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TOWARDS TRANSPARENCY IN POLITICAL FINANCE IN YEMEN



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Towards Transparency in Political Finance in Yemen

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Yemen Organization for Promoting Integrity (OPI):

OPI is a civil non-governmental, non-for-profit organization, concerned with promoting integrity, transparency, combating corruption, and deepening good governance rules, through campaigns, seminars, panel discussions, training sessions, specialized manuals, studies, researches and reports, and providing legal assistance to corruption victims, publishing, publication of electronic and hard bulletins. OPI was established in Sana'a under license No. 619, by the Ministry of Social Affairs and Labor.

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The International Foundation for Electoral Systems (IFES) supports citizens' right to participate in free and fair elections. Its independent expertise strengthens electoral systems and builds local capacity to deliver sustainable solutions. Since 1987, IFES has worked in over 135 countries - from developing democracies, to mature democracies.

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The U.S.-Middle East Partnership Initiative (MEPI) of the State Department offers assistance, training, and support to groups and individuals striving to create positive change in the society. MEPI works in 18 countries and territories, partnering with civil society organizations (CSOs), community leaders, youth and women activists, and private sector groups to advance their reform efforts. MEPI's approach is bottom-up and grassroots, responding directly to local interests and needs.

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Spotlight

This book includes an extracted study from Promoting Transparency in Political Finance and Expenditures in Yemen project, in addition to a draft of legal provisions that aim at providing transparent mechanism, to organize and monitor elections' finance and expenditures. This project has many positive points; specifically it is a quality project, considering its contents, which address a very important issue that is transparency of political finance and expenditures. Such project may contribute into more fair elections in Yemen, and in taking qualified representatives through elections to power positions, who will serve citizens' interests, unlike the past elections that assisted in certain group's domination over power and resources for decades, and in blocking peaceful change means, through democratic mechanisms, whereas existence of legal system that provides transparent mechanism on elections' finance and expenditures, will achieve justice and equality between all partisan and independent candidates and minimize votes' buying, and forging voters' will through illegal finance and expenditures, also such system will increase political accountability.

On the other hand this project marks OPI emergence, being the first project it implements, as part of its activities and objectives to combat corruption, and promote integrity and good governance.

OPI worked for five months in this project in an effective partnership with IFES, Yemeni government, parliament, political parties, civil society, international organizations, and media, and has concluded this study in addition to the draft law.

Dr. Mohammed Al-Mikhlaifi, minister of legal affairs, stressed government's willingness for active participation with OPI and other NGOs in the country, and with IFES to conduct legal reforms that provide for transparent mechanism to organize and monitor elections' finance and expenditures in Yemen, emphasizing genuine tendency for partnership between the government and the civil society.

It is important to mention that, this study and draft law, is not the end for this project on Promoting Transparency in Elections' Finance and Expenditures project, rather it is the beginning of future partnership between OPI and IFES, and other local, regional and international partners, to complete our activities and programs that serves our objectives, towards free, fair and transparent elections, as a mechanism that promotes integrity values, and good governance principles in Yemen and the Arab region.

Ahmed Al-Zekri, Chairman

Yemeni Organization for Promoting Integrity

The book

1. A summary of six researches; three basic papers, and three complementing papers on transparency on elections' finance and expenditures in Yemen, prepared and presented by Yemeni researchers, in workshop on 7 July 2013, in Sana'a.

The researches include the following:

- A. Elections' Finance and Expenditures and it Development (Analytical Study to the Domestic Legal Environment, in Comparison with International Conventions and Experiences), basic paper by Dr. Mohammed Abdullah Numan, assistant professor of international general law, and human rights, Sana'a University;
- B. Elections' Expenditures - Finance and Expenditures; complementing paper by Mr. Saeed Mohammed Al-Soufi/Al-Mikhlaifi;
- C. Electoral Systems and their relation with Political System-Yemen case; basic paper by Dr. Abdulmalik Mohammed Essa;
- D. Electoral System and Elections' Finance and Expenditures and their relations with Yemeni Political Parties' Efficiency, complementing paper by Mr. Faisal Hassan Mahboub;
- E. CSOs' and Media's Role in Monitoring Elections' Finance and Expenditures in Yemen, during 1993 - 2006, basic paper by Mr. Jamal Abdo Al-Hitar;
- F. Corruption and the Dilemma of Monitoring Finance and Elections in Yemen, complementing paper by Mr. Fathi Saeed Al-Ariqui (Fathi Abu Al-Nasr).

2. Recommendations by the participants in the workshop that OPI has implemented on 7 July 2013, to review and discuss the researches by the legal experts, academia, government reps, NGOs, international organizations, revolutionary entities, media and activists and independent reps, and it is a conclusion of serious and fruitful discussions in the workshop;
3. Draft legal provisions prepared by the legal expert Mr. Bagash Al-Mikhlaifi, on the basis of the researches and recommendations made by the participants in the first workshop. OPI and the expert developed the draft following recommendations made by the participants who included MPs, academia, law profession, government and NGOs institutions, international organizations, revolutionary entities, media, and activists who participated in the workshop.

However what is most important following this draft of law is to continue pressuring by civil society and media to lobby among the government, parliament and political parties to adopt this bill in the expected upcoming amendments to the elections law, in line with the GCC Initiative, which backed up by international resolutions.

goal of the study

This study along with the legal provisions, represent a database and reference for those who are interested on "transparency on elections' finance and expenditures", as part of Promoting Transparency in Elections Finance and Expenditures in Yemen project, that aims at providing legal environment that provide for capable transparent mechanism to controls political finance and expenditures and promotes civil society's monitoring mechanism for political finance, in order to ensure equality between candidates, and contribute in building trust in electoral process and increase political accountability.

Promoting Transparency in Elections Finance and Expenditures in Yemen project, is part of "Promoting Transparency in Political Expenditures in the Arab Region", which is implemented in partnership between Arab Parliamentarian Against Corruption "ARPAC", and IFES, and funding from MEPI. Also this project is the first regional initiative to address political finance in Arab region; Bahrain, Egypt, Jordan, Kuwait, Lebanon, Morocco, Tunisia, and Yemen.

The project at the Arab region aims at empowering citizens with accessibility into information related to political finance, and to organize their affairs in absolute transparency, also to increase awareness and understanding among elections' stakeholders with in the region with issues related to effective laws on political finance, building the experts' capacity in supporting reforms on political finance along with the decision makers, through monitoring activities.

Preface

Elections is the way of democratic societies to select or change regimes, also the mechanism that ensures public involvement and participation, it also ensures that the present regime represents trends and aspirations of the community. During the past years, many initiatives emerged as a result of the political and societal movements that aims at enhancing public involvement and regain peoples' role as a genuine party in the political reform formula. Civil society organizations also played significant role in developing these initiatives to create new reality that allow for such CSOs to involve in the development process, drafting new phase laws, monitor democracy process and tools, to measure compliance to neutrality, integrity and transparency in this regard, as provided for by international conventions and charts.

Going back to last century, particularly to 1947 elections in UK, we realize that, that elections has provided a good lesson for all political leaders; that in a democratic society there is no leader who could not be replaced, rather there are strong institutions that are capable to continue and sustain⁽¹⁾. Elections throughout Europe continue to provide the same lesson.

Elections and democracy are twins; whereas many researchers define democracy as "practicing of group selection in deciding on public issues". Although definition of democracy varies; yet a number of elements could be specified to distinguish democratic system, than others, which are⁽²⁾:

- 1- Public representation and elections: meaning that mechanism of acquiring power and occupying any public post, is the elections, whereas people select their representatives, unlike other regimes that depend on appointment;

(1)Winston Churchill was right when he said "democracy is the less worse form of government", however it is known he said that after his electoral defeat, noting that he thought he is a winner, particularly after he won the WWII in 1945. Western democracy managed, through elections as a means for peaceful transition of power, to lay the rules for respecting different opinion, and peaceful opposition, and the common say was so popular "ballot instead of bullet", see <http://www.law-zag.com/vb/t3994.htm>

(2) see.: www.umma.org/.../20080708%20Ahamad%20Khalil.

- 2- Responsibility and accountability: persons who are directly or indirectly elected bear the responsibility of caring for people's interests, normally such persons are professional politicians whose work is to occupy public posts, and shall be accountable for that before the public;
- 3- MPs and parliament: the parliament includes elected MPs, who practice political work to protect people's interests through political institutions that could be bicameral or unicameral that has the power to enact legislatures that serve people's interest in monitoring the executive power;
- 4- Separation between the government and the parliament: political institutions are based on a general legal principle; that is separation of powers, or balance of powers.

On the other hand, in Middle East, millions of people joined Arab spring revolutions, challenging violence and oppression, calling to depose corrupted and dictator family regimes, and demanding change and their right of expressing their will through fair elections. In Yemen, students and youth played pioneer role in this endeavor, when Students started their youth peaceful revolution on 11 February 2011, and gathered in great numbers at change square before Sana'a university, following their fellow youth at freedom squares in Taiz and Aden. Opposition powers were also mobilized behind youth, when Arab revolutions shuddered tyrannies in Tunis, and Egypt, and reflected peoples' will in determining their destiny and establish democracies that represent such will.

Consent of the ruled is the basic concept of democracy, and the basic rights emerged from that is the right of citizens to select their leaders in free, fair and periodical elections, nonetheless, there are other rights that achieves democracy, whereas elections only is not sufficient to maintain democracy, yet people's right of electing their representatives and influence political trends of the government is the major pillar of democracy.

Law organizes all parts of elections, from beginning to end, and monitoring over public elections in any democratic society as one of the most important guarantees that are provided by the constitution and law, to the electoral authority, applying the constitutional principle "people is the owner and source of authority", such legal and constitutional power is practiced indirectly by the electoral authority, through administrative and judicial bodies and institutions in accordance to the provisions of the constitution and laws enacted by the legislative power and organizing resolutions issued by concerned authorities according to their mandate.

In order for the oversight to express the interests of the electoral body, it shall be based on legal legitimacy, and shall strive to ensure equal rights for all voters, and equal opportunities for all candidates, partisan or independent, and shall prevent violations to law's provisions, making its ultimate goal to achieve fair elections, regardless of who will win⁽³⁾.

Oversight shall include monitoring the supervision procedures that are conducted by government institutions in addition to monitoring of the process by political parties, media, NGOs and voters which is the essence of public monitoring, within legal organization and monitoring of election, comes organizing elections financing and expenditures to promote neutrality of elections and ensure equal opportunity for candidates.

Elections in the international conventions:

Free and fair elections is the pillar of democratic system, and of the legitimacy of power transition in any given country, therefore international community and organizations as well as concerned national and regional organizations, pay great attention to its conditions and guarantees, and many regional and international protocols, and conventions, were issued to address each and every details, elements and conditions of elections freedom, integrity and transparency.

International conventions are of great significance, to the extent that it is difficult to consider any national legislature or constitution that might

(3) see Suliman Essam, "comparative report on the situations of the parliaments in Lebanon, Jordan, Egypt and Morocco, Promoting Rule of Law and Integrity in Arab Countries", Arab Center to Promote Rule of Law and Integrity, 2008, p.12, see <http://digital.ahram.org.eg/articles.aspx?Serial=785096&eid=9436>

contradict them, especially with regard to the elections and political rights, also democratic countries adopt such international conventions as part of their national legal system⁽⁴⁾.

Many constitutional and international conventions experts, discuss whether to consider international conventions as the maximum criteria for specific legal system, nonetheless a compromise has been reached, for specific issues stated in these conventions, such as protection of human rights, including political rights, right of election and voting, which are part of the "second generation" of human rights, whereas it must be incorporated in any legal system of specific country.

International conventions have helped in disseminating and enrooting political and elections rights, and became mandatory for increasing number of countries, rather an important reference for elections law. Further it is impossible to underestimate the level and significance of the great number of international conventions, resolutions, declarations, and reports on human rights in general, and on political rights in particular, where many important rules are derived from these documents, for instance, each and every democratic country shall organize elections to assign representative officials, also these documents emphasis on the need to have international observers attending elections process.

International documents are organized through the specialized rules of the international law, also national constitutions shall consider the international conventions as reference for the national legislatures, and as superior organizing bylaws, and mandatory criteria, furthermore normal legislatures and systems shall explain in deep details the contents and procedural measures contained in the international conventions⁽⁵⁾.

Many international conventions and instruments have referred and elaborated on the procedures that guarantees integrity and transparency; mainly; Universal Declaration on Human Rights, International Convention on Civil and Political Rights, issued on 16 December 1966, International Declaration on Democracy, issued by the International Federation of

(4) <http://aceproject.org/ace-ar/topics/lf/onePage>.

(5) See previous source

Parliaments, on the 161st session in Cairo, on 15 December 1997, Declaration on Free and Fair Elections Criteria, by the Council of International Federation of Parliaments, in Paris, on March 1994, Sana'a Declaration on Democracy and Human Rights, in 2004, Harare Declaration in 1991, and other international conventions and declarations.

Within the context, UDHR has provided for the importance of participation of all citizens in managing the public affairs of their country, either directly or through elected representatives⁽⁶⁾, ICCPR, has also provided for the same right⁽⁷⁾.

Clause (3), article (7) of UN Convention Against Corruption, that Yemen has ratified on 7 November 2005, stated that "each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties"⁽⁸⁾.

(6) see article (21) of UDHR, 1948 "

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

(7) See article (25) of ICCPR, 1966, clause (2) "(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors"

(8) UN Convention to Combat Corruption, UNDOC, Vienna, UN, New York, 2004, p.11.

1

Political Finance, its Concept, Sources, Organizing and Monitoring Mechanisms

Political Finance

Candidates and political parties' income and expenditures, which are formal and informal, as well as financial and in-kind. These transactions may occur within or outside of the campaign period, or they may not be directly related to a campaign at all⁽⁹⁾.

Finance role in elections has mounted at different parts of the world, whereas it plays major role in most of elections campaigns. Thereby, relationship between money and politics, became one of the significant problems that encounter governments, according to many international studies on this respect; for instance; James Ker Bullock pioneer study, on practices of political finance in UK, Germany, and France, published in 1932⁽¹⁰⁾.

Political finance was the center of many political debates around the world, considering the waves of democratic transformation, and the increased complicity in electoral process, increase in awareness with the risks of corruption on electoral institutions.

An important question arises when speaking about election finance; who finances elections administrators and elections in general? And how? The answer might be long and requires explanation of the justifications; whereas elections process is the major responsibility of any democratic country, and the state is main source of financing basic or direct expenses for most of the elections administrations, and the elections budget is part of the state annual public budget, however ways of financing elections administration, allocating financial resources in the public budget for this administration, differs from one country to another, depending on the elections law and system⁽¹¹⁾.

(9) See; Political Finance Regulation: The Global Experience, IFES

(10) Professor of political science in Michigan university, served as special advisor of the US military government after WW2; see <http://digital.ahram.org.eg/articles.aspx?Serial=785096&eid=943>

(11) See; <http://aceproject.org/ace-ar/topics/em/emg/onePage>

However, sources of elections finance for parties and candidates are represented at three major sources:

- 1- Self-resources of the candidates;
- 2- Grants and donations by individuals and special domestic institutions;
- 3- State's contribution.

Forms of Public Finance for Parties and Candidates:

Forms of public finance could be divided into three forms as follows⁽¹²⁾:

1- State's direct finance:

Includes cash grants distributed among parties and candidates according to general procedures provided for in the law; Importance of direct state finance lays on the fact that it is a means to improve the financial status of the small parties, and many indicators in Uruguay and Cost Rica, for instance, proves that when wide financial disparities existed between political players, a good system of finance by the state will be a strong tool to maintain balance in the elections arena. Direct state finance plays major role in providing financial means for the leftist front in Uruguay to challenge the elections control of its opponent the traditional conservatives, that continued for a full century, and which was the favorite choice for the donors among companies, therefore public finance system is not just protection for the elections justice, rather it became an important guarantee for multilateralism in the country⁽¹³⁾.

2- State's indirect finance:

Includes in-kind financial assistance provided to the political representatives, such as broadcasting time at public radio stations, using of public facilities, publishing of printed materials through public print house, also state's conceding from tax revenues in favor of the political contributors or candidates, or granting the political representatives with concessions of using government services,

Including also procedural facilities required for the campaign, such as; offices, telephone lines, exemption from specific services' fees,⁽¹⁴⁾ In Lebanon; elections campaign is exempted from the stamp fees, also in Syria,

(12) See http://www.elections-lebanon.org/elections/docs_6_G_2_2a_2.aspx

(13) See Kasas Zamura, Kevin Political Finance and State's Finance Systems, General Overview, Brookings Foundation, Costa Rica University, 2008, p.8,19,
<http://digital.ahram.org.eg/articles.aspx?Serial=785096&eid=9436>

(14) See Dr. Ali Al-Sawi http://www.elections-lebanon.org/elections/docs_6_G_2_2a_2.aspx

where it is exempted from judiciary and financial fees, in Kuwait and Bahrain the state allocate specific locations freely, to be used by the candidates in their elections advertisement

However on the other hand, some countries prohibits that, either for political or financial reasons,⁽¹⁵⁾ where in Palestine, the National Authority is prohibited from financing or assists any candidate in his/her elections campaign. Also in Yemen it is prohibited to spend on elections advertisement from public funds or from ministries, public authorities or companies or institutions, except for presidential elections, which is exempted by article (71), of Elections and Referendum Law, in Jordan, it is prohibited to conduct them at public institutions, also it is not allowed to use state emblem in the meetings, advertisement and elections statements, in Algeria it is not allowed to use worship places, basic and high education facilities for any of elections advertisement purposes,

3- Specified Political Subsidies:

Includes cash grant specified fed for parties, that have blocks in the parliament.

Foreign Funding

Arabic countries are reluctant to open the door for foreign finance for the elections campaigns, under the impression that, which might be true, behind such foreign assistance lies hidden agenda for these countries, otherwise why funds are provided for one candidate than another, also such foreign parties that finance these campaigns might aim to provoke sectarian conflicts, or influence existing regimes under different pretexts⁽¹⁶⁾.

When reviewing most of Arab elections laws, we sense semi-consensus among Arab countries that no candidate shall receive donation or finance from foreign party to fund his/her elections campaign, in Bahrain the law prohibits the candidate from receiving any finance for elections advertisement from any party, in Palestine also the law prohibits any party or candidate from running elections form receiving funds for his/her elections campaign from any foreign source, in Jordan the law prohibits any candidate from requesting

(15) see Dr. Ali Al-Sawi, previous source.

(16) See Dr. Ali Al-Sawi, previous source.

gifts, donations, or in-kind or cash assistance or other benefits, directly or via others, in Saudi the law required to provide a statement of all sources finance received by the campaign to the local supervising committee, within maximum 10 day of announcing the final results of the elections, and prohibits all cash or in-kind donations and assistance, or receiving assistance or finance form foreign party, so did Yemeni law, and prohibits funding elections advertisement from foreign assistance.

Elections Expenditures:

Governments plays economic role depending on the economic philosophy it adopts, therefore it shall apply the applicable way through which it may allocate economic resources to satisfy public needs, through public expenditures, and public expenditures is defined as "cash money that is spent by public authority to satisfy public need", or "amount of money that is spent by the state or public nominal person to achieve public interest"⁽¹⁷⁾.

From the above definitions, expenditures are not considered as public expenditures, although made by public nominal person, unless and until it is directed to satisfy public need of the community, so existence and concomitance of these three pillars makes an expenditure a public one, aims at satisfying public needs⁽¹⁸⁾, on the same level, elections expenditure is part of public expenditures, especially if it comes from state's treasury to finance activities related the election campaigns of parties or individuals.

However, the most serious issue about using and spending money during elections, is the presence of negative features such as bribes to the officials, heads of offices, votes-buying, resulting on dominating the elected institutions by individuals all their qualifications are huge financial capabilities, without having political history or genuine partisan affiliation⁽¹⁹⁾.

It is true that financial corrupting to elections, is just one form of the multifaceted elections corruption, yet it is not isolated from other factors, it interacts with the administrators interference and support to specific

(17) See Wael Salem Jameel, <http://econ.to-relax.net/t835-topic>

(18) See previous source

(19) Some studies indicates that some candidates to parliamentary elections in Morocco spend 10 million Dirhams, or 15 or 20 million Dirhams, for each candidate in his/her campaign, which is not rare cases in Morocco, or few amount of money, considering living conditions in Morocco, which is similar to Yemen, and this amount equals 300 thousand US dollars, according to exchange rate. See Saadeddin Othmani, Towards Rationalizing Elections Finance, <http://www.maghress.com/almassae/137180>

candidates and with other discrepancies throughout the elections process, associated with the legislative deficit that impacts all relevant aspects, leading to inability to shut down sources of elections' financial corruption, however we shall focus on issues related to elections finance and expenditures, which shall be addressed by elections law.

Organizing mechanisms for elections finance and expenditures:

Before addressing elections finance and expenditures, we have to raise certain questions such as; how can we speak about elections integrity, free and fair competition, whereas the competitors face financial floods turning elections into a business without restrictions or rules? After all will elections and democracy have any meaning if the financial and economic powers took control? Observers to elections affair, agree on the mounting influence of money on elections process and its results, which is one of the most devastating evils on politics and on elected institutions, such evil is escalated by poverty, need and unemployment, making citizens an easy prey before grants, donations and other forms of blackmailing.

Such issue represents a major discrepancy that endangers political process, and a decisive factor that shapes elections map. Nonetheless this issue was not considered seriously from legal viewpoint, rendering elections law lagging behind in this respect, including Elections and Referendum law in Yemen⁽²⁰⁾. Furthermore, such issue is not addressed in the public arena, or discussed or by political parties, and unless serious measures are taken to combat it, its risks will escalate and continue, and if elections expenditures left without restrictions or rules, it will eliminate equality principle among candidates.

Role of capital in political activities could be organized through a number of legal mechanisms and tools, to control elections finance system, and rules that address the inevitable influx of funds to and from the political system, and that provide the framework within which parties and candidate can operate legally to obtain and spend required finance to their elections activities, also through which citizens and organizations may contribute in funding such election activities. Legal tools to organize elections finance could be classified into four categories, as follows:

(20) Yemeni Elections and Referendum law and its executive bylaw, lacks articles that controls elections expenditures; see <http://www.parliament.gov.ye/election/part4.htm>

1. Regulations on candidates and parties source of finance:

This category includes organizing tools for the flow of economic resources to the economic activities by controlling use of certain sources of finance, or prohibit using them ("negative prohibition regulations", or providing uses of other sources or encourage using them "positive approval regulations". Yemeni, Egyptian and US law, for instance, prohibit foreign finance for elections, i.e. finance to candidates or competing parties, however it is noted that the authorities charged with organizing and supervising elections, receive foreign finance for its activities.

2- Regulations on Political Expenditures:

This category includes rules that specify the ceiling for expenditures by the parties and candidates, in addition to the limits or restrictions applied on using specific expenditures item, particularly elections campaign adds, also includes limits on the elections' campaign duration.

3- Regulations on financial transparency reporting:

Covers all criteria that are imposed on political parties, candidates, and other political representatives, and to report to government authorities about the sources and uses of their economic resources, also include the rules that determine whether such information has been audited and disclosed locally or not⁽²¹⁾. For promoting neutrality, the independent committees that organize elections shall work in transparency, particularly on the sources of finance, such as:

- A- Political parties' membership fees;
- B- Unconditional donations by businessmen;
- C- Grants in the form of resources, services or in kind contributions;
- D- Grants by national or international institutions concerned with democracy issues.

4- Penalties:

Includes all penalties applied at instance of violation to any of the restrictions or commitments to the abovementioned rules, however on the

(21) Yemeni law lacks the regulations that ensure transparency and oversight over finance and its sources, and size, or elections expenditures ceiling, thereby harming equality principle among competing candidates and parties, as well as equal opportunity principle.

international level, it is noted that fines is the common penalty for any violations to the political finance rules⁽²²⁾.

Rules and conditions on elections finance and expenditures:

International criteria on elections campaign finance and expenditures are based on two major principles, which are⁽²³⁾:

- First; transparency of the bank accounts of the elections campaign;
- Second; specifying ceiling for the elections expenditures;

Certain elections laws, does not indicate to the sources of finance for the candidates and their elections' campaigns⁽²⁴⁾, rather indicates to "state's contribution in financing elections' campaigns", organized by political parties and unions, also Yemeni law has limited elections finance to the presidential elections' candidates⁽²⁵⁾. Certain comparative laws tend to ban receiving of finance from nominal persons, such as public companies and corporations, and to put a ceiling on individuals' contribution in the elections campaigns.

This will include all elections' activities, that cover all elections campaign activities, which represent the areas of elections' expenditures, through spending on elections campaigns following provision of required finance. Researchers use the term "election campaign" on all media, partisan and individual's efforts; whether such efforts are⁽²⁶⁾:

- 1- Advertisement works;
- 2- Announcements;
- 3- Media campaigns;
- 4- Public relations;

(22) Following 2000 elections in Mexico, a fine of \$.102 million was imposed on the Revolutionary Party, by the electoral authority, for receiving finance from a state-managed company, which was not reported to the authorities, also a fine of \$.3.5 million was imposed on Labor Party in Israel, for using illegal donations. Kasas Zamura, Kevin, 2008, previous source, p.7. see <http://digital.ahram.org.eg/articles.aspx?Serial=785096&eid=9436>

(23) see Saadeddin Al-Othmani, Towards Rationalizing Elections Finance, see <http://www.maghress.com/almassae/137180>

(24) See Saadeddin Al-Othmani, previous source.

(25) See Yemeni Elections and Referendum law article (72); which exempt provisions of article (40) of the law, and article (38) of the executive bylaw of the law, that prohibits financing elections from public finance; whereas it provided for "granting each candidate for presidential post an amount of money, to be paid from the public treasure, based on parliament presidium recommendation, and parliament approval, provided that all amount paid being equal for all candidates, to meet elections' campaign expenses for each candidate"

(26) Lebanese Parliamentarian Elections law, No. 25 of 2008, specified these issue accurately, see <http://www.elections.gov.lb/Parliamentary/SCEC/Campai>

- 5- Elections offices hired by candidate or list, or political entity to which the candidate affiliates, and rent incurred for such offices, and other related expenditures;
- 6- Public rallies, gatherings, meetings and meals of elections nature and expenditures related to all these activities;
- 7- Expenses incurred when transporting his/her supporting voters;
- 8- Foods and refreshments for the elections' campaign staff on the day of balloting.

Elections campaign is the planned and continued outreach efforts by political parties or individual candidates, that aims at creating desired image about the party or the candidate, among present or potential voters, or to urge individuals to cast their vote for such party or another, also defined as "the planned and continued outreach efforts that aims at urging people to stand behind elections program or to vote in favor of specific candidate"⁽²⁷⁾. Also it is the process through which an election advertisement campaign is organized either for a party, candidate, or organization of special interest, that solicits public support to win a political post⁽²⁸⁾.

Most of elections laws, determine areas of elections expenditures through defining the activities and aspects on which such funds are spend that are considered as elections expenditures; for instance, article (58) in Lebanese Parliamentary elections' law No. 25 of 2008, obliges each candidate to provide data and information related to the following issues⁽²⁹⁾:

- First; list of hired elections offices, by each candidate or elections list, or political entity to which the candidate is affiliated, rent paid for these offices, and other related expenses;
- Second; statement on public rallies, gatherings, meetings and meals of elections nature and expenditures related to all these activities.

(27) see www.umma.org/.../20080708%20Ahamad%20Khalil

(28) See Farrell 1996, Kafanakh 2000, and Nelson 1999, http://www.iknowpolitics.org/en/taxonomy_menu/2/7

(29) see <http://www.elections.gov.lb/Parliamentary/SCEC/Campai>

Ceiling of elections finance and expenditures:

Specifying ceiling for expenditures on election campaign is an important issue, to achieve equal opportunities between candidates, being a precondition for correct and fair election representation, normally national elections committees, specify campaigns' expenditures ceiling, ways of verifying commitment therein, and measures applied when such commitment is violated, however maximum ceiling for financing elections' campaign varies among different countries, noting that certain countries left that maximum ceiling open, as in Yemen, Jordan and Lebanon⁽³⁰⁾, leaving the ground for capital to play major role in most of elections' campaigns there.

Some proposes to link the expenditures ceiling to the average annual income of a specific rate of voters, according to the estimation of the central bank in a given country, about (0.5-1%) of total number of voters in a specific constituency, for instance; if the average annual income of individual, according to the central bank estimation is \$1000, and the number of the registered voters is 5000, the expenditures ceiling should range between 25 thousand to 50 thousand dollars; i.e. 0.5-1% percent of the total average annual income of the voters in the constituency, whereby the maximum ceiling of the candidate expenses is 50 thousand dollars.

However the expenditures ceiling is still a matter of debate, and political, legal and accountant differences, in either case it should be linked to the verification, and oversight measures over the finance and expenditures in reality, in addition to the economical and social conditions prevailing during elections time⁽³¹⁾.

On specifying maximum ceiling for elections campaigns expenditures, for both parties and candidates in certain Arabic countries such as Yemen, Jordan, there is no such law that specifies this ceiling, thereby maximizing the role of capital in playing major role in most of the campaigns there, and further determines election results in these countries.

In Lebanon, the law did specify ceiling for elections' expenditures, in article (57) of Lebanese elections law No.25 of 2008, has determined the

(30) See <http://digital.ahram.org.eg/articles.aspx?Serial=785096&eid=9436>., previous source

(31) See Dr. Ali Al-Sawi http://www.elections-lebanon.org/elections/docs_6_G_2_2a_2.aspx

maximum ceiling of expenditures for each candidate during elections' campaign at two different levels, first fixed amount of 150 million lira, and second a mobile ceiling linked to the number of voters in the constituency, and endowed the cabinet to specify the mobile amount, based on minister of interior and municipalities recommendations, which is related to the number of voters in given constituency.

In Morocco the pertaining law has organized finance of elections campaigns, and specified state's contribution in these campaigns, and the amount that the states contribute is distributed according to the parliament seats for each political party, as compensation, and there is certain mechanism provided for by the law to control and specify the expenditure ceiling⁽³²⁾.

In Egypt, the Supreme Elections Committee has described in 2005, the rules for elections campaigns expenditures, and determined expenditures ceiling therein, however the amount spent by certain candidates, especially, businessmen, exceeds the maximum allowed ceiling, although the Committee determined the maximum ceiling of expenditures for the parliament and Shura council's elections in 2011, at 10 million pounds, yet the reality varies greatly, whereas expenses of certain candidates, particularly in rural areas, exceeds the 10 million pounds⁽³³⁾.

On the ceiling of expenditures on elections advertisement , article (4) of the Committee resolution, has stated the maximum ceiling of each candidate expenditures on elections' advertisement to be at 500 thousand pounds, and 250 thousand when reruns elections, either for individual candidates or partisan list/ticket candidates⁽³⁴⁾. Elections expenditures process has developed in the recent years, from merely organizing, supervising, and controlling expenditures, up to "public finance to elections".

Sweden is one of the first countries that adopted public finance to elections principle, within the frame of organizing elections expenditures in 1966, which is based on three major rules;

(32) see Suliman Essam; Comparative report on Parliaments' situations in Lebanon, Jordan, Egypt and Morocco, promoting rule of law and integrity in Arabic countries project, Arab Center to Promote Rule of Law and Integrity, 2008, p.12.

(33) Previous source.

(34) See report by Yemeni Society to Support Democratic Development. "Present Violations and Absent Democracy", 1st report on Monitoring Elections Campaigns for Parliament Elections, Nov.2011, p.4,11

- 1- Finance provided to serious parties that possesses genuine political presence;
- 2- Finance based on justified request form the party or candidate;
- 3- Relative finance according to parliamentarian size of each political block.

With the success of Swedish experience and development of the elections' process, many countries adopted public finance⁽³⁵⁾, where Germany started since 1968, organizing public finance to elections' campaigns, where in addition to donations and membership fees, each party receives specific amounts from the state, whereas each political organization that scores 0.5 percent of votes at the national level, and 1 percent at the territories' elections receives state's finance.

UK followed the path of other countries, where a ceiling for elections expenditures has been adopted in 1983, and the spent amount and donations shall be executed through an independent bank account, under the oversight of the public administrators concerned with elections process, and the candidate shall assign special financial delegate.

In France, the law enacted in 1988, was the first in a series of laws, that organized political parties finance system, with specifying ceiling for elections' expenditures and oversight mechanism. In 1990, two laws were enacted that specify new mechanism to monitor elections finance and expenditures, whereas the pertaining French law determines a ceiling on the size of elections campaign finance, which shall not exceed 13.7 million Euros for first round candidates, whereas second round candidates shall not exceed 18.3 million Euros limit. Since 2001, the state reimburses the candidates with half of the amount spent on the campaign for those who scored 5 percent of votes at the first round of elections; however such reimbursement shall not exceed the amount of the expenses declared by the candidates⁽³⁶⁾.

In Algeria, the ceiling for elections' campaign expenditures for each list in the legislative elections has been specified as "not to exceed a maximum of one million dinars for each candidate"⁽³⁷⁾, Japan also distinguish between

(35) See experiences of a number of Arabic countries in elections finance

http://aceproject.org/ace-ar/topics/me/mec/mec04/mec04b/mec04b03?set_language=ar

(36) see <http://www.arabnet5.com/news.asp?c=2&id=181607>

(37) See article (207) of Algerian elections law on: http://www.ennaharonline.com/ar/algeria_news/

parties and candidates in controlling campaign's expenditures, whereas it is not allowed for the candidates to purchase broadcasting time, however the parties, may purchase the time allocated for advertisement , provided that the advertisement calls for supporting the party not for a specific candidate.

In the first parliamentary elections in Mongolia, the same free and paid broadcasting time was allocated for each party, and the government subsidizes the paid time for the small parties, at some instances the option of "addition" is proposed, to ensure equality of spending in the campaign in order to enforce expenditures limit, the idea is to specify expenditures limit, and if one party exceeds that, other parties will get additional funds from the public finance⁽³⁸⁾.

Finally it is important to specify ceiling for elections campaigns' expenditures, to achieve equal opportunities between candidates, and ensure genuine and fair representation, also political parties shall work for change and reform, and increase their abilities to work with more transparency and accountability, and shall receive technical assistance and training in this respect, to enable them to follow the needed procedures, to adopt transparency, democracy, financial accountability, in addition to commitment with the rules and laws organizing finance and expenditures of elections campaigns.

Civil society also shall play their monitoring role, disseminate awareness among public on political parties finance, noting that limiting expenditures on elections campaigns, will indirectly organize paid political advertisement in many countries, and such limits shall be stipulated in the pertaining law.

Monitoring elections campaigns' finance and expenditures:

It must be emphasized that when the systems, strive to achieve simple and clear goal, it is not always easy to achieve that through legislatures, whereas tricks and illegal practices, represent an obstacle, so when a law specifies limits on the expenditures for a party or a candidate, it should clearly stipulate what is meant by "advertisement expenditures", and distinguish between items that are considered as advertisement expenditures, and other expenditures, whereas political parties, candidates, and donors often succeed in avoiding legal requirements, through the legal loopholes.

(38) see Robert M. Altman, Media and US Elections, Public Policy and Media Practices, in Yasha Lang and Andrew Palmer, Media and Elections, Europe Institute Manual for Media, Dusseldorf, 1995. .
http://aceproject.org/ace-ar/topics/me/mec/mec04/mec04b/mec04b03?set_language=ar

To combat fraud, article (54) of Lebanese elections law No. 25/2008, stipulates the provisions pertaining to elections campaigns' expenditures, and candidates' expenditures during the campaign that starts with the date of applying for candidacy, and ends with closure of the ballot box⁽³⁹⁾.

Article (55) of the same law, states that "each candidate shall open a bank account in a Lebanese bank, to be titled according to the campaign's name, and shall attach with the candidacy license, a bank statement proves that he/she has opened such account with account number and name of account holder", also "the bank account of the said campaign shall not be subject to bank confidentiality condition, and the candidate concedes by de jury such confidentiality the moment he/she opens such account", also "all donations and expenditures shall be made through this account exclusively during the whole period of the elections campaign". Article (62), of the law penalize with six months sentence, and a fine of 50 to 100 million liras, whoever violates any of this section's provisions, or by one of each of these penalties, without invalidating other crimes stated in the law". Article (61) also states that "each candidate, when elections is over, shall prepare a comprehensive financial statement according to the financial rules, including details of the total donations received, its sources, dates, and the total due or paid, expenditures, its dates, during the elections period", such statement shall be submitted to the authority, within one month period following elections, attached with supporting documents of the accounts' items, such as receipts, payment vouchers, and other documents, along with bank statement of the campaign's bank account, stating all operations conducted in this account, from the opening day till the date of such statement".

In Egypt, article (214), of Presidential elections law, provided for opening a bank account for the elections campaign, in a bank that the "Presidential Elections Committee" specifies, in which the received cash donations shall be deposited, as well as financial assistance received from the state, and what he allocates from his own money. The candidate shall further notify the Committee, with the deposits he/she made in such account, its sources, and areas of expenditures, at times and through procedures decided by the Committee, and it is not allowed to spend on the campaign from other sources rather than this account".

(39) see law articles <http://www.elections.gov.lb/Municipal/Legal-Framework/Election-Law>

Article (27) of the law has banned the candidate of "receiving any contributions or financial or in kind assistance, for the campaign, from any Egyptian or foreign nominal person, or any foreign country, entity, international organization, or any entity in which a foreign person is shareholder, or from a natural foreign person".

Article (28) obliged the candidate to submit to the Committee, within 15 days after announcing elections' result, a detailed report includes "total revenues received, its source, its natures, and what is spent on the campaign, and areas of such expenditures", and the Central Authority of Auditing shall monitor and review the campaigns accounts, which in turn shall submit a report on the auditing conducted to the Committee within 15 days from referring such accounts to the CAA⁽⁴⁰⁾.

Although these provisions are precise, scampers will find their way, for instance certain contributions could be passed as commercial services and "partisan institutions" might be established as officially independent entities from the mother corporation, whereas in fact they are affiliated to it. At certain instances some donors may not even care about evading laws, based on their confidence to avoid any investigations, they provide illegal grants to the politicians, who accept them⁽⁴¹⁾.

Even though, monitoring finance of elections campaign, could be used as means to give chance to poor parties in the paid advertisement environment, through legal provisions or regulations, for instance in the US, all political advertisement must inform who pays for them⁽⁴²⁾, also at certain countries, the elections authorities, shall specify the systems, and assistance that are applied on financing political parties, candidates and campaigns.

(40) see <http://www.masress.com/elfagr/169968> , previous source.

(41) At certain instances, some politicians were suspected of involvement with criminal organizations, and the role of money generated from drugs trafficking, among the political elite in Colombia, is an obvious example on the that, also other scandals on illegal political finance raised in Belgium - Class case, UK and France, Germany Flick case, India, Italy, Japan, Spain, an US, see;

<http://www.pal-plc.org/index.php/2010-07-06-16-15-46/709-2010-07-25-21-48-58.html>

(42) see Robert M. Altman, Media and US Elections; Public Policy and Media Practices; previous source.

Legal and illegal elections' finance and expenditures:

Rules that govern elections' organization consist of a wide number of provisions, and they draw the line between what is legal and what is not, and they could be categorized into four levels as follows:

- 1- Constitutional rules;
- 2- Elections laws;
- 3- Administrative regulations, which is lower than laws "issued by special authorities mandated with elections administration";
- 4- Rules on public competition.

These four levels form the legislative framework that governs conducting democratic elections and it is important each rule shall be in the relevant level, for instance, organizing elections requires rules that range between the right of secret ballot, to public competition rules, that governs relations between competing candidates. These four levels are interlinked, whereas, when a specific system does not fall under one level, it falls under another lower or higher level, and the lawmakers at each country shall choose the most applicable legal tools to organize elections activities. Also organizing of elections activities shall be a matter of consensus on the content, and sustainability of the main elements, such as the structure of electoral system, and rules that guarantees the right of ballot, with a margin to allow for amendment to the regulations and their interpretation, either by administrative arrangements or resolution by the elections' authority.

Violating the provisions that determine elections finance and expenditures, are considered as violations in such sense, elections bribe becomes illegal and non-democratic practices, and state's institutions shall observe that being concerned with protecting legitimacy and enforcing law⁽⁴³⁾.

Noting that involvement of capital element in the elections process and campaigns in particular, may impact its integrity, pertaining laws have imposed certain restrictions on receiving and spending funds, and specified a financial ceiling that the candidate shall not exceed, also these laws, have organized means on contesting such finance sources and expenditures, and

(43) See Dr. Ali Al-Sawi http://www.elections-lebanon.org/elections/docs_6_G_2_2a_2.aspx

monitoring them to prevent any violations, this rule also obligate the candidate to submit record of sources of finance to his/her campaign to the national elections committee.

It is important to stress here, that conducting elections campaign under equal opportunity, places ethical restrictions on the interference on the candidates' freedom to conduct campaign by all democratic means, whether such interference is legal (imposing freedom restriction laws, such as emergency law), or administrative; thorough the institutional capacity of the state; i.e. distinguishing between the candidates of controlling party, and others, in providing facilities, and flexibility in implementing political work law, or organizational interference, deriving it legitimacy from the supervising authority mandate, although independent and unbiased, however, the rules managing elections campaign shall contain an important element; finance shall be subject to accountability.

In order to verify the legitimacy of the elections finance and expenditures, each candidate shall maintain bookkeeping on the sources of his campaign finance and areas of expenditures as stipulated in the pertaining laws, that to be submitted to the concerned elections authority, provided that only the concerned authority shall have the right of reviewing such records, unless with court's ruling. If the finance and expenditures rules have been violated, the violator may face penalties that reach up to invalidating of his/her wining, in Algeria for instance, the candidate whose expenses exceeded the limits specified by the law, shall pay the exceeded amount to the public treasure, however, the financial violation will not lead to disqualify the violators at the presidential elections⁽⁴⁴⁾.

(44) See, http://www.ennaharonline.com/ar/algeria_news/106889

2

Political finance in Yemeni law

First; Elections and Referendum law and its executive bylaws:

Yemeni law No. 13 of 2001, and its executive bylaws of 2002, lacks the provisions that organize elections finance and expenditures, however it has indicated that the state incurs the expenses of elections and referendum, and the government shall provide the Supreme Elections Commission with all resources, tools and means, that enable it to perform its work satisfactorily, and the Commission shall prepare an annual budget and submit it to the cabinet and that should be approved by the parliament, such budget shall be part of the state public budget, under Commission's name, however what is meant here is incurring the organization and administrators of the elections at the national level to ensure its success, not support the candidates, with exception to the presidential elections, whose candidates receive elections' finance. The law, and bylaws, did not determine sources of elections finance, or decide on as the candidates' right in the parliamentary or local elections, also did not provide for specific way for monitoring elections' finance or expenditures in these elections, neither did the law specify finance or expenditures ceiling. Rather it is left unaddressed, thus, contradicts with the equal opportunity principle as provided for by the constitution, thereby rich candidates determine their own ceiling to ensure winning elections, either from their own resources or their supporters⁽⁴⁵⁾.

It would have been more convenient if weak categories were provided with relative advantage to be able to compete, such as specifying finance and expenditures ceiling on the elections campaign, so as rich and influential people may not dominate the scene during elections' campaign. On local elections; article (38) of the bylaws, has banned financing candidates of the parliamentary elections from the public finance, or foreign finance; "with due consideration to article 72 of this bylaws, it is prohibited to spend on elections advertisement from the public finance, or ministries', public corporations', companies, or public authorities' budget, or from foreign assistance", yet this is not enough, where rich candidates can finance and spend lavishly on their elections campaigns, only poor candidates and small parties that cannot support their candidates to win will suffer.

(45) See Yemeni Elections and Referendum law and its executive bylaws, in the link <http://www.parliament.gov.ye/election/part4.htm>, or <http://web.scer.gov.ye/arpage.aspx?show=15>

Equality in Elections Advertisement

Although article (40) of the bylaws, strived to mitigate the wide gap between the candidates as with respect to elections advertisement, in clause (b), that provide for "the main committee shall identify locations, following closing the withdrawal from candidacy, to post elections advertisement within the constituency and allocate equal space for each candidate at such locations, with due consideration to the following;

- 1- Specify one location at each elections center, divided into equal quarters and numbered according to the candidates' number;
- 2- Organize such quarters according to candidacy applications' order of priority;
- 3- Not to post any advertisement or posters outside the specified locations according to this clause provisions.

However, this does not mend the gap between the candidates, whereas well off candidates may use such space more effectively, unlike others with limited resources. Other articles of the law provided for general outlines on the elections campaign's advertisement, meetings, and what is allowed and what is not during the campaign, its duration, and other formalities; where article (42) of the bylaws provided for "not allowed for any candidate to post at the specified locations at article (40) of this bylaw, till the last date prior voting date;

- A. More than two elections advertisement ;
- B. More than two announcement for elections' meetings, and such announcement shall contain only date and venue of meeting, name of speakers, and candidates"

Article (43), stipulated that "no candidate shall use or allow using his/her advertisement board, for purposes other than his/her candidacy and elections' program, further he/she may not concede the allocated space for others", thereby banning selling of spaces to other candidates. Article (57), clause (b), stated that "each candidate shall pay elections advertisement posters' fees, of five thousand rials, in favor of the local council at the cities where the constituency lays, and shall receive a receipt confirming payment, the candidacy application may not be accepted without such payment receipt, and the local council shall remove such posters within maximum thirty days following elections". Article (50) of the bylaws has vested the Supreme Elections Commission with the responsibility of organizing using of public media for elections campaigns, for the presidential elections' candidates, in a way that achieves equal opportunities in time and space for all candidates.

Public Funding for Presidential Candidates

On elections finance, article (71) provide for exempting competitors over presidential elections from the provisions of article (40) of the law and article (38) of the bylaws, by granting each candidate to the president post, an amount of money to be paid from the public treasure, on the basis of parliament presidium recommendation and parliament approval, provided that the amount are equal for all candidates, to meet the expenses of the elections campaign. Article (75) has provided for each candidate to the presidential elections to receive donations from natural and nominal persons, provided that such donations are made through a bank account, and that statement of account is submitted to the Commission, and it is not allowed to receive finance from any foreign party.

Lack of Public Finance for the Candidates of Parliamentary and Local Councils' Elections:

While the law approves provision of finance assistance to the candidates of presidential elections from the public treasury, exempting them from elections' advertisement fees, and allowing them to receive local donations, it bans candidates to local and parliamentarian from receiving any government finance, apart from continuing paying them their due salaries against their public jobs, and grant them with financial dues, related to their public jobs when they resume work; it states that "each employer who runs parliament elections, and suspend his public job, as of the date of candidacy, and resumes his job if he/she did not win elections, shall receive all his/her dues, if he/she won, his dues shall continue at his/her place of work during his/her term at the parliament, and he/she may return to a job similar, at least, to his/her previous one"⁽⁴⁶⁾.

Article (57), clause (b), on posters fees, became an obstacle, according to observers of 2006 local elections, before candidates' applications who are not welcomed by the ruling party then, Peoples' General Congress, in additional to other obstacles that involved using of elections finance, such as the financial precondition to accept contest over balloting and counting at local constituency, "provided that the contest is accompanied with an amount of ten thousand rials to be deposited at the court's safe, as financial guarantees, that to be paid to the account of the local council at the district, if the contest proved to be invalid, or refunded to the applicant if such contest was in his/her

(46) Republic of Yemen, law No.13 of 2001, on Public Elections and Referendum article 60.

favor"⁽⁴⁷⁾. when the contest filed at the supreme court, the law has required "to pay an amount of 100 thousand rials, along with his contest application, to be deposited at the court's safe, as financial guarantee, that to be deposited at state treasury, if the contest was proved invalid, and to be refunded to the applicant of the contest if the ruling was in his/her favor"⁽⁴⁸⁾, same applies for the contests on balloting and counting of votes in the parliamentary elections; whereas the has required "to pay to pay an amount of 50 thousand rials, along with his contest application, to be deposited at the court's safe, as financial guarantee, that to be deposited at state treasury, if the contest was proved invalid, and to be refunded to the applicant of the contest if the ruling was in his/her favor"⁽⁴⁹⁾.

Observers to Yemeni elections, considered that the prerequisite to deposit huge amount of money at the court, to consider applicants' contests, impedes such process, rather it is considered as prejudgment on the filed contests, thereby discouraging applicants from doing so, under the impression that such legal provisions was made to intimidate them, and burden them with additional elections' expenses.

Second; Political Parties and Organizations law:

The law on Political Parties and Organizations law No. 66, was enacted on 16 October 1991, and the executive bylaws was issued under republican decree No. 109 in 1995, and chapter four of the law addressed in articles (17 through 27), the resources and financial provisions, where article (17), specified political parties resources as follows:

- Membership fees and donations by the members;
- Financial assistance;
- Non-commercial investment revenues, gained from publications and print houses, provided that they serve the political party's purposes;
- Grants and donations.

Clause (5) of the same article, has banned receiving any donation, or privilege, or benefit, from foreign person of party, or from a nominal person even Yemenis. The clause required the political party or organization to record the donor's name and amount donated, in legal accounts records, if the one time donations' amount exceeds 100 thousand rials, or 200 thousand rials within one year, and such donations are not deducted from any income tax. In

(47) Same, article (120), clause (c).

(48) Previous source, article (117), clause (c).

(49) Same, article (111), clause (c).

addition to the abovementioned resources, article (18) emphasis, on state's financial assistance to the political parties, where the Political Parties and Organizations Committee proposes the amount of the annual assistance, to cabinet, and to be included in the public budget, following its approval. Article (19) has allocated the total amount of the assistance as follows:

- 25 percent to be distributed equally among the political parties that are represented at the parliament;
- 75 percent to be distributed among all political parties, according to the number of votes that they have scored during the parliamentary elections;

However, this article exempted political parties that scored less than 5 percent of the total votes. However, distribution of such assistance among political parties shall be during the transitional period, on the basis provided by the cabinet, recommendations by a committee formed by political parties, submitted by Political Parties Affairs Committee, and cabinet approval.

Article (20), specified amount of assistance so as not to exceed the total of the annual subscription fees paid by the party's members, and any surplus shall be refunded to the public treasury, and such assistance shall be paid on the first day of January as specified in article (21), however if budget approval was delayed, the assistance will paid on the last year's estimation, pending issuing public budget law.

According to article (22), the provided assistance will be suspended at the following instances:

- If a judicial ruling was issued to suspend a political party, according to article (34) of this law;
- If the party failed to submit the annual financial report, on the revenues and expenditures to the concerned authority;
- If the party did not commit to article (24) provisions, and on the basis of court ruling;
- If the party is dissolved voluntarily.

Article (24) states that party's finance shall be spend only on the party's purposes, objectives and according to the rules and procedures provided for in the bylaws. The party or political organization, shall deposit its funds at a bank account in a Yemeni bank, and shall maintain bookkeeping that includes it revenues, and expenditures according to the rules specified in the bylaws, and shall report annually with final accounts to the Political Parties' Affairs Committee;

Article (25), emphasized that the Committee, following reviewing the annual report on the final accounts, may review and inspect party's books, receipts, revenues and expenditures, and whether such revenues are legal, and areas of expenditures, by a technical nonpartisan commission, to be assigned by the Committee, such commission shall provide copy of their findings report to the political party's leader, and shall maintain confidentially of the findings concluded, unless violation is detected that requires judicial procedures, according to the Political Parties and Organizations law⁽⁵⁰⁾.

Institutions authorized with monitoring elections campaign s finance:

Is it necessary to have an institution that monitors political finance? Which one? These two questions indicate that there are more than one party vested with monitoring political finance, and its expenditures mechanism, within this context, "a recent comparative research has shown that 63 percent of the countries that have authorities concerned with enforcing political finance, depend mainly on the national elections administration, and 28 percent assigns this task to government institutions, such as ministry of interior, labor, or justice, or tax authority, attorney-general, other institutions concerned with enforcing political finance may include parliaments and constitutional courts⁽⁵¹⁾.

In Yemen, the Supreme Elections and Referendum Commission (SERC) is responsible for managing elections, yet the law did not mandate it with wide and clear powers on monitoring elections finance and expenditures. This Commission with its nine members is responsible for preparations, supervising, and monitoring public elections and referendums.

On elections finance, article (31) of Elections law provided that;

- A. "the state shall incur elections and referendums expenses, and the government shall provide Supreme Elections Commission with all resources, mechanisms and means that enables it to conduct it work satisfactorily;
- B. SERC, shall have an annual budget that it prepare and submit to the cabinet, and shall be approved by the parliament, and included within state's public budget, under one budget item under SERC name;

(50) See Political Parties and Organizations law, chapter 4, and article 17 through 25. Please note that this law is one of few laws that were not amended yet, also many political parties were formed after this law, and its executive bylaws was delayed until 1995

(51) Marcin Walecki, Organizing Policies: Role of Internal and External Supervision in Europe, January 2008, p.3

- C. SERC shall propose its budget to the government according to the common principles and rules in budgeting, for authorities that are financially and administratively independent;

Article (32);

- A- SERC is financially and administratively independent entity, and has nominal character, and shall practice all responsibilities and powers provided for in this law, in complete independence and neutrality, SERC resolutions shall be public and no party whatsoever may interfere in the affairs of SERC, works, responsibilities or may limit its powers.
- B- SERC shall have administrative, financial and technical system, in the headquarters and the governorates, and shall have its own staff members, for whom a republican decree shall be issued. SERC may prepare its own organizational structure and bylaws;
- C- SERC may practice all powers and responsibilities authorized for the ministries of civil service and finance, in the valid legislatures, in all administrative and financial affairs pertaining to the SERC administrative and technical staff;

One of democracy principles is to institutionalize elections' administrators to ensure professional and independent elections' management, independent from the executive power, where monitoring criteria applies on elections' finance and transparency in its performance.

We believe that partisan or government control over Elections Commission, will make it prone to corruption and under influence, rather it should be a technical and professional commission, work under objective and neutral criteria, and to ensure its independence it is important to amend the relevant law to allow for fair and open competitions to occupy the commission posts.

3

Role of political parties in promoting transparency in elections' finance and expenditures

No state could not be considered as democratic one, unless elections are conducted in competitive way among different political parties and independent candidates, where voters possess the ability of free selection between different political options and candidates. Political parties and candidates are genuine partners in elections process, they compete to win representative posts, and exert efforts through elections' campaigns to convince voters to elect their candidates, however ability of political parties to organize campaigns, leading to form government or opposition, depends on legal and political environment at each country, and the way elections is managed. In other terms, approval and acceptance of elections final results, remains with the political parties and candidates, where if they reject the elections outcomes, for any deficit, real or alleged, this will undermine the credibility of the elected government⁽⁵²⁾. For many reasons, political parties in Yemen did play significant role in promoting transparency in elections' finance, and in monitoring elections' campaign expenditures.

The Peoples' General Congress (PGC), the former ruling party, did not play genuine role to promote transparency in elections finance and expenditures, benefiting from such legislative and legal ambiguity to mobilize army, security, media, and education, in favor of the party candidates, during elections, in addition to misuse of public finance for the same purpose. Despite the legislatures that "banned using of public finance and public civil and military services"⁽⁵³⁾. However such legislatures did not represent any obstacle before the ruling party to misuse state potentials, including public finance, in favor of its candidates.

On the other hand the Joint Meeting Parties (JMP) called for comprehensive political reform, not only election reform. The 2006 presidential elections and the intensive competition between PGC and JMP, has resulted in new criteria and "necessitated reform in elections' rules, including political and constitutional reforms, as requested by JMP, in other terms, neutralize all influential means on voters' will, such as public resources, public administration, media, central and local government influence, army, public finance, and such demands received EU mission's support and

(52) Maja Tjernstrom and others , Parties and Candidates , ACE Electoral Knowledge Network , Site ACE Electoral Knowledge Network www.aceproject.org .

(53) Dr. Mohammed Al-Mikhlaifi, Integrity in Parliamentarian Elections in Yemen; its components and mechanisms in Arabic countries, Arab Organization to Combat Corruption, Arab Unity Research Center, Beirut, 1st edition, 2008, p.323.

understanding, as seen in the recommendations concluded by the mission"⁽⁵⁴⁾. These demands raised by political parties, and agreements they concluded, represent their role in promoting transparency in elections' finance and expenditures in the country.

Political parties, either in power or opposition, have called for reforms in the electoral systems, through individual and group initiatives for comprehensive political reforms in the Republic of Yemen⁽⁵⁵⁾. Such initiatives, visions and project for reform commenced in December 2004, and included; National Project for Comprehensive Reform in Yemen, by Yemeni Sons League party, Political Program of the Yemeni Social Party, Comprehensive Political and National Reform Initiative, by Unitarian Popular Nasserite party, and PGC Vision to Reform Political System, below is review of these initiatives and visions that addressed elections' finance and expenditures;

First; Yemeni Social Party:

During 26-31 July 2005, the fifth conference of the YSP, has approved its political program, and specified chapter one "Reforming the Political System to build the modern State of Unity and Democracy"⁽⁵⁶⁾, of the program for political reform. On political parties' role to promote transparency in elections; finance and expenditures; the document focused on the following basics:

- 1- Reform legislatures relevant to elections to address the loopholes detected during recent elections process, to provide genuine political and legal guarantees for free and fair elections;
- 2- Ensure neutrality of public services, public finance, army, police, security forces, and public media towards competition between political parties and candidates ⁽⁵⁷⁾.

(54) Abdulkareem Sallam, National Dialogue and Reform Argument between the Power and Opposition, Track and Challenges, group of researchers, Saba Strategic report, 2010, Saba Center for Strategic Studies, Sana'a 1st edition 2011, p.177,178.

(55) Dr. Mohammed Al-Mikhlaifi, Democratic Transformation in Yemen, Legal Studies magazine, Sana'a, Yemeni Center for Studies and Researches, issue (4), Oct.-Dec. 2009, p. 18

(56) Annual Report on Human Rights and Democracy in Yemen, 2005, Sana'a, Yemen Observatory for Human Rights, 1st edition, 2006, p.165, 166.

(57) Yemeni Social Party, Political Program, YSP general-secretariat, Sana'a 26-31 July 2005, p.7, YSP website www.aleshteraki.net

Second; Joint Meeting Parties project for Political and National Reform:

On 25 November 2005, JMP announced their vision on political and national reform; "JMP project for Political and National Reform", this project was signed by 6 political parties; Islah, YSP, Unitarian Popular Nasserite party, Ba'th Social Arab National party, Federation of Popular Forces, and Al-Haq party⁽⁵⁸⁾.

On the political parties' role to promote transparency in elections' finance and expenditures, the project emphasized on lack of integrity and equality in elections, misuse of public finance, public service, and all state's potentials in favor of the ruling party⁽⁵⁹⁾.

Third; JMP Vision to ensure Free and Fair elections:

On 7 March 2006, JMP announced their vision "JMP Vision to ensure Free and Fair elections", that included the required guarantees to conduct free and fair elections, in a form of inclusive matrix that includes all present and future elections requirements; some are urgent and only requires political will to effect, such as legal amendments, and others at the long term such as constitutional amendments and enacting new legislatures on parliamentary elections⁽⁶⁰⁾. On political parties' role to promote transparency in elections' finance and expenditures; the project called for public service and public finance neutrality, and characterized present discrepancies and proposed the following remedies:

1- Present discrepancies:

- A. Lack of public service and public finance independence and neutrality, which is dominated and politicized by the executive power and ruling party;
- B. Misuse of public finance, and foodstuff and other in-kind materials to bribe the voters and elections administrators, thereby corrupting elections' process and endorse its results in favor ruling party's candidates.

(58) Annual Report on Human Rights and Democracy in Yemen, 2005, previous source, p.166,167.

(59) JMP project on Political and National Reform, 25 November 2005, see Mareb Press website www.marebpress.net

(60) JMP Vision to ensure Free and Fair Elections, 7 March 2006, previous source

2- Proposed remedies:

- A. Obligate SERC to apply pertaining laws on public media, public service and public finance neutrality and refer violators to judiciary, and empower SERC to practice its monitoring role to verify required neutrality, and to consider any violations therein, as an act that jeopardize elections integrity and freedom, and thus invalidates elections result for the party committed such violations, no matter at which level such violations were perpetuated;
- B. Incriminate any acts that corrupt elections, including distribution of money, and in-kind materials or foodstuffs, to bribe voters and staff of elections' administration, also to instruct law enforcement apparatus to control these practices and bring perpetrators into concerned courts;
- C. Ban any official and public servant from donating or making promises with any project that will be implemented by public finance during elections campaign, whether such project falls within the public budget or extra-budget, also to ban using development as part of elections' campaign;
- D. Amend relevant law to allow SERC to monitor political parties' finance and expenditures on elections campaign and determine maximum ceiling therein, also obligate political parties and candidates to disclose their assets, prior and after elections' campaign, disclose sources of their finance, and prohibit exaggerated donations that lead to political corruption;
- E. Expedite passing of combating corruption law, and include special chapter on elections' corruption⁽⁶¹⁾;

Fourth; Political framework of JMP Vision for the requirements of free and fair elections:

On 1 November 2008, JMP announced their vision "Political framework of JMP Vision for the requirements of free and fair elections", this vision included JMP's stand to achieve inclusive elections' reforms to reform the political, legislative, and legal environment for elections, according to the agreements signed between the parties of political process, i.e., Agreement of Principles and EU mission recommendations, to achieve independence and neutrality of all elections' committees, to ensure balanced representation of all

(61) J MP vision to ensure free and fair elections, 7 March 2006, previous source

parties, equal opportunities in fair elections' competition, and confidence in the process and its outcomes as means of peaceful and democratic change, and source of legitimacy for the power that emerges from such process, that represents the free will of the voters, regardless of the winning party⁽⁶²⁾. on the political parties' role to promote transparency in elections' finance and expenditures, the framework stresses on the need for clear and legal provisions that provide for practical and efficient mechanisms to ensure neutrality of public finance, public media, and civil and military public services, at the centers, constituencies and central levels⁽⁶³⁾.

Fifth; National Salvation Vision:

On 7 September 2009, the Preparatory Committee for the National Dialogue, announced the National Salvation Vision initiative, the initiative sees that the ruling power has blocked the way before change through fair and free elections, and obstructed the principle of peaceful transition of power, by refusing any measures that may develop elections system and administration, or improve elections conditions, to represent people's will, rather it became facelift process unable to respond to develop democratic process and build Yemeni state, just to bestow unreal legitimacy on a regime that runs the country with a rounds of elections sessions that have been adapted to reproduce the same regime over and over⁽⁶⁴⁾. On political parties' role to promote transparency in elections' finance and expenditures; the vision called for legal, political and technical guarantees to ensure public media, public finance, public service army, and security neutrality, in the elections⁽⁶⁵⁾.

(62) Political framework of JMP's vision for the requirements of free and fair elections, 1 November 2008, see Alwatan newspaper website, www.alwatanyye.net.

(63) Previous source

(64) National Salvation Vision, Sana'a, Preparatory Committee for the National Dialogue, 2009, p.16

(65) Previous source, p.54

4

Civil Society Organizations' role in promoting transparency in elections' finance and expenditures

Monitoring elections campaigns by local NGOs, is a matter of great importance, to detect any violations by the organizers of such campaigns, however, it looks very obvious that the NGOs and media played poor role in this regard, on previous elections since 1993, and on monitoring finance and expenditures during elections campaigns specifically, as we will elaborate below:

First; Elections campaigns during first parliamentary elections in 1993:

Public elections law was issued on 28 June 1992, and this elections took place on 27 April 1993, however when referring to SERC publications, we did not notice any reference to local or international NGOs that monitored this elections.

Second; elections campaign during second parliamentary elections 1997:

Organized on 27 April 1997, and chapter four of law No. (27) of 1996, on Public Election, addresses organizing and guidelines related to elections advertisement in articles 34 through 47⁽⁶⁶⁾. The total number of monitors in this elections has reached 20635 monitors, including 4 local NGOs, however we could not detect any report by these NGOs, to list the violations associated this elections.

Third; elections campaigns in the first presidential elections 1999:

Organized in 23 September 1999, and prior this elections in August 1999, amendments have been approved on law No. 27 of 1996 on Public Elections, to be issued under law No. 27 of 1999, however all these amendments were related to presidential elections, and on organizing elections campaigns during presidential elections, (article 75 repeated), and organize using of public media for elections advertisement for the candidates to the presidential elections (article 75-1 repeated), also on granting each candidate to the president post an amount of money to be paid from public treasury, on the basis of parliament recommendation (article 75-2 repeated), obligate each candidate to organize one elections rally at least at the governorates' capitals, and the capital city (article 75-3 repeated), also allowed for organizing debates between the competitors in the last week of the elections campaign, and to be aired trough public media outlets, (article 75-4 repeated), organize seminars and press conferences for the candidates to present their elections program (article 75-5

(66) See law No.27 of 1996,on Public Elections, p.26-31

repeated), also allowed for the candidates to receive donations from Yemeni natural persons, provided that it is channeled through bank account, and to provide statement on the donations received to the SERC, and it is not allowed to receive finance from foreign parties (article 75-5 repeated)⁽⁶⁷⁾. Total number of monitors in this elections has reached 968 monitors, including 707 licenses for monitoring to 6 local NGOs, however we could not detect any report by these NGOs, to list the violations associated this elections.

Fourth; elections campaigns during first local councils elections 2001:

Could not get any publications by SERC on these elections.

Fifth; elections campaign during third parliamentary elections 2003:

SERC has provided 20986 monitoring licenses for this elections, including 19712 to 24 NGOs. When referring to these NGOs report we detect the following violations during elections and voting:

- 1- Misuse of public finance and resources, during elections campaigns, including using of public vehicles to transport ruling party's supporters to the rallies and other events organized by the party;
- 2- Using public schools by ruling party's candidates for elections advertisement and depriving opposition candidates from such facilities;
- 3- Senior government officials involve in publicizing for PGC candidates;
- 4- Unlimited finance for PGC campaigns, compared with opposition parties';
- 5- Unequal time allocated for using public media outlets; TV, radio stations, in addition to censorship on political parties elections programs;

Sixth; elections campaign during presidential and local elections in 2006:

Organized on 20 September 2006, and SERC provided 46489 monitoring licenses, including 27851 licenses to 37 local NGOs. These NGOs detected the following violations during elections campaign, voting, and counting process, as follows:

(67) Law No. 27 of 1999, on Public Elections with recent amendments, p.26-27

- 1- Although article (71) of the related law has provided for equal public finance for each candidate, whereas each candidate has received YR.25 million from public finance, allowing them to organize elections campaigns, yet the amount spend by the incumbent Saleh was much higher than the amount provided by public treasury according to many national and international organizations, thereby raising doubts that he has used public finance, in violation to article (40) in this regard. Also Saleh campaign did not announce any donation they've received, although it is allowed provided that provisions of article (75) of the law are observed⁽⁶⁸⁾.
- 2- Sabotage acts on elections posters, which violates article (49) of the law;
- 3- Unequal time allocated for each candidate to present his elections program, at public media outlets; TV, radio and newspapers, where the incumbent Saleh received longer time than his competitor, in addition to additional time when covering his campaign news, thereby violating articles 39, 51 of the law, on providing equal time for each candidate;
- 4- Misusing state's potential; such as government buildings, vehicles, and organize events with public finance, violating article (46) of the law that prohibits using mosques, colleges, schools, government institutions and military camps, and public facilities for elections' campaigns;
- 5- Misuse of mosques by both sides to urge voters to vote for the incumbent against opposition candidate and defame each others, and vise versa; thereby violating article (47) of the law;
- 6- Misuse public post as an intimidating tool whereas, opposition supporters are transferred into pots at remote areas, and rewarding Saleh followers; thereby violating article (52) of elections law that banned any form of pressure, intimidation, blasphemy accusations or promising financial or moral gains;
- 7- Votes-buying, and providing money among voters on the voting eve, or prior entering ballot boxes, to vote for the incumbent "Saleh";
- 8- Failure of SERC to apply provisions of articles 125 through 137, of elections law against the violators.

(68) See Public Elections and Referendum law p.25,26,37

5

Role of international organizations in promoting transparency on elections' finance and expenditures in Yemen

Many international governmental and non-governmental organizations called for reforming electoral system in Yemen, in their reports since March 2005, including recommendations by International Foundation for Electoral Systems (IFES), EU Mission to Monitor Presidential and Local elections.

First; IFES recommendations:

IFES sees that 2003 parliamentary elections proved that elections law No. 13 of 2001 lacks many issues, and contains certain discrepancies that need to be addressed before 2006 presidential and local elections, and called for amendments in the law to promote neutrality and transparency in elections' procedures⁽⁶⁹⁾. Consequently, IFES implemented a project to reform public elections and referendum law; in two phases:

First phase started in January 2004, where IFES revised the law and compared law's article with relevant international procedures, and identified five areas that needs legal amendments; voters register, contest mechanism, votes counting venues, procedures of assigning branch committees' members, and local councils' elections procedures⁽⁷⁰⁾. The revision was disseminated to SERC, PGC, local and international NGOs, and organized panel discussions during February - March 2004, to discuss reform options in the five areas identified, and concluded with a report on the proposed reforms in August 2004⁽⁷¹⁾.

Second phase of the project, implemented during October 2004 - January 2005, and addressed legal reforms areas that were not discussed in first phase; where eight areas were identified; formation of elections committees, voters registration, elections distribution, candidacy procedures, balloting and counting, elections campaigns finance, issues related to elections law, and issues related to local councils' elections⁽⁷²⁾, and concluded with report on the proposed reforms, in March 2005, including outcomes of the debates and a number of recommendations by IFES. On political parties' role in promoting transparency in elections' campaigns finance and expenditures, IFES recommended the following:

(69) Reforming Elections Law; Final Report on Political Powers Dialogue, Jan. 2004-Jan.2005, IFES, March 2005, p.4

(70) Previous source, p.4,5

(71) Previous source, p.3,5

(72) Previous source, p. 3

- 1- Recommendation (30); SERC shall announce the name of donor and amount donated within 48 hours from receiving notification on donation for presidential candidate amounted to YR.100 thousand or more, or any donations from one donor that exceeds a total of YR. 200 thousand;
- 2- Recommendation (31); SERC shall decide on whether a ceiling shall be placed on the elections' campaign expenditures for presidential, parliamentary, and local elections, also whether high amount donations to the candidates of 2007 parliamentary and local elections shall be announced, if so, SERC shall determine the ceiling of expenditures and level of donations that need to be declared, and the applicable mechanism in this regard⁽⁷³⁾.

Second; Recommendations by EU mission on elections monitoring:

EU dispatched a two months mission to monitor September 2006 presidential and local elections, during August - October 2006. The mission conducted comprehensive revision to the elections process, including legal framework, SERC performance, elections advertisement, voting, and announcing of the results, according to the international criteria on elections' monitoring, and issued a report that included a group of recommendations to be considered by Yemeni government and political parties, in order to improve elections process⁽⁷⁴⁾.

On political parties' role in promoting transparency in elections' campaigns finance and expenditures, EU mission's recommended the following:

- 1- Recommendation (22); SERC and prosecutor-general shall enforce all government institutions to obligate with the legal provisions that ban misusing of public resources in favor of any campaign;
- 2- Recommendation (24); SERC shall enact clear guidelines on the monitoring elections' campaigns' finance mechanism⁽⁷⁵⁾.

(73) Previous source, p.33,34

(74) Final Report on Yemeni Presidential and Local Elections, 20 Sep. 2006, EU mission to monitor Elections, p.1,3,27

(75) Previous source, p.1,3,27

6

Role of media outlets in promoting transparency in elections' finance and expenditures

Media have a crucial role, provided that they are independent, transparent and professional, however it is rare to see such criteria in Yemeni media, which is subject to political powers' influence and domination, where public media have been mobilized in favor of certain powers and denied for others. Human Rights Information and Training Center (HRITC), a local NGO, launched a qualitative and quantitative assessment report on media outlets performance during 2006 presidential elections' campaigns. The report reviewed public and private media performance during the elections campaigns.

The report noted that the public media coverage to the elections campaign, have been mobilized in favor of the incumbent Saleh, and ignored controversial issues, hosted pro ruling party officials, and did not tackle main political issues to avoid criticism, the report stressed that there is no distinction between news and opinion, in Yemeni press, further government activities were mobilized for elections' advertisement, in addition to expand news and interviews that promotes government

performance and avoiding news that provokes the public opinion. On Sana'a and Aden radio performance during elections' campaign, the report noted that, both radio stations were directly and indirectly biased in favor of PGC candidate, so is the public newspapers, TV stations, and news agency.

HRITC team monitored media outlets for 24 days, the period provided for elections campaign by law, and the covered 5 public newspapers; Al-Thawra, Al-Jumhuryah, 14th October, 26 September, 9 private newspaper; AL-Nida, AL-Wasat, Akhbar Alyum, Al-Shumu', Annas, Al-Balagh, Al-Rai Al'am, 2 public TV stations, and 2 public radio stations. On private newspapers performance, Al-Nida scored the first rank, among independent and private newspapers, in providing balanced coverage to the elections' campaigns.

7

Electoral systems and their relation to transparency in elections' campaigns finance and expenditures

Selecting of an electoral system in a given country is impacted by available logistics capacities, qualified human resources and financial capacities of the country, even at instance of providing financial and technical assistance by the donors; it is important to consider seriously capacity of such country to work under such systems sustainably and at the long term. However, this does not mean that the simple and less expensive system is the best option, as it might not meet country's needs and conditions and implies negative consequences on the stability of the whole political and democratic system, also political parties' efficiency is directly interrelated with the electoral system, and elections' finance and expenditures.

Political parties are impacted to great extent by the applied electoral system; whereas some systems allow for forming political parties, and others recognize individual candidates. On the same way, political parties' coherence is impacted by certain electoral systems, positively or negatively, so is the way such parties conduct their elections campaigns, forming partisan coalitions, expanding their public base to be more inclusive for all categories, or to limit them to narrow ethnic or quality base⁽⁷⁶⁾. Furthermore, the electoral system that does not leave impression among opposition that it may win at next elections, may encourage losers to work outside the political system, and resort to non-democratic, some time, violent means⁽⁷⁷⁾.

Beside impact of electoral systems on political parties, political finance and elections expenditures, may also impact political parties, whereas uneven and unequal resources for political parties, may limit the ability of certain parties in organizing their campaigns and communicating their discourse to the voters, the matter that impact competition negatively, and thereby influence achieved results.

(76) Maja Tjernstrom and others , Parties and Candidates , ACE Electoral Knowledge Network , Site ACE Electoral Knowledge Network www.aceproject.org .

(77) IFES, and others, Elections Management and Cost project, translated by Lebanese Center for Studies, Beirut, April 1999, p.26

Definition of electoral systems:

Electoral systems basic concept is to translate balloted votes into seats, and there are three major variables in this process:

1. Applied electoral system; whether it is majority system, proportional representation, or mixed system, and what is the calculation formula to count seats for each winner;
2. Balloting structure; whether the voter votes for one candidate or to party, or whether the voter make one selection or a series of preferences;
3. Size of the constituency, and number of representatives to be elected from each constituency to the legislative body⁽⁷⁸⁾.

Classification of electoral systems:

There is a wide range of electoral systems, however they fall under 12 major systems, falls under 4 families, such classification is based on the functionality of each system in translating votes into seats in the elected legislative body, where the proportional relations between number of votes and number of seats is taken into account, in addition to level of missed votes. These electoral families are; majority system, proportional representation system, and mixed system⁽⁷⁹⁾.

1. Majority system:

Majority system is based on counting the highest number of votes scored by the candidates of parties, and there are five types of majority system; first winner; two rounds; alternative vote; block system; and partisan block system. Majority system is often used within unilateral or bilateral representation constituencies, and the candidate who scores the simple or absolute majority of votes wins the seat⁽⁸⁰⁾.

(78) Francesca Benda and others, Transformation into Democracy: major options for democratic transformation in Iraq, Sweden, IDEA, 2005, p. 24

(79) Stina Larserud and others, Electoral Systems: ACE Electoral Knowledge Network, Study is available on the Web site at ACE Electoral Knowledge Network www.aceproject.org.

(80) Andrew Reynolds, Forms of Electoral Systems, translated by Ayman Ayub, Sweden, IDEA, 2nd edition, 2010, p.45,53.

A. First Past The Post (FPTP):

Also known as individual constituency system, used within unilateral representation constituencies, and is centered around individual candidates, where voters elect one candidate, and the winner is the one who scores highest number of votes⁽⁸¹⁾;

B. Block system (BS):

This system is used at multiple representation constituencies, and the voters have equal number of votes to the number of seats that will be elected from their constituencies, and the voters may vote for any of the candidates at the ballot ticket, regardless of their partisan affiliation, the voter may also cast any number of votes as long as it does not exceed the number of seats allocated for his constituency⁽⁸²⁾.

C. Party block system (PB):

This system falls in between FPTP and Block systems, where the voter has one vote, but within multiple representation constituencies; where voter has one vote to cast for one of the competitive partisan lists, instead of individual candidates, and the party that scored the highest number of votes, wins all seats in the said constituency,

thereby all candidates in the list are elected, also it is necessary that the winner obtains absolute majority of votes, similar to first winner system⁸³.

D. The two round system (TRS):

This system allows for organizing elections in two rounds, within short interval; one or two weeks, where first round runs similar to one round within majority system, often based on first winner system, and the contesting party or candidate wins from the very first round without the need for second round, that scores absolute majority (50+1) of votes, if none of contender scores such majority, a second round of elections will be organized, where the party or candidate who scores highest votes wins the elections⁽⁸⁴⁾.

E. Alternative vote system (AVS):

Also known as preferential balloting system, and elections are organized under this system on the basis of unilateral representation constituencies,

(81) Stina Larserud and others, Op. Cit..

(82) Stina Larserud and others, Op. Cit..

(83) Andrew Reynolds and others, previous source, p. 69

(84) Stina Larserud and others, Op. Cit..

similar to first winner system, yet alternative vote system provide voters with wider options than first winner system, where voters, according to this system, organizes candidates according to preference, by giving the preferred candidate number (1), and (2) to the second preferred and so on, thereby such system allow the voters to express their preferences instead of one option only⁽⁸⁵⁾.

2. Proportional representation system (PR):

this system is based on minimizing relative difference between the contesting party quota of votes at the national level, and its quota of seats, hence, the party that scores 40 percent of votes shall have the same quota of seats in the parliament, and so on⁽⁸⁶⁾.

However applying such system, requires multiple representation constituencies, and at some countries the whole state, represent one election constituency, such as in Israel and the Netherlands. Also there are two types of proportional representation system; list proportional representation, and the Single Transferable Vote (STV)⁽⁸⁷⁾.

A. list proportional representation system (LPR):

This system requires that each party provide a list with his candidates at each of the multiple representation constituencies, and the voters vote for the list, accordingly each party secures seats corresponds to the votes obtained. However when closed list is adopted, winners will be selected on the basis of order of priority in the list, and according to party's decision, when open list is adopted, voters' options influence candidates' chances to win, according to the numbers of individual votes that each candidate obtains⁽⁸⁸⁾.

B. The single transferable vote system (STV):

Based on multiple representation constituencies, where the voter organizes the candidates at the ticket according to his/her preference, similar to alternative vote system, the voter may elect one candidate, and following counting first preferences on the ticket, the needed votes to elect one candidate will be counted, using Droop formula; $\text{quota} = \{\text{number of valid votes} / \text{number of seats} + 1\}$ ⁽⁸⁹⁾.

(85) Andrew Reynolds and others, previous source, p. 69

(86) IDEA, previous source, p.28

(87) Andrew Reynolds and others, previous source, p. 83

(88) Stina Larsrod, and Rita Tavron, Determination for Equality, Electoral Systems and Quota, applicable and non-applicable options, translated by Emad Yousuf, Sweden, IDEA, 2007 edition, p.5

(89) Stina Larserud and others, Op. Cit..

3. Mixed systems (MS):

This system combines positive features of majority system and proportional representation system, this combined system uses different formulas that goes side by side, balloting in both system is by the voters themselves, where both systems results gathered to elect the representatives in the elected body, and one of majority systems, contribute to electing the representatives, which is mainly based on unilateral representative constituencies, and the second is proportional list system⁽⁹⁰⁾.

There are two types of mixed electoral systems; Mixed Member Proportional, and Parallel system.

A. Mixed Member Proportional (MMP):

Under this system, the Proportional Representation seats are awarded to compensate for any disproportionality produced by the unilateral constituencies' seat results, elected by majority system that forms the mixed system. For example, if one party wins 10 per cent of the vote nationally from proportional list votes, but no district sets, then it will be awarded enough seats from the PR lists to bring its representation up to 10 per cent of the seats in the legislature⁽⁹¹⁾.

B. Parallel Systems (PS):

Parallel systems also use both PR and majority components, but unlike MMP systems, where the two sets of elections are detached and distinct and are not dependent on each other for seat allocations, where the PR component of the system does not compensate for any disproportionality within the majority system that used in parallel⁽⁹²⁾.

(90) Francesca Benda and others, previous source, p.30

(91) Andrew Reynolds, and others, previous source, p.115,122

(92) Previous source, p.122

Influence of Electoral System on Political Parties:

1- Constitutional and legal framework for electoral system in the Republic of Yemen:

Electoral system derives its legitimacy from the valid constitutional and legal provisions, as seen in the constitution of Yemen and Public Elections and Referendum law No.13 of 2001.

A- Constitution of the Republic of Yemen:

The constitution has set forth the basis for electoral system for parliamentary elections, as seen in article (63), that stipulated that "the house of representatives shall consist of three hundred and one members, elected through direct, free, equal and secret balloting, and the Republic of Yemen shall be distributed into equal election constituencies, as with respect to population number, allowing 5 percent more or less, and one member shall be elected from each constituency". This article indicates that the electoral system applied is First Past The Post (FPTP), according to this article's provision, which implies that⁽⁹³⁾. Also this article, has fixed the number of MPs and constituencies at 301 constituencies, from which one member is elected⁽⁹⁴⁾, however this article did not determine how the winner will be decided, is it by proportional majority, or absolute majority, and left that for elections law, also according to this article, preference is left for the voter to decide between candidates, not parties, also provided for geographic representation, linking the MPs to his constituency, to represent their local interests and held him/her accountable⁽⁹⁵⁾. on the other hand article (75) of the constitution stressed that "the MPs represent the whole people, and care for public interest, and his representation is not limited or conditioned"⁽⁹⁶⁾. Thereby, emphasizing that the MP does not represent his constituency, rather the whole people, and responsible for whole community interest, furthermore, he/she is not accountable before his/her voters, and they may not limit or condition his/her representation⁽⁹⁷⁾, thereby contradicts article (63) provisions, that confirmed that the MP represents his/her constituency.

(93) Mugahid Al-Sha'bi, Administration of Elections Process and Future of Democratic Development in Yemen; applied study to Parliamentary Elections, 1993-2003, PhD thesis, Cairo University, 2011, p. 78

(94) Tareq Qahtan, Legacy Challenges and Present Necessities, Rights and Freedoms in Yemen, 1900-2005, part one, Sana'a, Al-Rwafid printing house, 1st edition, 2006, p.358

(95) Dr. Mohammed Al-Mikhlaifi, Electoral Systems, Democratic Development in Yemen, edited by Ziyad Majid, Sweden, IDEA, in cooperation with ANND, 2005, p.85

(96) ROY Constitution, previous source.

(97) Dr. Mohammed Al-Mikhlaifi, Electoral System, previous source, p.85

B- Public Elections and Referendum law:

The lawmakers have determined the electoral system for parliamentary elections; in clause (b), article (105) of elections law, that stated "the candidate who scores proportional majority of correct casted votes is considered winner in the elections", the pertaining laws has clarified what is intended by proportional majority, in clause (u), article (2), that stated that "the majority of the correct counted votes, that have been casted in the elections"⁽⁹⁸⁾, this article clearly defines the applied electoral system; i.e. First Past The Post (FPTP), which the constitution failed to elaborate, that considers the winner as the candidate who obtained the majority of votes, regardless of the votes rate against the total number of the casted votes⁽⁹⁹⁾, even if the percentage of such votes does not exceed 15 or 20 percent of the voters who casted their votes¹⁰⁰. The major fault of proportional majority is that it does not materialize rule of majority, as it does not ensure obtaining of the majority of votes for the whole winners, where it does not require obtaining absolute majority (50+1) of votes to win the seat, even if the scored votes represent 10 percent of the total votes, thus it is likely that the legislature may represent the minority not the majority, where majority rule is the essence of democracy⁽¹⁰¹⁾.

2- Influence of electoral system in Yemen on political parties' results:

Electoral system is an important issue for the competing political powers, where it determines balloting means that translate such powers support among voters into representative seats⁽¹⁰²⁾. Hence the adopted system is one of the influential factors on elections' result, which varies according to the electoral system, that impacts the seats number for each party according to the system, being proportional or individual system⁽¹⁰³⁾. Yemen has witnessed three parliamentary elections during 1992-2013; from these elections' results we may conclude the following:

(98) Law No.13 of 2001, on Public Elections and Referendum, official journal, Sana'a, ministry of legal affairs, issue 21, part one, 25 November 2001 .

(99) Bilquis Abu-Asba', Political Parties and Democratic Transformation, applied study on Yemen and other countries, Cairo, Madbouli Bookshop, 1st edition, 2004, p.187, 199.

(100) Ahmed Al-Shar'abi, and others, Yemen-Complete Elections Cycle, Sana'a, General Center for Studies, Researches and Publications, 1st edition, p.89,90

(101) Abdulaziz Al-Kumaim, Formation and Performance of SERC 2003, AL-Jazeera net website, www.aljazeera.net.

(102) Yemen Annual Strategic Report, Sana'a, General Center for Studies, Researches and Publications, 1st edition, 2001, p.26

(103) Khalid Al-Najar, Yemeni Electoral System; Reading from Geographic Perspective, Al-Jumhuryah website, www.algomhuria.net.

A. Inequity between the number of votes scored by a party and the number of seats it has won;

Such system is biased in favor of big political parties, that win a high number of seats, that exceeds the number votes that it has secured, on the other hand, certain political parties, secure a number of seats that is much less than the votes it has gained⁽¹⁰⁴⁾.

In 2003 parliamentary elections, PGC scored 57.79 percent of total votes, qualifying the party to win 174 seats, yet due to the electoral system, the party has won 229 seats i.e. 76.08 percent of the seats, on the other hand Islah party, scored 22.51 percent of votes, qualifying it to win 67 seats, yet the party has won 45 seats only; i.e. equal to 14.95 percent of the seats only, same applies on other political parties⁽¹⁰⁵⁾, therefore the current electoral system does not reflect voters' will and trends.⁽¹⁰⁶⁾

So is the case with the results of 1993 elections, where some candidates scored less than one thousand votes and considered winners, while other candidates scored more than 4 thousand votes and considered losers⁽¹⁰⁷⁾.

B. Inability of the electoral system to produce a representative parliament:

Such electoral system has contributed to the declining participation of political parties in the different elections' rounds; where in 1993 elections, 22 parties participated in the election, only 8 made their way to the parliament, in 1997 elections only 12 parties participated, and 4 only have won, in 2003 elections, 21 parties participated, and only 5 were represented in the parliament⁽¹⁰⁸⁾. Furthermore, such electoral system led to unfair representation of independent and opposition candidates, in 1997 and 2003 parliaments, although they scored 57 percent of votes, in 1997 elections, they have won 112 seats; 37 percent of the seats, also in 2003 elections, scored 42

(104) Annual Report on Human Rights and Democracy in Yemen 2007, YOHR, 1st edition, 2008, p.48

(105) Ibrahim Al-Haier, Core Discrepancies in Electoral System, working paper in Electoral System; Discrepancies and Remedies Seminar, JMP vision, 17 February 2008, at Female Journalists without Chain website; www.bilakoyood.net.

(106) Annual Report on Human Rights and Democracy, previous source, p.48

(107) Hamoud Munassar, Empirical Track of Democracy Experience in Yemen and Future Indicators, Future Studies Center, Future of Democracy and Parties in Yemen, 1st edition, December 1998, p.58

(108) JMP vision to ensure free and fair elections, 7 March 2006, at YSP website www.aleshteraki.net.

percent of votes, yet they have won 72 seats only, thereby losing 60 seats in 1997 parliament and 55 seats in 2003 parliament, that the PGC has possessed⁽¹⁰⁹⁾.

The said system also increases the wasted votes that are not translated into seats, which has increased in 1993, from 351 thousand votes; i.e. 47 seats, into 527 thousand votes in 1997, i.e. 58 seats, to reach 1.1 million votes in 2003 elections; about 55 seats⁽¹¹⁰⁾. In addition to that, this system deprives women and intellectual categories from representation, as it is difficult for them to win elections particularly at rural areas, thereby the political parties refrain from nominating them⁽¹¹¹⁾. For example women participation as candidate and voter has declined throughout the parliamentary and local elections rounds, due to reluctance among political parties to nominate women, although women accounted for 43 percent of registered voters⁽¹¹²⁾, where in 1993 elections, 42 women contested the elections and 2 only have won, in 1997 elections 19 contested and 2 only have won, and 2003 elections 11 competed and only single woman has won⁽¹¹³⁾. The current system has further allowed highly under qualified candidates to win, where social status and financial capacities criteria overcome qualifications criteria⁽¹¹⁴⁾.

(109) Previous source

(110) Previous source

(111) Yemen Annual Strategic Report, 2008, Yemeni Center for Strategic Studies 2009, p.27,28,

(112) JMP vision to ensure free and fair elections, 7 March 2006, previous source.

(113) Dr. Mohammed Al-Mikhlaifi, Electoral Systems, previous source, p.88

(114) Yassir Al-Selwi, Political Participation in Yemeni Community, Comparative Social Study for Parliamentary Elections in Yemen during 1990-2003, Master thesis, Sana'a University, 2006, p.213

8

Proposed electoral systems, instead of First Past The Post (FPTP)

First proposal: Proportional Representation List

PRL, (closed or open), within this system, the state become one either one constituency or the five proposed provinces, according to National Dialogue Conference, became electoral constituencies, where legislative seats are distributed equally, or to distribute governorates into constituencies and distribute seats according to the size of population. According to this system, each party secures a number of seats that correspond to the number of votes, where the party that scores 15 percent of votes, wins 15 percent of seats, and the winners shall be the ones who are on top of the list. This system is followed in Turkey, for example, with 10 percent threshold, to limit small parties' elections; however it is preferred to reduce the threshold percentage to allow small social groups' representation, and small parties, such as minorities and women. This system is easy to manage⁽¹¹⁵⁾.

Importance of PRL in Yemeni community:

PRL achieves many important criteria in Yemen, such as:

- Fair public representation, especially for small parties;
- Reflects high degree of political diversity, and facilitate representation of different social groups and minorities;
- Develop political life where it limits personalization of choices, where the voter votes for a list;
- Encourages coalitions and develop partisan democracy;
- Reforms parliament thorough establishing parliamentarian blocks, that leads to more responsible governments;
- Increases political participation.⁽¹¹⁶⁾

The PRL also achieve a number of criteria:

1. Geographic representation:

Each party will diversify his elections list to include rural and urban areas;

2. Social representation:

Ensures representation of all categories in the community, where political parties will include in their list representatives of these groups;

(115) Abdulnaser Al-Moade'e, Elections Issues, Civil Development Foundation, Fredrich Eibert Foundation, p.84

(116) Essam Numan, and others, Democratic Elections and Reality of Elections at Arab Countries, Unity Studies Centre, Beirut, 1st edition 2009, p.282

3. Political representation:

Increases number of winning parties, thereby creates strong opposition and increases accountability;

4. National representation:

Makes the parliament more representative to all community components

5. Ensures equal opportunity and minimize votes-buying, and regionalism.**PRL and its influence on promoting elections; finance and expenditures:**

PRL limits and minimizes use and influence of elections money on the voters, thereby allow for equal opportunities, and unlike FPTP, where votes-buying widely exist. Also PR system, achieves the criteria that considers democracy as the perfect tool for peaceful transition of power, in the following way:

1- Makes elections attainable meaningful to everyone;

Increases participation level in elections, when elections results produce real impact on government management'

2- Providing incentives to achieve conciliation:

Electoral systems, beside being tool for electing government institution, is also considered as conflict management tool, also such system may urge political parties to expand their base to be more inclusive than their normal tribal, ethnical, local linguistic or ideological frames;

3- Facilitating Stable and Efficient Government

The prospects for a stable and efficient government are not determined by the electoral system alone, but the results a system produces can contribute to stability in a number of important respects⁽¹¹⁷⁾. For example, political and economic stability, provision of basic services, where the PR system, urges the elected government to provide these services to ensure winning next elections, and consequently achieving stability .

(117) Elections Knowledge Network, ACE

4- Holding the Government Accountable:

Accountability is one of the bedrocks of representative government. Its absence may indeed lead to long-term instability. An accountable political system is one in which the government is responsible to the voters to the highest degree possible. Voters should be able to influence the shape of the government, either by altering the coalition of parties in power or by throwing out of office a single party which has failed to deliver. Suitably designed electoral systems facilitate this objective⁽¹¹⁸⁾. PR leads to a diversified powers inside the legislature, allowing for coalitions at the government as well as at opposition side, therefore make accountability more likely to happen, unlike majority system where one party dominate and taking control.

5- Holding Individual Representatives Accountable:

Accountability at the individual level is the ability of the electorate to effectively check on those who, once elected, betray the promises they made during the campaign or demonstrate incompetence or idleness in office. Some systems emphasize the role of locally popular candidates, rather than on candidates nominated by a strong central party⁽¹¹⁹⁾.

6- Encouraging Political Parties:

The weight of evidence from both established and new democracies suggests that longer-term democratic consolidation-that is, the extent to which a democratic regime is insulated from domestic challenges to the stability of the political order-requires the growth and maintenance of strong and effective political parties, and thus the electoral system should encourage this rather than entrench or promote party fragmentation⁽¹²⁰⁾.

7- Promoting Legislative Opposition and Oversight:

Effective governance relies not only on those in power but, almost as much, on those who oppose and oversee them. The electoral system should help ensure the presence of a viable opposition grouping

(118) Andrew Reynolds, previous source,p.27

(119) Electoral Knowledge Network, ACE

(120) Electoral Knowledge Network, ACE

which can critically assess legislation, question the performance of the executive, safeguard minority rights, and represent its constituents effectively⁽¹²¹⁾.

8- Making the Election Process Sustainable:

Elections do not take place on the pages of academic books but in the real world, and for this reason the choice of any electoral system is, to some degree, dependent on the cost and administrative capacities of the country involved. Although donor countries often provide substantial financial support for the first, and even the second, election in a country in transition to democracy, this is unlikely to be available in the long term even if it were desirable⁽¹²²⁾.

Taking this into account, PRL is the most suitable one for Yemen, which is less expensive, easily to manage by the elections administrators, and easily absorbed and practiced by voters noting that illiteracy is high in Yemen and reaches 76 percent of the population⁽¹²³⁾.

Second proposal; Mixed Member Proportional (MMP):

When reforming electoral system in Yemen, the community's political, economic, social and cultural features must be taken into consideration, which forms the electoral environment⁽¹²⁴⁾. Also the suitable system is the one that allows for widest political representation for all political powers in the country; thereby avoid one party control or domination over the political scene⁽¹²⁵⁾.

Noting the present FPTP system's faults; disproportionate between votes and seats, high rate of wasted votes, and other faults in the PR system; denying independent candidates the right to run elections independently, and restricting voters' option to vote for a whole party list. Noting that, the researcher proposes adopting the Mixed Member Proportional (MMP), for the following reasons:

(121) Electoral Knowledge Network, ACE

(122) Electoral Knowledge Network, ACE

(123) Abdulmalik M. Essa, Political Islam Movements in Yemen, Arab Unity Studies Center, 1st edition, Beirut, 2012, p.69

(124) Mujahid Al-Sha'bi, previous source, p.299

(125) Khalid Al-Najar, previous source

1. Suitable for the rural nature of Yemeni community, where rural population represent 75 percent of total Yemeni population, where people's affiliation is mainly to the family, tribe or region, which in return shapes the political or electoral behavior and motivation of the voters⁽¹²⁶⁾.
2. Suits with the Yemeni community where illiteracy is high;
3. Most of the votes obtained by the political parties in the previous parliamentary and local elections, were casted for the parties' candidates, not the party themselves'
4. Responds to political powers' demand to reform the electoral system;
5. Ensures independent candidates' participation in elections process, who represents a significant number among candidates, as seen in the past elections.

Considering the above factors, the researcher recommends Mixed Member Proportional (MMP) system, which is expected to address the above challenges, further it will compensate the disparities between votes and seats that political parties obtain⁽¹²⁷⁾. In the MMP system, the voter have two votes, one for the party list and one for their local representative, and the second vote is the basis that determines number of seats that each party will get in the parliament.

Following MMP system, all political parties will be able to compete equally in the elections, due to the following reasons:

- the second vote is the basis that determines number of seats that each party will get in the parliament thereby more parties will be represented in the parliament;
- will neutralize and minimize elections' expenditures role, and will less influence than in FPTP system;
- will assist all political parties to get the finance from public treasury, which is linked to the number of seats or votes according to last elections;

(126) Yasser Al-Selwi, previous source, p.201.

(127) Stina Larserud and others, Op. Cit..

9

International experiences on elections' finance and expenditures:

First; finance of elections' campaigns in old democracies "France, Germany, and USA":

1- France:

according to 1988 and 1990 laws; public finance are divided as follows:

- A- Reimbursement of elections' expenditures: the documented expenditures incurred by the candidates who secured 5 percent of votes, in addition to expenses of printing elections' bulletins, posters and statements, other expenses are compensated up to 10 percent of the permitted ceiling;
- B- Facilities: postal exemption, secretariat services, documentation, public offices, and free broadcasting at radio and TV stations;
- C- Direct finance: providing finance to the political parties in two parts; first one according to the number of voters who voted for the party, and second part to the parties that nominated at candidates 75 constituencies⁽¹²⁸⁾;

2- Germany:

relevant law encourages private sector finance, and does not specify ceiling for individuals', groups', or private institutions' donations, also such donations are partially tax exempted, in addition to that, the state provides finance equal to the amount provided by the private sector;

Also the relevant law requires that any finance that exceeds 50 thousands Euros shall be notified to the parliament, however, not specifying maximum ceiling of private sector finance, raises many doubts about corruption instances⁽¹²⁹⁾.

3- USA:

The reported cost of campaigning for president has increased significantly in recent years. One source reported that if the costs for both Democratic and Republican campaigns were added together, the costs have more than doubled in only eight years (\$448.9 million in 1996, \$649.5 million in 2000, and \$1.01

(128) See Philip Bru, Sociopolitical Science, previous source, p.393, 394.

(129) How Political Life is Financed in Europe, Al-Mustakbal newspaper, Nawafith, issue 3728, 1/8/2010, p.16.

billion in 2004). In January 2007, Federal Election Commission Chairman Michael E. Toner estimated that the 2008 race would be a \$1 billion election⁽¹³⁰⁾.

It is worth mentioning that, the 2012 presidential election broke the \$2 billion milestone in its final weeks, becoming the most expensive in American political history, according to final federal finance reports. The reports detailed a last-minute cascade of money from mega-donors and an onslaught of spending by the Obama and Romney campaigns.

That final burst brought the Romney, Republican candidates, campaign's total for the election to above \$1 billion. Final fundraising and spending totals for President Barack Obama's, Democratic incumbent, victorious drive also topped \$1 billion, according to the Federal Elections Commission's financial tallies.⁽¹³¹⁾

In order to determine ceiling and minimize expenditures; the Congress issues Federal law on Elections Campaigns of 1971, the law also required announcing any donation that exceeds \$100.

Also Income law of 1971, encouraged tax excepted individuals finance, also following Watergate scandal, the Federal law on Elections Campaigns, was amended to allow for establishing a public finance for the candidates in the preliminary elections, and Public elections, also specified a ceiling for the individuals' and groups' financing. Also Political Works Committees law of 1974, and its amendments, allowed for private enterprises, syndicates, and shareholder companies, to form committees for political work, as fundraising tool to finance elections campaigns.

In 1979, the Federal Law on Elections Campaigns was amended to provide for reporting to the Federal Elections Commission on any contribution that exceeds \$.200. and allowed for party's committees at the state and local levels to spend without limits or restrictions from their funds on the activities that impact voters, and increased the financial subsidies for the candidates' conventions at the national level.⁽¹³²⁾

(130)Source: http://en.wikipedia.org/wiki/United_States_presidential_election,_2008#Campaign_costs

(131) Source: <http://bigstory.ap.org/article/casino-owner-aided-romney-late-10-million-bet>

(132) See Larry Luitz, Governance System in the US, translated by Gabir S. Awad, Egyptian Society for Disseminating Global Knowledge and Culture, Cairo, 1st edition, 1996, p.126-129.

Second; finance of elections' campaigns in emerging democracies (Tunisia, Peru, and Croatia);

1- Tunisia:

prior to national assembly elections, a group of legal frameworks, to organize political finance, were enacted, as follows;

- A. Decree No.35 of 2011 on the National Assembly, has set forth a system on elections campaign finance, where section (39) banned using of public resources, section (52), has defined four guidelines as follows;
- Each party of list of candidates shall open a bank account for the elections' campaign'
 - The account department shall monitor this account and publish a report on such finance;
 - Political parties and independent candidates are banned from financing their campaigns from foreign sources;
 - Political parties and independent candidates are banned from receiving donations or grants from individuals "persons or companies".

Section (53) of the law, has defined the rules for granting public finance to the candidates' list, on the basis of a value for each thousand voters, in two portions; first 50 percent to be distributed equally between all list prior the campaign, second portion' 50 percent to be distributed during the campaign. However the lists that did not secure 3 percent of the voters in the constituency shall refund half of the public finance received. Also this section decides a ceiling on the expenditures. Section (70) of the law mandates the Supreme Central Independent Authority, with the responsibility of honoring the provisions related to elections; campaign finance by the winner; further it may invalidate the results for the winners if they violet these provisions.

- B. Decree No. 27 of 2011; authorized Supreme Central Independent Authority to monitor and supervise elections' campaigns;
- C. Decree No. 91 of 2011; provided for the responsibilities, procedures and ways of monitoring elections' campaigns' expenditures by Accounts Department;
- D. Order No. 1087 of 2011; specifies the ceiling for elections' expenditures, and areas of spending public finance on elections' campaigns;
- E. Resolution by Supreme Central Independent Authority, on 3 September 2011; on the rules and procedures of the elections' campaigns⁽¹³³⁾.

2- Peru;

PR system "open list", is followed in this country, and the related law has provided for the political parties that are represented at the legislative to receive public finance or private finance, and the public finance is divided into five shares, to be paid annually. 40 percent of the public finance is distributed equally among the parties that are represented at the legislative, regardless of the votes obtained, and the 60 percent to be distributed proportionally, according to the votes secured by each party, however areas of spending such finance is determined to be on training and researches. However, political parties may receive private finance from the subscription fees, donations, party's activities, in-kind or cash grants, whereas it is banned to receive finance from priests, public entities, public companies, or companies to which the state is a shareholder, or from international parties, foreign agencies, unless such finance is allocated for trainings and researches, also the candidates may not receive direct finance, unless it is known to the party, and within the limit allowed by parties' law⁽¹³⁴⁾.

(133) See IDEA, 2012; Assessment of the Legal Framework and Practices on Elections Campaigns, during National Assembly elections, Barbara Juan, p.2,3,4.
<http://www.ifes.org/Content/Publications/Reports/2012/Legal-Analysis-of-Campaign-Finance-Regulations-in-Tunisia.aspx>

(134) Shari Bryan and Denis Pier, Role of Finance in Political Game, Study on Means of Political Parties' Finance in 22 countries, p.124.125

3- Croatia;

PR list is the system followed in this country; and there is no law that determines political parties; finance, however political parties and elections laws, included general financial provisions that are subject to different interpretations, accordingly it is very rare to see any penalties imposed in this sense, however according to the provisions of the law on non-for-profit organizations, it is expected that the received finance is expected to be spend on party's daily activities, elections; campaigns, and promoting party's programs. Also the Political Parties law, obligate these parties to disclose sources and purposes of their finance.

On the other hand, the state provides public finance to the political parties according to their seats' number in the parliament, and they are entitled to be reimbursed for what they've spent on the elections' campaign, according to the state's decision in this respect.

10

Recommendations

Recommendations for Political Finance in Yemen from Researchers and OPI Workshop Participants

From the recommendations made by the researchers who prepared the researches for Political Finance Transparency in Yemen Project, as well as from the participants in the Workshop that reviewed these papers, on 7 July 2013, we sensed the great concern on the transparency on political finance in the country, among different stakeholders, particularly during the coming period where Yemen will witness competitive elections that is expected to respond to the aspirations of the public peaceful uprising that erupted in 2011, and led to the present transitional period that is expected to pave the ground for achieving the democratic, civil state that commits to the good governance principles that represent one of the core demands of this uprising.

These recommendations reflects the demands of the participants from the government, parliament, political parties, civil society originations, academia, NGOs, INGOs, law profession, and media.

This section of the book include the recommendations which are categorized under subtitles for easy reference, according to the party addressed with such recommendations; such as direct recommendations on the political finance transparency, on electoral administration transparency, recommendations to civil society and media, recommendations to international organizations, in addition to general recommendation to reform elections process.

However, what is most important for OPI and other CSOs, government institutions, parliament and international organization is to work in genuine partnership to carryout and implement these recommendations through continuous programs and activities to achieve political finance transparency in Yemen, to ensure competitive, free and fair elections.

Recommendations on Elections' Finance and Expenditures:

Recommendations of the participants focused on the following:

Emphasize the importance of preparing legislation on partnership among the government, parliament, political parties and civil society that ensures the transparency of electoral finance and expenditure as follows:

1. identify sources of governmental and non-governmental finance and sections of electoral expense to ensure the equality of all candidates of political parties and independent.
2. provide a transparent mechanism for government support to candidates in the public election.
3. determine the electoral funding ceiling for individuals and political parties to achieve equality and allocating resources to support women candidates.
4. political parties and candidates should declare their funding sources and spending on elections.
5. Prohibition of secret and foreign funding of political parties and candidates.
6. Prohibition of employment of charitable associations and mosques by any political party or candidate in the elections.
7. Prohibition of the use of public money, public service and public facilities for the benefit of any political party or candidate unless for the legal funding.
8. establish a transparent mechanism for the Supreme Committee for Elections to control electoral funding and expenditure, restructuring its organs and granted full independence.
9. development of a transparent mechanism for the civil society and media in monitoring elections in all its stages and especially the electoral finance and expenditure.
10. Adopting legal procedures to punish irregularities in the process of electoral funding and expenditure.
11. Invalidate results of winning candidate, if it has been proved that he/she has violated the expenditures' ceiling;
12. Treat candidates equally on receiving donations and finance, regardless of the elections' type;
13. Enforce the state to publicize the finance it provides to political parties, being a public finance from the public treasury;

14. Obligate political parties to apply transparency and combating corruption mechanisms, and political parties leaders to submit and declare statements on their financial assets;
15. making a code of conduct for political parties including commitments to the transparency in electoral financing and spending.

Recommendations to elections administration;

- 1- Establish an independent, professional, elections authority through elections, or to reconsider the formation of the present SERC, to be more independent, by assigning non-partisan members;
- 2- SERC to respond to the complaints filed by NGOs that monitor elections, and establish committees to address such complaints, at the SERC head office and branches;
- 3- SERC to monitor elections' campaigns expenses for each candidate periodically and publicize that, and penalize whoever exceeds that limit.

Recommendations to the CSOs and media:

1. Provide for mechanism on CSOs role during elections, and facilitate their role in monitoring elections; particularly monitoring elections' finance and expenditures;
2. Raise public awareness with elections issues, being an important monitoring tool, not just votes, and with social justice, equal opportunity, misuse of public finance during elections; issues;
3. Civil society organizations, especially NGOs with interest to promoting integrity and anti-corruption, should intensify activities in the area of rising public awareness of the elections in general, and training of activists and journalists to monitor the electoral finance and expenditure in particular.
4. Privatization of public media outlets, and obligate all public, private or party media to be neutral and objective;
5. Remove limits and conditions on establishing newspapers, TV and radio stations, and other media outlets, to allow political powers to communicate with their audiences;
6. Include neutrality on monitoring elections, in a journalist chart of honor, and the syndicate shall dismiss whoever shows non-professional biased conduct;

General recommendations:

1. Provide for commitment with international criteria, such as transparency and integrity, in elections process in the constitution;
2. Provide for strict penalties on public servant who commits elections' crimes, and misuse their job to influence voters in favor of specific candidate, including dismissal from job;
3. To adopt Proportional Representative system in Yemen, and consider the provinces as constituencies, to achieve justice, and avoid prearranged results of elections, possible through FPTP system where tribalism and finance plays role;
4. To consider geographic, social, political and national representation criteria when applying PR system;
5. Adopt Mixed Member Proportional system, which merges FPTP with PR, as it will address many issues; such as independent candidates, disproportional in votes and seats;
6. Monitor government's institutions performance during elections, and enforce deterring provisions on any public servant who misuse public finance or public assets in favor of certain candidates;
7. Alleviate fess imposed on the local elections candidates, for removing advertisement posters;
8. Remove the financial conditions associated with filing an appeal to contest elections' result, as it impedes attempts to correct corruption practices in the elections.

Recommendations to the International Organizations

1. international organizations have to pressure on the government for the implementation of the conventions on anti-corruption and integrity, especially in the area of elections.
2. International organizations should support civil society organizations to play a role in awareness-raising, training, issuing election-related publications and monitor the electoral finance and expense in particular.

11

Draft Legal Texts to Promote Transparency on Political Finance in Yemen

by the legal expert
Mr. Bagash Al-Mikhlaifi

Elections are the basic means for peaceful transition of power and for practicing democracy.

Yemeni constitution has clearly stressed on democracy and political multilateralism, consequently several rounds of parliamentary, local and presidential elections were organized since Yemen unification in 1990. The outcomes of these elections have shown major deficits, and proved the need to develop the whole electoral process, including legislative side, as in the constitution, elections law, or political parties' law. Namely lack of legislatures on political expenditures.

On this legal draft that strives to provide transparent mechanism to organize, and monitor elections' finance and expenditures, we will not address state's funding that it provide to political parties, whereas such issue is tackled by the political parties law, rather we will focus on elections' campaigns finance and expenditures, and the state funding in this respect as stated in elections law.

No doubt that lack of organizing elections' expenditures will contribute in bringing money and politics together, leading to negative consequences; namely unfair competition between the candidates, unequal opportunities to compete for power, domination of financially well-to-do politicians over elections' results, thereby giving the way to illegal money to control over power and jeopardize rule of law.

Most elections' experiences in the world have shown that any fair and free elections require best chances of equal opportunities between contesters, and setting out maximum ceiling for expenditures to prevent candidates with great resources from exceeding such ceiling, and this is exactly what we are trying to achieve by proposing this legal draft.

One of the reasons to advocate for this draft, is Yemen ratification to UN Convention against Corruption, which states in clause 3, article 7 that "each state party shall consider appropriate legislative and administrative procedures in line with the objectives of this agreement, and according to the basic principles of its bylaws, to promote transparency in elections' finance

for the elections of public servants and in financing political parties, wherever is applicable".

According to these texts, Yemen is obliged to reflect its international commitment in legislatures that promotes transparency in political finance, and here lays the significance of this draft.

However we would like to clarify here that this draft legal texts was proposed as an amendment to the valid elections law, therefore we avoid repeating legal texts that prohibits misusing of public finance in favor of any of the candidates that the law has included. Also other texts on indirect government support such as allocating time and space at public media outlets, places for elections advertisement and others, noting that such provisions will remain within the valid law.

What is most important is that this draft will provide for a transparent mechanism to organize and monitor elections' finance and expenditures. Thereby providing for solid ground for new law on elections that is expected after National Dialogue Conference, in addition to the new constitutions, defining shape of the state, new political system, and the most applicable elections' system for Yemen, and other NDC tasks.

Draft Law No. () of the year 2013 to create chapter in the law No (13) of 2001, on Public Elections and Referendum and its amendments

- President of the Republic;
- Following reviewing the constitution of the Republic of Yemen;
- Law No. 13 of 2001, on Public Elections and Referendum and its amendments;
- Law No. () on approving UN Convention to Combat Corruption; and
- Following the Parliament and Cabinet approval;

Has decided;

Article (1): A new chapter shall be created according to this law, on elections' campaigns finance and expenditures, within law No. (13) of 2001 on Public Elections and Referendum, and for this purpose the fourth chapter of the Public Elections and Referendum law shall be renamed and reclassified, as follows:

Chapter Four

Elections' Campaign

Section One

Organizing and Regulations of Elections' Advertisement

(this section exists in the valid law)

Section Two

Elections' Finance and Expenditures

Article (2):

- A. For the purposes executing this law provisions, what is intended by elections' finance and expenditures, is the amount of money allocated by the candidates from their money for any public elections, the contributions and donations they receive from others, and spend on elections' advertisement, starting from the date of closing candidacy, and ends with closing the ballot boxes;
- B. The Supreme Elections and Referendum Commission (SERC) shall undertake organizing and monitoring elections' finance and expenditures for the candidates of any public elections, and shall draft the guidelines, regulations and procedures, and shall announce and publicize them, at least one month, prior to the date of opening candidacy for any public elections;

- C. The local and international civil society organizations, and media outlets shall have the right of observe elections' finance and expenditures, SERC shall enable these entities to practice such right, by providing all information relevant to elections' finance and expenditures, SERC shall further provide observation licenses if so needed for such organizations to facilitate their observation;
 - D. With due considerations to clause (c) of this article, SERC may not provide any civil society organization with the lenience to observe elections' campaign finance and expenditures if such organization's information, mechanism of work, including budget (income and expenditures), are not announced or publicized in its website;
 - E. The observers of elections' finance and expenditures are prohibited from misusing the information that they obtained, to receive any advantage or interest from the candidates, furthermore they are prohibited from using these information to defame any of the candidates;
 - F. This section provisions shall apply on the candidates to any public elections, regardless of the identity of their candidacy, or they way through which they have been elected;
 - G. Elections' finance and expenditures' ceiling for any candidate shall not exceed the following specified amounts:
 - 1. Candidate for the president post 100 million Yemeni rials;
 - 2. Candidate to the parliament 10 million Yemeni rials;
 - 3. Candidate to the local council at the governorate 5 million Yemeni rials;
 - 4. Candidate to the local council at the district 1million Yemeni rials.
- At instance of applying proportional list system in the elections; the amount of elections' finance and expenditures for each candidate, shall not exceed the specified ceiling in this clause, regardless of the number of the candidates in the list;
- H. SERC may reconsider the specified amounts, according to the economic conditions, with due considerations to article (71) of the Law.

Article (3):

- A. Without violating the provisions stipulated in the Law on candidacy for any public elections, each candidate shall open a bank account prior contesting for the elections, at any accredited Yemeni bank under the title (elections' advertisement account), and shall attach to his candidacy application an attested notification from the bank proves that the account has been opened stating the account number and account holder's name;
- B. The bank account on election's advertisement stated in clause (b) above, shall not be subject to bank confidentiality, and the candidate shall be considered, by virtue of law, conceded from the bank confidentiality attached to such account, the moment that account is opened;
- C. The candidate shall attach to his candidacy application, an officially attested memo that includes name of authorized persons in such account, name of the accountant or auditor authorized to pay from such account;
- D. All donations and allocations, payments of elections' expenditures shall be made through this bank account during the elections' campaign of the candidate;

Article (4):

- A. With due consideration to the provisions of articles (40, 71, 143)⁽¹³⁵⁾, of the Law; the contributions and donations provided for the candidates, shall be from natural or nominal Yemenis, and from the private sector; it is prohibited to receive any contributions or donations from the public/government or mixed sector, or from any foreign country, or natural or nominal foreigner, or from their representatives in Yemen, or from any entity to which a foreigner is a shareholder, also it is prohibited to receive donations from anonymous source;

(135) Article (40): it is prohibited to pay for elections' campaign from the public finance, or the from ministries' budget, public corporations', companies' or authorities' budget or from foreign fund, also it is prohibited to use public corporations or facilities for elections' advertisement.

Article (71): with exemption from the provisions of article (40) of this law, each candidate to the president post, shall receive an amount of money to be paid from the state public treasury, following the parliament presidium recommendations, and the parliament approval, provided that such amount are equal for all candidates, to meet elections' campaign expenses for them (the amount was specified at YR.25 million for each candidate at 2006 presidential elections)

Article (143): state's potentials, resources, vehicles, and equipments, shall not be allocated for any political party or organization, or candidate, either directly or indirectly; whoever perpetuate such act shall be penalized with punishment stated in article (133) of this law. (136) Article (133): has specified an imprisonment of not more than one year, without violating any severer penalty.

- B. Any grant or donation or cash prize shall be considered a contribution to the elections' campaign finance, however according to this law provisions, services provided by volunteered individuals shall not be considered as contributions;
- C. No donation, by a donor, in favor of any of the candidate, shall exceed 2 percent of the ceiling specified for each candidate; also the total amount of the contributions and donations shall not exceed the elections' expenditures ceiling specified at clause (g) of article (2) of this law.

Article (5):

- A. For the purposes of this law, each direct or indirect expenses that aim to promote the candidate at any public elections, shall be considered as elections' expenses; the following are considered as elections' expenditures:
 - a. Rent for halls and offices;
 - b. Organizing rallies, gatherings, and meals;
 - c. Producing, publishing and distributing of advertisement materials; such as booklets, magazines, and publications;
 - d. Costs related to designing, printing and distributing of pictures, posters and billboards;
 - e. Telephone, fax and internet fees;
 - f. Costs and wages of the delegates;
 - g. Transpiration fees of the voters and staff of the elections; campaign;
 - h. Any other costs or payments for the broadcasting, newspapers, magazines or any other broadcasting outlets;
- B. any cash or in-kind donations that the candidate provide to individuals, societies or associations, or to any NGOs, during the elections; campaign are prohibited, with exemption to the candidates who normally used to pay regularly to such institutions or individuals during the past three years, at least, prior to the elections advertisement period, and the SERC may verify such exemption;
- C. Voters'-buying is prohibited at any form, and if such act is proved, the perpetrator will be punished with the penalty stated at article (133)⁽¹³⁶⁾.

(136) Article (133): has specified an imprisonment of not more than one year, without violating any severer penalty.

Article (6): Any individual who provided contribution or received wage against services that he/she provided to the candidate, is obliged to disclose that when asked by the SERC, or by any representative of an NGO or media outlet.

Article (7): Each candidate to any public elections shall provide SERC with the following details, within less than three months period:

- A. detailed financial statement according to the financial procedures, signed by the authorized accountant, including details of all received contributions and donations, their sources, dates and total elections' expenditures and their dates, and shall attach all supporting documents; such as receipts, payment vouchers, and others, and shall attach a bank statement from where the bank account on the elections' campaign is opened;
- B. statement by the candidate, whether an individual or in a list, attested by the concerned court, acknowledges that the financial statement mentioned at clause (a) above, is correct and inclusive to all contributions, donations and expenses, and that no other expenses or contributions exist;
- C. SERC may review at any time the (elections' campaign account), of all candidates, and may request any information, document or clarifications;
- D. SERC may review the financial statement provided by the candidates, and shall publish that with its revision outcomes at its website within one week from the date of receiving such statement from the candidate;

Article (8): This amendment shall be considered as an inseparable part of law No.13 of 2001, on Public Elections and Referendum and its amendments and shall be read as part of it.

Article (9): This law shall be enforced and implemented as of the date of its enactment and shall be published at the official journal.

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