

The oversight mechanisms authorized for the Independent National Electoral Authority to ensure the integrity of electoral processes

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Abstract:

The Algerian legislature established the Independent National Election Authority (ANIE) under Organic Law No. 19-07 as an independent national body for organizing, supervising, and monitoring the electoral process. This newly created electoral administration was enshrined in the 2020 Constitution and its structure was further defined by Ordinance No. 21-01, which contains the Organic Law on the Electoral System. The ANIE is addressed in Chapter One, entitled "Management and Monitoring of the Electoral Process."

The Electoral Law, as amended and supplemented by Ordinance No. 21-01, enshrines a set of oversight mechanisms empowering the ANIE to ensure the integrity of elections. These mechanisms include both structural and procedural aspects, aiming to unify the principles and rules governing the electoral system, enhance transparency at all stages of the electoral process, and establish a more effective, impartial, and democratic oversight framework.

Keywords:

Independent National Election Authority, structural mechanisms, procedural mechanisms, electoral commissions, notification.

Introduction:

Elections of all kinds are the legal means by which representatives of the people can attain power. They are a participatory method that enables citizens to exercise their civil and political rights and participate in political decision-making within the state.

In reality, the integrity and transparency of the electoral process are the true measure of the credibility of the state and its institutions towards their citizens. Algeria is working to achieve this integrity through a series of experiments aimed at reforming its electoral system. These experiments included the establishment of bodies to monitor the electoral process, beginning with the 2012 experience of the Independent National Election Commission and the enactment of Organic Law 12-01 on Elections. A second experiment followed the 2016 Constitution with the establishment of the High Independent Authority for Election Monitoring, whose role was to monitor without regulating the process.

Then came the popular movement that broke with the previous regime, leading to the creation of the Independent National Election Authority under Organic Law No. 19/07 (now repealed). This law regulated its operations and functions as an independent body responsible for organizing and monitoring electoral processes. It was also stipulated in the 2020 Constitution within the chapter on oversight bodies, as one of the constitutional oversight bodies, and was subsequently enshrined in the Constitution. Then came Ordinance No. 21-01, which includes the Organic Law on the Electoral System, and stipulated it in its first chapter entitled "Management and Oversight of the Electoral Process."

The Problematic:

The question that arises is: **How effective is the electoral process in Algeria under the oversight mechanisms granted to the Independent National Election Authority?**

To answer this question, we adopted a descriptive-analytical approach by analyzing the articles of the 2020 constitutional amendment and the articles of Ordinance No. 21-01, which includes the amended and supplemented Organic Law on Elections, specifically those related to oversight of the electoral process. We divided the structure of the study into two main axes. The first axis includes:

the structural mechanisms for the Independent National Electoral Authority's oversight of the electoral process, through a study of the structural oversight mechanisms at the central level (first), and the structural oversight mechanisms at the local level (second). The second axis relates to: the procedural mechanisms for activating the Independent Electoral Authority's oversight to ensure the integrity of the electoral process, through a study of the Independent National Electoral Authority's means of addressing violations related to the elections (first), and then how the Independent Electoral Authority issues its final decisions on protests related to the conduct of the elections (second).

First Axis: Structural Mechanisms for the Independent National Electoral Authority's Oversight of the Electoral Process

To achieve fair and transparent elections, a set of oversight mechanisms must be in place. These mechanisms, granted to the Authority through the establishment of oversight committees, aim to gain the trust of both voters and candidates. These committees include the Electoral Lists Review Committee, municipal, provincial, and consular electoral committees, the Committee for Residents Abroad, and the Campaign Finance Monitoring Committee.

First: Structural Oversight Mechanisms at the Central Level (Campaign Finance Monitoring Committee)

This Campaign Finance Monitoring Committee is responsible for the financial oversight of campaign accounts to promote ethical political conduct and prevent the influence of illicit funds on politics. While campaign financing is legal, covert financing is illegal. Therefore, Order No. 21-01 established this committee within Chapter Two, Section Two, which deals with monitoring campaign finance.

1. Composition of the Campaign Finance Oversight Committee

According to Article 115 of Ordinance 21-01, as amended and supplemented, the Campaign Finance Oversight Committee is composed of:

- ☐ A judge appointed by the Supreme Court from among its judges as chairperson.
- ☐ A judge appointed by the Council of State from among its judges.

- ☐ A judge appointed by the Court of Accounts from among its advisory judges.
- ☐ A representative of the High Authority for Transparency, Prevention and Combating of Corruption.
- ☐ A representative of the Ministry of Finance.

2. Duties of the Campaign Finance Oversight Committee

The duties of the Campaign Finance Oversight Committee are:

- Receiving information sent to it by the campaign treasurer of each candidate, independent list, or political party regarding their bank account, which includes all income and expenses related to the campaign.
- Reviewing the validity and accuracy of the transactions recorded in the campaign account and deposited with it within the legal deadlines, in accordance with Articles 116 and 117 of Ordinance 21-01, as amended and supplemented.
- Approving, amending, or rejecting the account by a decision issued in person within six (6) months. If the deadline expires without the committee issuing its decision, the account is considered implicitly approved.
- Reviewing campaign accounts and assessing compensation was previously the responsibility of the Constitutional Council, but this now falls under the purview of the Campaign Account Financing Oversight Committee. All its reports are subject to approval by the Board of the Independent National Election Authority, pursuant to Ordinance No. 21-01, which contains the Organic Law on Elections and established the committee.

Second: Structural Oversight Mechanisms at the Local Level

The structural oversight mechanisms of the Independent National Election Authority at the local level vary, including the municipal committee for reviewing electoral lists, municipal and provincial electoral committees, consular committees, and committees for residents abroad.

01- The Municipal Committee for Reviewing Electoral Lists

The oversight objective of the Municipal Committee for Reviewing Electoral Lists is to review voter registration with complete credibility and transparency. This is achieved through reviewing and purging the electoral lists to obtain accurate lists free of electoral reserves¹. These lists definitively prove voter eligibility on election day, and it is not permissible to refute their contents. Therefore, it is necessary to discuss its composition and then its tasks.

A- Formation of the Municipal Committee for Reviewing Electoral Lists

A1- Within the country: According to Article 63 of Ordinance 21-01, as amended and supplemented, this committee shall be composed of:

- ☐ A judge appointed by the president of the territorially competent judicial council as chairperson.
- ☐ Three (3) citizens from the municipality, selected by the provincial delegation of the Independent Authority from among the voters registered on the electoral list of the municipality concerned.
- ☐ A permanent secretariat, managed by a municipal employee with experience, competence, and impartiality, shall be placed at its disposal and under its supervision.

The list of committee members and its rules of procedure shall be determined by a decision of the president of the Independent Authority.

A2- Abroad: According to Article 64 of Ordinance 21-01, the committee shall be composed of:

- ☐ The head of the diplomatic mission, the head of the consular post, or their representative as chairperson.
- ☐ Two (2) voters registered on the electoral list of the diplomatic or consular district, appointed by the Independent Authority as members.
- ☐ A consular officer as a member.
- ☐ A secretary-general shall be appointed from among its members. Based on the foregoing, several observations can be made, which we present as follows:

- ☐ Regarding the internal composition of the committee, the Algerian legislator, through Organic Law 19-07 and Ordinance No. 21-01, exempted both the

¹ El Ouardi Ibrahim, The Legal System of Electoral Crimes, First Edition, Dar Al Fikr Al Jami'i Publishing, Alexandria, 2008, p. 40.

President of the Municipal People's Assembly and the Secretary General of the Municipality from the composition of the Municipal Committee for Reviewing Electoral Lists, both of whom were prominent members under Organic Law 16-10.

□ Regarding the external composition of the committee, the legislator maintained the same composition stipulated in Organic Law 16-10, with the exception of the creation of the Secretary General position.

B- Tasks of the Municipal Committee for Reviewing Electoral Lists:

- Its work begins from the announcement of the opening of the electoral list review by the head of the authority until its conclusion. It oversees the review of the electoral lists, whether the regular review, which takes place during the last three months of each year on a regular basis, or the exceptional review, which takes place on the occasion of each election or referendum.

- Monitoring the national voter registry and the electoral lists, and updating them in accordance with Ordinance 21-01 relating to the Organic Law on Elections, in order to eliminate the electoral reserve.

- Receiving objections referred to it concerning registration or deletion from the electoral lists within ten (10) days following the suspension and conclusion of the operations related to the review of the lists, in the case of a regular review of the lists. This period is reduced to five (5) days in the case of an exceptional objection.¹

- The committee adjudicates appeals related to the review of electoral lists within three (3) days. The committee chairperson notifies the parties of the decision within three (3) days to allow them to file a judicial appeal within five (5) days of notification. If notification is not received, the appeal must be filed within eight (8) days of the date of the objection.²

¹ See Article 68 of Ordinance No. 21-01 dated March 10, 2021, containing the Organic Law relating to the Electoral System, Official Gazette No. 17, issued on March 10, 2021.

² See Articles 68 and 69 of Ordinance No. 21-01 containing the Organic Law relating to the Electoral System, *ibid*.

- Its decisions are subject to appeal before the competent courts of the ordinary judicial system, regardless of whether notification has been received. The important point is that the legal deadlines for judicial appeal must be respected. The legislator has not subjected these decisions to the jurisdiction of the administrative courts because they pertain to civil status and are therefore governed by private, not public, law. The court's decisions are final and not subject to appeal.

02: Municipal, Provincial, Consular, and Overseas Electoral Commissions

After the voting process concludes and the tally sheets are posted, the municipal, provincial, and overseas electoral commissions, each within its jurisdiction, are responsible for compiling and tallying the preliminary results obtained from the polling stations in order to monitor, record, and determine the results of the electoral process.

A- The Municipal Electoral Commission

A1- Composition of the Municipal Electoral Commission It consists of:

- ☐ A judge as chairperson, appointed by the head of the territorially competent judicial council.
- ☐ Two assistants (02) appointed by the provincial coordinator of the Independent National Authority from among the municipality's voters. Candidates, their party members, and their relatives up to the fourth degree of kinship are excluded from this appointment.¹

A2- Tasks of the Municipal Electoral Committee:

- The committee performs a technical oversight function by compiling the contents of the vote tally sheets into a summary report called the Municipal Vote Report. This report details the number of polling stations, the number of candidate lists, the number of registered voters, the number of votes cast, the total number of invalid, disputed, and valid ballots, and the share of these votes for each list.

¹ See Article 264 of Ordinance No. 21-01 containing the Organic Law relating to the Electoral System, *ibid*.

- For elections related to municipal people's councils, the committee is responsible for allocating seats based on the municipal census, according to the procedures stipulated in the Organic Law on Elections.¹

- For the election of members of local councils, two electoral committees are established. These committees record the census results obtained at each polling station within the municipality in an official report, in triplicate, in the presence of the legally authorized representatives of the candidates or candidate lists.² They cannot alter the results or the attached documents. The Municipal Vote Report is signed by all members. This oversight ensures the integrity and fairness of the electoral process results. The municipal electoral commission acts as a link between the polling stations and the provincial electoral commission. Its work guarantees strict oversight and supervision by the Independent Authority for Elections (IAE) to ensure the integrity of the electoral process. This mechanism guarantees the integrity of the election results and protects them from fraud through:

- ☐ A second technical review of the vote tally sheets to verify their accuracy.
- ☐ Compiling the results from all polling stations within the municipality.
- ☐ Recording, signing, and verifying the municipal vote tally sheet, ensuring that the results and supporting documents remain unaltered.
- ☐ Including any objections raised in the tally sheet issued by the polling station and notifying the IEA for adjudication.
- ☐ Submitting an original copy of the municipal vote tally sheet to the provincial commission.

B- The Provincial Electoral Commission

B1- Composition of the Provincial Electoral Commission

It consists of:

- ☐ A judge with the rank of advisor appointed by the head of the regionally competent judicial council.
- ☐ A member from the provincial delegation of the Independent Authority. Its president appoints him as vice-president.

¹ Ahmed Mahrouk, Judicial Oversight of Parliamentary Elections in Algeria, Master's Thesis in Law, Specialization in Constitutional Law, Department of Law, Faculty of Law and Political Science, Khider University of Biskra, 2014/2015, pp. 165-166.

² See Article 265 of Ordinance 21/01 relating to the Organic Law on Elections.

□ A public officer, assigned by the head of the authority to serve as secretary of the committee, is also appointed.

The committee also utilizes one or more technical units composed of engineers and IT and statistics technicians, as determined by a decision of the head of the authority.¹

B2- Duties of the Provincial Electoral Committee

These duties are defined by Articles 268 to 273 of Ordinance 21-01 and are as follows:

- Reviewing, compiling, and compiling the results sent by the municipal electoral committees.
- For elections related to municipal people's assemblies, the committee is responsible for allocating seats.
- Delivering an original copy of the tally sheet to the coordinator of the provincial delegation of the Independent Authority or their representative.
- Delivering a certified copy of the provincial electoral committee's report to the legally authorized representative of each candidate or list of candidates.

The minutes of the provincial electoral commission are deposited with the secretariat of the Constitutional Council for legislative, presidential, and referendum elections. For legislative elections, the envelope must be sealed, while for presidential and referendum elections, it must be a sealed envelope.

The provincial electoral commission then carries out its supervisory and monitoring duties in accordance with the powers granted to it under Ordinance 21-01, as amended and supplemented, to ensure the integrity of the electoral process.

C. Electoral Commission at Diplomatic and Consular Missions

C1. Composition of the Electoral Commission at Diplomatic and Consular Missions

Its composition and number of members are determined by a decision of the Head of the Independent Authority in consultation with the Ministry of Foreign Affairs.

C2. Duties of the Electoral Commission at Diplomatic and Consular Missions

¹ See Article 268, same reference

Taking tallies of the results obtained at its affiliated polling stations.¹

D - The Electoral Commission for Residents Abroad:

D1 - Composition of the Electoral Commission for Residents Abroad

Article 275 of Ordinance 21-01 defines its composition as follows:

- ☐ A judge of at least the rank of advisor, appointed by the President of the Court of the Capital, as Chairperson.
- ☐ A representative of the Independent Authority, appointed by the Head of the Authority, as a member.
- ☐ A public official assigned by the Head of the Authority as a member.
- ☐ The members of the Commission are assisted by an employee nominated by the Minister of Foreign Affairs and an employee nominated by the Head of the Authority.

D2 - Duties of the Electoral Commission for Residents Abroad

- Examining, compiling, and compiling the results recorded by all committees at diplomatic and consular missions abroad.
- The minutes of the Commission are deposited with the Secretariat of the Constitutional Council in a sealed envelope.
- A copy of the minutes of the results compilation is retained.
- An original copy of the minutes is delivered to the Head of the Independent Authority, and a certified copy to the legally authorized representative of the candidate or list of candidates.

Second Axis: Procedural Mechanisms for Activating the Independent Authority's Oversight of Elections to Ensure the Integrity of the Electoral Process

The electoral legislator, through Ordinance No. Order 21-01, as amended and supplemented, establishes a set of procedural mechanisms to activate the Independent National Electoral Authority's oversight role in the electoral process, ensuring its integrity as an independent electoral body. These mechanisms include the Authority's ability to issue notifications, receive petitions and protests, and intervene proactively. Investigations and reports are also included. The Independent National Electoral Authority issues its decisions according to the procedures outlined in Order 21-01, as amended and supplemented.

¹ See Article 274, same reference

First: The Independent National Election Authority's Means of Addressing Election-Related Violations

To ensure the integrity of the electoral process and implement effective oversight, the Algerian legislator has granted the Independent National Election Authority the necessary means and legal procedures to address violations and take the required measures with complete transparency and impartiality. These means include:

1- Notification

Notification is one of the Independent Authority's oversight mechanisms to guarantee the protection of voters' ballots. It is a legitimate right granted to any interested party to inform the Authority of any violation observed during the electoral process, through the following elements:

- The right to notify: guaranteed to all interested parties, including representatives of political parties participating in the elections, candidates, and voters.
- The entity to which the notification is addressed: the office of the Independent National Election Authority or, as applicable, its regional delegations.
- The content of the notification:
 - * Formal elements, including the notifier's name, surname, address, and signature.

Substantive elements, including:

- The content of the notification and supporting evidence, if any.¹
- Or the facts that the notifier considers a violation of legal provisions.²
- It is also required that... The notification must be in writing³ and not oral, as the formality is necessary, especially for proof and to exclude fictitious notifications.

¹ Article 38 of the Internal Regulations of the Independent National Election Authority, Official Gazette of the People's Democratic Republic of Algeria, No. 4, dated January 26, 2020

² Bouguerne Toufik, Adoption of an Independent Management System for the Electoral Process in Algeria – The Independent National Election Authority as a Model, Journal of Legal and Political Research, Vol. 2, No. 2, 2020, p. 60

³ See Article 39 of the Internal Regulations of the Independent National Election Authority, *ibid.*

02- Receiving Petitions and Protests

The Algerian legislator has authorized the Independent Authority, within the framework of its duties, to receive any petition or protest related to the electoral process from political parties participating in the electoral process, candidates, or voters. This includes, for example, submitting a reasoned objection to the removal of a person registered unlawfully, the registration of an omitted person in the same electoral district¹, or a citizen whose registration was omitted from an electoral list². Such a citizen submits their grievance to the municipal committee for reviewing electoral lists. All protests are considered and decided upon in accordance with applicable legislation.

Reviewing and adjudicating various protests in accordance with applicable legislation.

3- Automatic Intervention

Given the deployment of members of the Independent National Authority throughout all stages of the electoral process, and upon observing violations affecting the electoral process, they may automatically intervene to address them. This intervention is defined as follows:

- ☐ Observer: A member of the Authority or a designated delegation
- ☐ Subject of Observation: A violation affecting the transparency of the electoral process
- ☐ Result of Observation: Preparation of a detailed report on the violation affecting the electoral process
- ☐ Content of the Observation Report: Date, time, and location of the violation, observations, and supporting evidence
- ☐ Recipient of the Observation Report: The head of the Independent Authority or the relevant delegation, as applicable³

¹ See Article 67 of Ordinance No. 21-01 containing the Organic Law relating to the Electoral System, as amended and supplemented.

² See Article 66 of Ordinance No. 21-01 containing the Organic Law relating to the Electoral System, as amended and supplemented.

³ - See Article 40 of the Internal Regulations of the Independent National Electoral Authority, op. cit.

□ Result of Automatic Intervention: Deployment of public forces, coordination with the competent public authorities to provide security measures, and notification of the Public Prosecutor if the Authority deems the reported or observed violations to be of a criminal nature.¹

This intervention is regulated by Articles 42 to 46 and Articles 12 and 13 of Order No. 21-01 for the following entities:

- Political parties participating in the elections and candidates or their legally authorized representatives: The Independent Authority also has the right to address violations and transgressions committed by political parties participating in the elections and candidates or their legally authorized representatives, which it has observed during the various stages of the electoral or referendum process. They must also work to rectify the error within the deadlines set by the Authority.
- The Audiovisual Regulatory Authority: Upon observing audiovisual violations, the Independent Authority notifies the Audiovisual Regulatory Authority.
- Public authorities and the Public Prosecutor: In the event that the Independent Authority registers any defect or deficiency that could affect the conduct and organization of the electoral process at its various stages, it notifies the relevant public authorities within its jurisdiction, who then act urgently to rectify the deficiency and resolve the problems and irregularities. The Public Prosecutor is also notified if the subject of the notification is of a criminal nature. Furthermore, the public authorities must inform the Independent Authority in writing of the measures taken. It has taken this step.

Based on the above, it can be said:

There is a kind of overlap between the methods of operation of the Independent National Electoral Authority in the oversight field, between notification and automatic intervention. However, this overlap is only apparent. There is a kind of complementary work between the two methods. As a first step, the Independent National Electoral Authority is notified by interested parties. Then comes the

¹ Kaddour Dhrif, The Independent National Electoral Authority: Its Legal Framework, Functions, and Organization, Journal of Law and Political Science, Abbas Laghrou University of Khenchela, Issue 13, January 2020.

stage of automatic intervention after receiving notifications, by informing specialized bodies as a second step, such as public authorities, the audiovisual regulatory authority, political parties, and candidates, as the case may be. Automatic intervention by the Authority can also occur as soon as it observes violations, or through its members, for example, those deployed across polling stations and centers.

Secondly: How the Independent Electoral Authority issues its final decisions on protests related to the conduct of elections.

The Independent Authority receives petitions and protests related to the electoral process within the legal deadlines¹. In accordance with the law, the Independent Authority takes all necessary measures to verify their validity and adjudicate them according to the provisions of the applicable legislation.²

The Algerian legislator has regulated the procedures for issuing decisions by the Independent National Election Authority and its provincial delegations in Chapter Seven of the Authority's internal regulations, comprising seven articles, from Article 41 to Article 47.

- The head of the Independent National Election Authority or the provincial coordinator, as applicable, appoints a rapporteur to gather information and documents related to the case. Upon completion, the rapporteur prepares a report to be submitted to the appointing body for review.
- The Authority or delegation convenes upon the summons of its head or coordinator, as applicable, to decide on the case subject to notification or proactive intervention. A decision is made immediately when the nature of the notification, report, or inspection warrants it.

- Decisions on Matters as Applicable:

¹ Omar Zerqout, The Role of the Independent National Electoral Authority in the Integrity of the Electoral Process, Journal of Legal Studies, published by the Laboratory of Sovereignty and Globalization, University of Medea, Volume 7, Issue 2, June 2021, p. 371.

² Boualem Toubal and Zerqan Walid, Legal Guarantees for the Neutrality of the Independent National Electoral Authority in Algeria under Law 19-07, an article published in the Al-Bahith Journal for Academic Studies, Volume 7, Issue 2, 2020, p. 101.

□ The Independent National Election Authority decides on matters within its jurisdiction with a majority of its members present. Decisions are made by majority vote, and in the event of a tie, the head's vote prevails. The delegation decides on matters presented to it by deliberation with a majority of its members present. In case of a tie, the chairperson's vote is decisive.

- Notification of decisions to the concerned parties as appropriate:

For the Independent Authority: The head of the authority signs these decisions and then communicates them, ensuring follow-up on their implementation. They do not merely implement the decisions but continue to monitor their execution and notify the concerned parties by any appropriate means.

For the Provincial Coordinator: They implement the delegation's deliberations by means of a decision they sign and communicate to the concerned parties by any appropriate means. A copy of the signed decisions is sent to the head of the Independent Authority.

- Minutes of meetings and deliberations are kept in the Authority's archives.

Conclusion:

The Independent National Election Authority organizes, supervises, and monitors the electoral process at all its stages. It is a constitutional oversight body established by the 2020 amendment, and its role is to protect and strengthen the electoral process in Algeria.

The research on the oversight role of the Independent National Electoral Authority—the subject of this paper—has enabled us to draw a number of conclusions and recommendations, which we present as follows:

First, the conclusions:

1. The diverse committees distributed across the various stages of the electoral process provide an effective oversight guarantee for the Authority.
2. These committees offer a greater guarantee for the integrity and impartiality of the electoral process by collecting and counting votes and subjecting them to effective supervision and monitoring to protect the electoral process from fraud and forgery.
3. It is noteworthy that all committees are composed of judges, with their heads being judges, in addition to members from the Supreme Court, the Council of State, the Court of Auditors, or public officials. This provides them with a mechanism for overseeing the electoral process.
4. The exclusion of both the mayor and the secretary-general of the municipality from the composition of the municipal committee for reviewing the electoral lists, on which they had been prominent members for many years, ensures the independence of the Independent National Electoral Authority's oversight work.
5. The establishment of a campaign finance oversight committee within the electoral authority, along with defining its composition and responsibilities, is a significant achievement for the Algerian legislature, aimed at protecting the electoral process and preventing illicit financing and vote buying.
6. Appeals concerning electoral lists are heard by the ordinary courts and are final and not subject to further appeal. Appeals against decisions related to candidacy and the campaign finance committee are heard by the administrative courts.

Secondly, Recommendations:

1. Oversight of campaign finance must be concurrent with the electoral process (the campaign phase), occurring weekly during the campaign. For example, as soon as a legally disbursed installment is made, the second installment is disbursed, and so on. Oversight should not be a post-award audit for the purpose of compensation.

2. It is necessary to establish additional campaign finance oversight committees and not rely solely on the campaign finance oversight committee established under Order 21-01, in order to activate oversight mechanisms for the electoral process and guarantee its integrity.
3. The campaign finance oversight committee should be empowered to initiate and file reports on this matter to curb these crimes of political corruption in campaign finance.