



EISA Election Witnessing Mission to the Presidential Runoff Election in the Arab Republic of Egypt

Preliminary Statement

19 June 2012

1. Introduction

The environment ahead of the runoff election was impacted upon by important constitutional and political events. Specifically the issuance of a decree by the Supreme Council of Armed Forces (SCAF) granting to the military police and the military intelligence officers judicial powers to arrest civilians in cases of crime just a day before the announcement by the Supreme Constitutional Court's (SCC) decision on the constitutionality of the 'Disenfranchisement Law' and parliamentary elections laws. The SCC ruled that these laws are unconstitutional, leading eventually to the dissolution of parliament only hours before the polls. As the polls closed and the vote count started, a supplementary constitutional declaration was issued by the SCAF, curbing the powers of the President of the Republic to be elected and transferring legislative powers to the SCAF. These developments have aggravated the broad constitutional and political environment of the country, further compromising the separation of powers and, more importantly, reducing the value of people's mandate.

The Electoral Institute for Sustainable Democracy in Africa (EISA) has been in the Arab Republic of Egypt since November 2011 witnessing all the rounds of the parliamentary elections as well as the first round of the presidential election. EISA deployed an Election Witnessing Mission to the second round of the presidential election that took place on 16 and 17 June 2012 in the country. The teams were equipped with innovative technology tools (handheld computer tablets) which assisted them to collect and transmit election-day data to the Mission co-ordination office in Cairo in real time.

During the first round of the presidential election EISA was only able to witness the last stage of the election process, namely the final days of the campaign, the poll and the counting process. The EISA Mission faced a number of restrictions imposed by the Egyptian electoral authorities¹ which limited its ability to follow some phases of the electoral process. Nevertheless, the EISA Mission was able to witness other aspects of the electoral process, meet with key stakeholders and draw the conclusion that 'Egyptians on 23 and 24 May 2012 turned out in their numbers and they were able to cast their votes in an atmosphere devoid of violence and intimidation. This historic Presidential election in the Arab Republic of Egypt, has been conducted in a manner which allowed the people of Egypt to freely express their will'.² This preliminary election assessment of the EISA Mission builds on the findings made during the first round of the presidential election. The African Union's Declaration on the Principles Governing Democratic Elections in Africa, the Declaration of Principles

¹ These restrictions were: late accreditation of witnesses, a 30 minute time limit within which to remain in polling stations and the limited access to the closing, counting and aggregation processes

² EISA Interim Statement on the first round of the presidential election, 26 May 2012, <http://www.eisa.org.za/PDF/egy2012eom5.pdf>.

on International Election Observation and the Principles for Election Management, Monitoring and Observation (PEMMO) served as the basis for the Mission's assessment of the runoff presidential election.

EISA's preliminary assessment of the period covering the polling and the counting processes is that though the runoff presidential election held on 16 and 17 June 2012 was conducted within a context of political and constitutional uncertainty, Egyptians were able to freely return to the poll to choose the candidate of their choice. However, the current uncertainties in the country will largely impact on the nature of the regime that emerges from the elections.

The Mission has kept long term witnesses on the ground to witness the aggregation of the results, finalisation and announcement of results. The Mission noted that restrictions imposed by the HPEC on international witnesses during the first round of the presidential election were eased during the second round. It is the hope of EISA that last stages of the presidential runoff will be characterised by the same openness which is essential in enabling members of the EISA mission to follow the process more effectively.

2. Mission Composition

Under the leadership of His Excellency H.E. Cassam Uteem, former President of the Republic of Mauritius, and the Deputy leader, Mr Denis Kadima, the Executive Director of EISA, the Mission consisted of 34 witnesses, drawn from non-governmental organisations from the five sub-regions of the African continent. Witnesses came from the following 12 African countries: Cameroon, Côte d'Ivoire, Democratic Republic of Congo, Libya, Mauritius, Mozambique, Nigeria, Senegal, South Africa, South Sudan, Tunisia, and Zimbabwe.

3. Mission Methodology

The Mission adopted a long and short term witnessing methodology. However, its long term witnessing was limited by restrictions imposed on international witnesses during the first round of the presidential election. Within the confines of these restrictions the Mission deployed eleven long term witnesses in 19 governorates namely, Alexandria, Assiut, Aswan, Beheira, Cairo, Damietta, El Minia, Fayoum, Giza, Ismailia, Luxor, Marsa Matruth, Menoufia, Port Said, Qaliubia, Qena, Red Sea, Sharquia and Suez between the first and second round of the presidential election. Twenty three short term witnesses were deployed to follow the second round of the elections in 15 of these 19 governorates.

On election days, the EISA teams visited a total of 439 polling stations, and witnessed the opening of the poll, the voting and counting processes at the polling stations. To ensure real time transmission of data collected in the field on election days, 18 teams were equipped with innovative handheld computer tablets. The short term witnesses returned to Cairo for a debriefing session on 18 June 2012 to formulate the Mission's preliminary assessment of the electoral process up to the vote count. The Mission's conclusion on the runoff presidential election is restricted to the period up to 18 June 2012. Its long term witnesses will remain on the ground up to 25 June 2012 thereafter EISA will issue a statement on the post election phase.

4. Preliminary Findings

After considering relevant legislation and documentation, briefings by electoral stakeholders, media reports, direct observations made by its different teams deployed on the ground, and basing its findings and recommendations on guidelines contained in the aforementioned instruments, the EISA Mission has made the following preliminary findings:

4.1 The Political Environment of Election

Egypt is at a crossroad where the constitutional crisis is deepening for a number of reasons. Firstly, the absence of a constitution that leaves a gap in the current political architecture. Secondly, the recent ruling by the SCC dissolving the parliament on the basis of the unconstitutionality of the legal framework for its election further contributes to the constitutional uncertainty. The absence of a parliament and the lack of a

constitution leave the country with a constitutional vacuum that provides a fertile ground for a political crisis in the country. Lastly, the issuance of the supplementary constitutional declaration curbing the powers of the President of the Republic to be elected further deepens the political uncertainty as it raises concerns about the nature of the regime that would emerge from the elections and the value of the people's mandate.

4.2 The Legal Framework of the Presidential Election

The 2012 presidential elections were governed by a set of laws and regulations, the most significant being: the Constitutional Declaration of 30 March 2011 and its decrees and amendments issued by the SCAF; Law 73 of 1956 on the Exercise of Political Rights and its amendments; and Law 174 of 2005 regulating Presidential Elections.

As highlighted in the Mission's preliminary statement following the first round of the presidential election, in terms of Article 28, the HPEC is the final decision maker on electoral issues including the resolution of election disputes. This constitutional provision grants full authority to the Commission and in essence prohibits the review of its decisions.

4.3 The Electoral System

Law 174 of 2005 regulating Presidential Elections governs the conduct of the runoff presidential election in Egypt. Article 40 of the law stipulates that 'the elected president of the republic shall be announced when a candidate has obtained an absolute majority of the valid votes. Should none of the candidates obtain such a majority a runoff should be held after at least (7) seven days involving candidates who have obtained the largest number of votes'.³

Out of the 12 candidates who contested the first round of the election, Mohamed Morsy of the Freedom and Justice Party (FJP) with 5,764,952 valid votes and independent candidate Ahmed Shafik with 5,505,327 of the valid votes, were the two candidates eligible to stand in the second round on the basis of the results of the first round of the presidential election announced on 28 May 2012. The SCC's ruling that the 'Disenfranchisement Law' is unconstitutional cleared the way for the candidacy of Shafik who stood to be disqualified from contesting the runoff for having served as the last Prime Minister in the Mubarak regime.

4.4 Voter Registration and Voters' List

Regrettably, the Mission was informed of the HPEC's rejection of the request by some candidates for a copy of the voters' list.

4.5 The Electoral Campaign and Campaign Finance

The Mubarak's trial and related public protests as well as the court case on the constitutionality of both the "Disenfranchisement" and parliamentary elections laws considerably overshadowed the election campaign for the runoff election. The election campaign was more personality-centred than policy-oriented. During the first round of the presidential election the Mission welcomed the first-ever broadcast presidential debate. Unfortunately, there was no debate between the two presidential candidates ahead of the runoff. The Mission believes that a debate could have afforded the electorate an additional opportunity to make an informed choice.

The Mission noted that following the announcement of the first round results, acts of intimidation marred the campaign period. The Mission is of the view that these attacks and acts of intimidation and violence are an infringement of candidates' right to campaign.

In accordance with Article 24 of Law 174 of 2005, contesting candidates in the runoff election are allowed to spend up to LE 2 million (roughly US\$330,000.00). The ceiling was so low that it was likely to compel candidates to circumvent campaign finance laws to meet their actual needs. The Mission was not in a position to assess whether the ceiling was complied with.

³ Law 174 of 2005 regulating Presidential Elections

4.6 Election Day Findings

On election days our findings were as follows:

4.6.1 Opening the Poll

The polls opened on time in 80% of stations visited by EISA teams on both days of election with the latest opening at 8h30 due to late arrival of and insufficiency of election materials in some stations. In other cases polling staff did not turn up for duties and had to be replaced.

4.6.2 Polling Stations

The number of polling stations remained unchanged except for the relocation of a few. Twenty three percent of polling stations visited were not accessible to physically challenged persons and the elderly. The stations visited were mostly orderly with limited queues. Most stations were laid out in a manner that protected the secrecy of the vote which was largely an improvement on the first round.

4.6.3 The Voting Process

The process was peaceful and orderly and conducted in a professional manner. The Mission noted the low voter turnout on election days. The Mission also noted the uncertainty of some voters over the voting procedures. At 98% of stations visited judges provided assistance to persons requiring help.

4.6.4 Polling officials

The process was generally managed in a more efficient manner than in the first round, with voters being processed in less than a minute in most cases. The Mission noted however that polling staff were not easily identifiable in 79% of the polling stations visited, an observation also made in the first round.

4.6.5 Closing and Counting Processes

The close of the polls was extended to 21:00 hours on day one and to 22:00 hours on day two given the surge of voters towards the end of each day. Reconciliation of ballots was not adequately conducted at the polling stations where EISA teams witnessed the vote count. In most of the stations, presiding judges proceeded directly with the count without taking time to tally the number of ballots received with the number of used ballots. In some polling stations, this led to discrepancies in the vote count. The Mission also noted that the counting procedures were not applied consistently across polling stations visited.

5. Recommendations

Based on its findings, the Mission makes the following recommendations:

- ❖ **Political environment of the election:** The Mission urges Egyptians to reach a speedy and orderly conclusion of the transitional phase. The Mission reiterates its view on the need for Egyptian stakeholders to constructively work towards the conclusion of the constitution-making process so as to clearly define the respective powers of the Executive, the Legislative and the Judiciary.
- ❖ **Legal framework of the presidential election:** In line with international best practices, the Mission recommends that future electoral reforms consider the introduction of appeal mechanisms against the decisions of the electoral authority, when necessary. It is important to note that the resolution of election disputes is a crucial aspect of the electoral cycle that impacts largely on the outcome of an election.⁴

⁴ EISA preliminary statement on the first round of the presidential election, op.cit

- ❖ **Voter registration and voters' list:** The Mission recommends that a provision be made in future to grant contesting candidates and political parties access to the voters' list in line with international best practices.
- ❖ **Reconciliation of ballots:** The Mission recommends that reconciliation of ballots be carried out in a consistent manner before the beginning of the vote count. For this to be done procedures must be spelt out and training conducted systematically for all polling staff.
- ❖ **The announcement and posting of results at the polling station:** The Mission recommends that the results be announced publicly after counting and displayed at the polling stations.

6. Conclusion

Based on its findings and the guidelines enshrined in the AU Guidelines, the Declaration of Principles on International Election Observation, and the PEMMO, the EISA Election Witnessing Mission is of the opinion that the runoff presidential election held on 16 and 17 June 2012 were conducted in a manner which allowed the people of Egypt to freely choose the candidate of their choice in spite of the political and constitutional uncertainty.

EISA will continue to closely follow the process through its long term witnesses until its conclusion. The Institute will issue a post election statement after the official announcement of the results followed by a comprehensive final report upon the conclusion of the process. The report will provide an in-depth analysis of the Mission's observations, findings and recommendations.

The Mission, once more, extends its deepest gratitude to the Egyptian people and other national electoral stakeholders, for their hospitality and willingness to meet with the Mission. EISA is thankful to the Ministry of Foreign Affairs and the HPEC for having afforded the Electoral Institute the opportunity to witness such a defining moment in the political history of contemporary Egypt.

About EISA

Formed in 1996, the Electoral Institute for Sustainable democracy in Africa (EISA) has established itself as a leading player in the field of elections and democracy in Africa. EISA has evolved from an election NGO servicing Southern Africa into a more diversified organisation working throughout the continent with national, regional, Pan-African and global partners. The Institute's work covers not only elections but also other Democracy & Governance fields like political party development, conflict management, legislative strengthening, the African Peer Review Mechanism and local governance and decentralisation. With its headquarters in Johannesburg (South Africa), EISA has current and past field offices in countries including Angola, Burundi, Chad, Côte d'Ivoire, Democratic Republic of Congo, Kenya, Madagascar, Mozambique, Sudan and Zimbabwe, a reflection of its broader geographical mandate.

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