



Park Mellat, Tehran, Iran, Photo by NINARA, CC [www.flickr.com](http://www.flickr.com)

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# THE GUARDIAN COUNCIL

## THE KEYSTONE OF A THEOCRATIC SYSTEM

### **Power Structure and Elections**

Iranian Constitution, as the highest legal instrument in setting the rules of the game in running the country, institutes the nation and the country as a mixed of democracy and theocracy. In doing so, internationally accepted democratic norms and liberalism notions are intertwined with a super-

visory element of 'Velayat Faqih'<sup>1</sup> to ensure the adherence of laws, regulations and practices of any kind to the

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1 Guardianship of the Jurist or Providence of the Jurist is a post-Age-of-Occultation theory in Shi'a Islam which holds that Islam gives a faqih (Islamic jurist) or fuqaha (jurists) custodianship over people.

Islamic practices. Obviously, the electoral policy and system as one of the fundamental elements of democracy is not left out of this loop. In this note, I try to portray the rule of law on freeness and fairness of Parliamentary elections in the Islamic Republic of Iran specifically through the supervisory role of the Guardian Council.



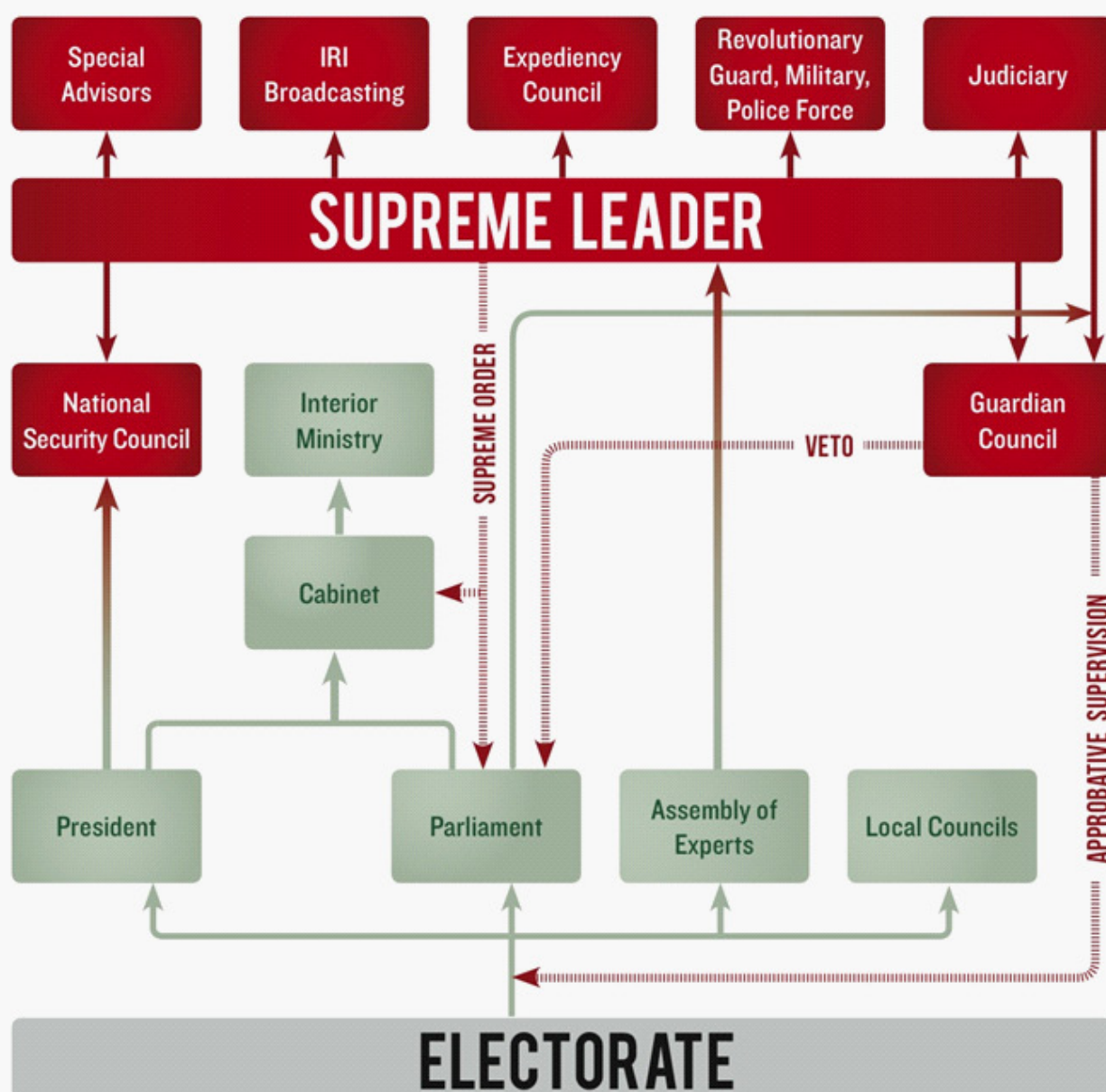
In addition to the appointed institutions mainly dominated by the clergy such as the Guardian Council and the office of the Supreme Leader, Article 6 of the Constitution permits four elected institutions: president, parliament, local councils and Assembly of Experts. The Constitution of the

Islamic Republic of Iran in 1979 and its amendment in 1989, together with five electoral laws is the basis of the legal framework for governing elections.

Historically, Iranians have regularly participated in elections since 1906.<sup>2</sup> Iranian women have been granted

the right to vote in 1963.<sup>3</sup> The Islamic Consultative Assembly, as the legislative body (known as Majlis) was established by the new regime, right after the 1979 revolution. Religious minorities were not neglected in the Electoral Law of 1909, and they were guaranteed representation in the leg-

## POWER STRUCTURE IN ISLAMIC REPUBLIC OF IRAN



**RED Boxes:** The Supreme Leader appoints and oversees all of these entities. There is no public oversight.

**GREEN Boxes:** These are, under the Constitution, "elected" bodies.

**Dashed Lines:** The Supreme Leader and his appointees approve (and disqualify) candidates, issue Supreme Orders, and hold veto power over activities of the elected bodies.

islative body. Armenians, Chaldeans, Zoroastrians and Jews were each allocated a seat in the parliament for over 70 years. The practice was then adopted into the Constitution of the Islamic Republic of Iran in 1979. Today, Iran's approximately 300,000 members of recognized religious minorities elect a total of five representatives to the Majlis.<sup>4</sup> However, there are other religious minorities in Iran who are not recognized by the state. As per the Constitution, voters elect 290 candidates to the Majlis for four-year terms. In addition to that, constitutional provisions guarantee the right to direct vote and secret ballot, and broadly set out the conditions for the delimitation of electoral districts and increase in the number of parliamentary seats. The diagram below shows the power structure and power relation in the Islamic Republic of Iran with regards to electorates.<sup>5</sup>

### Election Management Body

It is so unfortunate that there are not many details on responsibilities, composition or type of Election Management Bodies of Iran in the existing legal frameworks. The only exception to it is the Article 99 of Constitution which stipulates as follows: "The Guardian Council has the responsibility of supervising the elections of the Assembly of Experts for Leadership, the presidency, the Majlis, and referenda."<sup>6</sup>

In addition to the Constitution, the following five electoral laws provide additional details on administration and supervision of elections in Iran: Presidential Elections Law; Islamic Consultative Assembly Elections Law; Organization, Functions and Elections of Islamic Councils and Mayors Law; Guardian Council's Supervision of the Presidential Elections of the Islamic Republic of Iran Law; Guardian Council's Supervision of the Elections of the Islamic Consultative Assembly Law

In general, two main bodies are in charge of Election Management: the Guardian Council and the Ministry of Interior. The first one has the autono-

my to supervise, monitor and set policies for conducting elections, whereas the later is mainly the implementer and operator.

The Islamic Consultative Assembly Elections Law provides rules and regulations governing the Majlis elections. Majlis is composed of 290 elected members directly by the people's vote, based on the two-round voting system for four years with no term limitations. A speaker officially leads the chamber. To secure their seats in the parliament in the first round, candidates need to receive more than 25 per cent of the votes cast in their district. If they fail to receive so, a second round of voting is held. Those who receive less than 25% but above a minimum standard will be on the ballot for a second round of voting in about two weeks. In that ballot, the candidate will have to get "a relative majority" of ballots to enter the Majlis. It should be pointed out that the number of candidates who may run in the second round is restricted to twice the number of seats to be filled in a single member constituency (i.e. two candidates) and one and a half times the number of seats to be filled in a multi-member constituency. Voters will choose names from lists of candidates. Allocated seats range from 30 for Tehran to one for Iran's smallest towns and villages, so a voter in the capital can write up to 30 names whereas the process elsewhere is far simpler.

The Guardian Council's Supervision Laws on both presidential and parliamentary elections stem from Article 99 of the Constitution. Adopted in 1985 and 1986, they sketch the Guardian Council's supervisory rights for each election. Composition, duties and power limitation of the same committees are also outlined in the laws.

### Guardian Council

The idea of establishing the Guardian Council was to have a body composed of senior clerics overseeing legislations passed in the Majlis to make sure they adhere to the Islamic code. The Council convened for the first time after the 1979 revolution. The Guardian Council is composed of six qualified clerics who are well versed in Islamic jurisprudence, and six Muslim jurists experts in different areas

of law. The Supreme Leader directly appoints the first six clerics and the six jurists are nominated by the head of Judiciary and elected by the majority vote in the Majlis. It is very important to highlight that the Supreme Leader also directly appoints the head of Judiciary. Their term is six years, with half of the membership changing every three years on a random draw. Guardian Council is considered as one of the most powerful institutions of Iran, if not the top one, and has been a male-dominated Shi'a council so far. Although there are no legal restrictions for the selection of female jurists, the head of Judiciary has failed to nominate a single female to be elected by the Majlis. The same reason applies to the Sunni Muslims. On a discriminatory law, recognized religious minorities are denied memberships of the Council since the Constitution stipulates that all members must be Muslim.

The Guardian Council has extensive executive and legislative jurisdictions. In addition to reviewing all legislations passed in the Majlis and the power to reject or approve them, it has also the power to evaluate statutes approved by the cabinet and other state organs to ensure their conformity with Islamic criteria. While all members of the Council decide on the compatibility of parliamentary resolutions and government ordinances with constitutional law, only the six clerics have the authority of determination of legislation compatibility with the Islamic code. Estimates suggest that the proportion of legislation rejected by the Guardian in different periods has been between 27 to 40 per cent.

The interpretation of the constitution is also vested with the Guardian Council. This interpretation goes further and extends to the economic relations between Iran and the foreign countries, relations between different state institutions or the extent of the authority of a given state body.

The Guardian Council also has the politically sensitive duty of supervising the elections of the Assembly of Experts, president, Majlis, and referenda. Dominated by conservative right factions, the Guardian Council has been an instrument of political control, particularly in the aftermath of Ayatollah Khomeini's death.

<sup>4</sup> [http://www.state.gov/j/drl/rls/irf/2010\\_5/168264.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168264.htm)

<sup>5</sup> <http://united4iran.org/2012/02/organs-of-power-in-iran>

<sup>6</sup> Yasmin Alem, 'Duality by design: the Iranian electoral system', IFES, March 2011



In reinforcing its power on monitoring elections, the Guardian Council interpreted Article 99 of the constitution as to assert its approbation supervision of elections and its applicability to all stages of the electoral process, including the approval and rejection of candidates. Starting with the 4th Majlis elections in 1992, the Council started its vetting procedure of candidates and managed to exclude many opponents from the political scene. The number of disqualified candidates increased from an average of 15 per cent for the first three Majlis elections to 35 per cent for the 4th Majlis elections in 1992 and 39 per cent for the 5th Majlis elections in 1996. This trend has continued with an average of 30 per cent of candidates disqualified from running in each parliamentary election. In addition to vetting the candidates, the Guardian Council has the following major supervisory powers over elections through establishment of Central and Provincial Supervisory Committees: approving elections date; receiving electoral complaints and disputes; annulling election in an electoral district or even stopping the process; approving amendments and revisions to the electoral laws; final certification of election results.

#### **Ministry of Interior (MOI)**

In principal, MOI is the main administrator of all election related activities. In practice, however, MOI is perceived as a secondary implementing partner of the Guardian Council. Mostly the logistical aspects of elections are covered by the MOI through a permanent office called the Elections Office. EO is under the Bureau of Political Affairs of the MOI and is responsible for planning and prepa-

ration of national and local elections. Drafting and finalizing election budgets, timeline, guidelines for local electoral bodies, print and distribution of ballots, unique stamp design for each election, and archiving electoral documents are the main function of this permanent office. On top of that, Elections Office provides an overview of the number of eligible voters for each election. This is done to print enough ballots for each election. Normally EO prints 10 per cent more ballots than the number of eligible voters to ensure availability of enough ballots on voting day.

#### **Democracy without Citizens**

Islamic Republic of Iran has held 30 elections in total since its establishment in 1979. The political participation of the people has always been a point of reference for the Iranian authorities in their political encounters both at national and international levels. They have always referred to the high rate of participation in elections to show the legitimacy of their power and a sign of unity of the Iranians against external threats. However, the extent to which the political participation is perceived to be free, fair and democratic has always been debated. The vetting of presidential candidates by the Guardian Council and selective disqualification of almost 86 per cent of them over the last thirty years through misappropriated application of rules against those critical of the regime has undermined the legitimacy of this institution and raised a lot of debates on the impartiality and independency of this organ. Interestingly, in the Iranian constitution, there is no term limitation for membership in the Council. Therefore, in practice, there

have not been drastic changes in the composition of the Guardian Council since its inception. Ministry of Interior's partisan approach on the other hand has damaged the integrity of elections in Iran. Absences of an independent body or international electoral observer, an electoral roll system, a voter registration and emphasis on the role of the birth certificate in Iran have increased the potential and space for fraud. Chief among these problems is illegal voting, graveyard voting, ballot stuffing, and the capacity of the government to print extra documentation.

In short, Guardian Council's vetting of candidates threatens Iranian democracy. Having a closer look at the constitution, particularly Articles 111, 91, and 99, one can see the democracy versus theocracy in the Iranian political system. Whenever the Leader becomes incapable of fulfilling his constitutional duties, or loses one of the qualifications mentioned in the Constitution, or it becomes known that he did not possess some of the qualifications initially, he will be dismissed by the Assembly of Experts. In the other hand, the Guardian Council is responsible for vetting candidates for the Assembly of Experts elections. More importantly, members of the Guardian Council are directly or indirectly appointed by the Supreme Leader and obviously their political, social and religious inclinations cannot be so different from the Supreme Leader's. Good luck with finding people's votes in this circle.

