

CDDRL

WORKING PAPERS

Number 139
July 2013

Yemen's Transition: Electoral Challenges and Opportunities for Reform

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International Foundation for Electoral Systems



Center on Democracy, Development, and The Rule of Law
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Working Paper of the Program on Arab Reform and Democracy at CDDRL, published as part of the “Political Reform Prospects in Yemen” series edited by April Longley Alley, Erica Gaston, and Nadwa al-Dawsari.

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LIST OF ACRONYMS

EMB	Election Management Body
GCC	Gulf Cooperation Council
GoY	Government of Yemen
GPC	General People’s Congress
GCCA	Gulf Cooperation Council Agreement
JMP	Joint Meetings Party
NDC	National Dialogue Conference
NDP	National Dialogue Process
NGO	Nongovernmental Organization
PC	Preparatory Committee
SCER	Supreme Commission for Elections and Referendum
SEC	Supreme Election Commission
UNSC	United Nations Security Council
VR	Voter Registry/Registration

INTRODUCTION

Yemen is in a historic period of transition that began in 1994 following unification of the north and south. Although the Arab Spring brought Yemenis to the streets in January 2011 and culminated in a transfer of power in November 2011, political turbulence had been brewing in the country for years. In late November 2011, President Ali Abdullah Saleh signed the Gulf Cooperation Council (GCC) Agreement. This act paved the way for an official handover of power and triggered a transitional process designed to address Yemen's many lingering political and social problems that were inhibiting the government's ability to respond to a variety of pressing issues. Backed by members of the international community, the GCC Agreement outlines the requirements and expectations for Yemen's transitional period, including several key points relating to elections.

Recent developments indicate a mixed picture. President Abd Rabbuh Mansur Hadi was elected in a non-competitive election designed to gain the country's endorsement of the GCC Agreement and the transitional framework it outlined. Even though the transition is underway, Yemen still faces many of the same political challenges around elections that led, in part, to the protests against the Saleh government in the first place. While President Hadi has taken some critical political decisions required to adhere to the GCC Agreement, his primary focus early in his presidency was directed toward consolidating his authority, shuffling military commands, securing domestic political support and finalizing international donor community support. His efforts to further the political transition began to take shape in late 2012. He took preparatory steps for the National Dialogue¹ and appointed commissioners to the Supreme Commission for Elections and Referendum (SCER), the body responsible for implementing elections and whose decisions will directly impact many unresolved political challenges around elections. Although the GCC Agreement outlines steps that need to be taken, it will be difficult to bridge the gap between political imperatives and practical reform necessary to address concerns related to the electoral system in Yemen. Meanwhile, the accepted transitional schedule is at risk of delay, and it remains to be seen whether President Hadi and the political stakeholders can fulfill its terms leading to the election of a post-transitional government.

This paper outlines the challenges facing Yemen in holding free and fair elections in the transitional period as addressed in the GCC Agreement. It will provide a brief summary of the electoral issues in Yemen prior to the protests and the GCC Agreement, as well as a synopsis of how the GCC Agreement does and does not address these issues. After a brief discussion of elections that have taken place during the transition phase, including identification of problems or weaknesses that emerged, the paper will highlight key issues the Yemeni government must tackle prior to implementation of future elections and provide policy recommendations based on the authors' understanding of available resources, timelines, and political will among local stakeholders.

¹ The National Dialogue is meant to serve as a public mechanism for reconciliation in which all local stakeholder interests are represented and national issues, including the drafting of a new constitution, are dealt with in a consultative manner.

POLITICAL CONTEXT

Yemen's revolution began with the protests that broke out in the Middle East in early 2011. The protests were largely driven by dissatisfaction with high levels of unemployment, poor economic conditions, rampant corruption, and the government's failure to pursue electoral and political reforms in a participatory and transparent manner that seeks to address long-standing problems and contentious issues. By March 2011, the demands of protesters evolved to calls for systemic changes to the political system, including the resignation of President Saleh. In April 2011, the opposition parties released a list of demands that included the formation of a new SCER that would undertake a referendum on constitutional reforms, as well as parliamentary and presidential elections based on the new constitution's guidelines. During that same timeframe, President Saleh announced his intentions to modify the election law, and possibly the constitution. The proposed changes would have enabled the President to continue acting as President and pass the title to his son. This was strongly opposed by political entities.²

In the face of Yemen's growing violence and instability, the GCC attempted to mediate the situation in the spring of 2011 by brokering a deal that would remove President Saleh from power and instill a provisional government that would oversee the political transition process in Yemen. The deal was not accepted by President Saleh initially. After months of negotiations, the internationally backed GCC Agreement was officially signed on November 23, 2011, resulting in the transfer of power from President Saleh to then Vice President Hadi through uncontested elections. While the immediate objective of the agreement was to facilitate a peaceful transition of power, the terms of the GCC Agreement provided an outline for a broader, two-phase transitional period ending in 2014 that would be overseen by a National Unity Government led by President Hadi.³ Phase I covered the early presidential election held on February 21, 2012, and formally ended with the inauguration of the new president. During this time, Parliament passed a controversial law that impacted the perception of the process. This new law, which angered many groups, granted immunity to former President Saleh and his family and partial immunity from prosecution for "politically motivated" crimes for many of Saleh's top aides. Phase II of the transition process called for a National Dialogue Conference (NDC), followed by a constitutional referendum and parliamentary elections. If required by the new constitution, Phase II will also include local council and presidential elections.

HISTORY OF THE SCER AND ITS STRUCTURE

Yemen's election commission, established in 1993, is the oldest independent election commission in the region. Under Article 159 of Yemen's Constitution, responsibility for conducting presidential, parliamentary and local council elections and referendums must rest with a "supreme, independent and neutral committee." Prior to 2001, the Supreme Election Committee (SEC) exercised that authority. However, the SEC was a seasonal management body

² Arab Center for Research and Policy Studies. *The Yemeni Revolution: Replacing Ali Abdullah Saleh, or Replacing Obsolete Intuitions?* May 29, 2011. <http://english.dohainstitute.org/release/a81c810b-9b30-4cbc-bede-c03b5bf69eac>

³ UN News Centre. *Yemeni Parties Reach Agreement Paving Way for Holding of National Dialogue – UN Envoy.* November 28, 2012. <http://www.un.org/apps/news/story.asp?NewsID=43627&Cr=yemen&Cr1=#.UMjwTNWvZS8>

(EMB). In 2001, the General Elections and Referendum Law was passed, mandating a permanent EMB and establishing and assigning electoral administration responsibility to the SCER. The 2003 parliamentary election was the first electoral process administered by the SCER, including voter registration and boundary delimitation.

The SCER's mandate includes election administration and planning, electoral security, boundary delimitation and maintenance of the voter registry. The SCER has nine commissioners, including a Chairman and a Vice Chairman, all of whom are appointed by the President from a list of 15 persons nominated by the House of Representatives. SCER members serve a maximum of two six-year terms. The SCER has a General Secretariat in Sana'a and a branch office in each governorate. Many SCER headquarters staff are experienced election professionals. Since 2006, there have been no major changes in the SCER's mid-level and upper-level management. It is expected that there will not be significant staff turnover as a result of restructuring of the SCER. The previous practice of staffing has meant that each SCER member, except for the Chair and Vice Chair, heads a sector within the SCER – this practice is expected to continue.

The current members of the SCER were appointed in late November 2012. Of the nine appointees, six had served on the previous SCER appointed in December 2010. All appointees are judges, a practice that began in 2010. Although the election law calls for nomination of appointees by 2/3 majority of the House of Representatives, these current appointees came from a pool nominated by consensus in the House of Representatives, since the GCC Agreement states that all decisions by Parliament must be reached by consensus during the transition.

The SCER is required by the constitution to be “impartial and neutral.” The election law requires any member of the SCER who is a member of any political party to “suspend their party activities” during their term. A member of the SCER cannot be nominated as a candidate for an election or “take part in election campaigns of parties or candidates” during their term of office. Prior to 2010, Parliament nominated political party representatives, rather than judges, for appointment to the SCER. Although SCER commissioners were required to “suspend party activities” during their term on the SCER, this did not extend to rescinding party membership.

Since party politics played a large role in the appointment process, opposition parties, specifically the Joint Meeting Parties (JMP) alleged that many of the SCER's decisions were heavily politicized in favor of the ruling party, the General People's Congress (GPC). This deteriorated political trust in the integrity of the electoral process impacted most electoral processes since the 2003 elections. The political opposition refused to take part in the formal practice of nominating voter registration committee members, which delayed the planned 2006 voter registration update. Eventually, the SCER was forced to fill those spots with applicants from civil service positions; many committees performed poorly leading to reports of multiple errors throughout the registry.⁴

The dispute that arose from alleged politically motivated decision-making by the SCER led to the 2006 June 18 Agreement. Due to concern about the ruling GPC influence over the SCER, the opposition threatened to boycott the 2006 presidential election unless their demands were

⁴ IFES 2006 Post Elections Assessment Report – not published.

addressed. Initiated by President Saleh and signed in 2006 by the GPC and the JMP⁵, the June 18 Agreement outlined several changes designed to address political tensions. It increased the membership of the SCER from seven to nine members; stated that membership of election committees at all levels would be set at 54 percent for the GPC and 46 percent for the JMP; decreed that lawyers from both parties could examine the voter registry for violations; stated that the SCER must supply parties with electronic copies of the registry on request; and provided that after the 2006 elections the SCER would be restructured so that all appointees were judges.

The June 18 Agreement was a political document that was not legally enforceable. Discussions over the structure of the SCER continued until the end of the commissioners' mandate in 2007. Because various political stakeholders could not come to an agreement, no commissioners were appointed until August of 2008. The 2008 appointments were highly contested and rebuked by the JMP. Opposition parties withdrew their members from the SCER prior to the 2009 voter registration update and parliamentary elections. This led to the postponement of the 2009 parliamentary elections for an additional two years to allow for an agreement. Although new SCER commissioners were appointed in 2010, the general lack of action on all principles agreed to by both parties in the June 18 Agreement led to additional political tension.

Because of past controversies related to the SCER, the GCC Agreement addressed both the role and composition of the commission in its outline of the two-phase transitional period. Article 18 of the GCC Agreement stated the SCER would keep its current membership at the time of signing the agreement in order to manage and oversee the 2012 uncontested presidential election. In negotiations with Yemeni stakeholders prior to the GCC Agreement, it was acknowledged that reappointing the SCER commissioners in the very short period leading up to the early presidential election would compromise the ability of the SCER to manage and oversee a nationwide election. Given the pre-determined outcome of this election,⁶ the GCC Agreement signatories agreed to delay reform of the SCER until after the election. However, the GCC Agreement offered no guidance or timeline for the reformation of the SCER and the political decision on the SCER's reformation and composition was left to the consensus government.

Despite the absence of a timeline for restructuring the SCER, there were many critical issues that needed to be addressed immediately by the SCER after the early presidential election. The issues, critical to the integrity and legitimacy of upcoming electoral events, include the development of a new voter register for the 2014 parliamentary election; preparation for administering out-of-country voting (both logistical planning and coordination with the Ministry of Foreign Affairs); developing an electoral security strategic plan that involves security administrators; operational planning; and voter education and information activities. However, in light of its pending restructure after the presidential election, SCER commissioners were not willing to take steps to begin addressing these critical issues. Given the extensive list of matters

⁵ The JMP was formed in 2002 as an organized opposition party. It is a coalition of parties including Islah, Yemeni Socialist Party (YSP), Al-Haq, the Unionist party, and the Popular Forces Union Party. Source: Al-Jazeera "Who's Who in Yemen's Opposition?"

<http://www.aljazeera.com/indepth/spotlight/yemen/2011/02/2011228141453986337.html>

⁶ Article 18 of the agreement stipulated that only one consensual candidate, specifically Vice President Hadi, would run in the presidential election.

that needed to be addressed by Parliament and the President as the transition entered its difficult second phase, it was not until late October that it was announced that the restructured SCER would continue to be composed of judges. The restructuring of the SCER was not completed until November 2012, when the President appointed three new commissioners and reappointed six of the previous commissioners.

The delay in restructuring the SCER impacted preparations in several critical areas, especially the voter registry and, specifically, the decision on how the new voter registry should be developed. Due to high political sensitivity around this issue, it is important that this is dealt with immediately. The success of the voter registration process will inform citizen and stakeholder perceptions of the broad, overall success of the transition process. There are several critical electoral events pending in the transitional period, including the constitutional referendum, parliamentary elections and possibly a presidential election. If the new voter registry is not ready in time, it may very well compromise the integrity of the election process and the willingness of various stakeholders to accept the results. Although the consensus government has committed to developing a new registry for the 2014 parliamentary elections, it remains unclear whether the current register will be updated and utilized for the referendum, anticipated for late 2013. Given the likely difficulty of assembling and finalizing an entirely new voter registry in time for the expected 2013 referendum, it may be that the SCER decides to utilize the same voter registration approach for the constitutional referendum as was used for the 2012 presidential election. During the presidential election, voters were not required to be on the voter registry in order to vote. However, it is possible the SCER may decide to focus on revising the voter registration process in a transparent, politically acceptable manner as a temporary measure, and focus on finalizing a new voter registry for parliamentary and possible presidential elections. Whatever the final approach is, the SCER must decide immediately.

THE ROLE OF THE NATIONAL DIALOGUE IN YEMEN'S TRANSITION

The GCC Agreement requires Yemen to hold a NDC prior to any of the electoral events required during the second phase of the transition. The NDC is meant to serve as a public mechanism for reconciliation in which all local stakeholder interests are represented and national issues, including the drafting of a new constitution, are dealt with in a consultative manner. There had been a previous attempt to conduct a national dialogue in 2009 between the GPC and JMP; however, the process failed because it was not considered inclusive. Based on this experience, it was understood that a national dialogue held solely between political party stakeholders was inadequate and non-party groups would need to be represented. However, the GCC Agreement failed to outline the structure, function and objectives of the national dialogue, and did not identify who the participants of the dialogue process would be or state the topics to be covered.⁷ These deficiencies caused difficulties in the process of preparing for, and commencing, the dialogue. These issues were among the propriety tasked assigned to the National Dialogue Preparatory Committee, which was formed by Presidential Decree #30 on July 14, 2012.

Members of the PC were selected based on their perceived abilities to represent target groups

⁷ Next Steps in Yemen Transition, IFES page 5.

playing a role in the NDC, and were responsible for determining the structure of participants' representation and organization of the national dialogue. The complexity of the issues to be dealt with by the PC posed many problems. For example, the PC publicly presented organizational options for the NDC on September 9. In determining the composition of the NDC, it was necessary to ensure that political and traditionally marginalized groups – including the al-Hirak, Houthis, youth and women – were represented in the process. However, the proposed options led to threats to boycott the process by different groups over issues of seat allocation and perceived disproportionate representation at the NDC. President Hadi charged the United Nations Special Envoy Jamal Benomar with determining the distribution of seats, as consensus from stakeholders on seat distribution could not be achieved.

The plan developed by Benomar, which was ultimately accepted, proposed a 565 seat conference, with 30 percent of seats being allocated to women. The proposal included the allocation of 112 seats (19.8%) in the 565-seat conference to the GPC and its allies, 85 seats (15%) to Houthi representatives, and 40 seats (7%) each for women and youth. The final participation allocations are as follows:

Organization/Group	Number of Allocated Seats
GPC and its allies	112
Islah Party	50
Socialist Party	37
Nasserite Party	30
Youth	40
Women	40
Civil society organizations	40
Houthis	35
Southern Movement	85
Rashad Party	7
Justice and Development Party	7
President Hadi	62
The remaining parties in the JMP	20
TOTAL	565

On February 6, 2013, President Hadi announced that the NDC would begin on March 18, 2013.

The NDC has a very ambitious list of problems and issues to address. Political stakeholders in and outside of Yemen have been trying to address these same issues for several years without success. Although the GCC Agreement calls for the NDC to complete its work in six months, this may not prove feasible given the delay in starting the process; the number of participants; the number of competing interests represented in that body; and the number and controversial nature of the issues the NDC is tasked to address. Political conflict or deadlock within the NDC over resolution to the contentious issues could further push back the drafting of a constitution and

subsequent constitutional referendum. Finally, translating the decisions that emerge from the national dialogue meetings into constitutional language could prove difficult, and it has the potential to further delay the process. Any future delays challenge Yemen's ability to adhere to the agreed-upon timeline of the transition period and meet the benchmarks, in particular the planned parliamentary elections in 2014. Failure to meet benchmarks increases the possibility of an outbreak of violence and protests.

STATUS OF THE VOTER REGISTER

The state of Yemen's voter register⁸ has been a source of political controversy and a primary reason for the opposition's lack of political confidence in the integrity of the electoral process for a number of years. Although previous efforts by its predecessors to address concerns were not effective, the current SCER has an opportunity to deal with some of the most significant issues prior to the transition's mandated electoral events.

Chronic problems with voter registration in Yemen have been the registration of people under the age of 18 and duplicate registration. In 2006, the SCER acted to address these issues. Because the election law does not allow the SCER to act unilaterally to correct any instances of multiple registrations or underage registrations, the SCER decided to carry out its own checks and refer any cases it found to the Office of the Public Prosecutor for possible prosecution and a court order to correct the registers. The SCER designed computer software to detect multiple registrations on the voter register, which was followed by manual comparisons of the photographs of the voters. Possible underage registrations were detected by manual examination of the photographs of registered voters. Following these referrals, 32,049 duplications and 148,386 underage voters were deleted in 2006 before the voter lists became final. A major problem with the SCER's efforts to correct these issues was that the exercise was not carried out in an open, transparent way, leading to continuing political criticism of both the SCER and integrity of the voter register.⁹

Also, in April 2006, after major delays caused by the failure of the GPC and the JMP to agree on their proportions of members of the Voter Registration Committees, the SCER decided that the legal timetable for the election process meant it could wait no longer and appointed applicants from civil service positions to Voter Registration Committees. The experience was mixed, with some committees performing well and others performing poorly.¹⁰ The SCER's use of contracted personnel to train Voter Registration Committees was not successful in many cases. For example, on Election Day, many voters found their names had been removed from the voter list without their knowledge. Voters who had been wrongly deleted had no recourse to correct this

⁸ The Voter Register of Yemen was initially established in 1993; however, in 2002 the SCER carried out a national registration campaign and established the first electronic data base for eligible voters.

⁹ IFES, "Post Election Report on the 2006 Presidential and Local Council Elections in Yemen," November, 2006, accessed here: <http://www.ifes.org/Content/Publications/White-Papers/2006/Post-Election-Report-on-the-2006-Presidential-and-Local-Council-Elections-in-Yemen.aspx>

¹⁰ See NDI, *Monitoring Report, Yemen 2006 Voter Registration Update*; UNDP Election Support Project.

mistake, and were denied their voting rights for the 2006 presidential and local council elections. These incidents fuelled public perception about the inaccuracy of the voter registry.¹¹

The political impasse over the composition of the new SCER Commission, which resulted in a 10-month delay in its appointment from November 2007 to August 2008, and the pressures faced after its appointment, further complicated the status of Yemen's voter register in 2008. Because the appointment of the SCER was regarded as illegal, the JMP decided to reject the SCER's invitation to nominate members to the Voter Registration and Review Committees. To conduct the legally required pre-election voter registration update and review, the SCER decided to use teachers to fill all the places on the committees. The short period before the start of the process meant there was no time to make substantial changes to manuals and procedures or train the committees. Another major gap in the SCER's voter registration process was its inability to arrange a voter education campaign in the time between the appointment of the SCER members and the beginning of the registration period. The SCER's plans were further hampered by a lack of funding. As a result, the SCER had to rely on news releases and the official media to try to convey essential messages to the public.

It must be recognized that the voter register has not been updated since 2008. This means a significant number of citizens who turned 18 years of age since 2008 are not included in the current register. In recognition of these long-standing deficiencies, it was understood the SCER would update the voter register prior to electoral events during the transition. However, due to the short lead time before the 2012 presidential election, no voter registration update was conducted. However, the GCC Agreement mandated the SCER to implement special procedures to allow an estimated 2 million unregistered eligible voters to register and vote. Although the current voter register was deemed acceptable for the 2012 presidential election, and some political parties and the GCC Agreement suggest the register may be acceptable for the anticipated referendum process, the general stance and the GCC indicate that any subsequent election process should be conducted using a new voter register.

The political stalemate over the restructuring and composition of the SCER as mandated by the GCC Agreement, made it difficult, if not impossible, for the SCER to move forward on areas of the electoral process targeted by the transitional timeline, particularly the components that required commissioner-level approval, including addressing the status of the voter register. This impasse continued into the third quarter of fiscal year 2012. Since its appointment in November 2012, the current SCER undertook a comprehensive assessment of the proposed methods and resource requirements for implementing a modern, efficient voter registration system. The SCER has held ongoing dialogues with stakeholders to develop and finalize a comprehensive project plan for establishing a new, more reliable and more credible voter registration system. They also envision the new registration system will provide Yemen with a reliable civil register, which will have full national coverage of the national identity systems.

¹¹ IFES, "Post Election Report on the 2006 Presidential and Local Council Elections in Yemen," November, 2006, accessed here: <http://www.ifes.org/Content/Publications/White-Papers/2006/Post-Election-Report-on-the-2006-Presidential-and-Local-Council-Elections-in-Yemen.aspx>

The principal options put forward for consideration by the SCER and other stakeholders were to either continue using a predominantly manual registration process, currently in place, or to consider a new registration process incorporating the use of technology, such as biometric registration. The two prevailing options were shared by the SCER with stakeholders, including representatives from all political parties, members of civil society, and members of the international community at a workshop held in January 2013. During the workshop, a consensus from stakeholders was reached, and it was decided that a new registry based on biometric technology would be developed.¹²

The establishment of a digitized biometric voter registry would not only make cleaning and de-duplication more effective, but would bring the design and format of the voter register in line with the current national ID card system and future civil registry. The strength of this system lies in its capacity to integrate a voter's data, photograph, and fingerprints at the time of registration, which increases the capacity of the SCER to verify information early on, and ultimately ensure the accuracy of the voter registry. However, establishment of such a system requires procurement and installation of new equipment in all registration centers and field locations; amendments to the existing legal framework; and development of management and oversight capacity to implement the new registration process. The establishment of this system will require significant time, material and financial resources to implement. The SCER has secured international donor support for the establishment of the new registry. However, any delays will negatively impact preparations for the 2014 parliamentary elections.

The new biometric registration system will not be ready for the referendum process scheduled for late 2013. Given the history of political partisanship around voter registration issues in Yemen, it is imperative for the SCER and electoral stakeholders to agree on the actions to be taken to address shortcomings of the current register before the referendum. The SCER does not have the time or the resources to carry out a parallel update to restructure the existing database or rewrite the applications or conduct a comprehensive testing of the current system. However, time and efforts need to be invested in finding acceptable solutions to include new voters and restore the voting rights of those who were disfranchised by the deletion administered by the SCER in 2006 and 2008 during the voter registration updates. In addition, it will be prudent for the SCER to carry out an independent verification of the current voter register ahead of the referendum to identify areas of concern with regard to the voters list. A temporary measurement, such as a list-to-voter audit, in which a random sample of voters on the voters' lists could be contacted to verify their information contained in the lists, will go a long way in restoring confidence on the current list for the referendum.¹³

STATUS OF ELECTORAL LAW REFORM

International and domestic election observers found that the 2003 parliamentary elections and the 2006 presidential and local council elections were, in general, well conducted. These elections demonstrated, however, that Yemen's election law contained a number of omissions, procedural

¹² IFES workshop report, January 2013 – Unpublished.

¹³ This process can be conducted, However, it is costly, time consuming and will not be feasible if a political decision is delayed.

gaps and technical contradictions that need to be addressed, and that amendments to the law were also necessary to improve the impartiality and transparency of the electoral process.¹⁴ This paper will only focus on major reforms required in the interim and before a new elections law is enacted after the passing of the new constitution.

Additionally, it is important to note that there is also an urgent need for an independent and consultative review of Yemeni law on political parties.¹⁵ The law has not been amended since it was adopted in 1991. It is therefore timely for the law on political parties to be reviewed immediately in order to ensure it is consistent with international standards and norms relating to the registration and legal regulation of political parties; that it reflects Yemen's experience as a multi-party democracy; and that it ensures the continued contribution of political parties to the development of democracy in Yemen. Without limiting the issues that stakeholders may wish to raise, the authors of this paper expect the reform discussions will focus on the following issues:

- The nature, composition and powers of the body that should administer the law regulating political parties
- The criteria and procedures for establishing a party, for the continuing existence of a party, and for dissolving a party
- The provisions in the law relating to the internal structure and operations of a political party
- The qualifications for gaining political party membership
- Provisions relating to the annual state subsidies for parties
- Financial disclosure by parties

Although there is general consensus that the election law will be amended following the passing of the new constitution later this year, certain amendments to the law and procedures will need to be considered immediately to facilitate the proper execution of the biometric voter registration process and a new delimitation of the boundaries of the parliamentary constituencies. These amendments should cover a range of issues, including the SCER's legal powers, the composition of the voter registration committees, and the SCER procedures for determining electoral constituency boundaries.

To conduct the new biometrics voter registration process, the SCER is expected to appoint a number of committees at the governorate, district and polling station levels. The current elections law makes the SCER responsible for appointing all the heads and members of the committees, for developing and announcing appropriate selection criteria for these appointments, and for determining the jurisdictions and scope and functions of the committees. The compositions of the committees for voter registration in 2002, 2006 and 2008 were complex, difficult issues. In the

¹⁴ IFES, "Electoral Law Reform in Yemen: Phase One: Launching a Public Policy Dialogue," March, 2004; IFES, "Election Law Reform in Yemen: Final Report on the Public Policy Dialogues," March 2005; IFES "Election Law Reform in Yemen, Supplementary Report," September 2005, accessible here: <http://www.ifes.org/countries/Yemen.aspx>.

¹⁵ This law is an important component of Yemeni democracy, and not only it defines the principles and procedures concerning the establishment and activities of parties and political organizations, but it also reaffirms the notion that Yemen's political system is based on political and partisan pluralism in order to achieve a peaceful transformation of power.

past, the SCER decided to leave the formula for party representation on the committees to be negotiated by the parties. Negotiations between parties concerning the composition of voter registration committees were lengthy and delayed the start of voter registration and other electoral processes. There were widespread perceptions that parties managed previous voter registration processes and updates in their own interests through their memberships of the registration committees.

Yemen's election law is unusual for the region in allowing party representatives to be members of voter registration and election committees, although observation of the voting processes by candidate representatives is common. While it may not be feasible, at this point, for voter registration committees to be composed entirely of non-partisan persons, it is important that the SCER fulfill its statutory obligation to determine and announce the criteria for selection of heads and members of these committees in accordance with the law. The SCER must take the lead concerning the composition of voter registration committees, and it should announce its decisions well before committees are formed and trained for the next voter registration process. If the SCER can devise an equitable formula for party representation on main committees and subcommittees, the SCER should make recommendations to electoral stakeholders and the House of Representatives to include that formula in the amendments to the elections law, or the executive by-law. It is critical for the SCER to act on reducing perceptions of partisan influences in the work of voter registration committees, or to provide remedies where it is thought that such influences may have occurred.

Another equally important reform that is implicit in the law is a new delimitation of the boundaries of local electoral constituencies and parliamentary constituencies after each decennial population census. Although a population census was held in 2004, the final results were not available in time for the SCER to do a delimitation of local electoral constituencies before the 2006 local council elections. Since those elections, however, the Ministry of Local Authorities has been conducting a restructuring of administrative districts, which will affect both the local electoral and parliamentary constituencies, since local electoral constituencies are the building blocks for the parliamentary constituencies. Because of population changes, it is likely there will have to be a reallocation of parliamentary seats between governorates and major adjustments to the boundaries of many of the existing constituencies, if the current first-past-the-post electoral system is maintained.¹⁶ Both processes are likely to be politically difficult. The result of any delays in this process will be that the parliamentary constituencies to be used for the 2014 elections are the same as those used at the previous parliamentary elections in 2003. Preliminary 2004 census figures show that only 59 of the 301 parliamentary constituencies comply with the legally permitted population variation of ± 5 percent quota.¹⁷ It is therefore essential that there be full public and political confidence in the next delimitation. The SCER is likely to benefit from technical support and advice from local or international GIS experts, including updating software

¹⁶ First Past the Post is a political system in which the winning candidate is the one who gains more votes than any other candidate, even if this is not an absolute majority of valid votes. The system uses single-member districts and voters vote for candidates rather than political parties. Electoral System Design: The New International IDEA Handbook. Pg 35. http://www.idea.int/publications/esd/upload/esd_chapter3.pdf.

¹⁷ The highest population is 170,162 (constituency #15, Capital Secretariat) and the lowest is 29,125 (constituency #1, also in the Capital Secretariat).³ Seventy-four constituencies have a variation greater than $\pm 25\%$.

and refresher training for SCER staff and ongoing support during the database development phase. Donor support will also assist the SCER to adopt delimitation procedures that are open and transparent.

From a technical point of view, the SCER is far behind in preparing to conduct the parliamentary elections scheduled for April 23, 2014. Undoubtedly, the most serious risks that might further impact the SCER's ability to complete the preparations for these elections in a timely fashion are those imposed by the current political environment in Yemen. It is likely the SCER will have to deal with the consequences of political agreements affecting the conduct of the election, some of which could be reached close to the scheduled date. It will be important that the SCER's responses to those agreements are timely and clearly demonstrate the independence and political neutrality that it must observe.

ELECTION VIOLENCE AND SECURITY

Recent electoral processes in Yemen have been accompanied by conflicts and tensions leading to violence and deaths. Violence frequently stems from distrust among political factions, conflict among candidates, suspicion about the voter registry's accuracy and the seemingly arbitrary drawing of electoral districts. The victims of this violence have included supporters of rival candidates and parties; election officials; and journalists. Not only does this violence affect those directly involved, but it can also deter citizens from becoming involved in the electoral process.

In addition to the technical and logistical challenges in carrying out successful elections, Yemen's highly-fractured political environment, widespread presence of militant groups, and prevalence of self-governing tribal structures can further impede the peaceful execution of electoral events. Since the 2003 elections, however, measures have been taken by the government and civil society to prevent the outbreak of electoral violence. Specifically, the SCER has taken steps to prevent the outbreak of election-related violence in an effort to bolster the legitimacy of each electoral event. Although there were still many instances of violence leading up to Election Day, there were fewer reports of violent incidents during the 2003 elections. For the 2006 elections, political parties, candidates, nongovernmental organizations (NGOs) and the SCER made public commitments to an election without violence. This commitment was in part driven by a series of clashes on the second day of the election campaign in Al-Jawf Governorate, as well as the murder of the nephew of independent presidential candidate in Lahj Governorate.¹⁸

The SCER conducted a nationwide public awareness campaign aimed at mitigating violence at polling stations. Part of this effort included putting up 25,000 posters about a ban on guns in polling stations and informing electoral officials of the "no guns" message through training. A local NGO, working with the SCER, also carried out a campaign called "Polling Day 2006: A Day Without Arms."¹⁹ The NGO was able to get the heads of 21 tribes in seven governorates to sign an agreement stating that the day of the presidential and local council elections would be a

¹⁸ <http://www.almotamar.net/en/746.htm>.

¹⁹ Abu-Nasr, Donna. *Yemenis May Wear Daggers During Voting*. September 19, 2006. The Associated Press <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/19/AR2006091900159.html>.

day without guns. The agreement was signed by tribes from Sanaa, Dhammar, al-Baidha, al-Dhala'a, Amran, Marib and Shabwah. Securing buy-in from tribal leaders was a critical element in the success of mitigating violence before and during Election Day in 2006.

However, the SCER did not undertake extensive preparation to prevent election violence ahead of the February 2012 presidential elections, as there was only one consensus candidate running and the degree of competitiveness among the various political actors was extremely low. Despite the allocation of security assets to various election committees at the governorate, district and sub-committee levels by the SCER's Security Unit, the February 2012 election lacked a comprehensive security plan, with no chain of command or processes documented for contingency or emergency situations, and no variation of strategy on a region-by-region basis despite very different security environments. As a result, there were many instances of violence prior to Election Day, and Election Day violence resulted in at least 10 deaths, including the deaths of three soldiers. Both Yemen and international officials recognized this approach was lacking and will need to be improved substantially in advance of the upcoming constitutional referendum and parliamentary elections, which are expected to be more competitive electoral events.

Addressing electoral security in the lead up to upcoming electoral events is necessary to mitigate risks of violence and ensure that voters in all regions of the country have equal opportunity to participate in the process. The electoral events of the transition process will present far more complex security challenges than the previous 2012 presidential elections. Historically, parliamentary elections in Yemen have a higher rate of violence and security incidents. This will be the first parliamentary election held in 10 years; the stakes are very high. Additionally, the potential for terrorist attacks and civil unrest is high, which would threaten the electoral process. It will be necessary for the SCER to address gaps in preparation and planning, and ensure election-related training for security personnel is provided. The risk of violence in Yemen vis-à-vis the electoral process, such as terrorist attacks and civil unrest, could easily threaten the ability of the SCER and other stakeholders to carry out elections and election-related processes such as voter registration during the transition. Addressing these gaps in the ability to identify, plan for and mitigate the threat of violence is critical for the successful implementation of the electoral process. Furthermore, through increasing its cooperation with non-governmental actors, such as civil society organizations, the SCER has the opportunity to build trust in the electoral body; instill public confidence in the safety of the electoral process; and improve civic participation and turn-out for electoral events.

FUNDING FOR ELECTIONS

Funding for the overall transitional process, and specifically the electoral component, is a critical and practical matter that must be addressed in order to mitigate risks to political progress.

Both the international community and the Government of Yemen (GoY) are aware of the costs of the transitional process and securing the viability of the consensus government during that time. The international community is investing in various components of Yemen's transitional process, including elections. In August 2012 the U.S. State Department announced that the U.S.

will provide \$337 million in assistance to Yemen's civilian and security sectors in FY 2012, nearly 2.5 times the amount of FY 2011 funding.²⁰ This includes approximately \$47 million in security assistance; \$112 million in training and equipment for Yemeni security forces to conduct counter-terrorism operations; and \$178 million for humanitarian aid, development, and assistance to help Yemen transition to democracy. Concurrent with the State Department's announcement, the European Commission announced it would provide €18 million (approx. \$23.5 million) to provide support in democracy, civil registry, legal reforms and decentralization, including strengthening institutions key to the transitional process such as the SCER.²¹ The UN is also providing extensive support to the National Dialogue Process (NDP) and has requested international donors to provide approximately \$37 million to support the NDP primarily through the establishment of a secretariat the UN would oversee.

To date, the international community has clearly signaled that it will continue to support the GoY throughout the transitional process. It is unclear what the impact from delays caused by political inertia or conflict would have on committed or future international support. However, even given the relatively high degree of international support, funding for various aspects of the transitional process, including for electoral events, remains a large concern. International funding will not come close to covering the expected total requirement; it has been estimated that the GoY will need to commit up to as much as \$120-150 million for implementation of a new voter registration system and the elections outlined under the GCC Agreement. This does not include costs tied to the National Dialogue process NDP or drafting of a new constitution.

At this point in time, the extent and degree of resources actually available to support the development of a new voter registry, as well as to plan for and implement expected election events, is unclear. Normally, the SCER has an independent budget and there is a specific allocation for the SCER in the national budget. However, the SCER faces unusual demands over the coming period that require a significant budget. It needs to know the level of funding available to begin undertaking preparations for upcoming elections. It is essential for the GoY to identify and commit sufficient financial resources to the SCER and other stakeholders involved in the development of a new voter registry and implementing upcoming elections. Any significant delay in committing funding will create a domino effect of delays that could compromise the integrity of the electoral processes critical to political transition.

CONCLUSION AND RECOMMENDATIONS

Yemen will face significant challenges when it holds democratic elections in the near term. Budgetary constraints, a limited timeframe, weak stakeholder commitment to the proposed reforms, and delays to the transition timeline are all factors that could impact the SCER's ability to successfully manage electoral processes in the near future. Recent experiences in the Middle East and North Africa region have shown that holding elections in a short timeframe in parallel with the development or reform of the constitution and the electoral legal framework requires significant efforts to meet the public's expectations and international standards for a free and fair electoral process. In a deeply divided society such as Yemen – where tribal and political

²⁰ <http://www.state.gov/r/pa/prs/ps/2012/08/196136.htm>

²¹ http://ec.europa.eu/europeaid/where/gulf-region/country-cooperation/yemen/yemen_en.htm

affiliations are key considerations – it is imperative that the country’s transition is managed in a way that is inclusive and consultative and engenders trust across these divisions. Also, it is particularly important for Yemeni citizens to perceive transitional elections as open, free, fair and transparent. As a consequence, flawed electoral processes, even those marked by only minor irregularities, could negatively impact popular participation in future elections and slow or halt the democratic transition.

In response to the uncertainty surrounding the technical preparations for the upcoming electoral events, as well as the timing and sequencing of the transition, this paper presents the following recommendations for the SCER and electoral stakeholders to consider as options to mitigate a variety of challenges:

- 1) The SCER should identify and secure broad political support for possible delays in the compressed electoral timeline mandated by the GCC Agreement. It is unlikely there will be sufficient time for a constitutional referendum and the subsequent legislative amendments to the electoral legal framework before the scheduled 2014 parliamentary elections. This reality must be acknowledged and addressed before it becomes a political issue that can be exploited by potential spoilers looking to compromise the electoral process. An agreement to amend the GCC Agreement timeline might be necessary to avoid compromising political and voting rights, election preparations, and the integrity of the electoral processes or deviating from international standards.
- 2) The SCER is encouraged to continue practicing inclusivity through broad consultations with political and civic actors during all phases of the upcoming elections. It is critical in a charged political environment to openly discuss contentious issues, such as boundary delimitation and voter registration issues with stakeholders and agree on mutually acceptable policy solutions.
- 3) The SCER should improve its outreach to and coordination with civil society organizations in Sana’a and other governorates to best develop and implement targeted and coordinated civic and voter education campaigns. These campaigns should aim to raise Yemeni citizens’ awareness about the referendum and electoral processes leading to the 2014 elections, especially the biometrics voter registration process. Improving public understanding of basic aspects of Yemen’s transitional electoral processes will increase public confidence in these processes and the institutions administering them, especially among marginalized groups such as youth, women and persons with disabilities.
- 4) If delimitation is required by the new elections law, the SCER should develop and implement delimitation procedures that are open and transparent and meet recognized international standards to improve public and political confidence in the process.
- 5) The SCER in coordination with the judiciary and the public prosecutor’s office should launch a campaign to improve knowledge concerning election dispute processes, procedures, requirements, contents, and resolutions among election stakeholders. Increased public and stakeholder awareness of Election Day Registration processes, procedures and outcomes involving the courts would help effective and timely resolution of election disputes and contests.
- 6) The SCER, in coordination with security forces and tribal leaders, should develop and implement a strategy to mitigate the impact of election-related violence and conflict on the electoral process, including on the new voter registration process.

- 7) Nationwide elections are expensive undertakings; this is especially true in Yemen, which faces significant geographic, security and logistical hurdles. Lack of financial commitment and resources could easily threaten the electoral process by inhibiting sufficient preparation and implementation, and subsequently compromising its efficiency. Therefore, the SCER should immediately identify the costs and resources needed to administer and conduct free, fair and transparent electoral processes. The GoY and the international donor community have committed to providing financial support to the SCER. They must follow through on this commitment soon to allow sufficient time for the SCER's logistical and electoral planning.
- 8) The international community must maintain commitment to Yemen's democratic transformation and continue to provide the necessary financial resources and political weight to ensure adherence to the politically negotiated transition.