

The Defects of the electoral advertising Articles in the Libyan Election Laws and Its Executive Regulations

Policy Paper

By:

Mr Reda Fhelboom

The Chairman of Libyan Organization for Independent Media (LOFIM)

المنظمة الليبية للإعلام المستقل
LIBYAN ORGANIZATION FOR INDEPENDENT MEDIA



This policy paper was delivered as part of the activities of the workshop “Critical Review of the Libyan Electoral Laws” that was organized by the National Planning Council on Saturday, 8 January 2022, in Tripoli, Libya

Table of Contents

Introduction.....	3
The Electoral Advertising Articles of the Libyan Election Law and Its Executive Regulations.....	3
A Lack of the Electoral Advertising Definition and the Ambiguity of its Duration.....	4
Electoral Advertising Means in the High National Election Commission’s Regulations....	5
Financing Electoral Advertising and the Spending Limits	6
Recommendations.....	7

Introduction:

Elections for a General National Congress (GNC) were held in Libya on 7 July 2012, in which 2.8 million of 6 million registered voters participated. The election was the first free national elections in sixty years.

To this extent, did the legislative authorities issue election laws that guarantee the integrity and equal participation in the Electoral advertising?

To this extent, were the legislative authorities able to issue election laws that guarantee the integrity of the process and equal participation of candidates to conduct electoral advertising?

This policy paper presents how the Libyan Election Laws have failed to issue articles that ensure the integrity of the electoral process through the implementation of measures to include equal participation, monitor the electoral advertising illegal acts, and the ability to implement urgent measures to any form of breaches of the electoral advertising.



General National Congress (GNC)

The Election Advertising Articles of the Libyan Election Laws and its Executive Regulations:

On 8 September 2021, the House of Representative issued a Law No. (1) of 2021 regarding the election of the President of the State, which included 77 Articles, and Article (1) included 23 definitions.

On 5 October 2021, the House of Representative issued a Law No. (2) of 2021 regarding the election of the House of Representatives, which included 46 Article, and Article (1) included 16 definitions.

On 29 November 2021, the High National Election Commission Board issued the Resolution No.82 of 2021 regarding the adoption of the Electoral Advertising Regulations on the Election of the President of the State and the House of Representatives, which included 31 Articles that clarified the procedures, rules, and regulations of the electoral advertising campaigns for the presidential candidates, House of Representatives candidates, which are supposed to be in accordance to the Electoral laws No. 1 and No. 2 of 2022.

On 30 November 2021, the High National Election Commission published online the Executive Regulations of the Electoral Advertising, which was disappointing and had many flaws that threatens the integrity of the electoral process that was scheduled to be held on 24 December 2021.



A Lack of the Electoral Advertising Definition and the Ambiguity of its Duration:

The Libyan Electoral Laws and its Executive Regulations did not address the definition of the Electoral Advertising. Law No. (1) of 2021 on the presidential elections did not include definitions related to the electoral advertising or electoral campaign. Also, Article (23) prescribed that the High National Election Commission shall determine the controls and requirements of the electoral campaigns' publicity for the specified period.

The First Article of the Election of the House of Representatives Law No. (2) of 2021, did not define the electoral advertising or the electoral campaign.

Also, the executive regulations published by the Commission lack the definitions, and its First Article only mentions that the aforementioned definitions include terms that are available in

the Electoral Law No. (1) and No. (2) of 2021 as well as Law No. (8) of 2013 on the Establishment of the High National Election Commission, which did not include any definition about the electoral advertising. Besides, Article (3) of the Commission's resolution only mentioned that all candidates have the right to run the electoral campaigns.

Article (23) of Law No. (1) stipulates that the High National Election Commission shall announce, through various official media outlets, the controls of the electoral campaigns' publicity as well the time period allocated for it. Article (27) prescribed that the day of electoral silence is 24 hours before the polling day.

Furthermore, Article (9) of Law No. (2) stipulates that the High National Election Commission should announce through an official media outlet the definition of the electoral advertising regulations and the time period allocated for it; the same article set the electoral silence, which is 24 hours before the polling day.

As for the executive regulations, it stipulates that the Commission shall announce the launch of the electoral advertising campaign for the candidates, at least 72 hours before the specific to start the electoral campaign, and the electoral advertising period ends 24 hours before the polling date; however, it did not specify that period of time. Also, the regulations should have prohibited the candidates from appearing on various public and private media with a period of no less than one or two months before the start of the election campaign; this is called the pre-election period.

For instance, in Tunisia, the Election Law of 2014 specified that the electoral campaigns begin twenty-two days prior to the polling date, and are preceded by the pre-election campaign period that extends to a period of two months.

Electoral Advertising Means in the High National Election Commission's Regulations:

Chapter IV of the Electoral Advertising Regulations clarified the means of the electoral advertising, including Article (16) concerning the candidate conduct of the meetings, and Articles (17, 18, 19) concerning the publications and posters and their publication in newspapers or the electronic media. In addition, Articles (20, 24) indicated the media usage for the official “governmental” print and audio-visual media in the electoral advertising, without mentioning or detailing the regulation mechanisms, and the opportunity was left open for private media without any regulations or limits.

The regulation did not clarify in detail the candidates' media appearances. Is the candidate allowed to conduct interviews on public media about his election program and profile? Is the candidate allowed to appear on TV or radio programs to discuss current events or public issues? What about if the candidate writes an opinion piece in public or private newspapers? What about his/her content on social media platforms like Facebook and Twitter, and the sponsored ads? Therefore, there were no rules to regulate the private electronic, print, and audio-visual media concerning the electoral advertising.

The electoral advertising means were supposed to include a detailed information about advertisements, public meetings, interviews, encounters, brochures, posters, billboards, and media activities in various electronic, printed, audio-visual media.

Financing Electoral Advertising and the Spending Limits:

Article (28) of Law No. (1) specified the basic principles of the election campaigns which included the transparency of financing electoral campaigns and the equality between candidates before state agencies. Article (29) prohibits the financing of the electoral campaigns from foreign sources. Besides, Article (30) obliges each candidate to submit a detailed financial statement and the total expenses on the electoral campaign to the High National Election Commission within (10) ten days from the date of the polling day. Article (67) punishes with a fine of no more than (5,000) five thousand Libyan dinars, and deprivation from candidacy for a period not exceeding (3) three years, each candidate who does not submit a detailed financial statement to the High National

Election Commission that includes the sources of funding for the electoral campaign. Nevertheless, Law No. (1) did not specify the spending limits of the electoral advertising; therefore, this is an opportunity for people with huge funds to contribute with unlimited spending on the presidential elections.

On the other hand, Article (13) of Law No. (2) stipulates that the High National Election Commission should specify the spending limits on the activities of the electoral advertising.

Article (37) punishes with imprisonment or a fine of no more than (5,000) five thousand Libyan dinars and deprivation from candidacy for a period not exceeding (5) five years, each candidate who exceeds the spending limits and does not submit a detailed financial statement to the High National Election Commission.

The Commission's regulation did not specify the spending limit on the electoral advertising activities whether it is about the meetings, publications, posts, banners, brochures, audio-visual reports, and paid political ads on all audio-visual channels and print and online newspapers, including social media platforms. The regulation did not impose a rule stating that the published election advertising to be made clear that they are paid ads. Therefore, this explicitly violates Law No. (2) regarding the spending limit on the electoral advertising.

As for the equal opportunities of candidate appearances on private media, private media was not mentioned in the texts of the Election Law which forbids advertising on foreign media. Consequently, the regulation left a lot of room for the private Libyan media, including those who are owned by political streams that are linked to foreign countries that have influence in Libya. The Commission allowed the candidates, without any conditions, to produce political ads, buy ad space on private TVs, radios, and newspapers; hence, unequal media access to candidates.

On 6 July 2021, High National Election Commission issued Resolution No. (35) of 2021 that included the media representatives list, while excluded the participation of a freelance journalist. Freelance journalists do not work for one publication and the Commission required the media representatives to be affiliated to a registered media outlet. Therefore, the freelance journalist was excluded from participating in the Commission's press conferences and following the electoral process.

Recommendations:

- Urge the Commission to emend the errors contained in the regulations in order to ensure an adequate legal framework for the electoral advertising that is compatible with the interim constitutional declaration and the role of professional media in the integrity of elections in accordance with the international standards.
- The executive regulation should contain a detailed definition of the electoral advertising, which include all the activities that are carried out by the candidates and their representatives within the legally stipulated period to publicize the electoral program through various advertising media, in order to persuade voters that they deserve their votes on the polling day.
- The Election Laws and its executive regulation should cover the time frame for the electoral advertising. For instance, similar to the election law in Tunisia, electoral campaigns begin twenty-two days ahead of the polling day, and are precede by a two-month ling pre-campaigning period.
- The Election Laws must establish a provision that specifies the spending limit on the electoral advertising, which shall be determined by the Commission.
- To establish detailed rules to regulate the electoral advertising in public and private media as well as social media. In addition, to define political advertising which includes any advertising displays that are directed towards the public and are based on commercial marketing techniques that aims to promote a person, idea, program, party, or political organization through audio-visual and electronic media. These candidates/parties allocate an advertising budget for their political advertising in return for a certain TV or radio or online ad space in order to propagate and influence the masses; as a result, this should be banned during the electoral campaign because it affects the voters' choices.
- The Election Law should oblige the Commission to regulate the electoral advertising, and the extent to which each candidate or party follow the principles and rules of the electoral campaigning. Besides, the Commission should be monitoring violations of the electoral advertising in cooperation with the General Authority for Monitoring Media Content (GAMNC), which will have a major role in monitoring violations of the electoral campaigning.

- Election Laws should contain rules that grant the Commission the power to make the measures and procedures to prevent violations of the electoral advertising. This includes the confiscation of publications, brochures, and posters as well as to take action to stop electoral programs, and resort to security authorities in case of electoral crimes.
- Election Laws and its executive regulations should establish specific rules regarding the media coverage of opinion polls during the electoral advertising period or the electoral silence, as well as ban the broadcasting and publishing of the opinion polls results before the close of the polling place. Additionally, this includes that this news should not be on headlines, lead, and front-pages, but a conclusion on the voters' choices. Nevertheless, a detailed information should be provided about the pollster. For instance, who is this entity? Its affiliates? When exactly did they conduct the opinion poll? In whose interest? Was it via phone, mail, or face-to-face? What was the size of the sample? Did it equally represent the population? And what is the margin of error? Finally, it should be compared to other polls on the same topic.
- Election Laws should grant equal opportunities for candidates to publish posters and billboards. The space and locations should be monitored by the municipalities with cooperation with the Commission.
- Election Laws should guarantee the candidates' right to access various audio-visual and print media during the electoral campaigning that are based on pluralism and equality.
- The High National Election Commission and the (GAMMC) must determine in a joint decision the campaign rules regarding the conditions and procedures for producing programs and reports of various media outlets. This should include determining the duration, timing, production, and distribution based on the respect of pluralism and transparency as well as considering the special needs of candidates with disabilities.