



The international control on the elections



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Abstract

To guarantee the honesty of the elections, guarantees have been set, mainly the international control, which is supported nowadays, unlike the past where it had been refused by most of the states, as they believed it would violate their sovereignty.

This study aims at defining the international control on the elections and showing its regulations.

Keywords

international control.
independent observation.
regulations.
elections.
sovereignty.

الكلمات المفتاحية

رقابة دولية؛
ملاحظة مستقلة؛
ضوابط؛
عملية انتخابية؛
سيادة.

الرقابة الدولية على العملية الانتخابية

ملخص

لضمان نزاهة وسلامة العملية الانتخابية فقد تمت احاطتها بجملة من الضمانات لعل اهمها خضوعها للرقابة الدولية، وهي الضمانة التي أصبحت في وقتنا الحالي محل تأييد بعدما كانت محل اعتراض من قبل معظم دول العالم باعتبارها تشكل من وجهة نظرهم مساسا بسيادة الدولة. وتأتي دراستنا هذه من اجل بيان المقصود بالرقابة الدولية على العملية الانتخابية واهم ضوابطها.

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Doi:

Introduction:

The elections are the main mechanism of reaching power. Therefore, the states set various guarantees to ensure the honesty and safety of their results, including the international control exercised by the governmental and non-governmental international organizations. In this regard, we must point that despite its importance in the elections, the international control implies some risks of violating the sovereignty of the state if it does not respect a set of regulations. Based on what was said, this paper aims at answering the following problematic, “**what are the main regulations of the international control on the elections?**” To answer this question, we divided the study into two chapters. The 1st shows the concept of the international control on the elections, while the 2nd shows its regulations.

First: the concept of the international control on the elections

We shall cover the concept and importance of the international control on the elections, as follows:

1. Definition of the international control on the elections

The jurisprudents defined it as the process of the objective and neutral field monitoring of the elections by international observers, and the evaluation of their organization, conduct, and respect to the constitutional, legislative, and organizational texts and the international standards of the elections (Lamouir,2020,p.381). In addition, it is the process of collecting information on the elections to reveal any falsification or manipulation(Al Anzi , Karim , Radi ,2014,p.179). Besides, it is defined based on the **party that exercises it** as the efficient method in controlling the elections, which requires the controllers to control the vote casting and counting, and to record the main information within reports to be transferred to the center of collecting the main data(Estock, Nafith, Quan,2002,p.01).

Furthermore, it is defined as the set of international control practices exercised by the international controllers on the elections that take place inside the state based on its demand. In so doing, the controllers monitor the correspondence of the elections to the international standards of democracy and human rights to inform the international society about the democracy and the people’s will expression in the concerned state(Sanef,2015,p.204). Moreover, it is defined **based on the goal** as the process of controlling the integrity of the elections starting from the phase of updating the electors’ record, the vote casting, until the votes counting to make evaluative reports(Al Anzi , Karim , Radi,p.179). In the same vein, **the international declaration of the international standards of elections and the blog of the rules of conduct of the elections’ controllers issued by the general assembly of the UN** in 2005 defined it as the process of the organized and exact collection of the information on the laws, procedures, and institutions related to the elections, without affecting the elections conduct(Lamouir,2020,p.283).

The Moroccan law uses the expression “the independent neutral observations of the elections” instead. He defines it as any process that aims at the field tracking of the elections conduct, the objective and neutral information collection, and the evaluation of the conditions and respect of the constitutional rules, the legislative and organizational texts on the elections, and the international standards through a report that shows the observations, and recommendations when necessary, of its writers to the concerned authorities (Article 01 of the Moroccan law 162.11.1).

In this regard, we point that the independent neutral observation of the elections is made by :

- The national institutions qualified by law to exercise the elections observation.
- The active associations of the civil society that are known for the serious work in the field of human rights and the promotion of the legal values of democracy and citizenship according to their rules of procedure.
- The foreign non-governmental organizations that are legally established based on their national laws, and that are known for objectiveness, independence, and interest in elections observation (Article 02 of Law 162.11.1).

All these definitions show that the international control on the elections is just an observation of the national elections by international controllers without intervening in their conduct because their role is limited to issuing a report that shows the respect of the state of the legal, constitutional, and international texts.

2. The importance of the international control on the elections:

The international control on the elections has a very big importance for the international society and the state that holds the elections. For **the international society**, it contributes to showing the conduct and correspondence of the elections to the international standards of democracy, and the expression of the people’s will(Al Anzi , Karim , Radi,p.180). In this regard, it reflects the interest of the international society in achieving democratic elections as part of strengthening democracy (Lamouir,2020,p.384) and respecting of the national sovereignty as long as the control is approved by the state per se. In addition, this control is an internal requirement, as it is an important guarantee for the opposition to reveal any falsification (Al Anzi , Karim , Radi,p.181), make sure of the quality of the elections, and consolidate the trust of the candidates and voters in the honesty of the elections (Arfa Mohamed ,2008,p.15).

As for **the state**, the international control on the elections provides the political support for the participation of all the political parties (Zeitar ,2009,p.412) in the elections through increasing trust in them, supporting their honesty, hindering their falsification, and, thus, leading to the acceptance of the results (Lamouir ,p.384) by the people and the international society (Zeitar ,2009,p.412). In this context, the existence of the international controllers during the various phases of the elections reveals the fraud (Estock, Nafith, Quan ,p.122) and helps provides recommendations to avoid it(Al Anzi , Karim , Radi,p.181). Moreover, it is a logical and acceptable guarantee of the elections thanks to the controllers' objectivity and neutrality(UN,1994, p.52), which strengthen the trust and reduce the potentials of conflicts over the validity of the results (Essaoui ,2005, p.06).

Finally, the **declaration of the standards of the international control on the elections** of the UN in 2005 explicitly confirmed that the international control on any elections serves all the peoples of the states that use the elections because the control focuses on the exactness and validity of the elections, not the results, as provided for by the 05th principle of the declaration(Al Anzi , Karim , Radi,p.182). We must point that despite the importance of the international control on the elections, some jurisprudents oppose it claiming that it is a mere pretext by the big states to intervene in the internal issues, and a violation and underestimation of the ability of the state to organize free honest elections (Sanef,p.202).

On the other hand, other jurisprudents support it and see that the international organizations exercise their tasks after the approval of the state according to its domestic laws. The international control is governed by international norms, mainly the respect of the domestic laws and the regime (Lamouir ,p.391) to avoid the feeling of the incredibility of the elections (Sanef,p.208). In addition, the controllers must make sure of the safety of the elections and show the gaps to improve them and enshrine democracy in the state (Lamouir ,p.392). The control was widely welcomed in many states, leading the **Organization of Security and Cooperation in Europe** to issue a declaration in 1990 calling the member states to accept the participation in the international control on the elections. This was confirmed by the UN through its support to the control, including the participation of non-governmental organizations, such as the US Institute of Diplomacy and Human Rights and Carter center(Al Anzi , Karim , Radi,p.175).

Second: the regulations of the international control on the elections:

The control is subject to a set of regulations on how to intervene and how to proceed in the work.

1. The regulations on how to intervene to control the elections:

The control cannot be started unless a set of regulations is respected, mainly **submitting a request by the state** to the international organizations that control the elections so that the organizations send controllers; this goes with the sovereignty of the state. In this context, the controllers cannot come to the state and control the elections of their own will, as confirmed by the international conventions. **The African Charter on Democracy, Elections, and Governance**, which was recognized by the African Union states in Addis Ababa- Ethiopia- on 30 January 2007 provided that sending its delegations to control the elections takes place after the hosting states make requests (Article 19/1 of African Charter on Human and Peoples' Rights).

The same applies to the UN, which sends its controllers after a formal request by the concerned state(UN , 2001,p.21). In this vein, the UN general assembly issued decision **6/137** in 1992 confirming that the general secretary must found an ad hoc center to guarantee the treatment of the requests of help to organize the elections; this task turned into the most important for the UN Elections Assistance Division UNEAD (Al Anzi , Karim , Radi,p.185). The latter coordinates the work of the controllers of the elections (<https://dppa.un.org/ar/elections>) and of the governmental and non-governmental organizations. It opens an office in the state that requested assistance to provide the logistic help. The UNAED team includes controllers from the member states and governmental and non-governmental organizations (Al Anzi , Karim , Radi,p.186). As for the control of the EU, the delegation is sent after the Higher Representative for the Union for Foreign Affairs and Security Policy and the vice-president of the delegation take the decision based on the recommendation of the pilot delegation headed by the European External Action Service(The EU manual of elections control, 2016, p.105).

This was internationally. Locally speaking, the domestic laws, such as that of Morocco, provide for regulations that must be considered to adopt the elections observers from the foreign non-governmental organizations, mainly their submission of a request to the committee of accrediting the elections controllers (Article 03 of law 162.11.1) that is part of the national council of the humans rights (Article 06 of law 162.11.1) and headed by the president of the same council or his vice. It is made up of:

- 04 members that represent the governmental authorities in charge of justice, internal affairs, foreign affairs, cooperation, and communication.

- A representative of the ministerial commissariat of the human rights.
- A representative of the national board for honesty and prevention of bribe.
- 05 representatives of the civil society associations represented inside the national council of the human rights and suggested by the associations to the head of the committee.

Besides, the head of the committee may call any qualified person to attend to the works of the committee for advice (Article 07 of law 162.11.1). The accreditation request must be through an electronic form uploaded by the committee. The form includes the data of the party that wants to control the elections and of the suggested people (Article 03 of law 162.11.1). As for the foreign non-governmental organizations, the request is submitted by their legal representative to the national council of the human rights within the deadline published on the media outlets by the committee (Article 04 of law 162.11.1). The latter studies the requests and checks the required conditions of the parties and suggested people (Article 10 of law 162.11.1). Then, it takes decision through its members' votes; in case of draw, the head casts his vote (Article 11 of law 162.11.1).

In case of refusing the request of the foreign non-governmental organizations to observe the elections, the committee must justify its decision within 15 days before the elections and sends a copy to the authority in charge of the elections (Article 12 of law 162.11.1). On the other hand, if it accepts them, it give them badges that show their identity(Article 13 of law 162.11.1). Besides, the committee provides a charter that shows the basic principles and regulations that go with the international practices and standards of elections and must be respected by the observers during their work (Article 14 of law 162.11.1).

2. The regulations on how to practice the control:

Despite the importance of the international control on the elections, the control is not absolute because there is a set of regulations that must be respected, mainly the commitment to the good conduct rules, namely:

- Respecting the sovereignty and the international human rights.
- Respecting the laws of the state and the authorities of the electoral boards (Lamouir ,p.385). In this regard, the international controllers must commit to all the domestic law, starting from the constitution to the administrative orders and regulations (Hamidi , Wadi , Abd al Hamza ,2016,p.08).
- Showing the political neutrality, as the controllers must show no support to any party and avoid any behavior that affects the neutrality and objectivity of the delegation, such as cooperation with some officials in the elections.
- Avoiding hindering and intervening in the elections, and avoiding harassing the others when doing their tasks lest the body in charge of managing the elections excludes him from the electoral center (Hamidi , Wadi , Abd al Hamza ,2016,p.09).
- Self-presentation.
- Maintaining the exactness of the observations and showing professionalism in deductions by making sure all the observations are comprehensive and neutral and show the positives and negatives.
- Avoiding commenting in front of people and media before the delegation sends its declarations.
- Cooperating with the controllers of the other delegations according to the orders of the leadership of the delegation.
- Showing the good behavior through respecting the culture and traditions of the hosting state, even during the break (Lamouir ,p.386).

In addition to these regulations, there are others provided for by the international organizations in their official manuals that generally include detailed provisions on the duties of the members during the various phases of the elections.

As for the hosting state, it can set regulations for the international controllers by the committee in charge of elections, such as is the case of Iraq and Morocco. In addition, it can refer the details of these regulations to the declaration of the international control, as in Jordan.(Hamidi , Wadi , Abd al Hamza,p p. 04- 05).

3. Regulations on the controller:

The importance of the human element in the elections obliges most of the international organizations to appoint expert and qualified people in elections as leaders of the delegations, just as what the African Charter for Democracy, Elections, and Governance provides for. It states that the elections controllers must be from the continental and national institutions, such as the African Parliament, the national electoral bodies, the national legislative bodies,

and the famous figures, with respect to the principles of the continental representation and balance between males and females (Article 21 of the African Charter for Democracy, Elections, and Governance).

Nevertheless, we must point that despite these regulations, the international texts did not show the sanctions of not respecting them by the controller, unlike the domestic laws such as in Morocco, where the badge and accreditation shall be withdrawn and the party that suggested the controller shall be notified about his mistake and the necessity of the commitment of is observers to the charter. If the violation is repeated, the accreditation of the suggesting party is immediately withdrawn (Article 18 of law 162.11.1).

Conclusion:

In the end, findings show that:

- The international control on the elections is one of the mechanisms of protecting their honesty, as the international controllers monitor the various phases to make sure of the laws' respect by everyone.
- The international control on the elections makes no violation of the sovereignty of the state because it takes place after the state's approval, and is carried out by neutral bodies such as the UN and other international organizations.
- The states that invites the international controllers must provide the suitable conditions so that they guarantee the safety and honesty and increase the trust of all the parties.
- The Moroccan legislator's use of the expression "international observation of the elections" instead of the "international control on the elections" is suitable and exact because the international controllers' task is observing all the events, not controlling.
- The Moroccan legislator succeeded in setting regulations that govern the international control on the elections and provided for sanctions on the international controllers in case of violating the regulations. These regulations agree with the international standards of control on the elections; however, their issuance in a special text has a big importance.

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