

The Organic and Functional Framework Governing the National Independent Election Authority in Algeria

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Abstract:

This research paper studies the National Independent Election Authority, one of the most significant bodies established by the constitutional founder under the 2020 constitutional amendment. This amendment represents a radical shift in the structure of constitutional institutions, particularly with regard to the body responsible for managing electoral processes. This body is the main mechanism for protecting voters' voices and embodies the requirements of integrity and transparency. We will therefore attempt to define the Authority's status and legal nature, as well as highlighting the updates introduced by the constitutional founder and the substantive changes affecting its composition and membership conditions. Furthermore, we will outline the guarantees that affirm its independence and enable it to exercise its constitutional powers in line with current developments.

Keywords: *2020 constitutional amendment, National Independent Election Authority, electoral process, membership conditions, powers of the independent authority.*

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1. INTRODUCTION

Elections are the fundamental mechanism for gaining power in modern democratic systems, enabling voters to elect their representatives and express their will freely and fairly. In response to calls for the establishment of institutional mechanisms that respect the popular will and protect voters' voices from all forms of violations and breaches, many countries have entrusted the supervision of elections to independent higher authorities to enhance the elements of credibility and transparency in the electoral process. This is part of efforts to successfully reform the electoral system.

In this context, Algeria established the National Independent Election Authority as an independent constitutional institution tasked with overseeing various electoral events under the constitutional amendment of 2020. The Authority is provided with all the legal and material resources necessary to ensure the integrity and transparency of the electoral process. This is particularly important given that past experiences have demonstrated the failure of previous electoral events to create suitable conditions for successful elections due to negative practices and manifestations.

However, this study aims to answer the following research problem: How should the National Independent Election Authority be defined within the constitutional system, and have the constitutional powers granted to it contributed to ensuring the integrity and transparency of the electoral process?

This issue will be addressed using descriptive and analytical methodologies. The descriptive method will encompass various relevant legal texts, while the analytical method will explain and analyse the constitutional provisions and legal texts that govern the powers of this independent authority based on its legal nature.

To address this topic, the study has been divided into the following sections:

Section One: The status of the National Independent Election Authority in light of the 2020 constitutional amendment.

Section Two: The Powers of the National Independent Election Authority

2. Section One: The Status of the National Independent Election Authority in Framework of the 2020 Constitutional Amendment

The Algerian constitutional founder established the National Independent Election Authority in accordance with the 2020 constitutional amendment. This granted the Authority a series of guarantees against the other state authorities, thereby affording it a special and distinctive status.

2.1 Subsection One: The Legal Nature of the National Independent Election Authority

Determining the legal nature of the National Independent Election Authority requires an examination of the constitutional provisions and organic laws relating to the electoral system, as well as an understanding of the extent to which the authority is exempt from the three branches of government, a factor that contributes to its unique nature.

2.1.1 Paragraph One: The National Independent Election Authority is an independent constitutional institution.

Article 200 of the 2020 constitutional amendment outlines the legal status of the National Independent Election Authority, stating: ‘The National Independent Election Authority is an independent institution.’ (See Article 200 of Presidential Decree No. 20-442 dated December 30) Additionally, Article 8 of Order No. 21-01 states: ‘The National Independent Election Authority enjoys legal personality and administrative independence, and is referred to in this text as “the independent authority”’. (See Article 08 of Order No. 21-01 dated March 10) This was previously mentioned in Article 2 of the now-repealed Organic Law No. 19-07 concerning the authority.

The provisions of the constitution and the aforementioned legal texts make it clear that the National Independent Election Authority is a constitutional institution that is not subject to the control of any other constitutional institution in terms of its operations or budget management. Its independence from other authorities positively impacts the transparency and integrity of the electoral process. (Rahmani Rabi, Volume 06, November 2021)

In this context, referring to Article 202 of the 2020 constitutional amendment (See Article 200 of Presidential Decree No. 20-442 dated December 30 2. c.) and Article 7 of Order No. 21-01, the National

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Independent Election Authority is tasked with overseeing and supervising the electoral process at all stages (See Article 08 of Order No. 21-01 dated March 10 2. c.).

Notably, the National Independent Election Authority is headquartered in Algiers; however, exceptionally and in cases of necessity, its headquarters may be relocated to any other location within the country, as stipulated in Article 9 of Order No. 21-01 concerning the organic law related to the electoral system.

2.1.2 Paragraph Two: The Non-Subordination of the National Independent Election Authority

The Algerian legislator has adopted a system of independent authorities as a new management model aimed at enhancing the independence of these bodies in terms of both their organisation and their functions.

By ‘independence’, we refer to two aspects: firstly, the non-subordination of the independent authority to any of the three branches of government; and secondly, its legal personality, which is a necessary element to embody this independence. (Hahha Abdel Ali, p. 155)

This authority’s independence is what distinguishes it, as indicated in Article One of Organic Law No. 19-07. Here, independence means that the authority is not subordinate to any entity or authority, and is independent of legislative, judicial and executive powers. This contrasts with certain authorities that are placed under the President of the Republic, the Prime Minister or a minister. Thus, the Algerian legislator has granted this authority a special nature in terms of establishing true independence by being separate and not subject to any other authority. (Hahha Abdel Ali, p. 155)

The features of independence are evident through the authority’s enjoyment of legal personality, as set out in Article 2 of Organic Law No. 19-07, which states that the authority has legal, administrative, and financial independence. This is a necessary element in realising the independence of this authority, which is characterised by its non-subordination to any other authority in the state.

Further supporting the independence of this authority, Article 45 of the aforementioned Organic Law stipulates that the independent authority is provided with its own operational budget. It is responsible for preparing,

distributing and monitoring the implementation of this budget in coordination with the relevant departments. The head of the authority is responsible for its budget. (See Article 45 of Order No. 21-01 dated March 10)

2.2 Subsection Two: The Composition of the National Independent Election Authority and Membership Conditions

2.2.1 Paragraph One: The Composition of the National Independent Election Authority

According to Article 19 of Order No. 21-01, which outlines the organic law relating to the electoral system, the central-level National Independent Election Authority comprises the Independent Authority Council, its office, its president and a technical secretariat overseen by a Secretary-General. The authority also has extensions at the local level, represented by provincial and municipal delegations.

First: The Council of the Independent Authority:

The Council of the Independent Authority comprises twenty members appointed by the President of the Republic from among independent figures, including one member of the diaspora residing abroad. They serve a single non-renewable term of six years in accordance with Article 21. Once installed, the Council is responsible for preparing its internal regulations and can only convene as a deliberative body upon invitation of the President or at the request of two-thirds of its members. (Previously)

Secondly, the President of the Independent Authority:

According to Article 27 of Order No. 21-01, which contains the organic law related to the electoral system, the President of the Republic appoints the President of the Independent Authority for a single non-renewable term of six years. However, this provision indicates that the appointment of the President of the Independent Authority is subject to executive authority. This contradicts the independence of the institution, which is responsible for overseeing the electoral process and ensuring its integrity. (Relying on an electoral system for selecting the president of the Independent National Authority is better than the appointment method)

The President of the Independent Authority exercises the powers defined in Article 30 of Order No. 21-01. (See Article 30 of Order No. 21-01 dated March 10)

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Directing and coordinating the work of the council.

Representing the Independent Authority before various bodies and public authorities and acting as its official spokesperson.

- Implementing the Council of the Independent Authority's decisions.
- Appointing two vice-presidents from among the members of the Authority's office.

- Appointing members of provincial and municipal delegations, as well as those accredited to diplomatic and consular representations abroad, in accordance with the Council's resolutions.

- Ensuring the mobilisation of members of the provincial and municipal delegations, as well as diplomatic and consular representatives, during the electoral process and electoral list revision period, and allocating them across the national territory and abroad.

Calling and presiding over meetings of the Council and Office of the Independent Authority.

- Announcing the preliminary results of elections.
- Signing the minutes of meetings and decisions of the Independent Authority and ensuring their notification, monitoring their implementation and informing the relevant parties.

- Appointing a Secretary-General to oversee the Independent Authority's technical secretariat.

- Announcing the opening and closing periods for the revision of electoral lists.

- Taking all necessary measures to ensure electoral processes comply with applicable legislation and regulations, to maintain the integrity and transparency of the electoral process.

Thirdly, there are the local delegations of the Independent Authority and diplomatic representations abroad.

These are established at provincial and municipal levels, as well as at diplomatic and consular posts abroad. They serve as extensions of the National Independent Election Authority. The President of the Independent Authority appoints coordinators for these provincial and municipal delegations, as well as for the diplomatic and consular representations. These coordinators exercise the powers entrusted to the Independent Authority

within their electoral jurisdiction under the supervision of the President of the Independent Authority. (See Articles 20 and 34 of Order No. 21-01 dated March 10)

1. Provincial delegations of the National Independent Election Authority: The composition of the provincial delegations is determined by a decision of the President of the Independent Authority.

2. Municipal delegations of the National Independent Election Authority: The President of the Independent Authority determines their composition for each electoral consultation, based on proposals from the coordinators of the provincial delegations and after approval by the Office of the Independent Authority.

3. The composition, organisation and operation of the delegations of diplomatic and consular representations are determined by the President of the National Independent Election Authority in coordination with the relevant authorities.

2.2.2 Subsection Two: Conditions of Membership of the National Election Authority

The Algerian legislator has established a set of conditions and regulations regarding membership of the National Election Authority, as outlined in Article 40 of Order No. 21-01. (See Article 40 of Order No. 21-01 dated March 10) These are as follows:

- Be registered on an electoral list.
- They must not hold a high position in the state.
- They must not be a member of any local popular councils or parliament.
- Not having been a member of a political party during the five years preceding their appointment.
- They must not have been convicted by a final judgement for committing a felony or misdemeanour punishable by imprisonment, unless their status has been restored, except for unintentional misdemeanours.
- They must not have been convicted of electoral fraud.

According to Article 42, a member of the National Independent Election Authority cannot run for elections during their term.

These conditions clearly indicate that the Algerian legislator aims to

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provide guarantees enabling members to perform their duties free from any pressure that could influence the smooth conduct of the electoral process, particularly with regard to their position or political affiliation. The same applies to personal histories involving judicial rulings for intentionally committing a felony or electoral fraud, as this contradicts the independence and neutrality of the National Independent Election Authority, thereby undermining its credibility. (Falah Ammar, 2021, p. 251)

The legislator did not only stipulate the conditions for membership of the National Authority, but also established a series of obligations for members during their term. The most important of these obligations are detailed in Articles 41 and 42 and include:

- The duty of discretion and neutrality, and the exercise of duties with complete independence.
- Members of the Independent Authority cannot stand for election during their term, as confirmed by Article 199, Paragraph 1, which states that members of the Authority are ineligible to stand for election while performing their functions and for one year after leaving the jurisdiction in which they are or were members of the Authority.

Members of the Authority must also refrain from using their official positions for purposes unrelated to their responsibilities during their term.

- Upon their appointment, members of the Council of the Authority must cease any other positions, activities or freelance professions in order to dedicate themselves fully to their role.

Integrity, neutrality and independence must be maintained during the performance of their duties, and the integrity and transparency of electoral and referendum processes must be ensured, as well as respect for the constitution and laws of the Republic. These principles are encapsulated in the legal oath that members take before the competent judicial council, as stated in Article 43. (See Article 43 of Order No. 21-01 dated March 10)

In order to achieve the required independence of the National Election Authority, the obligations of its members must be defined. It is essential that they ensure the neutrality, legitimacy and credibility of the electoral processes under their management. This can only be achieved by adhering to the principles of neutrality, transparency and discretion, exercising duties

independently and dedicating oneself fully to the position, while not exploiting official roles to influence electoral processes and outcomes. (Amer Ayash Abd al-Jabouri, p. 29)

Therefore, members of the Independent Authority must engage with all participants in elections — including voters, candidates, and political parties — on an equal footing, without discrimination or favouritism. The fundamental principles established in the order creating the Independent Authority, including the obligations imposed on its members, are among the guarantees aimed at realising the desired independence, deepening constitutional democracy and enhancing the electoral system in accordance with the requirements of good governance. (Hamash, p. 46)

3. Section Two: The Powers of the National Independent Election Authority

The Algerian legislator has granted the National Independent Election Authority a number of powers relating to the organisation and oversight of the electoral process at all stages.

3.1. Subsection One: Powers Related to Organising the Electoral Process

First: General Powers:

The most significant general powers granted to the National Independent Election Authority by the organic law establishing this authority are essential to its existence. These powers embody and deepen constitutional democracy, enhancing the electoral system to ensure a peaceful and democratic transfer of power. In this context, the principle of popular sovereignty is upheld through free, transparent, pluralistic and fair elections that accurately reflect the will of the people, ensuring citizens have the right to vote freely and without bias.

The National Independent Election Authority intervenes in cases of violations of the electoral law or the law concerning the National Independent Election Authority, as well as relevant regulatory provisions. The Authority receives petitions, notifications or complaints relating to the electoral process from participating political parties or candidates. It reviews and rules on these matters through decisions within its jurisdiction and communicates these decisions by any appropriate means. (Faiza Gerouni, p. 214)

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In order to implement its decisions, it may resort to the use of public force, in accordance with applicable legislation. It also notifies the relevant public prosecutor when the National Independent Election Authority deems any recorded actions or reports to have a criminal nature. This measure is considered positive for safeguarding the electoral process against any actions that could have a negative impact on its proceedings.

The National Independent Election Authority prepares a detailed report on the entire electoral process and publishes it within forty-five days of the official announcement of the final results. This report is approved by the Authority's Council in the presence of the delegations' coordinators.

It ensures the protection of personal data relating to voters and candidates in accordance with applicable legislation.

It provides opinions on all matters relating to draft laws and regulations pertaining to elections.

It raises awareness in the field of elections and promotes a culture of electoral participation.

It trains and enhances the performance of election officials and supervisors.

- It promotes scientific research on electoral topics in collaboration with research centres and specialist bodies.

It prepares a charter for good electoral practices and promotes it among all stakeholders in the electoral process.

Second: Powers of the Council of the Independent National Election Authority

According to Article 26 of Order 21-01, which concerns the organic law of elections, the Council of the Independent Authority has the following powers: (See Article 26 of Organic Law No. 21-01 concerning the electoral system)

- Approving the work programme of the Independent Authority, as submitted by its President.

- Preparing lists of members for provincial and municipal delegations, as well as for diplomatic and consular representations abroad.

Receiving candidacy files for presidential elections without affecting the provisions of paragraph 3 of Article 121 of the Constitution and deciding

on them in accordance with the provisions of this Organic Law.

- Equitably and justly preparing a programme and methods for utilising national audiovisual media during electoral and referendum campaigns, as well as allocating meeting rooms and utilising advertising spaces.

Receiving appeals and complaints related to electoral and referendum processes.

Approving the report prepared by the Committee for Monitoring the Financing of Electoral and Referendum Campaign Accounts.

Approving the report on electoral and referendum operations presented by the President of the Independent Authority.

Approving the internal regulations for employees of the Independent Authority.

- Approving the Independent Authority's budget.

Providing opinions on any draft laws and regulations related to elections.

Preparing a code of ethics for electoral practices and promoting it among all stakeholders in the electoral process.

Third: Powers of the President of the Independent National Election Authority

The President of the Independent National Election Authority is elected by the members of the Authority Council during their first meeting after appointment, by a majority vote. In the event of a tie, the younger candidate wins (See Article 32 of Organic Law No. 21-01 concerning the electoral system).

As the chair of the Authority Council, the President of the Independent National Election Authority coordinates its work and exercises a set of powers and responsibilities, which include the following: (See Article 30 of Organic Law No. 21-01 concerning the electoral system)

- Representing the Authority before various bodies and public authorities and serving as its official spokesperson.

Implementing the resolutions of the Authority Council.

- Appointing two deputies from among the Authority's office members.

- Calling and presiding over meetings of the Authority Council and its office.

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- Announcing the preliminary results of the elections.
- Signing the minutes of the Independent Authority's deliberations and decisions, ensuring they are communicated and monitored, and notifying the relevant parties.
- Appointing a Secretary-General to oversee the Independent Authority's technical secretariat.

Mobilising members of municipal and provincial delegations, as well as diplomatic and consular representations, and disseminating them throughout the national territory and abroad during electoral operations and the electoral roll review period.

- The President of the Independent Authority announces the opening and closing of the electoral register review period.

The President appoints coordinators for municipal and provincial delegations, as well as for diplomatic and consular representations. They determine the composition of these delegations and representations and define their organisation and operation in coordination with the relevant authorities.

The President takes all necessary measures to ensure electoral operations comply with current legislation and regulations, to maintain the integrity and transparency of the electoral process and its results.

3.2 Subsection Two: Powers Related to Monitoring the Management of the Electoral Process

Paragraph 1: The pre-election phase

During the preliminary phase of the electoral process, which begins with the President of the Republic calling the electorate and ends with the conclusion of the electoral campaign, the National Independent Election Authority exercises a range of powers. These powers can be summarised as follows:

- **Maintaining the National Voter Database:** To enhance the integrity and transparency of the electoral process, the Algerian legislator has entrusted the National Independent Election Authority with the responsibility of establishing the national voter database under Article 53 of Order No. 21-01. The Authority is responsible for monitoring the registration process for electoral lists at municipal level and at diplomatic and consular offices abroad

(al-Shuqani, 2005, p. 235), and for updating this information periodically and continuously. (There are many reasons that make the process of registering voters in the electoral lists necessary and important. For more details)

- Receiving candidacy files for various electoral events: The Algerian legislator has granted the National Independent Election Authority the power to receive and adjudicate candidacy files for presidential elections in accordance with the provisions of the organic law relating to the electoral system (See Articles 249 and 252 of Organic Law No. 21-01 concerning the electoral system). For other electoral consultations, such as legislative and local elections, as well as mid-term elections for the Council of the Nation, candidacy declarations are submitted to provincial delegations of the National Independent Election Authority. (See Articles 201 and 222 of Organic Law No. 21-01 concerning the electoral system)

Appointing and mobilising supervisors for voting centres and offices

The provincial delegate or the coordinator of the diplomatic or consular delegation of the National Independent Election Authority is responsible for appointing the heads of voting centres and the primary and additional members of the voting offices. Their appointment is formalised through a decree (The conditions for mobilizing members of polling centers and offices are defined in Articles 3 to 8 of the Decision of the President of the Independent National Authority for Elections).

- Accrediting candidate representatives as election observers: The Algerian legislator has granted each candidate the right to submit a list of legally qualified individuals to represent them at the provincial delegation of the National Independent Election Authority at least twenty days prior to the election date. This allows the representatives to monitor the voting and counting processes. (See Articles 153)

Paragraph Two: The Contemporary Phase of Voting

Regulating the Legal Timelines for Voting: Under Article 32 of Organic Law No. 21-01 concerning the electoral system, the Algerian legislator has set the start of voting at 08:00 and its conclusion at 19:00. However, the President of the National Independent Election Authority may, at the request of the provincial delegate, allow voting to start up to seventy-two hours earlier than scheduled in municipalities where it is not feasible to

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hold elections on the scheduled day due to exceptional circumstances. (See Article 33 of Organic Law No. 16-10 concerning the electoral system)

Providing election documents and equipment: The National Independent Election Authority is responsible for providing voting papers for each candidate or list. The President of the National Independent Election Authority determines the content and technical specifications of the voting papers.

- **Licensing Media and Press for Coverage:** The authority is responsible for granting licences to media outlets and journalists who are tasked with covering and monitoring the electoral process, in coordination with the relevant bodies.

- **Providing Resources for International Observation Missions:** The Authority ensures that all necessary resources are available to support international observation missions monitoring the electoral process. (Faiza Gerouni O. Q.-9.-2.)

Paragraph Three: The Post-Election Phase

Supervising the Vote Counting Process: The Algerian legislature has granted the National Independent Election Authority the power to oversee the vote counting process and address any violations or irregularities that could affect the electoral process's integrity and transparency. This process is conducted according to the specific procedures and regulations set out in the organic law concerning the electoral system.

Enabling candidate representatives to monitor the electoral process and receive copies of reports: The Algerian legislator mandates that the National Independent Election Authority allow legally qualified candidate representatives to observe the voting and counting processes, and to receive certified copies of reports at the polling stations and offices.

- **Announcing the preliminary results of the elections:** According to Article 30 of Organic Law No. 21-01, the President of the National Independent Election Authority is responsible for announcing the preliminary results of all electoral processes. Previously, this responsibility lay with the Minister of the Interior, Local Authorities, and Urban Planning. For the first time, this responsibility has been assigned to the President of the

Independent Authority, embodying the principle of its independence and avoiding any influences that could compromise the integrity and credibility of the electoral process.

4. Conclusion:

Based on the findings of this study, we have identified several results and proposals, which are detailed below:

1. Study results:

The constitutional founder's objective in establishing the National Independent Election Authority was to ensure the transparency and integrity of the electoral process by creating a legal framework and institutional mechanism for organising elections.

The establishment and operation of the National Independent Election Authority are among the most important guarantees of its independence and fundamental aspects of achieving credibility and integrity in electoral and referendum processes.

The authority's possession of legal personality, along with the associated legal and financial effects, contributes to achieving its independence.

- Through the texts of the constitutional amendment of 2020 and Order No. 21-01 concerning the organic law related to elections, the constitutional legislator has granted the President of the National Authority and its coordinators extensive powers that encompass all stages of the electoral process. This represents a qualitative shift in electoral system reform, enabling citizens to participate in political life and freely elect their representatives.

Strengthening the powers granted to the National Independent Election Authority with a series of punitive provisions aims to deter and address behaviours and practices that could undermine the authority's independence and neutrality, and distort the expression of the people's free will.

Regarding the composition of the National Independent Election Authority, as set out in Order No. 21-01, the appointment of the President of the Authority and twenty members, including one member from the Algerian

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diaspora, remains at the sole discretion of the President of the Republic. This indicates a preference for appointment over election, and the responsibilities of these independent figures are not defined.

- Training for the members of the Independent Authority in the areas of monitoring and organising the electoral process has not yet begun.

Recommendations:

- Reassess the method of appointing the Council of the Independent Authority and its President, as well as the composition of its members, by adopting an electoral method instead of appointment, to ensure the Council's independence and neutrality.

- Expedite the issuance of the presidential decree defining the statutes for the Council's members and administrative staff, as well as their compensation system, in accordance with Article 29 of Order No. 21-01 concerning the organic law related to elections. It is unreasonable for the authority to manage national electoral events by relying on employees from various administrations, as this affects its credibility, as well as its financial and administrative management.

- Organise intensive training sessions.

Mobilise all public authorities to serve the Independent Authority.

Provide a precise definition of the concepts of competence, integrity and neutrality, as well as the entity with the authority to recognise these qualities, rather than leaving their meanings broad.

Consider assigning the presidency of voting centres to judges to ensure effective and stringent monitoring of the voting process.

It is essential to grant members of the National Independent Election Authority judicial immunity while they are performing their duties, in the same way as other members of constitutional institutions.

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The conditions for mobilizing members of polling centers and offices are defined in Articles 3 to 8 of the Decision of the President of the Independent National Authority for Elections, w. s. (n.d.).

There are many reasons that make the process of registering voters in the electoral lists necessary and important. For more details, s. J. (n.d.).