

***Shams Network* for Observing Elections**

In cooperation with the Amman Centre for Human Rights Research

Series of Observing Reports on the Election process in Iraq

2008-2009

Report Number -2-

The Legal framework of

the elections of provinces, Districts and Sub-Districts

And

to what extent they are in consistent with the International Standards

Prepared by:

The Committee of preparing reports in the Shams Network

November 2008

Content

1- This Report

- Shams Network
- The Independent high electoral commission IHEC
- The goals of Observing the Elections
- The state of law and institutions
- Citizenship

2- Part 1/ International Standards

- An entry to the concept of legal framework of the elections
- International Standards for free and fair elections
- International Standards for observing elections
- Legislative Timetable
- Operational Timetable

3- Part 2/ Analysis of legal framework of the elections in Iraq

- Constitution and the laws
- The systems of the commission
- Electoral measures and practices
- Separate legal notes

4-Suggestions and Recommendations

5- The References

This report:

The Shams Network and the Amman Centre for Human Rights Research, while they present this report they try to show a general overview of the electoral process in its legal framework and a comparative analysis between the Iraqi laws relevant to the international standards, in addition to that it becomes a simple guide and an educating material for all.

The Shams Network:

The Shams Network for observing elections is a voluntary gathering for the institutions of the civil society which was founded in 2004 by (113) organizations, associations and unions. It has monitored the last elections and the constitutional referendum in 2005 through 3328 monitors in all Iraqi provinces.

In its new project, the Shams Network has announced that it will monitor a complete round of elections which includes (issuing the elections law, observing the regulations and orders of the commission, observing voter registration , observing the registration of entities, supporting the political entities and the candidates in their elections campaigns, observing the elections campaigns, observing the election day- casting, counting votes and announcing the results and observing elections promises).

After the end of every observing process, periodic and final reports will be published about the most prominent points concerning the level of success of the process in accordance with international standards for elections (fair, transparent, success).

At the first stage, (2000) monitors were trained and within the human resources of the network are more than (3000) monitors trained previously who were supported by a large number of experienced and talented trainers and monitors, some of them were monitors in other countries such as (the Federal Germany, Poland, the Republic of Yemen, the Hashemite Kingdom of Jordan).

The Shams Network published its first report on the observing process of up-dating the voters' registration. This report is the second within a series of reports which the network will publish about the legal framework of the election process.

The Independent high electoral commission:

The Independent high electoral commission is an independent and autonomous, non-partisan, neutral and professional government office; it has a moral character subject to monitoring by the Council of Representatives and its functions shall be regulated by law.

1. Setting the bases and rules which should be used in the federal, regional and local elections and referendums throughout Iraq in order to guarantee fair and impartial elections.
2. Supervising all types of federal and regional elections and referendums in the provinces which are not regulated in a region.
3. Announcing and managing, conducting all types of federal and local elections and referendums in the provinces which are not organized in a region and they are mentioned in the constitution throughout Iraq.
4. The regional offices of elections in coordination and cooperation with the national office manage and organize the regional and local elections in a particular region under the supervision of the Independent high electoral commission.

Independent high electoral commission consists of:

1. Board of Commissioners
2. The Electoral Administration

3.

The laws:

1. The law of the Independent high electoral commission
2. The law of the provinces which are not regulated in a region.
3. The law of the elections of provinces, Districts and Sub-Districts.
4. The amended law of the elections of provinces, Districts and Sub-Districts

The Regulations:

The regulations which have been issued by the Independent high electoral commission after its establishment in accordance with the law number (11) in 2007 are as follow:

1. IECI Reg. 1- 2007 Internal Regulations of Board of Commissioners
2. IECI Reg. 2 - 2008 Complaints and Challenges Of Election
3. IECI Reg. 3 - 2005 Ref And Electoral Observers
4. IECI Reg. 4 - 2008 Election Campaigns
5. IECI Reg. 5 - 2008 Certification Political Entities
6. IECI Reg. 6 - 2008 Political Entity Agents
7. IECI Reg. 7 - 2008 Up-dating Voter registration
8. IECI Reg. 8- 2008 Mass media
9. IECI Reg. 9 - 2008 Certification of Candidate List
10. IECI Reg. 10 - 2008 Exhibition of Voter registration and Challenges
11. IECI Reg. 11 - 2008 Allocated seats for the Components
12. IECI Reg. 12 - 2008 Regulations For Forming the Regions

The Objectives of Observing Elections:

The observing of the elections may achieve at least seven goals:

1. The first goal is in fact to guarantee evaluating the election process which must be independent, non-partisan and subjective.
2. The second is that observing the elections may encourage accepting election results.
3. The third one is that observing the elections may encourage participation and winning the trust of the elected in the electoral process.

4. The fourth goal is to assure a safe electoral process, including the prevention, disclosing violence, terrorism and fraud.
5. The fifth is that there is the need for watching the protection of the human rights during the election period.
6. The sixth is that observing the elections facilitate for settling the disputes particularly which is associated with electoral process.
7. The seventh is that observing the elections may indirectly contributes into a civil education and building a civil society.

The process of observing elections aims to:

1. Showing if the freedom of transport, assembly, forming groups and freedom of expression was respected during the election period.
2. Showing if all the parties carried out their activities within law.
3. Showing if any political party or group with a special interest was subjected to arbitrary and unnecessary restrictions especially in the possibility of reaching the mass media or anything related to freely airing its views.
4. Showing if the parties, candidates, supporters equally felt secure.
5. Showing if the voters freely cast their vote void of fear and threat.
6. Showing if secret balloting procedure was protected.
7. Showing if the overall voting was conducted in a way no fraud and violation of law was reported.

Before entering into the international standards of the election process and analyzing the Iraqi laws in accordance with it, this is a necessary introduction to the subject of the state of law and citizenship.

The State of Law

The State of Law as a legal term refers to a constitutional theory concentrated on transferring authority from a subjective or personal practice related to the ruler which was popular in the past and it is sometimes called the traditional state to an abstract practice, an institution on a legal and institutional basis, which is called the modern democratic state, now described as the most important standard affiliated to the Modern age.

The State of Law is also a political slogan aiming to establish a relation between the ruler and the ruled on stable and general legal basis and win the approval and consent of the people. Provisionally, the State of Law in a larger concept is responsible for setting balance between the necessities of the power and guaranteeing the rights and public liberties because disregarding the necessities of the power results in oppression and disregarding the guarantees of rights and public liberties results in chaos. The State of Law characterizes with institutionalizing the power, and its commitments to the rule of law and submission to institutions instead of obeying the rulers. Obeying the law but not the rulers is the objective of the State of Law or transferring from an individual to abstract. It is true that old institutions developed the humanity, but transferring the state itself to one of the institutions or separating its power from the ruler and re-channeling this power to a legal non-human status is a big achievement of these modern ages. The most important constituent of the State of Law is the judicial power which is regarded as the most suitable factor to maintain and protect the rights and liberties which are guaranteed within the independent judiciary the first condition for the existence of other constituents of the state. Judicial censorship is worthless without independent judiciary.

Conditions of the State of Institutions:

To establish the State of Law and achieve the goal which it works for, there must be the following conditions:

1. Separation of the powers: this separation is considered as one of the constitutional principles in the modern democratic countries.
2. Judicial censorship: if the principle of separation of the powers forms a kind of overall censorship on monitoring the power of the power or restricts a power by another on the basis that every power possesses guaranteeing means to limit arbitrariness and trespassing the other constitutional powers. The Judicial censorship is considered as the best means to maintain and protect the rights and liberties of individuals, whether it is related to submitting of the executive and administrative authorities to law, or concerning the submission of legislative power to the constitution.
3. Independent Judiciary: the judiciary in its all forms which is an unquestionable need for establishing the state of law should be guaranteed in two levels: First, is

the level of the personal independence of judges and through the selection of the judges, immunity, and not being able to depose them and the financial and administrative system of promotion and transferring and the bases of impartiality in confronting the other. Second is the professional independent of judiciary, and through it submitting all functions of the government power to the censorship of judicial power without the interference of both legislative and executive powers in the function of judicial and guaranteeing respect for the judgments of judicial and their implementation are maintained.

The State of Law in Iraq has become a real demand and there are many constituents that shall be used to build the state of law in Iraq and they may be classified as the following:

1. Constitution
2. Elections
3. Pluralism
4. Awareness of the elite
5. Awareness of the society

The Establishment of the State of Law and Institutions

One of the very first challenges in front of all seeking to build the new Iraq is the capacity to establish the state of law which discloses many controversies and difficulties covering the ultra structure and infrastructure of Iraq. That also includes the possibility to prepare the young generations who suffered hardships of pre-occupation and extending it to a psychological and social rehabilitation through educational and cultural

programs and economic atmospheres which can fill the gaps in the civilization in the age of globalization and its sudden consequences on the Iraqi society.

The beginning point of building a society which depends on tolerating the other, his opinion and respect his privacy, this is all on the basis of the culture of tolerance and opening and spreading confidence among the individuals, groups and components to solve the problems. It should be prioritized by convincing them that they all are equal citizens in rights and duties and share the same homeland. For this the process of building the society must go through two directions:

First: Rebuilding the state and maintaining its authority and cleansing it from the germs of oppression.

Second: Conducting a nation-wide educating campaign, based on the political and social upbringing to mobilize the society and preparing it to cope with the requirements of the new circumstances and preparing it through educating, teaching and media tools and channels.

Starting from the point that the sovereignty of law is the basic condition of the modern society, how we understand the state of law? And how we describe a certain state as the state of law? And what are the obstacles facing the establishment of the state of law in Iraq?

The gradual emerging the concept of the state of law in Europe as an alternative idea for the state of empire, the state of the only ruler and the absolute powers in which the king and the emperor have the upper hand, the state of law in that context is the state of institutions comparing to the traditional state which is the state of Emir and sultan. So if power in the traditional state centralized in only one person, the state of law or the modern and democratic state is the state where the powers are not distributed among individuals but among institutions: legislative institutions, executive institutions, and judicial institutions.

The modern state rely on substituting legal relations with emotional, familial, ethnic and professional, financial, moral and religious and other relations. Here the rule of law is

the authority of the supreme power which becomes the source of legitimacy for all the other boards, sectors, practices and movements.

The conditions of the democratic state in order to become the state of law:

1. The citizens of the state must enjoy the basic rights, the public liberties and they must be equal before the law.
2. The official power must be practiced in a way characterized by implementing the law and the rule of law.
3. The power shall be regulated in accordance with the principle of the separation of the powers and the participation of people in it.
4. It is necessary that the political system in the state of law must coincide with the constitution of the state because the constitution in every democratic state is a set of rules that organizes the power and shows how the official power is used or not used without changing the marginalized sides in the constitution. The constitution must protect the civil rights and freedom of speech which includes the freedom of disclosing the information, freedom of assembly, freedom of demonstration, freedom of belief and the constitution shall not be the protector of the rights and liberties unless the ruling authority is the power of law and not the power of an individual, religion or a tribe.
5. Calling for the supremacy of law in the political relations which means law becomes the first source in evaluating the movement of the different political groups despite their different affiliations, beliefs, their position and their occupations without biasing towards one political side over the other and restricting all sides in respecting the basis of law. This call shall be incomplete unless the political sources agree to resort to the judgment of law and not violence whether in the political behavior among the different political organizations or in the tools of a peaceful shift of power in the direction of rising to power or falling from it.
6. The independence of judiciary: the independence of judiciary (judicial, administrative and constitutional) is a must for establishing the state of law.

The Citizenship and the Establishment of the State of Law

The process of transferring from an inclusive regime to the project of establishing a new different system represented a quality change they Iraqi society witnessed in 2003. It has affected different economic, political, social and ethical domains. The most prominent leap occurred in the field of citizenship and reshaping it through a new wording of the concept of citizenship which is expected to be a firmly-established base to launch a new national project aiming to establish or re-establish the new Iraqi state, the state of institutions and the rule of law.

Generally, the role of the state and its political system (in rebuilding the national identity and the identity of citizenship) within the framework of an overall process is building a new system of political relations which is the system of citizenship referring to achieve vertical participation in the overall political relations. In a way that leaves out all kinds of natural descriptions which occur in the form of loyalty to a tribe, a clan, a sect or a nation, replacing it with a new political description entitled with the loyalty of the president to comprehensive entity which is the national entity. In another sense, the first obstacle to restructure a new concept for citizenship is that to define people politically not as citizens or outside all that has relations with fanatical, family relations and traditionally loyal relations.

Depending on this understanding, the concept of citizenship, from the beginning, needs deciding the principles and commitment to the institutions and implying the tools and measures which contain their application on the ground. If we consider that the process of expressing those requirements needs a kind of flexibility during its application in another country and in another time, taking into consideration values of civilizations, the beliefs of the societies, the experience of the political states, and the hierarchy in implementation.

However, that flexibility should not reach a level that trespasses the principles of citizenship as it is described by the modern democratic political thought and whatever was decided upon about the comment elements and constituents should be available in

the concept of citizenship. This includes beside the legal and constitutional rights, guarantees active political participation, the minimum rate of economic, social and cultural rights which enable the citizen to freely express his/her opinion and interest for example reducing the differences in the levels of income, wealth and education. And these conditions must include the minimum level of social responsibility towards developing job opportunity, social care in the case of getting old and unemployment for the sake of education, health and cultural progress.

The Requirements of the Concept of Citizenship:

1. No supremacy of an individual or the minority over the people who is the source of powers.
2. The control of the rule of law and equality before it.
3. Not gathering between any of the legislative, executive and judicial powers in the hand of one person.
4. Guaranteeing these rights and public freedoms constitutionally, legally, judicially and socially.
5. A peaceful power change and resorting to the polling boxes in legal and fair elections under the supervision of an independent judicial system and with high transparency.

If we classify the nations from the angle of respecting the principle of citizenship and ignoring it, there are two main standards in this field.

First: The cessation of all forms of the rule of an individual, a handful of people, and liberating people from following the rulers as the people is the source of the powers and according to the legibility of a democratic constitution and through the guarantees of its principles and institutions.

Second: Considering all the population who has the citizenship of that state, citizens equal in rights and duties. Each individual has civil, legal and equal rights and commitments. There must be guarantees and the possibility of practicing the right of active political participation and holding public portfolios by every citizen.

Basically, the concept of citizenship is (self-acceptance and a political commitment to the principle of citizenship representing a social agreement on a social contract and according to it the principle of citizenship is described- not anything else). That becomes the source for rights and duties for all those who carry the citizenship of the state void of religious or racial discrimination and later to embody that consensus in a democratic constitution.

Part -1-

International Standards

(With the help of published international documents)

Introduction to the concept of legal framework to elections

Not all the elections which are held in the modern countries of the world are democratic, because there are many ways to cheat in the elections for other purposes far away from the aim of democratic elections. Aiming to differentiate between the competitive and democratic election and other elections that can not be described as democratic and uncompetitive, the following three topics are important:

First/ Requirements of Democratic elections:

The modern experiments indicate that competitive and democratic elections can be held only under a democratic rule. In another meaning, there are requirements for democratic elections which could be briefed in three main principles:

1. Organizing the function of the institutions of power through the principle of the rule of law, or restricting the authority of the government to constitution which shall be obeyed by the rulers and the ruled equally. It also provides defined mechanism to decide, political questioning and an independent judicial system to protect the principle of the rule of law and maintaining the liberties and rights of individuals.

2. Enabling the citizens to participate in the process of political decision-making and depend on the principle of peaceful circulation of power and the right of all the political forces to compete on the seats of authority. This is through depending on the principle of "people are the source of authority" and the government practices its authority aiming to achieve the public interest of the citizens and not achieving the interest of a certain component or a political party.
3. Organizing the relations between the institutions of authority and the public on the basis of the principle of citizenship, or all the components of the society must equally have all rights and duties and they must be equal in the process of participation the political decision-making void of discrimination on the basis of background, language, race, religion, sect or the social or economic positions.

Second/ The aims of democratic elections:

After the accomplishment of those principles in the modern democracy- in the form of democratic constitutions, elections are held to meet certain purposes, or there should be active elections but active elections are not the goal themselves, however, they are a mechanism to achieve higher objectives or carrying out real functions:

1. The elections express the principle of "people are the source of authorities" through providing the opportunity for the voters to practice the most clear picture of political participation which is general elections.
2. Democratic elections provide the way which is used to elect rulers, and this is through transferring power to the winners in the elections concerning the presidency of the executive council or members of the legislative council or both together. And this is done in accordance with political and electoral regulations as it is decided by the legislative councils, which bring about democratic elections- political pluralism through representing all the main parties in the society and proper representation of women and minorities.
3. The elections provide the mechanism to circulate the power and change the centre of power and the possibility of letting the opposition forces to seize power instead of the current government. The democratic regime does not allow the change of governments unless it is done through the majority of the votes and not through the violent transfer of power by military coup or armed

revolution. Meanwhile, the government which comes to power by the will of voters shall not be removed.

4. The elections guarantee a popular legitimacy for the newly-elected government or renew the legitimacy for the current government which probably needs to renew its legitimacy among its voters.
5. The elections have a key point which is the questioning of judges at the time of elections through the assessment of competitors' programs or via rewarding or punishing the politicians in case they want to be nominated again.
6. The democratic elections play a general mobilizing role by preparing and training the politicians and the leaders, and qualifying them for political positions. This, in turn, contributes in renewing the community's activity and ensures the participation of new elements in the status of policies.
7. The democratic elections play an educational role. These elections take part in, with other means, educating citizens with the ways which are connected with work before and during the elections.

Third/ The standards of democratic elections freedom and its integrity:

The standard of elections "freedom" encompasses three aspects:

1. Those elections should respect the rule of law, which means the practicing power legitimately does not occur unless via the submission of the Ruler and the ruled ones – equally – for a pre law, it is the principle of supremacy of law instead of the rule of Kings and Princes, and the abeyance of law instead of yielding to the individuals' decisions.
2. The respect of rights, substantial political freedoms mentioning in the pacts and international and regional agreements, such as the freedoms of movement, speech , and gathering, as well as formation of political organizations which is independent from the executive authority as political parties, and thus guaranteeing the freedom of nomination in the elections and so on.

3. The respect of principle of competition, this means there is a real competition among several nominees or different programs.

However, the standard of elections integrity is connected with neutrality rules and the organized bodies for the process of elections, and the neutrality of the supervised body on the elections in treating with all concerned parties in the process of elections from nominees, voters, supervisors and superintendents, and in all its stages starting from registering the voters and guaranteeing the right of public voting (without any discrimination on the basis of color, origin, race or social status or religion, and without prejudice to the principle of equal votes) coming through how to convert the votes of voters into a parliamentary seat (by means of adopting an electoral vital and active law), ending in everything that is connected to the supervision of elections, counting votes and the declaration of results.

Furthermore, integrity of elections means the principle of regulation and periodical, which is the applying of elections rules themselves – and the pre specified – on all the voters and nominees in a periodical way and regularly and non-biased to any certain category.

This principle is based on a key feature of democratic features which is the political posts are determined by time in certain periods, and that the voted ones are not voted lifetime, this leads to the rule that questioning Rulers calls for judgment goes to voters periodically and orderly is that their opinions are to be taken into consideration in the matter of voted politicians and their different policies.

Elections are characterized by another group of standards to ensure their integrity, like the guarantee of voting secrecy, and the freedom of voting for all electors and the right of competitor in supervising the process of elections through their deputies and protecting the elections departments from any external interference, and providing securities for these departments against violence that may happen and may sabotage or delay the process of elections.

Moreover, elections characterized by the transparency of sorting votes and showing results and their declaration, also giving a room for complaints which is usually done by the supervised committee on the elections or the courts.

Generally speaking, doing election in any country does not mean that the regime in it has been out of its comprehensiveness and has become democratic, as real democratic elections should be based on a democratic constitution which puts the main democratic principles in a practical method, besides, it is marked by being honest, free and active, otherwise it could be false, or relieving pressures which demand reformation and the respect of human rights inside and outside, as well as it is not done periodically and orderly and the process of managing it is not characterized by neutrality and transparency, and does not respect the principal of law and does not enable the majority of voters from competing the Rulers, aside from the capability of taking the authority.

The International Standards for free and Impartial Elections

1. Participation in administration and non-discrimination

- Anyone has his/her own right in the participation of administering the affairs of his country which is considered as a main human right. The elections are marked with a main significance in guaranteeing commitment in the right of political participation. Article 21 (3) of the world declaration for human rights stipulates that "People's will is committed to authority, which should be appeared through impartial elections that are made periodically of public voting and equally among the voters and the secret voting or done by an equivalent procedure in terms of voting freedom".

- The international pact concerned with political and civil rights in Article 25 (B), guarantees that every citizen has the right and the chance to elect and to be elected, in an impartial elections made periodically and equally among the voters and in the secret voting, ensuring the freedom of speech of voters' will..."
- The regional organizations have also confirmed the right in the participation of impartial elections. According to Article 3 of the first protocol annexed to the European Agreement for human Rights, the concerned parties commit to make free elections on the basis of reasonable periods by secret voting, and the council of international parliamentary association in Europe had adopted unanimously the declaration of impartial and free elections' standards in 1994.
- In addition to this, the right of participation in impartial and free elections is applied in a general way and without any discrimination. Article 1 of the agreement of political right for woman and Article 7 (A) of the agreement of elimination of all kinds of discrimination against woman, stipulates the right of woman in voting in all elections equally with man, owing to Article 5 (C) of the agreement of annihilating all kinds of racial discrimination, "the concerned states commits not to practice racial discrimination and killing all its kinds and confirming the right of each citizen, without discrimination because of race, color, or national origin, equality in front of law, especially enjoying political rights, and the right in the participation in elections –nominating and voting- on the basis of public equality, also contributing in administering public affairs on all levels, and holding public occupations equally...

2. Main rights

The acts of international human rights protects a number of main rights which enjoying it is considered a crucial for any electoral real process, the right in impartial and free elections consists of these rights, including:

- Right in freedom of speech – election process if a mechanism the purpose of which is to express the political will of the people. Therefore, the protection of right must be established in expressing party opinions during elections period.

- Right in freedom of opinion – the unconditional freedom in adopting political opinion is considered as a definite matter in the context of elections in view of the impossibility of formal assurance for people will in an environment where freedom is absent or subjected to conditions in any way.
- Right in peace gathering – the right of gathering should be respected where public demonstrations and political gathering form a key part of the process of elections and gives an active mechanism for releasing political information to the public.
- Right in forming societies - - this right obviously implies the right in forming the political organizations and participating in these parties. Respecting this right is a vital thing during the electoral process owing to the fact that the ability to form political parties and joining them represents one of the main ways which people can participate in the democratic process.

The main sources for international elections standards:

It is the standards which the international community has reached by its bodies working in the field of elections in pacts, decisions, blogs and agreements by: United Nations, European Union, Organization of Security and Cooperation in Europe, and the International Institute for Democracy and Electoral Assistance (IDEA), International Parliament Union and through the pacts , agreements and decisions which form the legal sources into important package of international democratic standards of elections and to be guided with particularly by societies and organizations and the world supervising individuals.

Most of the important of these main sources of international standards are:

1. Universal declaration of human rights (1948)

The Universal declaration of human rights has confirmed the right for anyone to enjoy in addition to freedom mentioned in this declaration without any discrimination, such as race, color, sex, language, religion, the political opinion, or any opinion, or the national origin or the revolution or birth, or another status

and without any discrimination between men and women..... (Article2), also everyone has the right in expressing fr freedom and opinion, this means in turn the embracement the opinions without any interference 9Article19).

Also in Article 20 the right of a person in the freedom participation of societies and peace groups.

Whereas the confirmation is clearly stated for individuals' right in voting and nominating directly in Article (21) Articles:

Each citizen has the right in participation of administering the public affairs of the country either directly or by means of representatives to be chosen freely.

Each individual has the same right of other citizen in taking the public position in the country.

People's will is the source of government authority, and expresses this will by the periodical and impartial elections, to be done on the basis of the secret vote and equally among the all or according to same procedure ensures the freedom of voting.

2. The special international pact of civil and political rights

One of the main international legislative sources (the special international pact of with civil and political rights), adopted by the general Assembly (2200 –A in December/January 1966) which reassured the total human rights that has been undertaken by the pacts and international declarations in that “The only way to achieve the higher principles owing to the universal declaration for human rights is that humans should be free and enjoying the civil and political freedom and without fear, which is an approach for preparing environments to enable every one to enjoy his political and civil rights, also his economic, social and educational rights (pact preface), also what Article (2) confirms item (1.2.3-a.b.c) in conceding these rights and the state's pledge to take the necessary constitutional procedures for undertaking it, and the Article (19) Items 91.2.3-a.b) confirms the right in the freedom of speech and free opinions and conveying

them to others freely , in addition to organizing the practices these rights in legislations for the respect of others rights or their reputations and protecting the national security, public system, health, public manners.

Also Article (21) which has undertaken the right of peace gathering accredited legally (the right of peace gathering should be accredited and should have no restrictions on the practices of this right, except for those to be imposed according to law, and form necessary steps in a democratic community to protect the national security or the public safety, or the public system, or a protection for public health, or the public manners, or protecting the rights of others and their freedoms.

Whereas Article 925) in its items 9a.b.c) states obviously the right of citizens in selecting their representatives freely and nominating in periodical elections equally.

1. Each citizen should have, without any kind of discrimination mentioned in Article (2), the following rights which should be, the following rights which should be available as a chance to enjoy these rights without any unreasonable restrictions.

To participate in administering the public affairs either directly or by means of representatives chosen freely.

To elect and to be elected in impartial elections made periodically by public vote and equally among voters and by secret vote guarantee the free expression of voters' will.

To provide him equally the chance of taking public positions in his country.

3. The agreement of fighting all forms of discrimination against woman (General Assembly decision 24/8 in 8/December 1979):

This agreement has called for faith in human main political rights and equally to man and woman in these rights, and each citizen had the right of enjoying rights and

freedom mentioned in the international declaration for human rights without any discrimination, including the discrimination of sex, also the guaranty of equality of man and woman in the right enjoyment of all social, economic, educational, civil and political rights as well as taking the proper steps, including the legislative ones to ensure these rights (Article3), as discrimination against woman is a violation for equality principle in rights, and the respect of human dignity, and an obstacle in front of her participation equally with man in her country's political, social, economic and educational life, in addition to the hindrance of society's welfare, family and human development in the country.

Article (7) has directly called in items 9a.b.c) to the eradication of discrimination against woman in the public and political life of the country, and ensuring in particular woman rights equally with man in:

Voting in all elections and referendum to elect all Electoral College.

The participation in forming government policy and implementing this policy in taking the public positions on all levels.

C. The participation in any organization or non-governmental society concerned with public life and policy of the country.

In short of what has been mentioned above, the international standards of elections are:

1. Elections are an expression for the free will of people.
2. Non-restricted public voting.
3. Reasonability.
4. Secret and direct voting.
5. Equality among all citizens in the right of nomination and election.
6. Integrity.

7. Periodic elections.

Classification of United Nations:

The center of human right for the United Nations has classified the international standards which ensure to do impartial and free elections and as follows:

- People's will.
- Freedom insurance.
- Insurance of main rights which are:
 - a. Freedom of speech and expression.
 - b. Freedom of peace gathering.
 - c. Freedom of the formation of parties/societies.
- Independence of judicial authority.
- Principal of non-discrimination.
- Secret voting.
- Equal public voting.
- Periodic voting

For the respect of the right of self-determination, the first joint article had confirmed in the two international pact for civil, political, social, economic and educational rights have stated that all peoples have the right in their self-determination of their political status and political center with freedom, and to seek to carry out their political, social and economic development.

Thus, all the international agreements related to human rights have stipulated the necessity of freedom guaranty by doing elections in a free and democratic atmosphere without any fear.

International standards for monitoring elections

The availability and participation of international specialized observers and analysts, and the assessment of all the electoral practical aspects in the states is an important thing for creating favorable environment to do the elections and ensuring the assistance in providing the political support and the participation of all concerned parties to the reach of elections results which enjoy transparency and honesty.

The most distinguished of these standards that include the international pact related to political and civil rights (1966) in Article (25) a justification and a standard for monitoring elections through its confirmation on the principle of integrity as a main approach. Also the declaration of international monitoring on elections which the United Nations has adopted it on 27 October 2005.

The most important standards are:

1. The extent to make secure and safe environment free from fear and threat and attack on the election process in general and on the voters and nominees in particular.
2. For how far is a democratic atmosphere, and the extension of political participation in the elections.
3. Adopting electoral independent legislation.
4. For how far is the voters' record of higher honesty.
5. For how far is the ability to make awareness for voters.
6. The extent of the transparency in the electoral system and the practice in the electoral process.
7. The extent of the availability to participate and make international missions for monitoring elections as well as NGOs and governmental organizations and individuals, and nominees in monitoring elections, besides, reaching all information and elections centre.

The main principals which guide the formation of electoral system

O form an electoral system, it is advisable to start putting a summary of standards which sum up what is needed to be accomplished or to be avoided, in general, kind of parliament. Forming electoral system should be taken into consideration the following targets:

1. Guarantee the parliament with representing extensive feature.
2. Making sure that elections are at the hand of voter and it is true.
3. Encouraging the compatibility among the already contradictory parties.
4. Supporting the legitimacy of the legislative authority and the executive authority.
5. Encouraging for establishing an independent and active government.
6. Development of the sense of responsibility to the highest degree for the government and the elected deputies.
7. Encouraging for making closer of political parties.
8. Crystallizing a parliamentary opposition
9. Maintaining the country's administrative and financial energy.
10. Encouraging citizens to participate and make procedures as easy as possible and motivate them for vital participation in the process of lection.
11. Encouraging the political development and party multiplicity.

Therefore, whatever is the electoral process, its results depends mainly on the electoral system relied on, and a wide knowledge of such elections should be gained to make them successful.

An overview of electoral systems

All the electoral processes in the world are subject to one of the two electoral systems for majority or relatively and when these two systems have had various applications, the privacies of the states and the political systems should be taken into consideration.

This internationally means, the dependence of majority system, applying the system of one vote, which is clarified in the circle of individuality or the circle of multi-seats.

In turn, the majority of the landslide countries relied on the system of relative voting, originally, the relative system had been invented by the British philosopher John Steward, in the mid of the nineteenth century, for his intense care to achieve the real representation for the minority and maintain their rights. At the end of nineteenth century Belgium had followed this system in order to maintain the representation of ethnic minority in its country.

Iraq is one of the countries which need this system much, owing to its society's components based on multiplicity and diversity, and in order to maintain the right of these various and multi-category.

Important definitions:

Voter: The person who has the right to vote.

Nominee: everyone who has been accepted to be nominated officially.

Preliminary voters record: The record which contains the names, data of voters which is prepared and distributed by the commission to be informed on and presenting objections about it.

The open list: It is the list which contains the declared names of nominees, which should not exceed the number of seats intended for the circle.

Single list: It is the list where one person has the right to be nominated in the elections and who should be registered in the commission.

Electoral factor: It is the number of votes which are necessary to get a seat in the electoral circle, and it is gotten by dividing the correct number of votes in the electoral circle by the number of intended seats for that circle.

Electoral circle: It is every specific area to which specified a number of seats according to the rules of law.

Centre of election: The place which is specified by the commission within the electoral circle to do the process of voting in it.

Displaced voter: the voter who has been obligatory displaced from his domicile into another place inside Iraq after 9/4/2003.

The legislative deadline

1. Formation of the Independent High Electoral Commission

The law which the Independent High Electoral Commission has established according to it, has enacted in late of February 2007 by the name of the Independent High Electoral Commission where the following steps has followed:

- **Appointment nine new employees.**
- Selection of a president, vice-president, CEO for the electoral administration by the majority of the new deputized votes in the commission.
- Council of deputies chooses five nominees for the positions of each of the nineteen directors for the electoral offices in the provinces, and the deputies of the Independent High Electoral Commission take the final decision to appointment.
- The verification of deputies of the Independent High Electoral Commission on the organization structure of the central office and the provinces offices and their verification on appointment of top officials in the commission according to recommendations of the CEO for the electoral administration.

- The adoption of deputies of the Independent High Electoral Commission a blog of manner and internal system to enact the legislation the necessary systems and making decisions.
- The deputies of the Independent High Electoral Commission stay supervised on the employees of the previous electoral process.
- The agreement of the deputies of the Independent High Electoral Commission on continuing to have support of international team for the electoral assistance, this is a mechanism where the deputies had verified on to coordinate the efforts as support for the Iraqi establishments.
- The agreement of the deputies of the Independent High Electoral Commission on the intended plan by the United Nations Mission to help Iraq about their training to get them new positions. This includes making study missions and making various workshops presented by the commission.

2. The legal framework:

This should include the constitutional rules related to the elections and other regulations which have relations and the law of referendum, and all the systems issued by the Independent High Electoral Commission. The law of elections should have the following main terms:

1. Determination of number of members and the membership period which would be elected, this mostly will depend on the census. In the Iraqi context and since fifties, there was a public acceptance for the percent of one representative for each 200,000 citizens. But the international standards concentrate on less percentage. In case of doing elections before making a recent census, the members of councils may resort to other population data, providing that there should be a political compatibility for its acceptance that it is guaranteed data.
2. Type of the electoral system provides the rules and procedures through which it could be translated into votes which any entity may win. It is also possible to

look into special rules related to group that have not enough representation, like seats of minorities and the guarantee of woman representation.

3. The designation of the borders of electoral circles.

The designation of geographic borders of an area shall be done by making elections which is an important requirement in any electoral law. In the elections that had done in Iraq in 2005, the administrative separations were taken into consideration since the former regime. However, many disputes have been raised; and political agreement must be reached about this case.

4. The qualification of membership in the council

Residence, age, experience and background are necessary requirements; therefore, residing in Iraq should be verified owing to the internal displacement over conflicts.

5. Termination of the membership of council members and the mechanism of their replacement

Procedures for ending membership in the councils must be carried out in case any prohibited action may raise or there would be any undesired action or in case of death.

6. Registration of political parties

This includes when, where and how these political parties can be registered to do elections, if a party registration called for a specific number of signatures, sufficient time must be given to all parties to get these signatures. Their right must also be ensured in the monitoring of political process and raise complaints.

7. Financing political parties

It is important to make sure of having financing, in order to prepare all the necessary environments, financing might be in different forms like using mass media, government facilities and taking advantage of tax-free as an example.

8. The qualification of the voter

Preparing the record of voters is considered as an important element in any electoral law. The best international practices in registering voters that would contain a comprehensive and accurate record includes the names of all the qualifiers, besides, registering process should be totally transparent.

9. Period of election campaign

Appointments of the start and the end of campaigns are stipulated by the law of elections, even though the particulars related to the electoral campaigns and solving the complaints connected with it have been treated with generally by the systems issued by the Independent High Electoral Commission.

10. Observance:

The law of elections must indicate that there should be local and international observers in addition to representatives of the media, political parties and the candidates. It is likely there will be details in the regulations of the Independent high electoral commission.

11- Media and Freedom of Speech:

The political parties and candidates shall equally have access to the government media mainstream and freedom of speech must be guaranteed during the election campaigns. The elections campaigns and the freedom of speech should not be restricted through using extra general definitions or extra use of accusations of defamation.

12- Ballot papers:

Generally, the elections law indicates the need for including the candidates and the political parties in the ballot paper. At the same time, we leave the applying measures for the organizing system of the Independent high electoral commission.

13- Vote Counting and Separating:

Just, fair and transparent vote counting is the cornerstone of any election. The elections law must indicate the need for the representatives of the political parties, candidates and observers of elections to attend the process of vote counting and separating. And the elections law must include standards that define the validity or invalidity of the ballot papers that is likely to be counted. Meanwhile, the systems of private measures deal with the ballot papers and transfer them to the vote counting and separating centers. It is also a necessary that the elections law includes a mechanism to verify the election results.

14- Complaints and Challenges of Election:

The elections law must define the role and responsibility of the Independent high electoral commission and the judicial system in the measures of complaints and challenging the elections. Some of the rules in the law of Independent high electoral commission cope with the articles of any electoral law.

Drawing Administrative Borders

When reconsidering the border of the electoral units, it is necessary to have standards that clearly draw this border, including a certain degree of the population's participation and the clear role of the legislative, judicial and executive powers in this process. In additions to that, it is referred to who will have the final say in the final drawing of the border and stating the kind of this power. Usually, there is a law in these standards according to which an administrative border committee or a similar body is formed. Despite the fact that the practices which are pursuit in drawing the border and

administrative re-dividing is greatly different from place to place in the world. There are three international principles are used in this process:

1. Representation: It is necessary that the elections borders must be drawn in away that allow the voters in the election zones an opportunity to elect those candidates whom they feel they represent them. Generally, this means that the border must cope with the interests of the groups. The interest groups can be defined in many ways including the administrative, racial, cultural and religious groups.
2. The equality in the voting power: It is necessary that drawing the election border in a way that the zones are relatively equal in the voting power. This way the vote of each voter has the same power which can be kept to a minimum.
3. Equal Treatment and No Discrimination: The bases which are used to draw the border must be coordinative and fair. The process must be neutral in order not to allow any party to change the results.

Operational Timetable

An acceptable broad-based timetable is assessed to conduct the election operations which are related to six-month. It also includes organizing measures, voter registration, conducting the election operations, and registering the political entities, printing the voting papers and counting them.

As soon as the principle legislations are approved, the commission must review all the previous electoral systems in the light of the new legislations which include:

- The internal system of the board of commission
- Registering voters
- Monitors of referendum and elections
- Agents of the political parties
- Publishing the lists and challenging them
- Legally review of the electoral complaints
- Ratification of the political entities

- Ratification of the coalitions
- Ratification of the candidates lists
- Political campaigns
- The process of voting and counting the votes
- The results of referendum
- The regulations which controls the function of the media channels
- The electoral violations
- Registration and voting abroad including work for the IDPs
- Regulations of manner of the employees of the electoral commission and the political entities.

Section

-2-

Analytical Study

Of the Current Legal Framework of Elections in Iraq

International Standards

First: The will of People

Second: Insuring Liberty

Third: Insuring the following principle rights:

The freedom of opinion and expression

The freedom of peaceful demonstration

The Freedom to form associations and parties

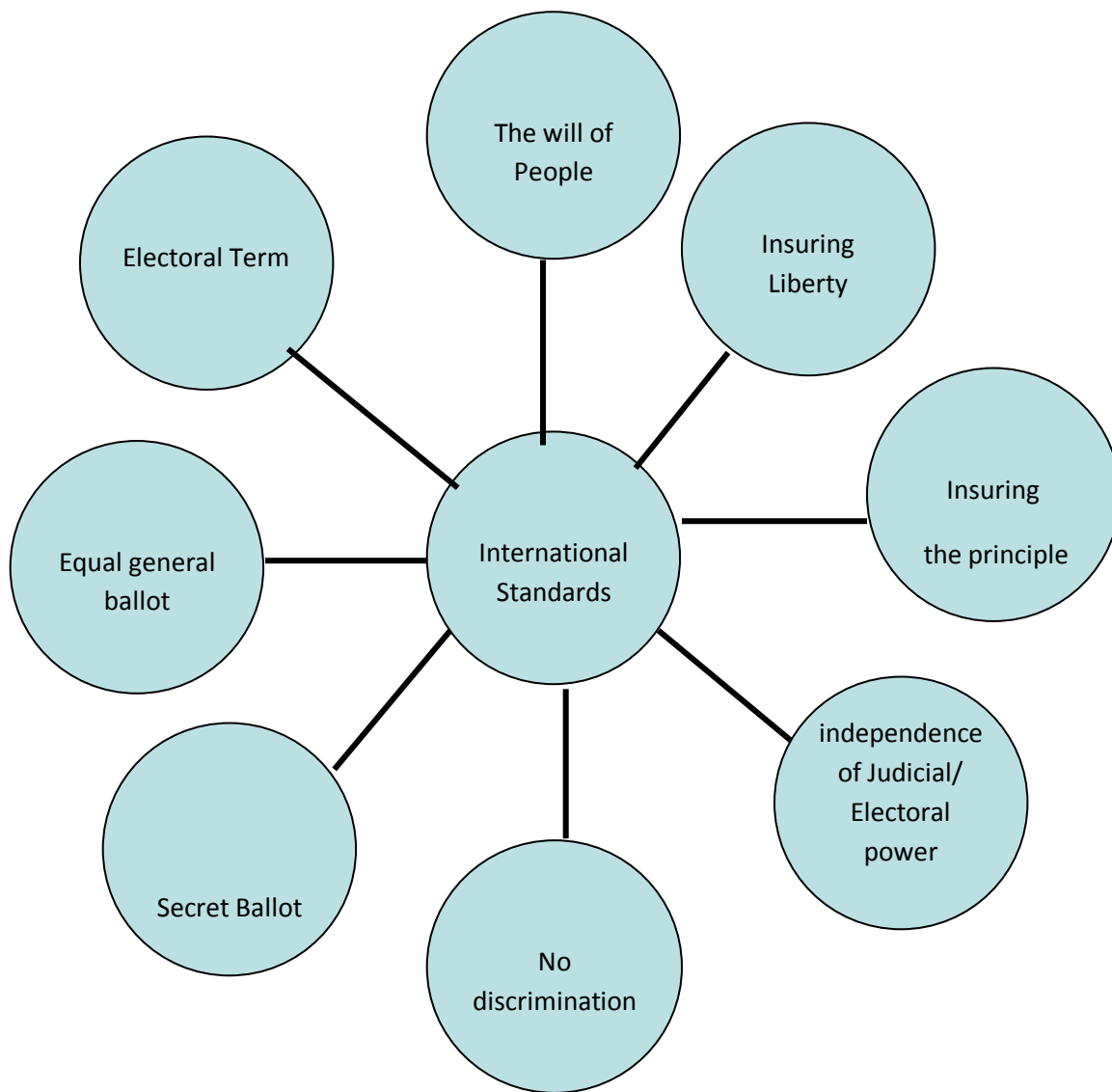
Fourth: The independence of Judicial/ Electoral power

Fifth: The principle of no discrimination

Sixth: Secret Ballot

Seventh: Equal general ballot

Eighth: Electoral Term



Chapter -1-

The Constitution of the Republic of Iraq and the Relevant Laws to the Election Process

First/ The Constitution of the Republic of Iraq and the International Standards

The current Iraqi constitution contains many articles which are in consistent with the international standards in rights and liberties, excluding some weak articles that might hurt the constitution. So it can be described ideal and a progressive step in the region.

Below, are the paragraphs which are stated in the constitution within the international standard mentioned opposite to it:

Article	Text	International Standard
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.	Secret Ballot Equal general ballot
6	Transfer of authority shall be made peacefully through democratic means as stipulated in this constitution.	The will of people
20	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.	The will of people No discrimination
37	First: The liberty and dignity of man shall be protected. Second: The state shall guarantee protection of the individual from intellectual, political and religious coercion.	Insuring Liberty
38	The state shall guarantee in away that does not violate public order and morality: First: Freedom of expression using all means. Second: Freedom of press, printing, advertisement, media and publication. Third: Freedom of assembly and peaceful demonstration, and this shall be regulated by law.	Freedom of opinion and expression Freedom of peaceful demonstration
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.	The freedom to form associations and parties
42	Each individual shall have the freedom of thought, conscience and belief.	Insuring Liberty

45	First: The state shall seek to strengthen the role of civil society institutions, develop and preserve their independence in a way that is in consistent with peaceful means to achieve their legitimate roles, and this shall be regulated by law.	The freedom to form associations and parties
46	First: The freedom to establish associations and political parties and to join them is 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.	The freedom to form associations and parties
49	First: The Council of Representatives shall consist of a number of members, at a ratio of one seat per 100,000 .Iraqi persons representing the entire Iraqi people They shall be elected through a direct secret general ballot. The representation of all components of the .people shall be upheld in it	Direct and Secret Ballot No discrimination
56	First: The electoral term of the Council of Representatives shall be four calendar years, starting with its first session and ending with the conclusion of .the fourth year Second: The new Council of Representatives shall be elected forty-five days before the conclusion of the preceding electoral term.	electoral term
87	The judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law.	The independence of judicial power
88	Judges are independent, and there is no authority over them except that of the law. No power shall have the .right to interfere in the judiciary and the affairs of justice	The independence of judicial power
93	The Federal Supreme Court shall have jurisdiction over the following: Seventh: Ratifying the final results of the general elections for membership in the Council of Representatives.	The independence of judicial power
102	The High Commission for Human Rights, the Independent Electoral Commission, and the Commission on Public Integrity are considered independent commissions subject to monitoring by the	The independence of judicial power

	Council of Representatives, and their functions shall be regulated by law.	
--	--	--

Constitution and Positive Distinction

Article	Text	Positive Distinction
9	First: -C- The Iraqi armed forces and their personnel, including military personnel working in the Ministry of Defense or any subordinate departments or organizations, may not stand for election to political office, campaign for candidates, or participate in other activities prohibited by Ministry of Defense regulations. This ban includes the activities of the personnel mentioned above acting in their personal or professional capacities, but shall not infringe upon the right of these .personnel to cast their vote in the elections	This measure is followed in many countries because the armed forces are under the leadership of the general command and its orders are implemented and it is likely that the executive council shall use it for it aims.
49	First: The Council of Representatives shall consist of a number of members, at a ratio of one seat per 100,000 They .Iraqi persons representing the entire Iraqi people shall be elected through a direct secret general ballot. The representation of all components of the people shall be upheld in it.	Positive distinction which guarantees the representation of all components of the people
49	Fourth: The elections law shall aim to achieve a percentage of representation for women of not less than one-quarter of the members of the Council of	Positive distinction (Women Quota)

	Representatives.	
--	------------------	--

Second/ The law of the Independent high electoral commission IHEC

Article	Text	International Standard
2	<p>The Independent high electoral commission is an independent and autonomous, non-partisan, neutral and professional government office; it has a moral character and subject to monitoring by the Council of Representatives and their functions shall be regulated by law and it has the duty to:</p> <p>Set the bases and rules which should be used in the federal, regional and local elections and referendums throughout Iraq in order to guarantee fair and impartial elections.</p> <p>Supervise all types of federal and regional elections and referendums in the provinces which are not regulated in a region.</p> <p>Announce and manage, conduct all types of federal and local elections and referendums in the provinces which are not organized in a region and they are mentioned in the constitution throughout Iraq.</p> <p>The regional offices of elections in coordination and cooperation with the national office manage and organize the regional and local elections in a particular region under the supervision of the Independent high electoral commission.</p>	The Independence of Electoral Authority
3	<p>Second: The Board of Commissioners: The Board shall consist of nine members, including at least two jurists elected by the majority of the Council of Representatives after they are nominated by (a commission of the Council of Representatives). The two members should be professional experts and they are proved to be shall be chosen based on their reputation for professionalism, integrity, impartiality along with considering the</p>	No Discrimination

	representation of women.	
4	<p>The Commission practices the following responsibilities:</p> <p>To establish and update a voter registry in collaboration with governorate and regional electoral offices.</p> <p>Regulate the registration and certification of political entities for the purpose of contesting elections.</p> <p>Regulate and certify candidate lists for elections.</p> <p>Accredit election observers and political party agents and media representatives.</p> <p>Adjudicate all electoral complaints and appeals.</p> <p>Certify tally procedures.</p> <p>Declare and certify final results of elections and referenda with the exception of the results of the Council of Representatives elections.</p> <p>Set regulations and instructions preserving fair electoral processes.</p> <p>Certification of the structure of the electoral administration and the appointment of senior posts.</p> <p>Set financial policy of the IHEC.</p>	The Independence of Judicial/ Electoral Authorities
8	<p>The Board has exclusive jurisdiction with respect to the civil enforcement of its own procedures and regulations.</p> <p>The Board may refer a criminal case to appropriate authorities if it finds evidence of criminal misconduct relating to the integrity of the electoral process.</p> <p>Except as provided herein, the Board has exclusive jurisdiction to resolve disputes arising out of the preparation for and execution of national, regional and governorate elections and may delegate jurisdiction to resolve disputes in the first instance to the Electoral Administration.</p> <p>The Appeal Court shall form a panel called (Judicial Council for Elections), composed of three judges dedicated to the job. They look into the challenges sent to it by the Board of Commissioners or submitted by those who are prejudiced by the decisions of the council and directly sent to the Judicial Council.</p> <p>The final decisions of the Council may not be appealed, unless they are reviewed before the (Judicial Council for</p>	The Independence of Judicial/ Electoral Authorities

	Elections).	
--	-------------	--

Third/ The law of the Provinces not regulated in a Region

Article	Text	International Standard
2	First: The provincial Council is the supreme legislative and monitoring body within the administrative border of the province, it has the right to issue local legislations within the border of the province in a way that shall allow it to run its affairs in accordance with the autonomous administration and does not contradict with the constitution and the federal laws.	The will of People
3	First-4/ The members of the Councils are elected through a secret and direct ballot in accordance with the law of provincial elections.	Secret Ballot
4	The electoral term of the Councils shall be four calendar years, starting with its first session.	electoral term

Fourth/ The law of the elections of provinces, Districts and Sub-Districts

Article	Text	International Standard
3	This law aims to:	The will of

	<p>First: The participation of the voters in electing their representatives in the councils of provinces, districts and sub-districts.</p> <p>Second: Equal participation in the election.</p> <p>Third: To guarantee the rights of the voter and the candidate in participating in the election.</p> <p>Fourth: To guarantee fair, free and impartial elections.</p> <p>Fifth: providing legal protection for the steps and measures of the electoral process.</p>	<p>people</p> <p>No discrimination</p> <p>Insuring principle rights</p> <p>Equal general ballot</p>
4	<p>First: Voting is the right of every Iraqi who enjoy the conditions mentioned in this law to practice this right without discrimination because of sex, ethnicity, nationality, origin, color, religion, sect, belief, opinion or social or economic status.</p>	<p>The will of people</p> <p>No discrimination</p>
4	<p>Second: Every voter practices his right to vote in free, direct, secret, private ballot and it is illegal to vote instead of him.</p>	<p>Secret ballot</p>
5	<p>The voter must be:</p> <ol style="list-style-type: none"> 1. An Iraqi citizen. 2. Legally competent. 3. 18 years old, in the month in which elections are held. 4. Registered to vote in accordance with the procedures established by the Independent Electoral Commission of Iraq. 	<p>Equal general ballot</p>
6	<p>Second: Allocating polling stations for the Internally displaced people in the place of residence in order to vote for their candidates in the original places and the commission is tasked to create a mechanism to register the in accordance with regulations.</p>	<p>No discrimination</p> <p>Equal general ballot</p>
27	<p>Election campaign is free and it is guaranteed in accordance with the judgment of this law, and starts on the day of accepting his candidacy officially and it ends (24) hours before the date of holding the elections.</p>	<p>Freedom of opinion and expression</p>

33	<p>First: No party, group, organization, entity, individuals or any side is allowed to exercise any kind of pressure, frightening, excommunicating, accusing others of disloyalty or try tempting or giving financial and moral achievements or pledging them.</p> <p>Second: No party or political entity that has militias is allowed to participate in the elections.</p> <p>Third: Any party that closes an electoral district by force or threatens to use force for his interest or against others shall be denied the participation in the elections and vote counting.</p>	Insuring freedom

Positive Distinction and Positive Specifications in the Elections law

Article	Text	Positive Distinction or Specification
6	First: Allocating specified polling stations for IDPs in their place of residence in order to vote for their candidates in the places they were displaced and the Commission set a mechanism to register them in accordance with the regulations.	Insuring the right of the IDPs to vote in their original provinces
13	Second: The seats are distributed on the candidates of the opened list and the names of the candidates are rearranged depending on the number of votes each candidate wins and the first winners is the one who wins the most votes within the opened list and the same for the rest of the candidates on a condition that a woman shall come at the end of every three winners despite the men winners.	Positive distinction (Women Quota)
28	The election campaign is exempted of any taxation.	Encouraging election

		campaigns
30	Election gatherings organized by the candidate or his supporters with the aim to campaign for the candidate within the limited time in this law are prohibited in the ministry and different government buildings	Fair election campaigns and equal opportunities
31	The use of the state's official emblem in the meetings, advertisements and electoral leaflets and in the writings and the photos which are used in the election campaign.	Fair election campaigns and equal opportunities
32	The employees of the state departments and the local authorities are not allowed to use their positions or the government means and equipment, including the security and military apparatuses for their interest or the interest of any other candidate in the electoral campaign or to influence the voters.	Fair election campaigns and equal opportunities
34	It is prohibited to use the state departments, literally place of work and employment for election campaign, but the use of the places of worship is allowed.	Fair election campaigns and equal opportunities
35	The candidates are not allowed to make any election advertisement which includes deceiving and cheating voters or the use of a behavior that hurt and defame others in the electoral advertisement.	Fair election campaigns and equal opportunities
36	Spending public finance in the electoral advertisement or from the budgets of the ministries or the endowment finance or finance coming from foreign support is banned.	Fair election campaigns and equal opportunities
47	The voting process of soldiers and members of the internal security forces shall be conducted in special polling stations, which are opened by the Commission in coordination with the concerned ministries.	A measure practiced many countries
52	The components below shall be given the following special seats in the provincial councils: 1- Baghdad: one seat for the Christians and one seat for the Sabeas. 2- Nineveh: one seat for the Christians, one seat for Yazidis and one seat for Shabak. 3- Basra: one seat for the Christians	Insuring the representation of the components of the people as it is stated in the constitution

Chapter-2-

The regulations issued by the Independent high electoral commission

The Independent high electoral commission has issued 12 regulations in its current term to organize the internal affairs of the commission and specify the bases for continuing the electoral process in Iraq. To some extent, these regulations are characterized by a firmly-established structure which begin with a preamble, the definition of the terms, then the body and the explanations.

The regulations specialize in interpreting the laws related to the electoral process and setting a general framework to them which is relevant to the authority of the Commission in that. Some of the regulations cover a large proportion of what is required from it. Meanwhile, some others limit themselves on the general bases and left the explanations to the measures and the instructions issued by the electoral administration at the Commission.

NO. of Regulation	Name of Regulation	Description
1	Internal Regulations of Board of Commissioners	Explained regulations for the bases of measures of the Board of Commissioners and regulated the internal affairs of the Commission.
2	Complaints and Challenges Of Election	Explained the bases of measures for complaints and challenges relevant to the stages of the electoral process.
3	Ref And Electoral Observers	Explained the bases of measures for the work of the team of monitors of the elections and referendums.
4	Election Campaigns	Explained the bases of measures for a legal media and convincing campaign ruin by the political entity or a coalition to convince the voters to vote for them.
5	Certification Political Entities	Explained the bases of measures for certifying the political entities.
6	Political Entity Agents	Explained the bases of measures for the work of the political entities.
7	Up-dating Voter registration	Explained the bases of measures for up-dating the voter registration.
8	Media	Explained the bases of measures for the work of the mass media during the electoral process.
9	Certification of Candidate List	Explained the bases of measures for certifying the candidate list.
10	Exhibition of Voter registration and Challenges	Explained the bases of measures for exhibiting voter registration and submitting challenges.
11	Allocated seats for the Components	Explained the bases of measures for distributing the seats allocated for the components.
12	Regulations For Forming the Regions	Explained the bases of measures for forming the regions.

These regulations are characterized by its clear legal support and benefiting from other experiences and experiments in the world.

However, these regulations lack issuing instant executive regulations in a way that all will be familiar with through the fastest and easiest means.

Chapter-3-

The Electoral Measures and Their Implementation

The Law	Article and Paragraph	The Electoral Measures and Their Implementation	↑↓
The law of the Provinces not regulated in a Region	Article (3)- First	This is a positive case because the law has limited the level of the seats and ratios and this does not allow any diligence and interpretations.	↑
The law of the Provinces not regulated in a Region	Article (3)- Second	It is an important point because it concentrates on official censuses and it does not allow any evaluations and predictions.	↑
The law of the Provinces not regulated in a Region	Article (4)	International Standard- election terms or circulation	↑
The law of the Provinces not regulated in a Region	Article (5)	There are demands from the youth elite through their organizations to specify the age of the candidate at 25 or less.	↓
The law of the Provinces not regulated in a Region	Article (54)	The issue of not sticking to the election timetable (The election calendar) is a big problem because of failing to implement the laws on time.	↓
The law of the elections of	Definitions, Validity and	Free should be added to the term of opened list or the citizen has the right to arrange the lists.	↓

provinces, Districts and Sub	Objectives	- We notice that the law denies the emigrants outside Iraq to participate.	
The law of the elections of provinces, Districts and Sub	Article (3)	It is in consistent with the credited international practices.	↑
The law of the elections of provinces, Districts and Sub	Article (4)	It is in consistent with the credited international practices.	↑
The law of the elections of provinces, Districts and Sub	Article (5)	Insuring the right of IDPs.	↑
The law of the elections of provinces, Districts and Sub	Article (8)	Is it possible to check the lists in ten days?	↓
The law of the elections of provinces, Districts and Sub	Article (11)	It restricts the power of the political entities, and the possibility of forming coalitions between the entities which resulted in the size and number of the participating entities in a way that complicates the voting process. On the other hand, there is a positive point which allows the member the independency in deciding.	↓
The law of the elections of provinces, Districts and Sub	Article (12)	It is in consistent with the credited international practices.	↑
The law of the elections of provinces, Districts and Sub	Article (13)	Realistic measures and it is likely to be implemented.	↑
The law of the elections of provinces, Districts and Sub	Article (23)	It is not in consistent with the credited international practices of democratic elections and it contradicts a constitutional.	↓
The law of the elections of	Article (27)	It is in consistent with the credited international practices, but how the political entities are	↑

provinces, Districts and Sub		obliged to remove the posters?	
The law of the elections of provinces, Districts and Sub	Article (29)	It is in consistent with the credited international practices.	↑
The law of the elections of provinces, Districts and Sub	Article (30-37)	It is in consistent with the credited international practices.	↑
The law of the elections of provinces, Districts and Sub	Article (51)	It is in consistent with the credited international practices, but will the parties stick to the date.	↑

Chapter-4-

Different Legal Notes

First: Not splitting up the rights and liberties:

The Iraqi constitution and the laws relevant to the electoral process in some of its articles depend on splitting up the rights and liberties for considerations related to the current situation and the former hard stages. However, these articles should be

reviewed as soon as possible in order not to become a hole in the desired democratic system.

Among those rights and liberties that are split up:

1- Limiting the descriptions of the candidate (age- education) in a way that is generally different with the descriptions of the voter, while basically practicing the political rights are equal for all whether they are candidates or voters.

2- Depriving a group from practicing their right of candidacy in accordance with the Law of Questioning and Justice or (De-Baathification). This issue can not be disregarded as allowing the deprivation of a group from their political rights can not become part of a democratic culture and this contradiction even exists in the articles of the constitution.

3- Women quota (%24) is not an alternative for the necessity of generalizing the culture of participation of all in the political process. If that is a positive distinction pursuit in the newly-emerged democracies, still it is discrimination and it remains as a

Weapon with cross-purposes and it can not continue. And it restricts the ambitions and pursuit of women to improve and develop politically.

Second: The gap between the head of the pyramid and its base:

There is a big gap between the Board of Commissioners and the electoral office on one side and the employees of the registration and polling stations. This gap concentrates on the laws of elections and the regulations issued by the Commission which the base of the pyramid only knows about what is related to their daily work. The Commission should have paid greater attention to this matter through providing its employees with copies of these laws and regulations with possibility of organizing a series of training and discussion meetings.

Third: Delay of implementing the electoral calendar:

The matter is mostly out of the control of the Commission. It seems that there is a delay in sticking to the electoral calendar to some extend that we are afraid that it develops to

a routine that every deserving elections to be adjourned under the pretext of not existing a political consensus or any other pretexts.

The Commission should pressure the other parties to stick to the legal date of any election as a sacred ad this is a fundamental thing in the process of building the new democracy in the country.

Third: Selection of the Board of Commissioners:

The Al-Sabah Newspaper published in its number (1106) on May 07, 2007 the news of the election of the new board for the Independent high electoral commission IHEC in this wording:

(The new board of the Independent high electoral commission elected Faraj Mirza Haidari from the Kurdistan Democratic Party as the chairman of the Commission. This happened in the first meeting of the new board, which was elected y the Council of Representatives on April 28, 2007. The nine-member panel elected Usama Abdul-Hamid from the Dialogue Front as the deputy-chairman and Karim Mahmud Al-Tamimi from the Sadr Sect as the head of the electoral office.....)

A concerned Network of Observing the Electoral Process commented on the event like the following: This news is an evident that there is a political bargain in this election and it undoubtedly shows that the independent board which is responsible for running the electoral process in Iraq has been politicized and it is partisan. This is considered as a violation of the constitution and the law of the electoral commission, as the Iraqi constitution says in Chapter Four [Independent Commissions] (Article 102) that: (The High Commission for Human Rights, the Independent Electoral Commission, and the Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law). The legal interpretation of independency is impartiality to the competing sides and being non-partisan or party aligned to an institution and its officials.

The selection is also a clear violation of many articles of the law legislated by the Council of Representatives such as the following articles: Second section of article (2): The Independent Electoral Commission a professional, government, independent and

neutral office and it has a moral character subject to monitoring by the Council of Representatives...), Third section (Boards of the Commission) article (3): The second: (The Board of Commissioners) which says: (The Board shall consist of nine members, including at least two jurists elected by the majority of the Council of Representatives after they are nominated by (a commission of the Council of Representatives). The two members should be professional experts and they are proved to be shall be chosen based on their reputation for professionalism, integrity, impartiality along with considering the representation of women). It stipulates that who runs for the membership of the Board of Commissioners must be: (6) politically independent.

Recommendations and Suggestions

Recommendations to the Independent high electoral commission IHEC:

Case	Recommendation
Is it enough that the Commission only publishes its laws, regulations, activities, its advertisements and all related to its work on its website and occasionally in some newspapers?	The Commission may exploit its financial and human resources to issue a periodical magazine or publication (legal- media- educating- awareness-raising) to publish its laws, regulations, activities, its advertisements and all related to its work
How the Board of Commissioners legislate regulations? Does it seek the help of local expertise, consult the institutions of the civil society interested in the electoral process, Does it show the drafts to other sides in order to enrich and improve them?	Board of Commissioners may circulate the drafts of regulations and lists on the relevant sides of the electoral process and set a period to receive suggestions aiming to enrich and improve these regulations depending on local expertise.
How is it possible to receive the bases of measures issued by the department of measures and training of the	The Commission may depend on a mechanism to publish the bases of measures and the sources of training electronically and through rough copies to

Commission? Those sides who are interested in the electoral process can not find that on the website of the Commission.	create the opportunity for all those who are interested in reading them and to consider them in their work if they are relevant to them.
Are employees of all offices the Commission informed about the new regulations issued concerning the electoral process? In Which mechanism? Is there training on it? Is there the process of follow-up and assessment?	The Commission may seek the help of its training staff or the organizations of the civil society to train the employees of the Commission on the laws and the regulations related to the electoral process in a way that the employee of the Commission are familiar with the information in front of the voter, representative of the political entity, media and the observers.
The Commission follow the contract system with its employees, are the contracts renewed on their legal date? Do the employees receive a copy of the contract?	In addition to the great effort made by the Commission in its work, the issue requires a greater effort particularly in the field of human resources as all its current working staff is on contract.

Recommendations to the Council of Representatives:

Case	Recommendation
What is the adopted mechanism by the Council of Representatives to monitor the Commission? What is the Commission responsible to do that? Is there a periodical report regarding that?	The Council of Representatives may set up a committee from its members to monitor the work of the independent boards mentioned in the constitution namely the Electoral Commission and submit a periodical report about the work of these boards.
Can a non-governmental side (political entities- organizations- networks.. etc) object a certain legislation issued by the Commission? What is the mechanism?	Within its constitutional jurisdiction, the Council of Representatives may regulate the process of receiving the objections on a certain legislation issued by the Commission and propose ways to revolve them. .

Will the issue of splitting up the principle rights in the constitution be solved?	The committee of constitutional amendments may hold the responsibility for this issue and meet with the Human Rights organizations to listen to their point of view and specify the appropriate amendments in the articles of the constitution.
Will the process of guaranteeing the representation of women and minorities over the quota continue or permanent seats will be allocated?	The Council of Representatives may organize dialogue and discussions with many different sides including the institutions of the civil society to study a way of finding a radical solution to the issue of the representation of women and minorities and plan to overcome the issue of allocating permanent seats to a more developed and democratic system.

Recommendations to the UN Agencies and the NGOs:

Case	Recommendation
Is it enough to monitor the election day to evaluate the electoral process?	The UN agencies and the institutions of the civil society should improve mechanisms to observe all the stages of the electoral process from issuing the legislations to monitoring the accomplishment of the electoral promises of the political entities.
Has the role of the UN agencies and the international experts finished in providing consultation to the Commission?	The UN agencies, international experts and the organizations of the civil society should continue providing consultation

	and advice about the electoral process until they shall be sure about reaching an advanced stage.
Does the executive authority have the right to interfere in the work of the Commission or its agenda, out of that is allowed by law? Is it possible to use the principle of sovereignty and the federal authority as a pretext for that interference?	The UN agencies and the institutions of the civil society should coordinate their efforts and form pressure campaigns to prevent the interference of the executive authority in the work of the Commission or its agenda unless it is allowed by law.

Recommendations to the legal experts, jurists, Human Rights activists and mass media:

Case	Recommendation
Iraq is building its fresh democratic project step by step, do we wait for the mistakes to be made then to correct them.	These sides are responsible for contributing in the building of the democratic process through expressing their opinion about the legislations and forming pressure groups to improve and correct the laws in away that are in consistent with the international standards
Who is responsible for the (civil- democratic-electoral) awareness-raising of the citizen?	These sides are also responsible for the awareness-raising of the citizen and consider that humane and national duty in that critical time, so that has a positive role to change for better.

References:

- 1. The Constitution of the Republic of Iraq**
- 2. The relevant laws to the electoral process in Iraq**
- 3. The regulations issued by the Independent high electoral commission IHEC**
- 4. The Legal Framework of Voting... and its Impact on the will of people- Judge- Qassim Hassan Al-Abudi**
- 5. The Iraqi Newspapers**
- 6. The Declarations and the Agreements issued by the UN and its Agencies**
- 7. Observing Reports of the International Missions**
- 8. Observing Reports of the Local Networks and Organizations**
- 9. The Reports of the Observer of *Shams Network*.**