

National Institution for Human Rights (NIHR)'s Opinions on the Draft Law to Modify the Decree – Law No. (3) of 2002 on the Election of Members of Municipal Councils

(Executive Summary)

Preamble:

In consideration of the efforts undertaken by the esteemed Council of Representatives in all matters related to the human rights issue, being the constitutional organization vested in the protection of public rights and freedoms, and in appreciation for the considerations targeted by the Draft Law to modify the Decree – Law No. (3) of 2002 on the Election of Members of Municipal Councils, and upon request of the Council of Representatives' Committee on Public Utilities and Environment, the NIHR hereby refers its opinions on the Draft Law to the esteemed Committee, to the extent it finds directly touching or influential upon basic human rights and freedoms, taking into consideration the relevant provisions of the Constitution as well as international human rights instruments and conventions.

Article (30):

The draft Article:

Without prejudice to any more severe penalty stipulated in the Panel Code or any other law, anyone who commits any of the following acts shall be punished by imprisonment for maximum **two years** and a fine of no more than **two thousand dinars** or either of both:

1. Knowingly gives a false statement in any document he/she submits for a matter related to voters' agenda or deliberately by any other means adds or deletes a name to it in violation of the provisions of this Law.
2. Forges, falsifies, distorts, hides, damages or steals any voters' agenda, stand-for-election document or any other document related to the election operations for the purpose of changing the result of the election.
3. Infringes freedom of election or its system of procedures through the use of force, threats or disruption or participation in demonstrations or gatherings.
4. Uses his right to vote more than once in the polling day or impersonates others.
5. Prints or disseminates any of the public media for the purpose of electoral propaganda without printing the name and address of the print house or the publisher on the first page.
6. Degrades any of the committees set forth in this Law or any of its members during the performance of its activities.
7. Disseminates or broadcasts false statements **on the subject of the election or on** the conduct or morals of a candidate for the purpose of influencing the result of the election.

No verdict may be issued to suspend the fine penalty stipulated in this Article. And any attempt of an offense stipulated in this Article shall be punished by the penalty established for the total offense.

The criminal case shall expire and the civil case shall not be heard on the offenses stipulated in this Article after **six months** from the date of announcing the result of election or from the date of the last judicial action thereon.

NIHR's opinions:

Whereas the current Draft Law, as mentioned in the attached Explanatory Note, aims at intensifying the penalties established for electoral offenses stipulated in Article (30) of the Decree – Law No. (3) of 2002 on the Election of Members of Municipal Councils, being not fit for the seriousness of committed actions due to their danger to the public opinion and their deep impact upon the electoral process, the proposed modification to intensify the penalty achieves public and private deterrence and makes the criminal penalty adequate for the committed crime.

The proposal is to intensify the penalty stipulated in Article (30) of the Decree – Law for offences of the electoral process to **(imprisonment for maximum two years and a fine of no more than two thousand dinars or either of both)**, in addition to adding a Paragraph stipulating the inadmissibility of issuing a verdict to suspend the fine penalty for offenses stipulated in this Article and increasing the duration for the expiration of the criminal case or not hearing the civil case for offenses stipulated in this Article to **six months** instead of **three months**.

Based upon the above:

The NIHR believes that the current Draft Law, which intensifies the scheduled penalty for electoral offenses, achieves the purpose of public and private deterrence from committing such kind of offenses, and is commensurate with the seriousness of such offenses in such a way that does not influence the practice of basic rights and freedoms. In addition, the proposed amendments in the Draft Law do not represent a violation of human rights pursuant to the relevant international human rights instruments.