

Legal Framework for International Oversight of Electoral Processes in International

الإطار القانوني للرقابة الدولية على العمليات الانتخابية

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الملخص:

من أبرز الآليات التي اعتمدها المجتمع الدولي لضمان نزاهة العمليات الانتخابية هي المراقبة الدولية، حيث يمارسها مراقبون دوليون تابعون لمنظمات دولية متخصصة وغير متخصصة. وتهدف هذه المراقبة إلى التحقق من مدى التزام الدول المعنية بالمعايير الدولية التي تكفل احترام الحقوق السياسية والمدنية، وتعزيز مبادئ الديمقراطية والشفافية والمساءلة، فضلاً عن الحد من الممارسات الاحتياطية وحماية حقوق الإنسان والحريات الأساسية، وخاصة في الدول التي تمر بأزمات سياسية أو صراعات داخلية. وتهدف دراسة إلى تحديد دور بية في مراقبة الانتخابات وتعزيز نزاهتها المنظمات الدول وعليه إشكالية إلى أي مدى تشكل الرقابة الدولية على العمليات الانتخابية آلية قانونية فعالة لضمان نزاهة الانتخابات واحترام المعايير الدولية، دون أن تمثل لمبدأ سيادة الدول أو تدخلاً في شؤونها الداخلية؟ انتهاكاً أما أهم نتائج في أصبحت الرقابة الدولية على الانتخابات إحدى الآليات الأساسية التي يعتمدها المجتمع الدولي لتعزيز نزاهة العمليات الانتخابية تستند الرقابة الدولية إلى مجموعة من القواعد والمعايير الدولية المتعلقة بحقوق الإنسان والحقوق السياسية .

الكلمات المفتاحية: الرقابة الدولية؛ القانون الدولي؛ المجتمع الدولي؛ الانتخابات؛ القانون الوطني.

Abstract:

One of the most prominent mechanisms adopted by the international community to ensure the integrity of electoral processes is international monitoring, carried out by international observers from both specialized and non-specialized international organizations. This monitoring aims to verify the extent to which countries adhere to international standards that guarantee respect for political and civil rights, promote the principles of democracy, transparency, and accountability, as well as reduce fraudulent practices and protect human rights and fundamental freedoms, especially in countries experiencing political crises or internal conflicts. This study aims to identify the role of international organizations in monitoring elections and promoting their integrity. It addresses the question of the extent to which international monitoring of electoral processes constitutes an effective legal mechanism for ensuring the integrity of elections and

respect for international standards, without violating the principle of state sovereignty or interfering in internal affairs. Among the most important findings is that international election monitoring has become one of the fundamental mechanisms adopted by the international community to enhance the integrity of electoral processes. International monitoring is based on a set of international rules and standards related to human rights and political rights

Keywords : international oversight, international law, international community, elections, national law.

Introduction:

Elections are an essential tool that allows people to express their will and contribute to shaping public policies and determining the future of their countries, making them an essential element in democratic construction. However, ensuring the credibility of these processes depends not only on national procedures, but also requires international oversight that enhances their transparency and integrity. In this sense, international observation of elections has emerged as one of the vital issues receiving increasing attention in the international arena during the recent period.

In the early stages, election control was exercised within an internal national scope, but developments in international relations and the escalation of internal conflicts and civil wars led the international community to recognize the need for supranational monitoring mechanisms. It has become clear that international monitoring has become an urgent necessity in fragile political environments or in countries undergoing transitional transitions, with the aim of protecting electoral processes from deviation and ensuring that they are conducted in accordance with democratic and transparent standards.

Despite the tangible contributions of international election observation in supporting transparency and guaranteeing fundamental rights, it continues to raise divergent positions. While on the one hand it is seen as an effective tool to ensure the integrity of elections and safeguard human rights, on the other hand it is criticized for interference in internal affairs and a violation of the principle of national sovereignty, which opens the debate about the limits of its legal legitimacy and political dimensions.

This study aims to shed light on international election observation from a purely legal perspective, by analyzing the legal foundations on which this practice is based within the framework of public international law, and reviewing the means adopted in its implementation. The study also focuses on the extent to which such monitoring contributes to enhancing the integrity of the electoral process, and ensuring respect for fundamental rights and freedoms in different political environments.

Viability of the topic:

The importance of international election observation is its pivotal role in fostering trust between the citizen and the political system, by ensuring that the electoral process respects international standards relevant to human rights, justice and transparency. It is also an effective tool to reduce cases of fraud and manipulation, which enhances the credibility of elections and legitimizes their results.

Research Objectives

This study aims to:

1. Examine the concept of international election observation and its evolution within the framework of international law.
2. Analyze the legal foundations governing international election observation, including international treaties, conventions, and relevant legal instruments.
3. Identify the mechanisms and methods employed by international organizations and observer missions in monitoring electoral processes.
4. Assess the role of international election observation in promoting transparency, electoral integrity, and democratic governance.

Methodology

This study adopts the analytical method to examine and analyze the legal texts, principles, and international instruments governing election observation within the framework of public international law. Particular attention is given to international treaties, conventions, and standards that regulate the conduct of international election monitoring missions.

In addition, the descriptive method is employed to explain the mechanisms of international election observation and to illustrate how monitoring missions operate in practice. This approach facilitates a comprehensive understanding of the procedures, actors, and institutional frameworks involved in the observation of electoral processes.

Curricula:

This study was based on the analytical approach with the aim of examining and analyzing legal texts related to international election observation in the light of international law, with special attention to international treaties and conventions regulating this field. The descriptive approach was also adopted to demonstrate international control mechanisms and highlight how they are practiced in the field.

The problem of the study:

International Monitoring of Electoral Processes from an International Law Perspective.

Hypotheticals:

Are the challenges facing international election monitoring in political contexts in their legal or institutional mechanisms?

1: The theoretical approach to international control

International election monitoring has been practiced by international organizations, whether governmental or non-governmental. Legal scholars and politicians considered that international monitoring is a newly emerging legal and political phenomenon that has evolved with the development of the principles on which human rights are based, as well as good governance. In this regard, I decided to divide this part into two points where I address:

*The concept of international control.

* The importance of international control.

1.1: The concept of international control

There has been jurisprudential and legal controversy over the definition of international election observation, with some defining it as:

"International election observation is a set of practices carried out by international observers when elections are held within a State, at the official request of that State. These practices aim

to assess the compatibility of the electoral process with international standards related to democracy and human rights. They also allow the international community to see the course of the democratic process in the state concerned, and the extent to which it truly reflects the will of the people. " ¹

It includes a set of procedures carried out by a specialized category of observers known as " international observers", who closely follow the progress of the electoral process. Monitoring the elections aims to inform the international community of the timing of the elections, which mainly reflects the will of the people.

Another definition of international control is:

"The process practiced by some neutral persons, or representatives of supervisory bodies, to ascertain the extent to which the electoral supervisory body complies with the electoral law, and to ascertain the extent to which it complies with international standards for the integrity of the election . " ²

From the aforementioned definitions, it is noted that:

International election observation is a series of procedures implemented by qualified international observers assigned to follow the electoral process in certain countries. This supervision aims to ensure that the elections are conducted in accordance with the standards of integrity and transparency, and in a manner that ensures.

the honest expression of the will of the voters. Such oversight is often required of the State concerned, after which detailed reports are completed that monitor compliance with international standards. In this way, international monitoring is one of the tools to support democracy and consolidate the principles on which human rights are based.

From the previous definitions, it can be concluded that:

"The fundamental objective of international monitoring of elections is to enhance political legitimacy and ensure respect for the fundamental rights of voters, as it is a means that allows citizens to freely express their position on the political system, whether in support or opposition, reflecting the essence of the exercise of good governance".

1.2: The importance of international monitoring of elections

International observation of elections is very important, as it is one of the vital tools to strengthen democracy in countries. It monitors and follows up the progress of the electoral process to ensure its integrity and credibility. In addition, international observation seeks to detect any fraud or fraud that may occur in the elections, which enhances transparency and integrity in the electoral process. The importance of international supervision of elections derives from several aspects, most notably:

* The perspective of the international community has become that all elections are not subject to international monitoring, the results of which are considered fraudulent , and some violations prevail . ³

* International monitoring of elections is a catalyst for the process of candidacy and voting , as well as instilling confidence in the elected regime⁴ .

*It has become an internal demand because it is one of the important guarantees for opponents to detect electoral fraud ⁵.

* Encouraging acceptance of results⁶ .

1.3: The foundations of international monitoring of elections

International observation of elections has been widely debated as some consider it a violation of the freedom of states and a violation of the principle of respect for their internal independence ; while others see it as a prerequisite for democracy, in this context, this part can be divided into:

*International election observation is a mechanism for preserving human rights

* International observers.

1.3.1: International election observation is a mechanism for preserving human rights

International monitoring of elections is an essential legal mechanism to ensure respect for human rights Article 1/36 of the U N Charter states that:

" ...International collaboration. and strengthen the protection of internationally guaranteed human rights , fundamental freedoms,... Distinguish.... " ⁷

It is noted from the text of the article that the United Nations, through its Charter, works to:

- Promote human dignity and ensure the enjoyment of all fundamental rights.
- Dealing with issues of international cooperation in a manner that promotes equality and prevents discrimination based on race, sex, religion or language.
- The U N has adopted the International Election Observation Mechanism with the aim of ensuring respect for freedom of expression and enabling citizens to engage effectively in public life.

Article 21 of the UDHR 1945:

"...Everyone has the possibility of ruling his country... Freely chosen actors... Public service. The will of the people ,... Fair elections... universal suffrage ,... Voting secrecy... Freedom to vote . " ⁸

Through the text of Article 21 of the Declaration, we note that:

- It has guaranteed political rights to individuals.
- They are conducted through elections that are fair, periodic, and do not oblige the electors to choose their electors, or in choosing the system of government.

Article 1 of CPW and 07 /a of CEDAW states :

"The right of women to vote in all elections on an equal footing with men. " ⁹

From the above, we conclude that:

The role of international supervision in ensuring the protection of political rights and civil liberties of individuals. International law sets out the basic principles that guarantee the right of individuals to political participation .

the enjoyment of their civil liberties. The importance of international supervision in ensuring the commitment of States to these principles during electoral processes is highlighted. International supervision also contributes to ensuring the holding of free and fair elections that reflect the will of the people. International supervision is an effective mechanism to protect political rights

and promote good governance in the international community.

1.3.2: International Observers

According to international legal provisions, the value of international supervision of

elections is highlighted in enhancing the transparency of the electoral process and ensuring its credibility, which is supported and organized by international organizations, whether governmental or non-governmental. These processes are regulated under specific conditions and controls that ensure the independence and impartiality of monitoring.

The international observer delegation must be qualified to carry out the tasks assigned to it, by having:

- Language skills,
- Commitment to neutrality,
- Commitment to objectivity,
- Experience in election management or politics,
- Knowing the history of the country hosting the elections,
- Not to obstruct the electoral process, Cooperation with the host country (local authorities),
- Maintaining the accuracy of the observations, and professionalism when drawing conclusions.

While international observers must be present from the beginning of the electoral process for a period of no less than 7 days, they must also attend registration sessions, monitor daily election activities and record the number of votes.

Among the obligations of international observers are:

- *Respecting state sovereignty and universal human rights.
- *Comprehensive monitoring and expanding coverage on election day.
- *Wearing the observer's badge.
- *Maintaining the accuracy of monitoring and professionalism when drawing conclusions.

2: International legal frameworks for monitoring the electoral process

The international organization for election observation is a set of mechanisms and initiatives that aim to ensure the integrity and transparency of elections in different countries. This organization includes the participation of international and local organizations to monitor the progress of electoral processes and ensure their compliance with international standards. This is through:

- * International Legal Regulation for Election Monitoring,
- * International Institutional Organization for Election Monitoring

2.1: the international legal regulation of election monitoring

International supervision derives its legal basis from international and regional charters and treaties that affirmed the right of citizens to fair elections as a human right. The most important of these charters are:

2.1.1: International Covenants

International covenants play an important role in election observation by defining legal norms and ethical principles that ensure the integrity and transparency of the electoral process. The most prominent of these references are the Charter of the U N and the ICCPR, as they constitute a legal framework that supports the holding of fair elections in accordance with international standards.

UAE :

The UAE is a source of great historical value in the field of international law and was adopted by UNGA in Paris on 10 December 1948. This declaration sets out the fundamental rights that must be ensured to be respected and protected throughout the world.

Article 21 refers to the need for mechanisms to ensure the integrity of elections:

1. Actors freely chosen.
- 2 . public office in his country.
3. The will of the people... Fair elections ... by universal suffrage... Using secret voting ...Freedom of choice¹⁰.

Where as the 1948 UAE referred to other rights related to elections, namely: Freedom of expression and opinion, the right to join peaceful associations and assemblies, and the right to join trade union organizations,...

ICCPR

The ICCPR is one of the most important international treaties regulating human rights at the global level. It was adopted by UNGA on 16 December 1966, and entered into force on 23 March 1976.

The Covenant commits signatories to the treaty to respect the civil and political rights of individuals, the most important of which include:

The right to life, freedom of religion and belief, freedom of expression, freedom of the individual, the right of peaceful assembly, participation in electoral processes, the right of access to justice, and the enjoyment of a fair trial.

Article 2 of the ICCPR clearly specifies that:
“internationally agreed controls should be adhered to... Voting and participating in elections for all.... ”¹¹

Article 25 of the ICCPR raises three basic issues with regard to the right to participation:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country¹².

CRPD 2006

The U N has sought to bring about a fundamental shift in attitudes and policies towards persons with disabilities, by recognizing them as individuals with all human rights, able to claim them and make their decisions freely and independently. It also emphasizes their role as active members and active participants in society.

Article 29 of the CRPD “... Political and public life on an equal footing with others ... Vote and be elected”¹³

It is noted from the text of the article that the Convention prohibits States from taking any discriminatory action against individuals with disabilities on the basis of their disability. It also imposes obligations on States parties to ensure the achievement of universal equality

and to enable them to fully enjoy all rights and freedoms on an equal basis with others in society.

The ICERD 1966, CEDAW 1979

In addition to the provisions of the ICERD of 1966, especially in Article 25, which regulates the right to political participation and allows for specific restrictions on it, both ICERD and CEDAW included clear legal rules that prevent the arbitrary restriction of electoral rights on the basis of race or gender, and guarantee full equality in voting for all men and women.

2.1.2: Regional Charters

Regional charters play an important role in monitoring elections, as they contribute to enhancing their integrity and transparency by establishing legal standards and procedures aimed at ensuring the right to vote and limiting manipulation or fraud.

01 ACHR 2004:

The ACHR was adopted by the ALC in 1995, and revised in 2004. This charter sought to preserve fundamental freedoms and rights. Although it is non-binding, it is necessary to contribute to elections and related rights. Article 24 of it stipulates that:

“Everyone has the right to:

1-Freedom to engage in political activities.

2-Participation in the management of public affairs either directly or through freely elected representatives.

3-Candidacy for office or the choice of a representative in a fair and transparent manner, while ensuring the equality of all citizens in expressing their will.

4-To have the opportunity, on an equal basis with all, to hold public office in his country based on the principle of equal opportunities.

5-Freedom to form and join associations in cooperation with others

6- Freedom of assembly and freedom of peaceful assembly.¹⁴

It is noted that Article 24 that it indirectly refers to the right of everyone to participate in free and fair elections, but the Charter does not explicitly stipulate the right of the citizen to general elections. Instead, he focused on the general principle of the right of peoples to freely choose their political system, which is in line with the UAE.

02 ACHPR:

Adopted on 1 June 1981, entered into force on 21 October 1986. The Maputo Protocol, Annex ACHPR in Africa, which entered into force in November 2005, contains a number of fundamental rights for women, including the right to engage in political activities, and to ensure full equality with men in the social and political spheres.

Therefore, from the above, we find that the international legal mechanisms on which international election monitoring is based, which included a set of international standards, are: Legitimacy, transparency, accountability, justice and awareness.

2.2: the international institutional organization of election monitoring

International monitoring of elections in international law varies according to the entity

that undertakes the monitoring process. Monitoring may be undertaken by organizations such as the U N with the assistance of its various agencies, and in this case it is international monitoring. It may also be undertaken by regional organizations such as the Carter Center, and thus it is regional monitoring.

* Control of international organizations.

* Oversight of regional organizations.

2.2.1: Observation of elections by international organizations

Among the most important international organizations that have an effective role in international monitoring of elections is the United Nations with its various agencies. It does so only upon a request submitted by the country in which the elections will be held, as it sends a special mission to cooperate with the committee specifically in preparing and supervising the elections. I will explain:

*United Nations monitoring of elections and how the United Nations exercises its monitoring,

* Monitoring by the HRC

A: United Nations monitoring of elections

The activity of the U N in the field of election observation began when it sent a mission to supervise the Korean elections in 1948 , and from that date the organization continued its activities in this field , as it considered it an essential component of the organization's program in the fields of decolonization, dispute settlement and human rights ¹⁵.

By Resolution No. 46/137 of 1992 of the General Assembly, a special center was established to ensure the coordination of the processing of the request for electoral assistance, which is one of the tasks of the Secretary-General¹⁶ .

How the UN exercises its oversight:

The United Nations Social Programme , OHCHR and the U N Department for Development Support and Management Services exercise this through:

*Organization and conduct of elections,

*Sending verification missions and the electoral process shall be under the control, organization, and national administration in which the elections are held,

* The role of the United Nations is merely to express an opinion, and to know the extent to which the freedom and integrity of elections are achieved,

* Scientific organization of all aspects of the election process¹⁷ .

The U N Electoral Assistance Team acts as a coordinator between observers and supervisors of the electoral process, in cooperation with international governmental and non-governmental organizations. The Group also coordinates the work of the International Observer Group, which is composed of UN Member States as well as a number of intergovernmental and non-governmental organizations¹⁸.

Therefore, the U N supervision, as an international supervisory body, is an advisory role based on organizing the electoral procedures by sending special committees that work alongside the countries hosting the elections in terms of verifying the effectiveness and validity of the procedures. Its opinion is also non-binding and can be rejected.

Censorship of the HRC.

The core standards enshrined in the ICCPR include:

- Elections shall be held in accordance with the provisions of applicable law, ensuring compliance with all legal procedures and requirements governing the electoral process,
- elections shall be held within a framework,
- openness and accountability,
- The competition shall be characterized by fairness among the political parties representing the diversity of political opinions within the State,
- Competition should ensure equal access to public resources,
- The electoral body should be made aware of its electoral rights and the electoral process¹⁹,
- Allow independent monitoring of elections.

2.2.2: Control of Regional Organizations

Regional organizations, like international organizations, have an interest in international election observation. They provide technical and technical support and expertise, through which electoral processes are successful and their integrity is ensured.

One of the most prominent electoral systems that had an interest in elections was the African Union of Electoral Authorities, where the Harare Declaration was issued by it. We also find the Commonwealth of Nations, as well as the Forum of Electoral Commissions in Southern African Countries for Development, all of which contributed to electoral assistance and monitoring activities²⁰.

Among the most prominent international non-governmental organizations concerned with elections is the Carter Institute, which has made numerous contributions, the most prominent of which are: Urging parliamentarians, especially opponents, to continue to legislate laws in the interest of citizens.

Regional organizations, like international organizations, are based on providing election monitoring to all those who request it from States. They seek to provide technical and technical support before and after the election process in order to achieve integrity and democratization.

Conclusion :

This research dealt with the topic of international observation of elections from the perspective of international law, where the theoretical framework of this observation was reviewed by analyzing its concept and importance, in addition to highlighting its role as a mechanism for the protection of human rights. The research also included a study of the legal foundations on which international observation is based, with a focus on the role of international observers in ensuring the integrity of electoral processes. The international legal and institutional frameworks governing this oversight were also addressed, through a presentation of the mechanisms and bodies concerned with them. The research concluded with a number of conclusions and recommendations that can be summarized as follows:

1 Results :

- International control derives its legal basis from international law, which has prompted countries to keep pace with developments in the international community and incorporate them into their national laws.
- International monitoring is one of the most important pillars of democratic governance in countries, as it guarantees the integrity of elections and prevents abuses such as fraud and forgery.
- This control is based on a set of rules and principles approved by the competent international and regional bodies and organizations.
- The decisions of international observers are not binding on the country where the elections are held; their task is limited to monitoring and making recommendations.
- The international community has paid great attention to the process of monitoring the elections, and this is through the development of a set of international and regional charters. The aim of these charters was to enshrine the principle of electoral freedom and ensure its integrity.

2 Recommendations:

- Recommendations made by international observers should be followed and their role respected without question.
- An appropriate environment must be provided for international observers to carry out their tasks and support them in the performance of their duties.
- It is necessary to establish an international organization for election observation, which includes members from member states of international and regional organizations.
- National and international efforts must be combined to coordinate the monitoring process with international observers and national committees to achieve democracy.
- Setting up a special international committee to include one or more members for each country , and its members shall be renewed every 5 years and provided that it consists of specialized experts, with a training, or it shall be assigned to them every 3 months to monitor the elections .

It is clear from these findings and recommendations that international oversight plays a vital role in ensuring the integrity of electoral processes and promoting democracy at the national and international levels.

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