



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

## **Interim Statement**

**26 May 2012**

### **1. Introduction**

Having witnessed the first competitive Post-Mubarak parliamentary elections, the Electoral Institute for Sustainable Democracy in Africa (EISA) was accredited by the Higher Presidential Elections Commission (HPEC) to deploy a Mission to witness the historic presidential election that took place on 23 and 24 May 2012 in the Arab Republic of Egypt.

The EISA Mission has made its assessment of the first round of the presidential election, and its preliminary observations, findings and recommendations are presented in this Interim Statement. Our observations are based on the African Union's Declaration on the Principles Governing Democratic Elections in Africa, the Declaration of Principles on International Election Observation and the Principles for Election Management, Monitoring and Observation (PEMMO).

EISA will produce a comprehensive final report on the presidential election upon the conclusion of the process. The report will provide an in-depth analysis of the Mission's observations, findings and recommendations. EISA will continue to closely follow the process to completion taking into account the possibility of a runoff election on 16 and 17 June 2012.

EISA noted the efforts of Egyptian state and non-state actors in working towards the establishment of a new constitutional order and the consolidation of electoral democracy in the post-Mubarak era. The Election Witnessing Mission commends the enthusiastic and peaceful participation of Egyptians, supporters and sympathisers of the presidential candidates, witnessed in the last days of campaigning.

EISA has noted with satisfaction that some of the recommendations made by witnesses during the parliamentary elections were taken into account by the Egyptian authorities ahead of the presidential election. The Mission extends its gratitude to the Egyptian people and other national electoral stakeholders for their hospitality and for having availed themselves to meet and share their perspectives with the Mission. EISA is thankful to the Ministry of Foreign Affairs and the Higher Presidential Elections Commission for having granted the Institute the opportunity to witness this landmark election.

EISA's preliminary assessment of the period covering the polling and early stage of the counting process is that the will of the people has been freely expressed. The mission will continue to witness the finalisation and announcement of results before issuing its final report.

## 2. Mission Composition

Led by His Excellency, the Honourable Cassam Uteem, former President of the Republic of Mauritius, assisted by the Deputy Mission leader, Mr Denis Kadima, the Executive Director of EISA, the Mission consisted of witnesses drawn from non-governmental organisations from 14 African countries, namely, Cameroon, Cote d'Ivoire, Democratic Republic of Congo, Kenya, Libya, Mauritius, Mozambique, Nigeria, Senegal, Sierra Leone, South Africa, South Sudan, Tunisia, and Zimbabwe.

## 3. Mission Methodology

Having received accreditation shortly before the commencement of the poll, the Mission conducted a series of activities covering the last days of campaigning, the polling and early stage of the counting process.

The Mission met with a range of electoral stakeholders including the HPEC at national and governorate levels, representatives of the contesting candidates, political parties, civil society organisations, the media and domestic and other international witnessing groups.

Following a two-day briefing session held in Cairo on 17 and 18 May 2012, EISA deployed 17 witness teams on Saturday, 19 May 2012, to cover the following 15 governorates: Alexandria, Aswan, Cairo, El Minia, Fayoum, Giza, Ismailia, Luxor, Marsa Matruth, Menoufia, Port Said, Qaliubia, Red Sea, Sharquia and Suez.

Upon arrival in the governorates, EISA teams held consultative meetings with local electoral stakeholders and other international witnesses. During this period, the teams also familiarised themselves with the local context and observed the last days of campaigning and the preparation of the poll.

On election days, the EISA teams visited a total of **588 polling stations**, and witnessed the opening of the poll, the voting and counting processes at the polling stations.

The teams returned to Cairo for a debriefing session on 25 May 2012 where they exchanged notes on their experiences in the field and formulated the Mission's preliminary assessment of the electoral process up to the counting of the votes.

## 4. Preliminary Findings

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

### 4.1 The Constitutional and Legal Framework of the Presidential Election in Egypt

The presidential election of May 2012 was 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 Supreme Council of Armed Forces (SCAF); Law 73 of 1956 on the Exercise of Political Rights and its amendments; and Law 174 of 2005 regulating Presidential Elections.

The Constitutional Declaration guarantees equality of all citizens before the law and basic freedoms and rights. Political activities conducted on the basis of religion, discriminatory grounds of gender or origins

are forbidden in accordance with Article 4 of the Constitutional Declaration. Article 26 of the Constitutional Declaration and Article 1 of the Law Regulating Presidential Elections stipulate the conditions for the election of the president.

Besides the restriction stipulated in the Constitutional Declaration and the Law on Presidential Elections, further restrictions were introduced by the Corruption of Political Life Law commonly referred to as the 'Disenfranchisement Law' that was ratified by SCAF in April 2012. This law excludes persons who held political offices during the last 10 years of the Mubarak regime from participation in political activities for the next five (5) years. The ratification of the 'Disenfranchisement Law' raised questions about the eligibility of key contestants in the elections.

The Mission notes that the presidential election has taken place before the finalisation of the constitution process. As a result, the balance of power between the Executive and the Legislative Chambers are not well delineated at this stage. The mission hopes that the Egyptian leaders will be able to reach an agreement timeously to avoid a possible political impasse in the future.

#### **4.2 The Electoral System**

The President of the Republic is elected by direct universal suffrage. The winner of the election is expected to gain an absolute majority of valid votes cast, that, is 50 percent plus one. Article 40 of the law regulating presidential election stipulates that a runoff election should be held after at least seven (7) days in the event that none of the candidates in the presidential election obtains the required absolute majority. The Constitutional Declaration provides for a four year presidential term of office renewable only once.

#### **4.3 The Management of the presidential election**

Article 28 of the Constitutional Declaration and Article 5 of Law No.174 of 2005 entrust the HPEC with the supervision of the presidential election. The mandate of this judicial ad-hoc body covers the period starting with the launch of the candidate nomination process and ends with the declaration of the results. The HPEC is composed of the President of the Supreme Constitutional Court (SCC), who chairs the Commission, the President of the Cairo Court of Appeals, the most senior deputy of the Office of the President of the SCC, the most senior deputy of the Office of the President of the Court of Cassation, and the most senior deputy of the Office of the President of the State Council.

In accordance with Article 28 of the Constitutional Declaration, the Electoral Commission is responsible for adjudicating electoral disputes. Article 28 of the Constitutional Declaration empowers the HPEC as the final decision maker on electoral issues. This constitutional provision grants full authority to the Commission and prohibits the review of its decisions. 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 and impacts on the outcome of an election.

#### **4.4 Voter Registration and Voters' List**

Law No. 73 of 1956 on the Exercise of Political Rights regulates the voter registration process. However, voter registration was not conducted for the recent parliamentary elections nor was it conducted for the national identification Database of the Civil Status Authority of the Interior Ministry. Eligible Egyptians of and above 18 years of age are registered according to their home address listed on their National ID card. The Mission notes that this is the most cost effective way of maintaining the voters' list provided

that the civil registry is continuously updated. The Mission's attention was drawn to the exclusion of some voters from the roll shortly before the commencement of the poll based on a "pink list" distributed by the HPEC. The Mission hopes the affected voters were informed prior to the exclusion and afforded the opportunity to appeal when necessary. The Mission received conflicting report as to whether parties and candidates received copies of the voters' list prior to polling day. The Mission recommends that the voters' list be made available to contesting parties and candidates well in advance of the election day.

#### **4.5 The Registration of Political Parties and Nomination of Candidates**

In order to operate as legally recognised entities, political parties in Egypt are required to be registered. Candidates from political parties and independent candidates were free to register to compete in the 2012 presidential election.

In order to qualify for nomination, candidates needed either the endorsement of a minimum of 30 elected members of the People's Assembly and the Shura Council, or the support of 30,000 voters in at least 15 governorates. A total of 23 candidates applied for candidature in this year's presidential election. The HPEC endorsed the candidacy of 13 presidential candidates upon completion of the nomination process, one of whom withdrew before polling day but remained on the list as ballots had already been printed. About 50% of the candidates were disqualified as a result of criminal conviction, for reportedly having failed to meet the citizenship requirement and for having failed to secure the required endorsement.

#### **4.6 The Electoral Campaign and Campaign Finance**

Campaigning took the forms of posters, public rallies, press conferences, advertisements on billboards, the display of posters on campaigning vehicles, the display of images of candidates on giant TV screen of boats, and other types of outreach.

Law 174 of 2005 regulates the presidential election campaign which begins three weeks prior to election day and ends 48 hours ahead of polling. The official campaign commenced on 30 April 2012. The law prohibits the use of foreign financial support, the use of public funds as well as the use of public buildings and facilities for campaign purposes. The law sets the campaign expenditure ceiling to LE 10 million (roughly USD 1,700,000.00) for the first round of the presidential election, and LE 2 million (about USD 330,000.00) for the runoff election. Candidates are legally allowed to receive the financial contribution of nominating parties and natural persons of up to 2 per cent of the ceiling. Article 26 of Law 174 of 2005 compels the disclosure of source of campaign funds. The Mission hopes the appropriate mechanism is in place to verify that the expenditure ceiling is respected.

The Mission welcomes the holding of the first ever presidential debate but noted that this debate was only restricted to two of the 13 candidates. The Mission recommends that all candidates be afforded this opportunity in future.

#### **4.7 The Role of Security Forces**

The Mission noted with satisfaction the visible presence of security forces at polling centres on the two election days. In most cases, the security forces were unobstructive and effectively managed the voters waiting to cast their vote.

#### **4.8 Civic and Voter Education**

In line with the laws governing the presidential election the HPEC does not have the primary responsibility of providing civic and voter education. Law No.174 of 2005 stipulates that the Commission has, however, a role to play in sensitising voters about the importance of citizen participation in the presidential elections. Stakeholders consulted by the Mission confirmed that the sensitisation of voters has been largely done by non-governmental organisations ahead of the polls. However, the Mission noted that there were large numbers of voters who were not familiar with the voting process and recommends that voter and civic education programmes should be an area of priority in future.

#### **4.9 Election witnesses**

Decree 12/2012 governing International Election Witnessing issued by the HPEC confers upon the HPEC the power to oversee the participation of international non-governmental organisations in witnessing the presidential election.

While the Mission is grateful to the HPEC for having granted accreditation to EISA as one of the three accredited international non-governmental organisations, the late accreditation did not allow EISA to deploy long term witnesses prior to the first round of presidential election.

On April 23, the HPEC issued the PEC Decree 12/2012, “Controls Governing International Organizations’ Witnessing for the Presidential Election 2012”. The Decree provided guidelines for the conduct of international witnesses during the presidential elections including the requirement that witnesses do not remain at a given polling and counting station for more than 30 minutes, thus limiting the freedom of movement of witnesses and the ability of witnesses to follow the process. Several EISA teams were not able to witness the count, even for 30 minutes as prescribed. In addition, this Decree sets out guidelines that limit the ability of witnesses to make statement regarding the conduct of the process until the announcement of the results. The EISA Mission is grateful that at a meeting with the HPEC on the eve of the election, it was clarified that witnessing missions could make statements after the closing of the poll on the second day. The importance of granting witnesses the right to issue preliminary statement provides an opportunity to share best election practices and for improving the process along the way.

National witnesses were subject to similar restrictions in terms of Decree 19/2012, “Controls Regulating Local Organisations’ Monitoring of the Presidential Polls”.

#### **4.10 Party/candidate agents**

The Mission notes with satisfaction that party/candidate agents were allowed free access to voting and counting and that they were present at all stations visited by the EISA teams. Not all party/candidate agents wore identifiable paraphernalia. More importantly candidate/party agents seemed not to be fully aware of their role and responsibility.

#### **4.11 Gender Representation**

The Mission notes the unfortunate absence of women among the presidential candidates following the withdrawal of the only female candidate from the presidential race as a result of her unsuccessful attempts to gather the required number of signatures for her nomination bid.

## **4.12 Election day observations**

The polling days were characterised by high level of enthusiasm and a generally peaceful environment which allowed voters to cast their ballot freely.

### **4.12.1 Opening the poll**

The Mission noted that on the first day of the election, most polling stations visited by EISA teams opened on time with a few exceptions of stations that were delayed up to 30 minutes.

On the second day of the election, there were more cases of late opening reported as a result of travel logistics for electoral personnel and in a few cases materials that were not stored at the polling stations and the late arrival of party/candidate agents.

### **4.12.2 Polling Stations**

The reduction of the number of polling stations from about 52,000 to 13,099 resulted in lengthy queues and overcrowding in many polling stations. An improvement on the parliamentary elections was the display of the voter's list outside the voting station allowing voters to identify their polling station in advance.

The Mission noted with concern the inaccessibility of a sizeable number of polling stations for people with disabilities and the elderly.

### **4.12.3 Ballot Papers, Ballot Boxes and Election Materials**

Election materials were distributed timeously and in sufficient quantity throughout the process. Another improvement on the parliamentary elections was the serialisation of the ballot papers which makes it easier to manage and account for used and unused ballots.

### **4.12.4 The Voting Process**

The voting was generally conducted efficiently. It was however noticed that in most cases where EISA teams witnessed, polling staff did not check the ink on voters' finger to ascertain whether they had previously voted. Furthermore, there was no consistency in regard to the finger inked. There were also instances when the ink was not consistently applied.

The secrecy of the vote was generally upheld with the exception of isolated cases due to the limited space in many voting stations, the placement of the ballot box, the voting processes and the procedure for placement in the ballot box by the voter.

### **4.12.5 Polling officials**

Polling staff were not easily identifiable because only a limited number of them wore an identification apron. It was also noted that polling staff applied procedures in an inconsistent way.

The Mission recommends that polling officials wear their identification at all times and calls for more vigorous and uniform training of polling officials.

### **4.12.6 Closing and Counting Process**

The closing and counting procedures were not consistently applied. At the polling stations where EISA teams were able to witness, the count reconciliation of ballots was not adequately conducted.

However, the Mission notes with satisfaction that party and candidate agents were allowed free access to voting and counting and that they were present at all stations visited by the EISA teams. In addition a further positive development was that these agents were provided with a copy of the official results at the polling stations at the conclusion of the count, an improvement on the parliamentary elections.

## 5. Recommendations

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

### ❖ **Constitutional and Legal Framework**

- The Mission notes that the presidential election has taken place before the finalisation of the constitution process. As a result the balance of power between the Executive and the Legislative Chambers are not well delineated at this stage. The Mission hopes that the Egyptian leaders will be able to reach an agreement timeously to avoid a possible political impasse in the future.
- The Mission recommends that future electoral reforms provide for clear complaint mechanisms.

❖ **The Voters' List:** The Mission recommends that the voters' list be made available to contesting parties and candidates well in advance of election day.

❖ **Voter education:** The Mission recommends that voter and civic education programmes should be an area of priority in the future.

❖ **Party/candidate agents:** the Mission recommends that party agents undergo training on their role and responsibilities as well as in electoral procedures and regulations for the sake of consistent application of electoral rules.

❖ **Polling officials:** the Mission recommends that judges should be encouraged to apply the procedures rather than rely on their discretion in administering the poll. The Mission recommends that polling staff wear their identification at all times and calls for more vigorous and uniform training for polling staff.

❖ **Election witnesses:** Election witnesses need to be able to witness the entire voting and counting process without limitations. This will allow the sharing of best electoral practices.

### ❖ **Counting process:**

- The Mission recommends that reconciliation of all ballots takes place prior to the commencement of counting. Where discrepancies occur missing ballots need to be traced.
- The Mission recommends that the results be posted at the entrance of polling stations after counting.

## 6. Conclusion

Based on the legal framework governing the presidential election in Egypt, our findings and the guidelines enshrined in the African Union Guidelines, the Declaration of Principles on International Election Observation and the Principles for Elections Management Monitoring and Observation, the EISA Election Witnessing Mission concludes that the presidential election held on 23 and 24 May 2012 were conducted in a manner which allowed the people of Egypt to freely express their will.

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### **About EISA**

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*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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