

The Right to Elections Between International Covenants and Libyan Laws

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الحق في الانتخابات بين المواثيق الدولية والقوانين الليبية

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تاريخ الاستلام: 2025-06-15 تاريخ القبول: 2025-07-15 تاريخ النشر: 2025-07-29

الملخص:

يعد الحق في الانتخاب من الحقوق الأساسية التي تضمنها المواثيق الدولية والقوانين الوطنية، ويعكس مبدأ سيادة الشعب والمشاركة في الحكم. ففي المواثيق الدولية، مثل الإعلان العالمي لحقوق الإنسان (المادة 21) والعهد الدولي الخاص بالحقوق المدنية والسياسية (المادة 25)، يتم التأكيد على حق كل شخص في المشاركة في إدارة الشؤون العامة لبلده، سواء مباشرة أو عبر ممثلين يتم اختيارهم في انتخابات حرة ونزيهة ودورية، وبالاقتراع العام وعلى قدم المساواة. وتشدد هذه المواثيق على أهمية التصويت السري وضمان حرية التعبير عن إرادة الناخبين دون تمييز.

وأما في القوانين الليبية، فقد تطور تنظيم هذا الحق عبر عدة قوانين انتخابية منذ الاستقلال فمثلاً، قانون الانتخابات رقم 6 لسنة 1964 وقانون انتخاب المؤتمر الوطني العام رقم 4 لسنة 2012، والقانون رقم 2 لسنة 2021 بشأن انتخاب مجلس النواب، كلها نصت على شروط محددة لممارسة حق الانتخاب، مثل الجنسية الليبية، بلوغ السن القانونية (عادة 18 عاماً)، والأهلية القانونية، والتسجيل في سجل الناخبين وكما تضمنت هذه القوانين ضوابط لضمان نزاهة العملية الانتخابية وسريتها، وعقوبات للمخالفات. وعلى الرغم من توافق القوانين الليبية بشكل عام مع المعايير الدولية في إقرار هذا الحق، إلا أن الممارسة العملية للانتخابات في ليبيا واجهت تحديات كبيرة، من ضمنها الظروف الأمنية، التحديات اللوجستية، والخلافات السياسية التي أثرت على استمرارية العملية الانتخابية ونزاهتها في بعض الأحيان. وهذا يؤكد على أن وجود الإطار القانوني وحده لا يكفي لضمان ممارسة الحق في الانتخاب بشكل فعال، بل يتطلب بيئة مستقرة، مؤسسات قوية، والتزاماً حقيقياً بمبادئ الديمقراطية.

الكلمات الدالة: الحق في الانتخاب، المواثيق الدولية، القوانين الليبية، النزاهة الانتخابية، المشاركة السياسية.

Abstract:

The right to vote is a fundamental right guaranteed by international conventions and national laws, reflecting the principle of popular sovereignty and participation in government. International conventions, such as the Universal Declaration of Human Rights (Article 21) and the International Covenant on Civil and Political Rights (Article 25), affirm the right of everyone to take part in the government of their country, directly or through representatives chosen in free and fair periodic elections by universal and equal suffrage. These conventions emphasize the importance of secret voting and guaranteeing the free expression of the will of the electorate without discrimination. In Libyan law, the regulation of this right has evolved through several electoral laws since independence. For example, Election Law No. 6 of 1964, General National Congress Election Law No. 4 of 2012, and Law No. 2 of 2021 on the Election of the House of Representatives all stipulate specific conditions for exercising the right to vote, such as Libyan citizenship, reaching the legal age (usually 18 years), legal capacity, and registration in the voter registry. These laws also include controls to ensure the integrity and secrecy of the electoral process, as well as penalties for violations. Although Libyan laws generally conform to international standards in recognizing this right, the practical implementation of elections in Libya has faced significant challenges, including security conditions, logistical challenges, and political disputes that have at times affected the continuity and integrity of the electoral process. This confirms that the existence of a legal framework alone is not sufficient to ensure the effective exercise of the right to vote. Rather, a stable environment, strong institutions, and a genuine commitment to the principles of democracy are required.

Keywords: The right to vote, international conventions, Libyan laws, electoral integrity, political participation.

Introduction:

The right to elections is considered one of the most important political rights enjoyed by citizens in democratic systems, as it represents the cornerstone of political participation and decision-making processes. This right is an effective means for expressing the will of the people and choosing their representatives in legislative and executive institutions, which enhances the principle of the rule of law and good governance.

International covenants, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, have stipulated that every individual has the right to participate in the conduct of public affairs of their country, either directly or through freely chosen representatives in fair and transparent elections. The importance of elections lies in their role as a mechanism to achieve democracy, equality among citizens, political pluralism, and the peaceful transfer of power.

Importance of the Research:

The importance of this research lies in highlighting the right to elections as one of the fundamental pillars of modern democracy, reviewing the main challenges facing the exercise of this right, and examining the legal and international standards that regulate elections and ensure their integrity.

Research Objectives:

1. Analyze the concept of the right to elections and its political and legal significance.
2. Identify the challenges obstructing the exercise of this right.
3. Propose solutions to enhance integrity and transparency in the electoral process.

Research Problem:

The main problem of this research can be summarized in the following question: How can the right to elections be enhanced and its integrity ensured amid various legal and political challenges?

Research Methodology:

This research will rely on the descriptive-analytical method by analyzing legal texts and previous studies related to the right to elections.

Hypotheses:

- There is a close relationship between the integrity of the electoral process and the stability of the democratic system.
- Electoral laws play a pivotal role in either enhancing or restricting the exercise of the right to elections.

Research Plan:

First Chapter: The Legal Framework of the Right to Elections

- First Requirement: International Legal Foundations of the Right to Elections
- Second Requirement: National Legislations Related to Elections

Second Chapter: Challenges Facing the Right to Elections

- First Requirement: Legal and Administrative Obstacles
- Second Requirement: Political Interventions and Their Impact on Election Integrity

Chapter One: The Legal Framework of the Right to Elections

The legal framework for the right to elections forms the cornerstone in ensuring its fair and democratic exercise. This framework includes a set of legal rules that determine how this right is practiced at both international and national levels. It is based on international legal standards and agreements governing electoral processes, in addition to local legislations that set practical details to guarantee election integrity and protect the rights of voters and candidates.

Requirement One: International Legal Foundations of the Right to Elections

The right to elections is derived from numerous international agreements and covenants that enshrine the principles of democracy and political participation. International covenants such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights emphasize the importance of guaranteeing citizens' freedom to participate in elections without discrimination or exclusion. Free and fair elections are considered a fundamental means to achieve good governance and ensure the peaceful transfer of power.

Some key international foundations for the right to elections include:

- Universal Declaration of Human Rights (1948):

Article 21 states that "Everyone has the right to take part in the government of his country,

directly or through freely chosen representatives." This underscores the principle of democratic representation and universal suffrage.

- International Covenant on Civil and Political Rights (1966):

Article 25 guarantees citizens the right to participate in political affairs, to vote and to be elected freely without discrimination. The covenant stresses the necessity of holding fair and transparent elections based on equality and freedom of opinion and expression.

- Regional Agreements:

For example, the African Charter on Human and Peoples' Rights and the European Convention on Human Rights, both affirming the need to enhance citizens' political participation through periodic free elections.

These covenants require member states to provide a fair electoral environment that guarantees equality for all citizens regardless of race, religion, or social status.

Requirement Two: National Legislations Related to Elections in Libya

The legal basis for the right to elections in Libya is embodied in several laws and temporary constitutions aimed at organizing the electoral process, including:

- Law No. 4 of 2012 on General Elections:

This law defines the fundamental principles for conducting free and fair elections, including candidacy and voting conditions, electoral campaigning, and ensuring the neutrality of the electoral process.

- Law No. 8 of 2013 Establishing the High National Election Commission:

This law regulates the tasks and competencies of the commission to guarantee the implementation of elections according to international standards and outlines its responsibilities concerning supervision and transparency.

- Interim Constitutional Declaration of 2011:

It stipulates that "Citizens are equal in political rights, including the right to vote and run for office."

When comparing Libyan laws with international covenants, there is general agreement on basic principles such as ensuring equality and transparency. However, challenges remain regarding the actual enforcement of these laws amid political instability, requiring stronger oversight institutions to ensure effective application.

Libya's electoral laws have evolved since the 2011 revolution and face numerous challenges such as the political division of institutions, armed conflict, and security instability, which negatively affect election integrity and citizen participation. The Libyan electoral system mainly relies on proportional representation lists, aiming to balance representation among political parties and social groups, but it suffers from weaknesses that impact democratic effectiveness.

Chapter Two: Challenges Facing the Right to Elections

Requirement One: Legal and Administrative Obstacles

- Unstable Electoral Legislation:

Libya has undergone a transitional period full of legal challenges. Electoral laws have frequently changed and often lacked clarity, undermining citizens' confidence in the process. Constant

amendments create an unclear environment for citizens and political parties, obstructing their right to free and unrestricted elections.

- Restrictions on Participation and Voting Rights:

Although Libyan laws acknowledge citizens' rights to vote and stand for election, some legislations impose restrictions on certain groups, such as those lacking identity cards or unable to reach polling centers due to security or geographical reasons. Additionally, women in some socially conservative areas face participation challenges.

- Unfair Representation:

The electoral system faces difficulties in fair representation of various social groups, with some laws limiting smaller or independent political groups' chances to gain seats, favoring major parties instead.

- Lack of Effective Legal Mechanisms for Election Monitoring:

Although laws provide for independent monitoring committees, their effectiveness is often limited by lack of resources or political interference. Laws dealing with electoral violations are sometimes inadequate or vague, complicating accountability.

Requirement Two: Political Interventions

- Political Influence on Electoral Institutions:

One of the biggest challenges is interference by political parties and armed groups aiming to influence election results by pressuring electoral bodies or voters. The High National Election Commission faces significant political pressures undermining its independence.

- Military and Security Interventions:

The security and political situation in Libya severely affect elections. Armed conflicts and threats discourage voters from reaching polling stations or participating freely. Armed groups' interference weakens the authorities' ability to organize elections in a secure environment.

- Manipulation of Electoral Districts:

Gerrymandering, or manipulating electoral boundaries, affects election outcomes. Some political forces may try to redraw districts to favor their representation, undermining fair representation.

- Manipulation of Voter Lists:

Political pressures sometimes alter voter lists illegally, deleting or adding names to serve certain interests, corrupting the election's integrity.

Besides legal and political obstacles, social and cultural factors also hinder full electoral participation, especially among women and youth, due to social norms or economic challenges, posing additional barriers to democratic progress in Libya.

Conclusion:

Amid Libya's rapid political and constitutional transformations, elections remain the optimal means to achieve peaceful transfer of power, enhance political legitimacy, and renew the social contract between the state and citizens. This research highlighted the reality of the electoral process in Libya, its legal framework, and the main challenges facing it legally, politically, and security-wise.

Libya, despite having an electoral legal heritage, suffers from institutional division, lack of a

permanent constitution, and multiplicity of legislative and executive bodies, adversely affecting electoral integrity and effectiveness. The study revealed an urgent need to unify electoral laws, ensure the independence of the High National Election Commission, and establish clear constitutional controls guaranteeing equal opportunities and inclusive participation of all social groups.

Findings:

- The legal framework for elections in Libya suffers from fragmentation and inconsistency due to the absence of a permanent constitution and multiple temporary laws.
- Legal problems exist regarding candidacy conditions, separation of powers, and judicial supervision of elections.
- Political and institutional divisions are major obstacles to conducting free and fair elections.
- Weak electoral awareness and lack of trust in electoral institutions limit popular participation.
- Women's and youth participation remain limited despite legal provisions for their inclusion.
- External interventions and security divisions pose real threats to the stability of the electoral path.

• **Recommendations:**

- Accelerate the adoption of a permanent constitution that ensures state unity and clarifies electoral rules.
- Unify electoral laws by issuing a single election law aligned with international standards and preventing arbitrary challenges.
- Enhance the independence of the High National Election Commission and provide constitutional guarantees protecting it from political pressures.
- Effectively involve the judiciary in election monitoring to ensure integrity.
- Promote electoral awareness programs and build trust between citizens and electoral institutions.
- Support women's and youth participation through legislative quotas and effective empowerment mechanisms
- Establish a national reconciliation body with elections as part of its outputs to achieve broad national consensus.
- Call on the international community to play a supportive and neutral role facilitating the electoral process without interfering.

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