eleven members of Parliament (Baalbek-Hermel district), while another, in a different district can give his vote for only two (Bsharre or Batroun). Accordingly, one candidate may require 110,000 votes to be elected (in the former district) while another may be elected with 18,000 votes (in the latter districts). In that regard, whichever method is used to divide the electoral districts, these inequalities should be taken into consideration. Divisions cannot be made solely on a geographical basis due to uneven population distribution; the electoral districts should be divided based on electoral criteria, taking into consideration the number of voters and eventually the number of representatives for each district.

There is another problem concerning the distribution of parliamentary seats, set in 1990 that involved a lot of political manipulation. Since the electoral law is assigned the duty to apply the guidelines stipulated in Article 24 in the Constitution, every new electoral law (and every call for elections even if there was not an amendment to the law) is then required to re-asses the distribution of the seats according to these principles.<sup>26</sup> By a simple calculation based on the numbers of voters in 2009, it appears that the numbers and the distribution of the representatives in the law no longer comply with reality. For example, based on these principles, Orthodox voters must obtain twelve representative seats not fourteen,

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26 The Parliamentary seats will be distributed according to the following rules: A- Equally between Christians and Muslims. B- Proportionally between the sects. C- Proportionally between regions.

while the minorities' voters should be granted two seats instead of one. On the other hand, the Sunnis and Shiites are supposed to obtain 28 seats instead of 27, the Druze seven seats instead of eight, and one for the Alawites instead of two. These seats should then according to the same article be distributed proportionally to the "regions" that host the constituents of each sect respectively. Unfortunately the constitution does not specify what a "region" is. So far (since the Taef accord) "region" has been understood as the Caza and the seats have been allocated to each Caza even when the electoral district was different. However, since the definition aims at better electoral representation, the logical interpretation of a "region" should be the electoral district.<sup>27</sup> Consequently the allocation of seats to the "regions" should not be fixed to the Caza as it is today, completely disregarding the electoral district, on the contrary, seats should be re-allocated with every electoral law according to districts adopted and the number of voters from each sect in these districts. A simulation<sup>28</sup> of this shows that the difference is not very big, however it clearly affects the overall results of a certain electoral process.

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27 Al-Hindy, E 2009, *Self Determination for Minorities: An Arab Perspective*, Unpublished PhD Thesis, University of Sydney, p.202-206. Also see: Information International 2003, *Majlis al nuwab 1920 – 2000 (Lebanese Parliament)*, p. 40-42

28 A simulation done on the numbers and districts of the 1996 election (without the above mentioned correction in the number of allocated seats for each sect) shows that based on the number of voters of each sect in each of the districts, the following sample adjustments should have been done: Maronite (1 seat removed from West Bekaa and added to the South); 1 seat removed from Keserwan and added to Jbeil); Orthodox (1 seat removed from Metn and added to Baabda); Sunni (1 seat removed from Baablbek and added to the North); Shiite (1 seat removed from Baabda and another from Jbeil and 2 added to the South); Druze (1 seat removed from Beirut and added to Aley)

Concerning the formation of the electorate (electoral constituency), the reality that the majority of the Lebanese districts encompass various confessions, adds another problem and complexity as citizens from various confessions unite to form one electorate for the different seats allocated for the different sects. All the voters from various confessions in a specific electoral district choose the representative who is supposed to represent a specific confession in a specific Caza. For example the 505,069 voters of the South-Nabatiye electoral district out of which 98% are not Druze and 87% are not from Hasbaya get to choose the candidate who will win the seat reserved for the Druze in Hasbaya. This means that the elected representative won't be chosen by the people he is supposed to represent and that the candidate, in turn, will care about satisfying the voters that elected him, instead of caring about the people he is supposed to represent and carry their voice, which leads to improper representation of the minority populations in the different electoral districts. This inconsistency in the electoral constituency has mainly affected Christians, and due to different types and means of manipulation, they have become the minority (smaller number of voters) among the electoral constituency in different districts. Consequently the equal division of seats did not serve for better representation of Christians but naturally led to the control of Christian seats by Muslim voters forming the majorities in the respective districts. Out of 64 Christian MPs the Christians have chosen at best 48 of their representatives, which points to a significant flaw in the national balance, enshrined by the National Pact. In a consociational system, the share of every group in the power sharing should actually represent this group otherwise the whole system will malfunction and it will defeat the purpose of its own existence.

This electoral abnormality has pushed several analysts to call for separating the constituents of the electorates according to their religious affiliation, allowing each confession to pick only its representatives in the electoral districts; a proposal that came to be known as “The Orthodox Law”.<sup>29</sup> Most of the Christian political leaders have supported this option while it faced a wide range of discontent and refusal from most of the Muslim and some of the Christian leaders. The argument against such a law is that it segregated the Lebanese people on not only religious but even sectarian bases and it damages, according to its opponents the “raison d’être” of Lebanon which is the peaceful common existence of all its components. Others claimed that it violates section (i) of the preamble of the constitution that states: “...the people may not be segregated, separated or divided on any bases...” and that instead of enshrining sectarianism further we need to search for ways to make voters and the weight of individual votes more equal. The “one person, one vote” system was suggested to provide real equality among voters and at the same time limit (but not cancel) the control of the voters of one sect over the seats of the other.<sup>30</sup>

It is safe to say that both groups have very valid arguments and address serious problems: A power sharing system without proper representation loses all its significance and proper functioning; while segregation like the one suggested as a solution may actually cause more problems and threaten the Lebanese national unity. Thus, as usual all the parties now are searching for a middle-ground electoral law (system and districts) that significantly improves the sectarian representation (mainly the Christian representation) and allows every sect to choose most of its deputies, minimizing the influence of other groups over this choice as much as

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29 The reason for this name is that the first official proposal of such kind was proposed by a group called “The Orthodox Gathering”.

30 Aline Farah, Baroud wa Saad yashrahan nizam al sawt al wahed (Baroud & Saad explain the one person one vote system), An Nahar Newspaper, 9 May 2013



possible, but without resorting to complete separation of the electorates. This search proved to be very difficult and the inability of the different political parties to reach consent, have lead, along with the deteriorating security, to the postponement of the elections.

This paper argues that finding such a law is simply impossible, because of the demographic reality in Lebanon and the fact that the power sharing system does not reflect this demographic reality. The Christians are 35-40% of the population and decreasing steadily<sup>31</sup> but their share in the political system and parliamentary seats remains 50%. Consequently, those hoping to improve the electoral law have two choices, either aiming at equality among sects (regardless of their numbers) giving the Christian vote a heavier weight than the Muslim one, which is a serious damage to the equality of all citizens before the law and to human rights in general; or aiming at the equality of citizens and the weight of their votes, which will lead with any electoral law no matter how ingenious it is, whilst seriously damaging the proper representations of sects. The reason for this dilemma is simply trying to do what no other pluralistic country does, which is mixing the representation of citizens and political parties together with the representation of sects in the same chamber of parliament.

As for the search for a possible solution for this dilemma, and after taking a look at best practices from around the world, especially from pluralistic countries, it can be clearly seen that the only way to reconcile the two forms of representation and do justice for each of them, not at the expense of the other, is to separate the two and define the aim of each in detail. The separation, the creation of the Senate, and its jurisdiction are a very interesting and challenging endeavor that unfortunately will have to be kept here to its minimal guidelines.

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31 Information International 2008, Statistics on Voters Numbers: The largest increases are in Akkar and Doniye, in the Alawites and Sunnis, An Nahar newspaper, No 23424, 26 July, p.3

Such a separation and the creation of a Senate was accepted and adopted in the Taef Agreement and became an integral part of the 1989 Constitution<sup>32</sup> as it was previously contained in the 1926 Constitution<sup>33</sup>. However the debate is concerning the timing of the creation of the Senate, and whether this creation should be after the election of a Parliament that isn't confined by the confessional constraints (as the parliament implies); simultaneously electing the two Chambers; or even forming the Senate first and negotiating its jurisdictions in order to reassure the confessions concerning their rights and privileges. If the Senate is created in order to assure the different sects and ease their fears, than it is necessary to have a parliament that represents the sects, creates it and regulates its work, and not a parliament that is outside confessional constraints and consequently may deviate from the spirit of confessional co-existence and equal power sharing. It is expected that for the Senate, every confession will elect its representatives with complete independence from the rest of the confessions, while it will join the other confessions in a joint electorate in order to elect deputies. This proposal seems to be the most appropriate one and adopted by most pluralistic countries and accordingly it separates representation of the individual citizens and regions from representation of the groups/sects, so that none of them dominates the other. This separation, practically, enables legislators to use any electoral system or tools to make both electoral processes much more democratic and provide proper representation, for example by using large districts with a proportional system for the election of deputies which will help develop political parties, or a majoritarian system with single member districts to better represent the regions.

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32 Was cancelled by the constitutional law issued on 17/10/1927 and was reenacted in an amended form by the constitutional law issued on 21/9/1990.

33 Article 22 of the Constitution stipulates the following: "When the first Parliament is chosen on national basis and not a confessional one, a Senate should be formed, in which all the spiritual families are represented and its powers are limited only to the fundamental issues of the nation".

# Other Critical Dimensions

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## Transparency

In order to guarantee the right of citizens to hold their representatives accountable, legislative elections should meet international standards, mainly by having frequent and periodic elections in addition to maintaining the integrity and transparency of the electoral process. However the mandate of each Parliament should be relatively fair, as the period between two elections represents the work of MPs in issuing the legislations that promote the political platform upon which they were elected. It is also of prime importance to enable the MP to have a decent amount of time to meet the expectations of the electorate. In addition the timeframe should also be measured in a way not to disable or suspend the role of the legislative power by the turnover of elections.<sup>34</sup>

Based on the best practices and the methods adopted from around the world,<sup>35</sup> different standards are put in place to ensure elections are transparent, among them is the creation of an independent electoral body/committee to manage and monitor elections. This body can be composed of government or independent members. Some of the functions of that electoral body would also be to train whoever is responsible for the electoral process. Additionally other functions that are referred to the electoral committee include: the rehabilitation of the polling stations, informing the voters of the elections and their duties, registering the candidates, preparing the electoral lists, overseeing the

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34 Towards the Development of the International Standards for a Legislative Democracy, the National Democratic Institute for International Affairs, 2007, p. 4.

35 The number of countries that adopted an independent body to manage elections is 122 countries while 54 countries adopted a governmental body and 28 countries adopted a mixed body, according to "The Training Manual on Elections" issued by the Lebanese Association for Democratic Elections 2011, p. 20.

electoral process, monitoring the vote counts, determining the winners, and finally receiving appeals and complaints. The independence of the body from any form of external interference and influence is a fundamental prerequisite for democratic elections regardless of the method used in forming the body.<sup>36</sup>

In the electoral law of 2008 (that is still valid) former Interior Minister Ziyad Baroud failed to convince the parliament of the necessity of creating a fully independent committee. The law passed in 9/10/2008 adopted the opinion that a completely independent body won't be able to administer the different aspects of the electoral process, including the organizational, security and administrative aspects and created instead a committee "linked to the interior minister", and that works under his "supervision", he can also attend and preside over its meetings whenever he wishes, without participating in voting".<sup>37</sup> According to the same law (Art. 15-16) the committee should consist of neutral individuals not connected to any candidate. The duties of that committee were specified restrictively (Art. 19) to supervise the media campaigning and financial spending of the candidates only, which remained far from managing the electoral process altogether. Based on this law a committee was appointed by the Council of Ministers on 27 May 2013. Moreover, the draft law proposed by Minister Marwan Charbel follows the same logic and kept the committee far from administering the process although it gave the committee a few more powers like giving permissions for non-government observers and disseminating "electoral education".<sup>38</sup> In both laws, the committee is an

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36 The universal values and obligations concerning the right to democratic elections: A Practical Guide to Democratic Elections - The Best Practices, the Office for Democratic Institutions and Human Rights, 2002, p. 9.

37 Law 25, 9 October 2008, Chapter 3, Article 11

38 Marwan Charbel, Draft parliamentary Elections Law for the Elections of 2013, Ministry of Interior and Municipalities, September 2011

ad-hoc committee that has a limited time appointment that finishes a few months after the parliamentary elections, and is not a standing committee that can provide its members true independence and allow them to supervise any other electoral activity (regional, municipal, etc.).

Thus the “supervisory commission” has failed so far to get proper independence and proper jurisdiction to “administer the elections”. It has been linked to the minister of interior, working under his supervision and reporting to him on a limited number of issues namely media policy and electoral expenses policy. As a result the interior ministry continues to be the main organizer and administrator of elections, with a clear inability to secure independent election management.

## **The Right to Run for Elections**

Concerning the right to run for the parliamentary elections, there are always some conditions that determine the eligibility to present one’s candidacy. It is necessary, according to international standards, that these conditions be objective and logical, without marginalizing anyone or denying his/her right to participate, or to restrict candidacies on the basis of religion, gender, race or physical disability. These values coincide with the principles of equality and non-discrimination, which constitute the core of any democratic state. The International Covenant on Civil and Political Rights (ICCPR) stipulates that all individuals have the right to benefit from public services and participate in the management of public affairs, whether this is direct or through their representatives. It is natural that there are general restrictions on the right to run for election, related to age, nationality or place of residence<sup>39</sup> but the reality in Lebanon is different.

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39 Towards the Development of the International Standards for a Legislative Democracy, the National Democratic Institute for International Affairs, 2007, p. 5.

The current electoral law follows the trend set in previous laws, by prohibiting certain individuals from presenting their candidacy. The law excludes all the top-ranking government employees (first and second grade), all judges, all presidents of municipal councils, and all security personnel from various categories (such as the military, public security, state security and customs), who are still in service during the electoral period, from running, unless they resign or retire a certain period before the election's date, that can vary between six months and two years.<sup>40</sup> The article also excludes those who are less than twenty-five years of age, those who gained Lebanese nationality less than ten years before the date of the elections, and those who have been convicted and sentenced with criminal charges. The excuses given for preventing these groups from enjoying their right to run are consecutively: to prevent them from taking advantage of their presence in the public sector and accordingly to achieve political interests, or to ensure that the candidate enjoys complete intellectual awareness and maturity, and finally to ensure the existence of the national sense of belonging.<sup>41</sup>

On the other hand, some more controversial exclusions have been suggested, such as one requiring the candidate to be educated and/or to hold a university degree.<sup>42</sup> While some consider this exclusion to be necessary to enable the elected deputy to read, discuss and formulate laws, others consider it discriminatory, as an uneducated individual may be deemed to be a better representative, and therefore freedom to run is confined.

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40 This has become more problematic in Lebanon since the electoral law and the election dates may not be known till only few days before the election.

41 Articles 7 \ 8 \ 9 \ 10, Law no. 25 of the electoral law, the Republic of Lebanon, 2008

42 This condition was suggested in a draft law for municipality elections, prepared by the ministry of interior in 2010 and was in debate whether it could be applied in parliamentary elections as well. The suggestion never made it into any officially adopted draft laws.

A fundamental right related to such exclusion is granting everybody who was denied the right to present his candidacy to appeal the decision before an independent judicial or electoral board; considering this appeal must be performed within an acceptable time limit, in order to give the candidate, if his appeal was accepted, enough time to prepare for his electoral campaign. Moreover, another related right is to ensure a candidate's protection from external pressures to join one list or the other or to withdraw their candidacy.<sup>43</sup> Furthermore, there could be some provisions that encourage those who can run but are hesitant, such as marginalized groups. Many countries have taken certain measures to ensure the participation of such groups, like women and minorities, who have been deprived from their rights to participate in the political life. The most important of these measures is adopting a certain quota as it will be discussed below in detail.

## Suffrage

Moving to the voters' rights issue, voting is a main pillar of the democratic system and thus it should be defined who has the right to cast a vote. Such a definition should be set according to clearly outlined conditions so that everyone knows what they are. Universal and direct suffrage is considered to be the backbone of any representative democracy and the source of legitimacy of any parliament. This principle is found in the Warsaw Declaration of 2000, which was signed by over 100 countries, stating that: "The will of the people shall be the basis of the authority of government, as expressed by exercise of the right and civic duties of citizens to choose their representatives through regular, free and fair elections with universal and equal suffrage and on the same footing." In fact, electing a representative has become very important, not only as

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43 The European Union Handbook on Election Observation, the European Union, 2008, p. 46.

one of the governance principles, but also as a fundamental civil right.<sup>44</sup> Usually, there are four main standards to determine who has the right of suffrage: Age, nationality, residency and legal eligibility. The right is commonly denied to persons with mental disabilities or those convicted of a felony or a crime.

With respect to **age**, international standards state that after a person has reached the age of 18, he/she may enjoy all civil and political rights.<sup>45</sup> However, there is a general consent over the possibility of increasing the age. The Netherlands for instance, reduced the legal age from 23 to 21 years old on a primary phase, and then to 18 years old. In Lebanon, the eligible age according to article 21 of the constitution is still 21 years, and there has been a debate to reduce it to 18. This motion was provided for in the draft law prepared by Boutros' commission, however, this motion has been halted by the concerns that it will further demographic imbalances. By increasing the age group from 18 to 21, the difference between the number of eligible Muslims and Christians voters would increase, ensuing a higher pressure on proper representation.<sup>46</sup> To reduce such an imbalance, there was a tendency to link the lowering of the suffrage age to providing non-resident Lebanese voters with the right and ability to vote. Such an arrangement is very controversial and would be diminishing international standards of human rights, as rights cannot be compromised; every citizen should have the same rights and duties.

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44 Towards the development of the international standards of legislative democracy, the National Democratic Institute for Foreign affairs 2007 p. 3.

45 The European Union Handbook on Election Observation, European Union, 2008, p. 41.

46 Dwaihy, Yussef C. 2008, The Effect of Lowering the Suffrage Age, An Nahar newspaper, no 23388, 20 June



Regarding **residency**, the Lebanese state has not done its part in providing voting mechanisms for non-resident Lebanese, although their names are listed automatically on the voters list. This is a key point, as the non-resident Lebanese contribute significantly to Lebanon's development and economy, however, they cannot live in Lebanon due to hard living conditions, or lack of employment and economic opportunities.<sup>47</sup> Consequently, the Lebanese state should not differentiate between its citizens or deprive them from their right to choose their representatives only because their work and life conditions do not allow them to be in Lebanon during the day of the elections. The law issued in 2008 included a "mechanism" that is supposed to regulate the election of non-residents and requested the ministries of interior and foreign affairs to start working immediately to apply the mechanism and make the election possible. Unfortunately this "mechanism" had many setbacks. First it was not to be applied in the 2009 elections but the election that follows (which still did not happen). Second, the mechanism included a vague condition that is very difficult to have which is to have a minimum of 200 registered voters in any specific electoral district if it is to be adopted as a voting station in any foreign city; this condition was actually satisfied in only a handful of cities around the world. Third and most importantly, instead of the immediate action required, very little was done by the Foreign Ministry for over many years and the late efforts were mainly driven by civil society and political parties and not by the ministry itself. This effort was too little, too late as it included less than 10,000 voters out of the estimated 800,000 potential voters.<sup>48 49</sup>

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47 114 countries provide voting mechanisms to their non-resident citizens, according to "the reforms booklet", the civil campaign for the electoral reform, p.24

48 Ministry of Interior, "Together for an Electoral Law for all Citizens", Conference Proceedings, 2010; Roxellina Najem, Iktira3 al mightaribin (Elections of Expatriates), Al Mughtareb Magazine, Summer 2013

49 The draft law proposed by Minister Charbel adopted the same mechanism and tried to clarify some of its ambiguities

On the other hand, another issue related to residency comes up. There have been suggestions to allow citizens to vote at their place of residence without having to make the physical move to their electoral district (where they are registered). This motion would facilitate voter affairs and does not harm the suffrage process, but it further complicates the vote count process. Moreover, the majority of Lebanese do not live in their villages; hence, casting their votes in their place of residence would be an additional reason for them to abandon their villages.

Concerning the suffrage of people with mental disabilities, many countries do not allow the candidacy or suffrage of people with special mental needs in their electoral laws. Nevertheless, this raises numerous discussions on the fairness of such arrangements. On the one hand, denying that right is a patent infringement to Article 29 of the International Convention on the Persons with Disabilities. The European Court of Human Rights confirmed these rights after issuing a court decision to annul the judgment which denied political rights to a Hungarian citizen with psychological problems, restoring his electoral rights.<sup>50</sup> On the other hand, some consider that the persons with mental disabilities are not capable of making such political decisions and that the evaluation of their surrounding environment influences them. This matter remains controversial. Such decisions are supposed to be regulated with a meticulous and transparent approach, not automatically and comprehensively. With respect to people with physical disabilities, they should not in any way be denied their right to vote. Therefore it is the duty of the electoral body and the government to provide all the necessary facilitations, such as equipping poll stations to be accessible and accommodating, taking into consideration the needs of people with disabilities and easing their movement and the practice of their rights.<sup>51</sup>

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50 Alajos Kiss vs Hungary, Netherlands Institute of Human Rights

51 The European Union Handbook on election observation, European Union, 2008, p 70.

As for the newly naturalized persons, electoral laws vary in defining the time limit before being able to participate in the electoral process. The electoral law adopted in the year 2000, granted them the right of suffrage straight after nationality is granted, while the law of 2008 fixed the probation time to ten years. This could be considered as an offence to the principle of equality and discrimination before law. It is understandable that the Lebanese nationality was given to many “undeserving” persons, but committing one mistake does not justify correcting it with another; knowing that a foreign woman who acquires Lebanese citizenship by marrying a Lebanese man, immediately enjoys the right of suffrage without any probation period.

Lastly, another unjustified exception also limits the capability of suffrage: Denying military personnel and the pre-trial detainees their right to vote. This contradicts the essence of equality before the law in matters of rights and duties. A pre-trial detainee should be treated as innocent, entitled to his full rights, until a ruling is pronounced. The state should bear the burden of the trials’ delay and the growing number of prisoners. As for military personnel who serve the nation and protect it, it is unjustified to exclude them from the political process. The pretext of not to involve them in politics is a poor excuse, as the military individual is a citizen who has his political and national opinion that is equal to any other citizen, an opinion that is already reflected through his family anyway.

On the other hand, identity cards should be deemed an adequate document for casting votes, without resorting to issuing special permissions or electoral cards that could be costly and vulnerable to errors or manipulation. Another point which should be taken into consideration is to grant any voter who has been excluded, or denied his right to cast his/her vote on elections day (for any technical reason), the right of immediate appeal and an accelerated decision to correct the situation.<sup>52</sup>

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52 The European Union Handbook on Election Observation, European Union, 2008, p. 75

Furthermore, the right of the people to vote, choose their representative and participate in governing themselves, has been seriously violated every time the parliament renewed for itself, or amended the constitution to extend a presidential term, and notably in the latest postponement of the parliamentary general elections and extension of the term of the current parliament for 17 months.

## **Marginalized Groups: Women Quota**

Moving to the issue of the representation of the marginalized groups, the focus will be on two main groups: minorities and women. Women often face barriers and challenges which results in denial of fair and an effective representation due to bias imposed between men and women. There are many acknowledged and adopted international covenants<sup>53</sup> that call for the necessity of stopping the discrimination in representation. All countries are called to work for establishing an electoral system that fulfills full equality between men and women.<sup>54</sup> Most of the time, the practiced method to improve women representation is to introduce a quota. It is based on the principle of allocating a specific percentage of deputies to women in any electoral list of candidates or in the resulting seats. Such a practice could be legitimized into a law and hold accountable whoever does not abide by it with strict sanctions.<sup>55</sup>

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- 53 These include but are not restricted to: the Charter of the United Nations, the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Discrimination Against Women
- 54 The international values and commitments regarding the right of democratic elections: practical guidelines for democratic elections- the best practices, Office for Democratic Institution and Human Rights, 2002, p. 12.
- 55 Towards the development of the international standards of the legislative democracy, the National Democratic Institute for Foreign affairs, 2007, p. 7

In Belgium, a law was promulgated equating the number of women and men candidates in the electoral lists. Moreover, it is not permitted for any two persons of the same gender to fall in the first two places of any list.<sup>56</sup> In other countries, women were allocated a specific number of seats in the parliament and not in the electoral lists. A draft prepared by the Ministry of Interior in Lebanon suggests that each electoral list must include a percentage of members “from the other sex” which does not fall under 30%, in addition to adopting a list that alternated successively candidates from different genders.<sup>57</sup> The counter argument for the quota policy argues that the allocation of a number of seats in nomination or in the results might be in itself diminishing to women’s rights and as such considering the women as minors who need an exceptional treatment because without it, they will not be able to access the parliamentary forum. Such a perspective is true and understandable; therefore the quota is often applied exceptionally and temporarily for a specific number of electoral terms and is to be canceled after that. Lebanese society seems to need such a procedure as the number of women who were elected to parliament does not reflect their active role in the Lebanese society, especially if we added to that the fact that most of them were elected to parliament because of their familial connections.

## **Marginalized Groups: Minorities**

Concerning the minorities, article 25 of the ICCPR states that: “[e]very citizen shall have the right and the opportunity [...]to take part in the conduct of public affairs, directly or through freely chosen representatives;[t]o 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; [t]

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56 The gender quota and its implementation in the electoral systems in Europe, The European Parliament, 2008, p. 42

57 The Lebanese Ministry of Interior, the draft law of the parliament elections 2013, The Lebanese Republic, 2012, P. 24

o have access, on general terms of equality, to public service in his country.”<sup>58</sup> Special procedures should be adapted to prompt and activate the participation of everyone in the political life, at least for temporary periods. Different strategies or laws should be adopted to the demographic change that takes place between each election.<sup>59</sup> Any electoral system should bear in mind the fair representation of all minorities. Hence, there is an urgent need for a detailed census to determine the demographics of the minorities, their geographic distribution and their percentages. It is important to conclude such designations at every electoral cycle and to consequently make a plan compatible with the new changes in order to guarantee equity and equality.

The rights of the minorities include the right of acknowledgement, the right to embrace and practice whichever traditions or religion they believe in and the right to participate in the political life and decision-making without discrimination. It is necessary to take the minorities into account in the electoral systems, especially in the societies suffering from crises and sectarian and/or political disputes.<sup>60</sup> There are four main variables to be included within the minorities’ issue: The size of the minority as a group, the degree of the geographic concentration or dispersion, the degree of homogeneity or difference within the same group and lastly, the numbers of voters in each group.<sup>61</sup>

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58 Andrew Reynolds, electoral systems & the protection & participation of the minorities, Minority Rights Group 2007, p.3

59 Towards the development of the international standards of the legislative democracy, the National Democratic Institute for Foreign affairs, 2007, p. 3

60 Andrew Reynolds, electoral systems & the protection & participation of the minorities, Minority Rights Group 2007, p.28

61 Andrew Reynolds, electoral systems & the protection & participation of the minorities, Minority Rights Group 2007, p. 26

When we talk about the minorities in Lebanon, we do not mean the main components of the Lebanese society. All of the components of the Lebanese society are technically minorities since none of them constitutes a majority, and they all have particular seats and functions that should be subjected to the previously mentioned proper representation standard. What is meant by the term of minorities in this section are the groups whose numbers do not qualify them to have an allocated seat in Parliament. These minorities therefore suffer from significant marginalization in the Lebanese society. Those minorities include some of the recognized sects (Syriac Orthodox & Catholics, Assyrians, Chaldeans, Copts, Latin, Ismaili and Jews); they also include all unrecognized sects (The Bahaias, Jehovah's Witnesses) and all ethnic groups (Armenians, Syriacs, Assyrians, Kurds, Turkmen) in addition to others, who do not belong to any sect or ethnic group. The status quo obliges all members of these groups to rally under a certain sect,<sup>62</sup> if they are to be entitled by law to participate in the political life. This contradicts fundamental human rights principles and international standards.

As a matter of fact, most of minorities in Lebanon do not cluster in one place; they are spread all over the Lebanese territories. Consequently, it is not fair to link their allocated seats to a specific Caza within the confessional distribution of seats, since no matter in which Caza it is fixed, a large percentage of minority voters would be outside this electoral district. It is necessary for this fact to be taken into consideration if the current electoral system remains as it is, or if a Senate is to be formed. In a Senate, the minorities would be represented each by a seat or be represented collectively by one seat which is not confined to a particular district or group. Otherwise in an election free from confessional restrictions, members of these minorities can participate as citizens, equal in rights and duties and can choose their representatives in terms of mere political stances according to the political

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62 Syriacs Orthodox & Catholics, Assyrians, Chaldeans, Copts, Latin are given combined, one seat in the parliament, which even according to the standards set by the Lebanese constitution (art 24) is unfair and improper representation.

programs of the different parties and their candidates.

## **The Standards of the Electoral Process**

The details of the electoral process are highly important to guarantee the rights of the voters, the equality among them and their freedom of choice. Those conditions include many standards that have been mostly accepted in Lebanon and adopted in the laws. These standards include but are not restricted to: secrecy of vote; pre-printed ballots; vote count methodology; a unified day for the elections; regulation of funding and campaigning; the election monitoring bodies; participation of the civil society and the international bodies in the monitoring; the right to appeal; and the accessibility of polling stations for all including elderly people and people with disabilities, etc.

As mentioned earlier, the study will not deal with the details of this phase, as these standards do not face political controversy in Lebanon. Thus it is completely technical and it will suffice to mention them, while clearly acknowledging that the general acceptance of these standards does not necessarily imply their implementation. Indeed, each of these standards needs integrated mechanisms that might be highly complicated and expensive.

## **The Post-Elections Standards**

The post-elections phase has the same importance of the pre-elections and elections phases. The international standards include the following: everyone has the right to have the detailed and full results of the elections including the violations and the incidents occurring during the electoral process;<sup>63</sup> afterwards, every citizen has the right to access information and be aware of everything happening in parliament and the actions of the representatives he/she voted for; all draft laws and bills should be made

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63 The European Union Handbook on Election Observation, 2008, p. 86.



public to the citizens who have the right to express their opinions and demand changes; holding the representatives accountable is a right as well as a duty of all citizens in order to guarantee the accomplishment of their demands; drawing attention to these standards was crucial although a lot of them are related to the legislative work and the inner system of the parliament as it is mainly connected to the voter's ability to question the representative he/she chose for the next elections based on his/her performance during their term in office. This ability and the access to information is the essence of democracy and elections.

## **Conclusion and Recommendations**

Different variants of electoral laws can be engineered with uncountable combinations of systems, districts, and vote counting methods that can be adopted. In Lebanon the discussion over the next electoral law is far from finished. Parliamentary elections have been postponed for 17 months and there are no signs a new law will be adopted anytime soon. There is an urgent need to adopt a new electoral system that will contribute in developing the political life and ensure everybody's right to proper representation. The will of the people should be the source of all authority as it is expressed by the people exercising their civil and political rights to choose their representatives through normal, free and fair public ballot, through secret ballots, monitored by independent electoral authorities, free from all manipulation, persuasion and intimidation<sup>64</sup>; a truly democratic election that encompasses internationally recognized human rights standards. A state's practice of these rights within the framework of its system and structure illustrates the extent of its growth and development. The coherence of such values through the principles

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64 Towards a democratic society- The ministerial conference, Warsaw's final declaration, 2000, P. 2, article 21 of the International Bill of Human Rights.

of transparency and accountability within the electoral contest, establishes the foundation of the people's trust in the elections and in the government's formation and governing process.

Hence, all fractions of society and specifically civil society institutions have a responsibility to act and demand the adoption of a new law that enshrines human rights, through applying international principles and standards as a basic rule, along with taking the Lebanese society and its realities and needs into consideration by ensuring the proper representation of the different sects. Human rights experts and election engineering specialists need to contribute to the public discussion and suggest tools that ensure the electoral law plays the role in renewing the political life and reflecting the people's will that it is meant to play.<sup>65</sup>

To conclude this study and analysis, the main ideas will be summarized in the form of recommendations for the different stakeholders involved in the search for a new electoral law and that may be included in advocacy and lobbying efforts:

- Clarify the true meaning of proper representation of individual citizens and groups without representing one at the expense of the other.
- Exploring possible amendments that open the way to limit sectarian influence on the elections and to have a more democratic electoral process. An important amendment could be the complete separation between the two levels of representation (individual & sects) by the establishment of a Senate in which strictly, the different groups/sects are represented.
- The equality between voters through the size of the electoral districts (number of electors) and the number of seats for which each elector votes.

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65 Patrick Marlo, the prompt of legal frames to the democracy of the elections, the National Democratic Institute for International Affairs, 2008 p. 4

- The meticulous implementation of article 24 of the constitution and the redistribution of seats according to the article for each new electoral law.
- To abolish political influence and interference in the elections either through a neutral government that does not include candidates, or through an independent administrative body.
- The removal of any limitations imposed on the right to run for elections.
- To reduce the voting age to the legal age of 18.
- To enable and facilitate each and every rightful citizen to vote, including military personnel, pre-trial detainees, patients, naturalized citizens and disabled people.
- To enable and facilitate the voting of non-resident Lebanese registered in the voters lists.
- The adoption of the women's quota for a temporary specified number of election terms.
- To ensure the right of dynamic participation of all recognized and unrecognized minorities by voting and running for elections equally to all other Lebanese.
- The insistence on the implementation of the theoretically accepted technical criteria of the electoral process.
- To ensure post-election transparency over the works of Parliament and of individual MPs in a way that enables their constituents to question them.

In the hope that this study has shed some light on some of the controversial human rights issues that need to be addressed in the new electoral law and that have been taking second row in the debate so far, the study has opened the door for further research on each of the functions of the electoral laws, notably in pluralist and consociational

democracies such as Lebanon, where electoral laws are expected to be a tool to push the country forward towards permanent civil peace and an improved democratic system.

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