

JORDAN'S NEW ELECTION LAW: MUCH ADO ABOUT LITTLE

SUMMARY

King Abdullah II of Jordan dissolved the Lower House of Parliament in November 2009, calling for fresh elections and instructing the government to amend the existing election law to ensure that the upcoming elections would be a 'model of transparency, fairness and integrity'. In May this year, the Cabinet duly adopted a new 'temporary' election law. New elections for the Lower House will take place on 9 November 2010.

Despite reforms, the new law does not represent significant progress over the former one. Most importantly, the law has done nothing to address the significant inequality of the vote, which has been intentionally maintained for many years. A seat for an urban constituency represents far more voters than a seat in the countryside, leaving urban voters greatly under-represented. Rural voters are generally regarded as the bedrock of support to the Hashemite Monarchy.

Other shortcomings of the previous law also remain unresolved:

- Rules on election campaigning are too restrictive in some areas, while absent in others.
- Ballot secrecy is not guaranteed for illiterate voters.
- There is no legal requirement for the prompt and detailed publication of election results at all levels of the election administration.
- There is no effective remedy to protect or enforce electoral rights.

In addition, the new law creates an electoral system that is obscure and combines the disadvantages of proportional and plurality voting systems. Deputies do not have a

strong link to their constituency and, at the same time, the system does nothing to promote proportional representation.

There are a few areas of improvement. Namely, the new law provides for an increase in seats reserved for women and also stipulates more transparency in relation to voter registration. Other improvements, such as permitting non-partisan election observation, were recently introduced in the form of procedures issued by the Ministry of the Interior. While positive, they do not have the force of law.

Although some improvements have been made, Jordan nonetheless has missed an opportunity to bring its electoral framework in line with essential obligations that it accepted when it ratified the International Covenant on Civil and Political Rights (ICCPR). The new election law is based on a temporary law, which should be brought before the new National Assembly. The National Assembly should review the new law, conduct public consultations on its content and amend it to make certain it respects Jordan's international obligations.¹

¹ An earlier report analysed the previous electoral framework in detail and made recommendations about how it could be brought in line with Jordan's ICCPR obligations. Jointly published by Democracy Reporting International and the Al-Urdun Al-Jadid Center in January 2007, this report can be downloaded in English and Arabic at: <http://www.democracy-reporting.org/publications/country-reports/jordan.html>.

1. BACKGROUND

The framework for elections is a sensitive political issue in Jordan. It is the only country in the region that has offered citizenship to a significant number of Palestinian refugees, most of whom live in cities. Consequently, the Hashemite rulers have struggled to limit the political influence of urban Jordanians with Palestinian roots by favouring voters in the countryside, where tribes provide the backbone of support to the King (also see below).

Debating electoral reform is a 'golden oldie' of Jordanian politics. Although discussion is permitted and sometimes even encouraged, the Executive branch of power has always tightly controlled the electoral framework. The last time the issue of electoral reform was raised was in 2004/05 by the government-sponsored National Agenda Committee. While the Committee adopted sensible recommendations, they were never implemented.

The most recent impetus for comprehensive electoral reform came in dramatic fashion when the King dissolved the Chamber of Deputies in November 2009, halfway through its term. He gave no reasons, but speculation indicates that the Executive was dissatisfied by the handling of draft legislation in the Chamber of Deputies. The King called for new elections based on a new election law that should be a 'model of transparency, fairness and integrity'² and directed the government to develop the electoral process 'in such a manner that the next legislative elections will be qualitatively improved and all Jordanians will practise their right to campaign and to elect their representatives in Parliament'.³

In May 2010, the Cabinet responded by adopting a new election law (Law no.9/2010) as a 'temporary law'. Prior legislation had also been adopted as a 'temporary law', yet after being in force for nine years it was anything but. The Constitution provides for the possibility of temporary legislation by the Executive when Parliament is not sitting. In these cases, the Constitution requires that in order to 'have the force of law' such laws must be brought to Parliament for approval once it re-convenes. However, the 2001 law was never tabled in Parliament for approval.⁴

Law reform taking place outside the parliamentary realm is a reminder of the significant limitations to democratic accountability in Jordan's political system, in particular the weakness of its Parliament. Not only is the political role of the Lower House limited, but its influence can

always be constrained by the Upper House (the Senate), the members of which are all appointed by the King. Legislation requires the approval of both Houses of Parliament. In addition, the King can dissolve Parliament as he pleases. He also appoints the Prime Minister and the Cabinet independent of election results.

In contrast to earlier practice, it is recommended that the new temporary electoral law should be tabled in the National Assembly, as required by the Constitution. The new National Assembly should conduct a detailed review of the new law, taking into account lessons learned from these elections. Moreover, it should conduct consultations on electoral reform with the public, all political parties and civil society, with the intention of amending the law in order to bring it in line with Jordan's international obligations.

Jordan completed the ratification of the UN International Covenant on Civil and Political Rights (ICCPR) in 2006.⁵ Article 25 of the ICCPR includes detailed obligations on the right to vote and to stand in genuinely democratic elections. The UN Human Rights Committee published an authoritative interpretation of Article 25.⁶ An earlier report assessed Jordan's electoral arrangements in light of these obligations.⁷ Most of the findings in that report remain relevant and it is therefore not necessary to repeat them here. Rather, this briefing paper focuses on the few changes introduced by the new law. Not only do these reforms create new problems, but they also leave previous shortcomings unaddressed. However, there are a few noteworthy improvements.

2. IMPROVEMENTS

The new law introduces some positive reforms, but on balance these remain inadequate.

In a step forward, the quota of women in the Chamber of Deputies has been raised to 12 seats, which will increase their representation to at least 10%. At the same time, this improvement has a significant drawback because it will likely further weaken the representation of urban voters (see below). Another potential improvement is that judges, who play a role in several bodies of the election administration, will now be appointed by the Judicial Council, rather than the Ministry of Justice. This may serve to strengthen judges' sense of independence in the election administration.

² Quoted from King Abdullah II's official website:

http://www.kingabdullah.jo/main.php?main_page=0&lang_hmka1=1.

³ *Ibid.*

⁴ Article 94 of the Jordanian Constitution states: "In cases where the National Assembly is not sitting or is dissolved, the Council of Ministers has, with the approval of the King, the power to issue provisional laws covering matters which require necessary measures which admit of no delay or which necessitate expenditures incapable of postponement. Such provisional laws, which shall not be contrary to the provisions of the Constitution, shall have the force of law, provided that they are placed before the Assembly at the beginning of its next session, and the Assembly may approve or amend such laws."

⁵ The ICCPR was initially ratified by Jordan in 1975 and published in the official Gazette in June 2006, giving it the force of law.

⁶ <http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?Opendocument>.

⁷ See footnote 1.

Two additional improvements bear mention:

More Transparent Voter Registration

The accuracy of voter registration lists has been contested in the past. The new electoral law introduces an annual revision,⁸ rather than an *ad hoc* revision before each election, as was the case before. For the first time, provisional voter lists have been displayed and made available online. There are some 3.4 million registered voters, with around 400,000 challenges and appeals to the provisional list, resulting in approximately 156,000 corrections. The Ministry of the Interior has published the final voter list on the internet,⁹ a practice that should be enshrined in the law.

Election Observation

The new law does not provide for non-partisan domestic or international election observation. However, in a positive step, the Ministry of the Interior has issued procedures for non-partisan election observers.¹⁰ For legal certainty, however, election observation should be enshrined in electoral law. International election observation has become a world-wide practice. A large majority of countries, old democracies included, have received international election observation missions.

3. OBSCURE ELECTORAL SYSTEM

The new election law largely maintains the former electoral system, which was based on the Single-Non-Transferable-Vote (SNTV). Under SNTV, a voter has only one vote, regardless of how many seats there are in an electoral district.¹¹ Candidates securing the most votes win a seat. For example, if there are five seats, the five candidates with the most votes gain the seats. In Jordan, the system is better known as 'one man one vote', but this is a misnomer. It suggests that votes have equal weight, which is not the case in Jordan (see below).¹²

SNTV leads to a focus on individual candidates and consequently is not favourable to the emergence of political parties. Indeed there are no major political parties in Jordan, apart from the *Islamic Action Front*.¹³

Although it is mostly the same as before, the new law amends the electoral system in one significant way. Under the previous system, each district was represented by several seats.¹⁴ Now, electoral districts are divided into virtual (as opposed to geographic) sub-districts, each of which is represented by one seat. A voter can vote anywhere in the district, but the candidate he or she wishes to vote for is linked to one specific sub-district. From the perspective of candidatures, the system comes to resemble a United Kingdom-style First-Past-the-Post (FPTP) system, whereby a sub-district can only be won by the one candidate with the most votes. Prior to the new law, however, a district had several seats, so several candidates could be elected. In contrast to the change at the candidature level, from a voter viewpoint, there is no change. They can still vote anywhere in a district for whomever they want.

This system appears to have little logic. Plurality voting systems, such as FPTP, have the primary advantage of creating a strong link between an elected official and his or her constituency. In contrast, the Jordanian version does not establish such a link between the candidate and the electorate because sub-districts are not geographically-defined electoral units and his or her voters can come from across the entire district. As such, the Jordanian system has the disadvantage of FPTP in that it can produce potentially disproportional election results. For example, a party whose candidates came in second in each sub-district will not win a single seat. Under the previous SNTV system, such a party would have likely gained some seats. Thus the new arrangements accumulate the disadvantages of other electoral systems without benefitting from their corresponding advantages.

The system also introduces a random element into the elections because there is no defined electorate for each sub-district. To illustrate this problem, one could imagine a district with 1,000 voters, which includes two sub-districts with one seat each. It is possible that 850 voters would vote for candidates in sub-district A and only 150 for candidates in sub-district B. The seats would *de facto* represent voting populations that are greatly varied in size.

⁸ The system is a mix of permanent lists and voluntary registration. While the lists derive, in principle, from the civil registry, in practice, voters have to present themselves in order to confirm the district in which they intend to vote. In addition to their place of residency, it is also possible for voters to opt for their place of origin (i.e., his or her father's place of origin), which is then submitted for confirmation by the *Mukhtar*, a local administrator, at that place of origin. Those voters registered in 2003 and 2007 who do not want to change their registration are automatically confirmed in their previous place of registration.

⁹ See <http://www.moi.gov.jo/> (Arabic).

¹⁰ *Ibid.* The procedures for international election observers are published in English.

¹¹ It is worth mentioning that in a number of districts, only one seat is elected, which renders these districts a *de facto* First-Past-The-Post system.

¹² Under many electoral systems, a voter has one vote. This is not unique to SNTV. In fact, in other contexts, 'one man (*sic*) one vote' often means that each vote carries the same weight, but this is not the case in Jordan.

¹³ An additional feature of the electoral system is that all seats, except those for women, are allocated to designated communities by government decree. The majority of seats are for Muslim candidates, but there are also seats for

Christians, Circassians and Chechens, as well as electoral districts that are reserved for specific Bedouin tribes.

¹⁴ Except in those districts that are only represented by one seat (see footnote 11 above).

One could imagine further that there are two competing candidates in each sub-district. It is possible that one candidate could win with fewer votes in one sub-district, while another with far more votes in a different sub-district could lose, as the table below demonstrates:

District = 1000 Voters	Sub-District A	Sub-District B	Comment
Votes Cast	850	150	
Votes for candidates	600 for candidate A; 250 for candidate B	100 for candidate C; 50 for candidate D	Candidate A wins a seat with 600 votes and candidate C wins a seat with 100 votes, but candidate B loses despite having received 250 votes. In the former system, however, candidates A and B would have won seats.

The process of registering candidates will become highly sensitive in the new electoral system. When choosing where to stand for elections, for example, it will now be crucial for candidates to find out who else intends to stand in any given sub-district. These arrangements increase the scope for undue influence by the election administration, which will be the first to know for certain where candidates intend to stand in elections, when they file their registration papers. Election officials could thus tip off other candidates in order to help them choose the most advantageous sub-district for their candidature.

The electoral system gives significant advantage to highly-organised parties and political groups. Under the new arrangements, they can calculate the respective strength of candidates and then make recommendations about which candidates their voting constituencies should support in order to better ensure that their support is well distributed. To use the example above again: If a political movement knows it can count on 700 out of 1,000 voters in a district with two sub-districts, it should avoid advising voters to support only one of its candidates. Instead, it should instruct half its voters to vote for one of its candidates and half its voters to vote for the other candidate. This requires a disciplined electorate that follows the advice of the political party or group. In the Jordanian context, rural tribes are regarded as having the greatest capacity to organise their voters.

4. INEQUALITY OF THE VOTE: URBAN JORDANIANS COUNT LESS

The most significant flaw in Jordan's electoral arrangements has always been that urban voters count less than those in the countryside. The numbers of voters registered per seat have been substantially higher in urban areas than in rural ones. As noted with respect to the last elections, "At its most extreme, there are nine times as

many voters per parliamentary seat in Amman's second district as there are in the 6th district of Karak."¹⁵

This problem of inequality is related to Palestinian refugees. Jordan granted citizenship to a large number of Palestinian refugees who predominantly live in cities, namely Amman. To limit their political influence and strengthen the political clout of rural tribes, urban voters are deliberately under-represented. The Jordanian government has acknowledged the link between Palestinian refugees and electoral reform, stating that the "...disproportion of constituencies in terms of the ratio of candidates to the population may be attributed to two factors: First, the large refugee population in and around densely populated urban constituencies is a political obstacle to any process of electoral reform. This may remain to be the case until the final status of negotiations between Palestinians and Israelis reach a permanent solution on the issue of refugees."¹⁶

The total number of seats, as well as the number of seats per district, is determined by decree from the Cabinet of Ministers. Neither the former nor the new electoral laws provide any criteria for that allocation or the process of delimitation. This consequently permits an approach to electoral districting that facilitates intentional under- and/or over-representation, depending on where the district is located.

The number of seats in the Chamber of Deputies has been increased from 110 to 120. Four additional seats have been allocated to urban areas, while six additional seats have been reserved for women, increasing the quota of women to 12 guaranteed seats (10% of the Chamber).

The addition of four seats to urban areas is not sufficient to address the dramatic inequalities that characterise the process of demarcating electoral districts. Moreover, it is likely that this gain for urban voters will be neutralised *de facto* by the six additional seats for women. That is, due to the particular electoral arrangements for the women's quota,¹⁷ it is more likely that those additional women will be elected in small rural constituencies rather than in urban areas. Jordanian women activists have criticised the manner in which the quota operates.¹⁸

¹⁵ DRI/UJRC report (2007), p. 18.

¹⁶ The other reason given is: "Second, the need to ensure sufficient access to underprivileged areas in the Kingdom in order to treat their demands on an equal footing with more privileged urban centers." Quoted from: Political Reform and Democratization, a presentation on the website of the Embassy of the Hashemite Kingdom of Jordan in Washington D.C.: <http://www.jordanembassyus.org/new/aboutjordan/dp2.shtml>.

¹⁷ Those women candidates who have not been elected through the normal system, but who gained the highest percentage of the vote in their constituency, are elected on the quota (Article 42 of the Election Law). While women in the cities have a much greater number of voters, they are less likely to have a higher percentage of the vote. According to the new law, only one woman per governorate or Bedouin district can be elected in this manner. This is an improvement, but the quota is still likely to reinforce rural over-representation.

¹⁸ "They said the percentage-based quota formula favours 'inexperienced' women from smaller districts while excluding experienced women from larger constituencies", Coalition pushes to seat more women in Parliament, *The Jordan Times*, 28 September 2010.

Equality is an essential election right, which is reflected in Article 25 of the ICCPR. The UN Human Rights Committee noted in its General Comment 25, which is an authoritative interpretation of the ICCPR, that: "...the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group."¹⁹ The current electoral arrangements in Jordan violate this obligation.

5. ON-GOING SHORTCOMINGS

While the new law introduces a few improvements to the electoral framework, it likewise leaves previous shortcomings unaddressed. In addition to the key issue of the unequal distribution of seats, the most significant of these include:

Secrecy of the Vote

Secret ballots are a key obligation for democratic elections under international law, namely Article 25 of the ICCPR. However, this is not fully guaranteed under Jordanian election law. At present, illiterate voters must whisper the name of their preferred candidate to a polling official who then fills out the ballot on their behalf. In the past, there have been allegations that many voters who were not actually illiterate voted in this way in the context of vote buying. This arrangement violates the secrecy of the vote. Problems could be avoided by introducing pre-printed ballots, which should also include symbols and pictures of the candidates, thus enabling illiterate voters to cast a secret ballot.

Campaigning

The law does not allow the use of public spaces (schools, government buildings, public streets, etc.) for campaign purposes. This significantly restricts the capacity of candidates to campaign. Instead of a blanket prohibition, the law could include rules to ensure equal opportunities for all candidates to use public spaces.

Furthermore, money plays a significant role in Jordanian elections, but the law does not include any limitations on campaign financing, nor does it have any requirements to disclose campaign spending.

Transparency of the Counting, Aggregation and Publication of Results

The new election law has more detail with respect to counting votes, which is an improvement over past practice. However, the law still does not include a requirement that detailed election results must be publicly displayed at each polling station, nor does it stipulate that each candidate, agent and observer must receive an official results form. Likewise there are no provisions for similar arrangements at the higher levels of

the election administration, where polling station results are tallied. In addition to these requirements, detailed results could also be posted on the internet. Such provisions would enhance both the transparency of and confidence in election results.

Lack of Effective Remedies

According to the law, candidates can lodge complaints against the polling process to a polling committee, whose decision is final. Only candidates and their representatives can lodge complaints, but voters are not permitted to do so. Even if the complaint is directed against the conduct of that committee, there is no further recourse to another body. This appears to be insufficient.

The Constitution also requires that a challenge to the 'validity of the election of a Deputy' be raised in a petition to the newly elected Parliament, which could only declare the election of one of its members invalid with a two-thirds majority. Although the member concerned is not allowed to participate in the vote, Parliament is nonetheless faced with a conflict of interest in terms of deciding its own composition.

6. CONCLUSION: A MISSED OPPORTUNITY

The new Jordanian election law is identical with the old law in most respects. It introduces a few improvements, along with some technical adjustments. However, these improvements are offset by the fact that existing key shortcomings, notably the inequality of the vote, have not been addressed. In these aspects, the new law is not in line with Jordan's obligations under the ICCPR. In addition, the changes to the electoral system have resulted in arrangements that combine the disadvantages of the plurality voting and proportional electoral systems without creating any benefits.

The process of changing the law by government decree was not likely to produce the comprehensive reforms that Jordan needs. Under the new election law, the potential for genuinely democratic elections is severely limited from the outset. This undermines the significance of the upcoming elections.

The impact of the new election law should be assessed after the November elections. The findings of such an assessment should inform an effort for comprehensive electoral reform aimed at ensuring respect for Jordan's ICCPR obligations. Such reforms should be broad based, including consultation with the public, all political parties and civil society. Parliament should be involved in this reform process, playing a role both as the focal point for public consultations and as the legislator. In line with Article 94 of the Constitution, the temporary new election law should be brought before the new National Assembly immediately for debate and possible amendments.

¹⁹ UN Human Rights Committee, General Comment 25 (1996), paragraph 21.

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