



مركز البيان للدراسات والتخطيط
Al-Bayan Center for Planning and Studies

Early elections in Iraq

Challenges and Pathways

By Dr. Amjad Hamed Al-Hathal



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Since 2014

Early elections in Iraq Challenges and Pathways

By Dr. Amjad Hamed Al-Hathal*

Introduction

The early elections are back to light again after Prime Minister Mustafa Al-Kadhimi's call to set a date to hold the elections. Al-Kadhimi had previously included among holding elections among his priorities in the brief ministerial curriculum. This is a response to the demand of the protests movement that erupted in October 2019. The first paragraph in his ministerial agenda states: "Conducting early elections after completing the electoral law, activating the electoral commission, and fully implementing the political parties law, to ensure the protection and integrity of the electoral process in cooperation with the United Nations"

Early elections are a common issue in democratic systems, and they are held for several reasons: When there are political crises that afflict countries, the political process reaching the stage of paralysis, or to absorb widespread anger and restore calm to the street because of resentment against the legislative and executive authorities. Early elections may be held due to the lack of consensus between the political forces to form a new government. Take, for example, what happened in Israel, where three parliamentary elections were held in just one year before an agreement is reached on a new government. The same happened in Turkey, as early elections were held in 2018 after they were scheduled to be held in 2019 after Turkish President Recep Tayyip Erdogan called for early parliamentary and presidential elections.

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This paper is about the main challenges facing holding early elections since it must be conducted based on specific conditions and standards. Otherwise, it will be a formal exercise and will not achieve the desired goals. The paper also shows the pathways that lead to the elections.

The First Axis: The Challenges of Conducting Early Elections

First Challenge: Completing the Parliamentary Election Law.

On December 24, 2019, the House of Representatives voted on the House of Representatives election law as a result of the popular pressure of the October demonstrations. The new law replaced the .House of Representatives Elections Law No. 45 of 2013

The new electoral law is completely different from the previous one¹. It will allow voters to choose an individual candidate in an electoral district while the previous law voting was based on an electoral list or individual representatives. The new law does not rely on a complex mechanism for distributing votes because it abolishes the Saint-Lego way of allocating seats. It adopts the method of the winner with the highest votes.

The law is based on the multi-circuit system, but it has not been completed because of disagreements over the size of the electoral district. The parliament was divided into three blocks with each block has its own opinion. One block sees the necessity of keeping the governorate as one electoral district, while another wants districts to be divided at the level of the districts of the governorate itself. Others want every seat in parliament to represent a district, meaning if there are 250 parliamentary seats, Iraq will be divided into 250 electoral districts.

This difference made the election law incomplete and prevented it from being sent to the Presidency of the Republic for approval.

1. For more, see Parliament Elections Law 2019, the official website of the Iraqi Council of Representatives. www.parliament.iq

The House of Representatives was supposed to vote on an annex resolving the electoral districts issue because the Electoral Commission cannot – technically – initiate the electoral arrangements, whether early or periodic, without finalizing the law. Therefore, the first challenge facing early elections is voting to complete the election law.

Second Challenge: The Federal Court’s Crisis

The Iraqi constitution has set up a role for the Federal Supreme Court on the parliament elections. In article (93) paragraph (seven), it stipulates that one of the court’s competencies is the ratification of the general elections’ results for membership of the Council of Representatives.

In the first session of the new parliament, the speaker and his two deputies are elected, and it is the start of the election of the President of the republic and a prelude to assign the candidate of the largest parliamentary bloc to form the new government under the provisions of Article (76) of the constitution. The first session must be held by a decree issued by the last President within 15 days from the date of the Federal Supreme Court’s approval of the election results, as stipulated in Article 54 of the Constitution.

After the results’ mere appearance, even if they are final, the candidate cannot be considered a deputy, even if he has achieved the votes required to win in the electoral process. The Federal Supreme Court must approve the results to ensure the candidate’s conditions are met. The new member will then take the parliamentary oath and get immunity and the rest of the material and moral privileges².

Therefore, the completion of the requirements for any early or periodic elections depends on the Federal Court’s existence.

A controversy has raged in the past months between the Supreme Judicial Council and the Federal Court after the General Authority of

2. <https://www.iraqfsc.iq/news>

the Federal Court of Cassation issued a decision on January 1, 2020, that what was issued by the Federal Supreme Court, which is legally incomplete according to the provisions of Articles 3 and 5 of Court Law No. 30 of the year 2005, is irrelevant and non-binding³.

This crisis appeared after the referral of a member of the Federal Court, Judge Farouk Al-Sami, to retirement resulting in constitutional and legal void according to the letter by the Court of Cassation directed to the Board of Commissioners of the Independent High Electoral Commission that states “there is a lack of a constitutional or legal text right now after the President of the Federal Court canceled Article 3 of Law No. 30 of the year 2005⁴.”

Although the House of Representatives had read the Federal Court bill two times, it was unable to vote on it due to political differences between the blocs. It failed over four parliamentary sessions to reach a formula satisfactory to all parties that end with the legislation of the law.

Accordingly, any early election project will face a major challenge represented by the imbalance of the Federal Court’s quorum, as it is constitutionally responsible for certifying the election results.

Third: Challenging the dissolution of Parliament and setting the date for elections

Article 64 of the permanent constitution stipulates the following: **First:** The Council of Representatives is dissolved by an absolute majority of the number of its members, based on a request of one-third of its members, or at the request of the Prime Minister and with the approval of the President of the Republic. The parliament may not be dissolved during the period of questioning the Prime Minister.

3. <https://www.hjc.iq/view>

4. Federal Court of Cassation, book number (37/2020) on 01/26/2020.

Second: When the House of Representatives is dissolved, the President of the Republic calls for general elections in the country within a maximum period of sixty days from the date of the dissolution, and the Council of Ministers in this case is considered resigned and continues to run daily affairs.

A question arises in this challenge: Does all the political bloc inside the parliament have the desire to dissolve the parliament and go to early elections?

It does not seem that there is a consensus within the corridors of the House of Representatives on the necessity of moving towards early elections, especially since the pressure of the demonstrations has eased its pace, and there are political blocs that may think that they will lose a number of their seats in the event of early elections.

Therefore, setting the date for early elections depends on the dissolution of the House of Representatives, whether at the request of one-third of its members or at the request of the Prime Minister, and there are experts in the electoral matter who say that the Commission needs at least nine months to organize the electoral process after setting the date of the elections!

Fourth Challenge: The Status of the Independent High Electoral Commission and Financing the Elections

The new law of the Independent High Electoral Commission brought about fundamental changes in the structure of the Commission. Article 3 of the law stipulates that “the Board of Commissioners consists of nine members.”⁵ The same article states in its first and second paragraphs that seven of the members must be judges. The third paragraph stipulates that the remaining two must be consultants of the State Council.

5. Al-Waqi’a Iraqi Newspaper, Law No. (3) of 2019, the Law of the Independent High Electoral Commission.

Article 5 stipulates that “the Supreme Judicial Council shall send the names of the nine members of the Council of Commissioners who are selected under Article 3 of this law to the Presidency of the Republic to issue a decree within fifteen days.” This new law has excluded any candidate outside, not part of the judiciary and the State Council, and the nomination process is restricted to the Supreme Judicial Council. This means that members of the Council of Commissioners are not part of the Commission and not nominated by political blocs or subject to the Council Representatives’ approval through voting.

Article 25 of the law stipulates in paragraphs three and four, “the transfer of the current general directors away from the commission’s staff,” and the transfer of the assistants of the general directors to state institutions. This article also stipulates the exemption of the departments’ current heads and directors of the divisions from their posts.

The new board of commissioners of judges and advisors of the State Council, the general directors and their assistants, and the heads of departments and divisions, do not have sufficient experience in the electoral process with its complicated details. They need experience and know-how to manage the election process effectively. They all need the training to be able to prepare for the elections. Consequently, this process needs sufficient time to be completed, which poses another challenge to holding early elections.

Financing the elections is a definite challenge, especially with the country going through some economic difficulties due to the drop in oil prices and the Coronavirus spread. Some experts say that a single electoral process costs 250 million dollars, and others indicate that an individual Iraqi voter costs between 11-15 dollars for the electoral process. Can the government provide the financial resources needed to hold early elections?

Fifth Challenge: The Health Crisis (Covid-19)

Perhaps the most difficult challenge in holding early elections, or even periodic elections, is the continued spread of the Coronavirus in the country. The political blocs can overcome the problems mentioned before if there is a will, but this pandemic cannot directly end with human influence. Instead, it depends on finding a vaccine or treatment or applying strict social distancing measures to hold early elections.

Suppose the government decides to hold early elections next year, with the Corona pandemic's continuing spread. The government will have to update the voters' register and complete the biometric registrations, which will increase the contact between the voters, especially since there are more than 22 million voters. As a result, the number of infections may increase if the government does not take the necessary measures to prevent that.

The Second Axis: Expected Pathways for the Upcoming Elections

Reading the political reality in all its details and intricacies shows there are three pathways:

First: Holding early elections in 2021, in the beginning, the middle, or the end of the year, after overcoming all the challenges, is theoretically possible. However, it may not be easy practically. The researcher does not rule out this possibility, but the indications of its failure are higher than the signs of its success.

Second: Not holding early elections and waiting for the periodic elections, which will be held in 2022, is the possible pathway because more time will make overcoming these challenges possible. The Corona pandemic may end, so will the financial crisis.

Third: Postponing periodic elections for one year or more, because of the challenges facing early elections or the presence of external political action to keep this government as long as possible, maybe ruled out due to the country's internal political conditions. Also, public pressure will not allow the House of Representatives to continue functioning after its constitutional serving time. This pathway may cause a loss of confidence in the already fractured democratic political process.