



The Coalition of Networks and National Organizations for Election Observation in Iraq

Kurdistan Region of Iraq
Parliament Election Monitoring Program
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Report: Monitoring the Legal Framework for the Kurdistan Region of Iraq Parliament Election 2024

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The Coalition of Networks and National Organizations for Election Observation

The Coalition of Networks and National Organizations for Election Observation in Iraq: A civil society initiative aimed at enhancing democracy, transparency, and integrity in the electoral process. This initiative includes several networks and non-governmental organizations working in the field of election monitoring, electoral awareness, and civic participation. The coalition seeks to provide recommendations and proposals to improve the legal, organizational, and technical framework of the elections in Iraq, and to enhance the role of civil society in monitoring and evaluating the elections.

Since its announcement, the coalition has been monitoring the stages of the electoral process, such as voter registration, or the voting processes for both special and general voting. This is in fulfillment of its goals, one of the most important of which is to monitor the electoral process in Iraq and the Kurdistan Region. Even before the coalition was announced, the networks and organizations within the coalition had been monitoring the course of the electoral processes in Iraq since 2005. This monitoring aims to determine the extent to which the Iraqi elections comply with international standards for election integrity and transparency and their implementation of the provisions of the constitution and electoral law, identifying weaknesses and strengths in the stages of the electoral cycle.

Introduction

The legal framework forms an essential element of any electoral process as it bestows legitimacy on it. The clarity, comprehensiveness, quality, and realism of this legal framework are greatly reflected in the success and credibility of the electoral process. This legal framework is shaped by constitutional and legal texts, regulations, instructions, and decisions of the electoral administrations in a manner that aligns with the conduct of the electoral process.

The upcoming Kurdistan Region of Iraq's parliamentary elections scheduled for June 10, 2024, as per Decree No. (50) of 2024 issued by the Presidency of the Kurdistan Region on March 3, 2024, has emerged from significant hardships characterized by severe and intense political disputes between the two main parties in the region over certain aspects of the amended Electoral Law No. 1 of 1992. Among the most contentious issues are the electoral districts, the quota for minorities, the composition of the High Independent Electoral and Referendum Commission in the region following the expiration of its term, and the extension of the fifth session of the Kurdistan Region's Parliament.

Turning to the Federal Supreme Court has made these elections particularly contentious. After several postponements, the court issued a ruling on this matter under decision number 83, with sub-decisions 131 and 185/Federal/2023, on February 21, 2024. This ruling amended the electoral system established by Law No. 1 of 1992, thereby altering the electoral map and the formation of future alliances in the Kurdistan Region.

The previously mentioned decision marks a significant shift in the Federal Supreme Court's approach, setting an unprecedented and grave precedent. It fundamentally changes the characteristics of the legal framework governing these elections which is going to be organized according to Law No. 1 of 1992 and its amendments.

This decision has elicited mixed responses within the Kurdish political landscape, particularly among parties that had benefited from the eleven seats designated for minorities, as stipulated in Article 36 of the amended Law No. 1 of 1992 for the election of the Kurdistan Region of Iraq's Parliament. Many view this judicial move as an overreach by the Iraqi Federal Supreme Court, exceeding its constitutional authority as defined in Article 92 of the 2005 Constitution of the Republic of Iraq, and a clear breach of the separation of powers principle outlined in Article 47. Furthermore, it is seen as encroaching on the legislative authority of the Kurdistan Region's Parliament, the duly elected representative body of the people of Kurdistan Iraq, as defined in Articles 121 and 141 of the same constitution.

It is worth mentioning that the amendments to specific articles of the regional parliament's election law, the introduction of legal alternatives, and the reinstatement of previously annulled legal articles set a novel precedent that diverges from the traditional purview of Federal Supreme Courts. These courts are principally charged with interpreting constitutional texts and nullifying legal measures that do not comply or that conflict with the constitution, as part of their mandate to oversee the constitutionality of laws.

Preface

The legal framework provides the foundation for conducting democratic elections, and defining the course, form, and composition of the entire political process. The legal framework is identified as a set of laws related to the electoral process or influencing it in any way. This primarily includes the constitution, election laws, and other related laws such as political party laws, legislative authority regulations, electoral regulations, and codes of conduct.

All countries strive to develop a comprehensive legal framework to ensure the integrity and smoothness of the electoral process. The legal framework is based on:

1. The **Constitution** serves as the bedrock for the electoral process in many countries, including Iraq, embedding fundamental principles and overarching guidelines to grant the process constitutional protection. This safeguard makes it challenging to alter the electoral framework, ensuring stability. Key elements such as electoral administration, election systems, and the right to vote are enshrined within, although these specifics can vary based on each country's unique societal and political landscape. The permanent Iraqi Constitution of 2005 delineates the broad contours of the electoral process, leaving finer details to legislative bodies. For instance, Article 49 highlights critical aspects like the proportionality of seat allocation, the principles of secret and direct voting, criteria for candidates and voters, representation of women, and the procedure for member replacement, entrusting their precise regulation to legislative authorities. Further, Article 102 positions the Independent High Electoral Commission of Iraq as an autonomous entity under the oversight of the Council of Representatives, with its functions detailed in subsequent legislation.
2. **Election laws** provide the structural backbone for the electoral process, detailing every aspect from voter registration and candidate nomination to the intricacies of electoral campaigns, the electoral system, political parties, electoral districts, and the voting process itself. These laws are pivotal in shaping the electoral framework, which is designed to adapt and evolve in response to the changing landscape of political forces and ideological divides. A key objective of the electoral legal framework is to bolster voter confidence in the integrity and fairness of the electoral process. The Iraqi legislative body has consistently prioritized this aim, frequently introducing new election laws or amending existing ones ahead of electoral cycles. This approach ensures the legal framework remains comprehensive, incorporating other crucial laws like those governing political parties and electoral administration, thereby maintaining the system's overall integrity.
3. **Regulations and guidelines** can be issued by special bodies charged with managing elections, and these regulations and guidelines are on a lower level than laws. This task is considered to be within the competencies of the Independent High Electoral Commission.

The Legal Framework of the Kurdistan Region of Iraq's Parliamentary Elections

First: Constitutional texts in the Constitution of the Republic of Iraq of 2005:

1. The Preamble: Accusations of being infidels, and terrorism did not stop us from marching forward to build a nation of law. Sectarianism and racism have not stopped us from marching together to strengthen our national unity, following the path of peaceful transfer of power, adopting the course of just distribution of resources, and providing equal opportunity for all.
2. Article (5): The law is sovereign. The people are the source of authority and legitimacy, which they shall exercise in a direct, general, secret ballot and through their constitutional institutions.
3. Article (6): Transfer of authority shall be made peacefully through democratic means as stipulated in this Constitution.
4. Article (20): Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office.
5. Article (38): The State shall guarantee in a way that does not violate public order and morality: Freedom of expression using all means.
6. Article (39):
 - First: The freedom to form and join associations and political parties shall be guaranteed, and this shall be regulated by law.
 - Second: It is not permissible to force any person to join any party, society, or political entity, or force him to continue his membership in it.
7. Article (46): Restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom.

Second: The Legislative Framework:

1. The Law of Elections for the Kurdistan Region of Iraq No. 1 of 1992 as amended, with all its provisions except for the articles amended or annulled by the decision of the Federal Supreme Court in Iraq.
2. The decree issued by the Presidency of the Kurdistan Region of Iraq No. 50 for the year 2024.
3. The Law of Parties for the Kurdistan Region of Iraq No. 17 of 1993 as amended.
4. The Law of the Independent High Electoral Commission No. 31 of 2019 as amended.
5. The Law of Parties and Political Organizations No. 36 of 2015 Federal, according to the system of (complaints and appeals for the election of the Parliament of the Kurdistan Region of Iraq No. (8) for the year 2024.
6. The First Amendment Law to the Law of the Independent High Electoral Commission No. (31) of 2019.

Third: The regulations and instructions issued by the Independent High Electoral Commission in Iraq regarding the sixth elections of the Kurdistan Region's Parliament

1. Regulation for the Accreditation of Local Election Observers No. 3 of 2023.
2. Electoral Campaign Regulation No. 2 of 2023.
3. Regulation for Registration and Certification of Candidate Lists for the Kurdistan Region-Iraq Parliament Elections No. 7 of 2024.
4. Media Regulation for the Kurdistan Region Parliament Elections No. 5 of 2023.
5. Regulation for the Agents of Candidates, Parties, and Political Alliances No. 6 of 2023.
6. Complaints and Appeals Regulation for the Election of the Kurdistan Region-Iraq Parliament No. 8 of 2024.
7. Voting, Counting, and Sorting Regulation for the Election of the Kurdistan Region-Iraq Parliament No. 1 of 2023 as amended by the decision of the Board of Commissioners No. (4) of the exceptional record (15) dated 13/3/2024.
8. Instructions for Alliances between Political Parties for the 2024 Kurdistan Region Parliament Elections.
9. Instructions for Accrediting Agents of Political Parties, Alliances, and Individual Candidates for the 2024 Kurdistan Region-Iraq Parliament Elections.
10. Up to the preparation of this report, the Commission has not issued any regulation or instructions for the distribution of seats for the Kurdistan Parliament elections.

Fourth: The new framework in light of the Federal Court's decision number 83 and its references 131 and 185/Federal/2023 dated 21/2/2024:

According to the content of the previously mentioned court decision, there is a change in the features of the legal framework for these upcoming elections based on the controversial interpretation of the court, as follows:

1. The number of seats in the Kurdistan Parliament consists of 100 seats: Following the ruling of unconstitutionality of the phrase "eleven" in the first article of the Kurdistan Parliament Election Law No.1 for the year 1992 as amended, the alternative text was proposed as follows: "The Kurdistan Parliament of Iraq consists of one hundred members."
2. Supervision and management of the electoral process by the Federal Independent High Electoral Commission: After ruling the phrase under the provisions of paragraph (4) of Article (2) of the Independent High Electoral Commission Law No. 11 of 2007 unconstitutional, until the formation of the Independent High Electoral and Referendum Commission for Kurdistan Iraq as mentioned in Article (Sixth - First) of the Kurdistan Region of Iraq's Parliament Election Law No. (1) for the year 1992 as amended. And ruling Articles Six and Seven of the aforementioned law, which deal with the formation of the electoral commission in the region and its jurisdiction in supervising and managing the elections, unconstitutional. The court proposed the alternative text as follows: The Independent High Electoral Commission replaces the High Commission for the Kurdistan Region of Iraq mentioned in this law to oversee and manage the parliamentary elections.
3. Decisions on complaints shall be made by the Independent High Electoral Commission (Board of Commissioners) and appeals shall be made before the judicial body formed under the amended Law No. (31) of 2019 of the Commission, instead of the judicial body in the Kurdistan Region Court of Cassation. This is stipulated in the Complaints and Appeals System for the Election of the Parliament of the Kurdistan Region of Iraq No. 8 of 2024. After ruling the fourth clause of Article Six repeated from the Kurdistan Region Parliament Election Law No. of the year 1992 as amended unconstitutional. This body consisted of three non-full-time judges to look into appeals referred to it by the Electoral Commission or individuals or entities affected by the Commission's decisions, and its decisions were final (Article Six - Fourth).

Following the proposal of the Kurdistan Regional Judiciary Council under the letter numbered (1/2/246) dated March 13, 2024, and based on the provisions of Article (19/First) of the Independent High Electoral Commission Law No. (31) for the year 2019 and Article (3/Ninth) of the Supreme Judicial Council Law No. (45) for the year 2017, it was decided to "reconstitute the Judicial Body for Elections that specializes in considering the appeals referred to it by the Board of Commissioners or submitted directly by those affected by the Council's decisions, from the judges named below in addition to their duties:

- Hassan Fouad Munem / Deputy Chief Justice of the Federal Supreme Court - Chairman.
- Jalil Adnan Khalaf / Supervising Judge at the Presidency of the Judicial Supervisory Authority - Principal Member.
- Ramadan Hassan Obeid / Deputy Chief Justice of the Dohuk Appellate Court - Principal Member.
- Ahmed Ali Khalaf / Judge at the Federal Supreme Court - Alternate Member.
- Kamran Hassan Faraj / Deputy Chief Justice of the Sulaymaniyah Appellate Court - Alternate Member.

4. Elections to take place in four electoral districts after the ruling of unconstitutionality of Article (ninth) from the Kurdistan Region of Iraq Parliament Election Law No. 1 for the year 1992 as amended, and the reinstatement of the previous text that was annulled by Article (fourth) of the third amendment No. 47 for the year 2004. The court revived the annulled text and decided to enforce it again in its original form before the amendment, which was in the following wording: (Iraqi Kurdistan is divided into electoral districts, no less than four areas).
5. Voter cards are to be exclusively provided by the Civil Status Department, reinstating the annulled Article 17 of the Kurdistan Parliament Election Law for the year 1992 as amended. After the ruling of unconstitutionality of (Article third) from Law No. 15 of the year 2012 of the seventh amendment to the Kurdistan Parliament Election Law No. 1 for the year 1992 as amended, and reinstating the old text (Article seventeen) which states: (The Civil Status Department shall provide every citizen who has reached the age of eighteen with a voter card according to a form that specifies its descriptions and shape as stated by the High Commission, and the voter must show identification at the time of voting).
6. Amendment of Article (twenty-two/1) to align with the multiplicity of electoral districts and individual nomination, with the 30% quota for women remaining unchanged. After the ruling of unconstitutionality of the phrase (across the Kurdistan Region of Iraq) and the phrase (that the number of candidates on each electoral list shall not be less than three) found in Article (twenty-two/1) of the Kurdistan Region Parliament Election Law No. for the year 1992 as amended.
7. Cancellation of the quota system regarding minorities in the Kurdistan Region of Iraq. After the ruling of unconstitutionality of Article (36) and clauses 1,2 of the original Article 36, which decided the mechanism for distributing votes and the remaining votes from the total votes cast for minorities.

Observation on the Legal Framework

1. The Federal Court's decision granted the Independent High Electoral Commission legislative authority by allowing it to divide the Kurdistan Region into electoral districts, no less than four. Therefore, the number of electoral districts, the number of seats allocated for each district, and their geographical boundaries are within the jurisdiction of the Commission.
2. In issuing regulations and instructions to determine the voting mechanism, voter requirements, and the counting and sorting process, the Commission relied on Article Six of the Kurdistan Parliament Election Law No. 1 of 1992 as amended, which was modified by Federal Court decision No. 83, where the Commission was authorized to issue the necessary regulations and instructions for the conduct of Kurdistan Parliament elections. In this, the Commission depended on the provisions of the third amendment to the law on the elections of the Council of Representatives and provincial councils No. 4 of 2023, especially in the details of the counting and sorting process as per Article 10 of the third amendment, which had many observations from elections monitors.
3. The Independent High Electoral Commission will rely on its jurisdiction as outlined in paragraph seven of Article Ten of the Independent High Electoral Commission Law No. 31 of 2019, which grants the Board of Commissioners the authority to ratify the final election results, as there is no specialized judicial body to ratify the results of the Kurdistan Parliament elections, as was done

in ratifying the elections of the provincial councils not organized in a region after deciding on all appeals.

4. The injustice in determining the number of seats allocated to Halabja governorate, where it could have been possible to rely on the division that took place in the 2021 Council of Representatives election in terms of the number of seats and the district boundaries to determine the district's borders and the number of seats (5).

Recommendations

1. The Kurdistan Region of Iraq Parliament, once elected, should issue a new law for the election of the Kurdistan Region of Iraq Parliament that adheres to the principles of electoral justice and is in alignment with the Constitution of Iraq.
2. The population census remains a priority in terms of essence and content, as it provides the indispensable data needed to conduct the electoral process.
3. The delineation of electoral districts through the creation of a specific apparatus or committee entrusted with this task, and the commission should work in cooperation with the authorities in the region to draw the electoral district of Halabja.
4. Establishing the principle of government neutrality to ensure the integrity and transparency of the electoral process.
5. Ensuring the commission's neutrality and distancing it from party and ethnic conflicts to maintain its transparency and independence for the preparation and execution of professional, neutral, and fair elections, free from doubts or criticisms.
6. The commission should complete the legal framework for the elections, issuing a system or instructions for the distribution of seats.