

Pre-election assessment

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I. Introduction

The Middle East and North Africa (MENA region) has experienced a wave of political revolutions that led to the fall of the long serving regimes of Presidents Ben Alli of Tunisia and Hosni Mubarak of Egypt. The resignation of the President Mubarak after 30 years in power paved the way for a transition programme initiated by the Supreme Council of the Armed Forces (SCAF). The transition programme that started with the March 2011 referendum to adopt the Constitutional Declaration that sets the legal framework for the 2011-2012 elections. From November 2011 to February 2012 Egyptians went to the poll to elected members of the People's Assembly and Shura Council and on 23 and 24 May, they will return to the polls to elect a President.

The 2012 Presidential election in Egypt is crucial because it is the first truly competitive presidential election to be held in the country. The importance of Egypt on the African continent and the MENA region further make this election crucial because the outcome of the election holds crucial implications at the continental and regional levels. At the continental level, it is important that the second most populous African nation is politically and economically stable to avoid a humanitarian crisis that could arise from any form of instability. At the national level, the presidential election is critical to the shaping of the country's future as the outcome would either lead to a democratic transition or a democratic regression. At the regional level, the outcome of the Egyptian election is also crucial because a successful transition would send a message to other countries that are still in revolution, transition or pre-transition phase.

In pursuance of its commitment to supporting the democracy building process in the Arab Republic of Egypt, the Electoral Institute for Sustainable Democracy (EISA) responded to the invitation of the Higher Presidential Election Commission by deploying an Election Witnessing Mission to the presidential election due to be held on 23-24 May 2012.

EISA's assessment of the Presidential election is based on the constitutional, legal and regulatory framework of Egypt, the AU Declaration on the Principles Governing Democratic Elections in Africa, the Declaration of the Principles on International Election Observation and the Principles for Election Management and Observation (PEMMO).

This report presents an assessment of the pre-election context.

II. Political and legal overview

The 2011 Constitutional Declaration is currently the fundamental law of Egypt, it stipulates that 'individual freedom is a natural right' and regards all Egyptians as equals. It guarantees

a set of freedoms such as freedom of belief, freedom of expression, freedom of assembly and freedom of press and other publications. It also guarantees the universal suffrage. It provides for the establishment of the election management body, the election organisation and the election conflict management mechanism. It sets provisions for the conduct of presidential election and the office of the president from article 25 to article 31. Two issues were dominant in the debates prior to the election, the first was the ratification of the 'disenfranchisement law' and the second was the debates on article 28 of the Constitutional Declaration.

The Corruption of Political Life Law commonly referred to as the 'Disenfranchisement Law', was ratified by the SCAF in April 2012. This law excludes the persons who held political offices during the last 10 years of the Mubarak regime from participation in political activities for the next 5 years. The ratification of this law was interpreted in some quarters of society as a contradiction to the provisions of the Constitutional guarantees of individual and political freedoms and in other quarters, it is seen as a legal means of guaranteeing a real transition. The acceptance of Shafik's participation in the 2012 election on the basis of the fact that the law cannot be applied retroactively while Hazem Abu Ismail's candidature was not reconsidered was not welcomed by the public. These legal twists and turns contributed to the tensions that characterised the pre-electoral atmosphere.

The pre-election period was dominated by the debate on the article 28 of the Declaration which states that the decisions of the Higher Presidential Election Commission are not subject to appeal. It is important to emphasize the implications of this article because of its impact on the candidate nomination process. This article was subject to criticism especially after the disqualification of some candidates and the return to the race of former Prime Minister Ahmed Shafiq. It is also important to consider the possible implications of Article 28 on the post-election dispute resolution process since the HPEC is headed by the Chief Judge of the Supreme Constitutional Court. Some of the stakeholders consulted by the mission expressed concerns about the fact that the Commission may take decisions that may not be accepted by all parties and with no provision for recourse, dissatisfied parties may adopt unlawful means to express their dissatisfaction.

There are also concerns about the fact that the work of the Constituent Assembly is stalled thus making it uncertain when the referendum will hold. The fact that the elected president will come into power in the absence of a constitution that sets the limits of presidential powers further fuels concerns that the 2012 presidential election may not lead to a transition, rather it might end up in a return to status quo. It is expected that SCAF will issue in the coming days, a new constitutional declaration that will set out the powers of the elected president in the pending the resolution of the constitution making process..

II. The Election Management Body

After the parliamentary elections a new commission was constituted to conduct the presidential election, called the Higher Presidential Elections Commission (HPEC). The HPEC is headed by the Chief Judge of the Constitutional Court after its appointment began the preparatory process from scratch. The Commission announced some technical improvements in the conduct of the poll, such as: the binding of ballot papers in serialised booklets. These improvements are indicative of the fact that the Commission has taken into account, the lessons from the parliamentary elections.

Much as these improvements are welcomed, it is important to that there are setbacks in the Commission's regulation of the activities of witnesses.

III. Candidates nomination and campaigning

Of the 23 candidates registered to compete in the presidential election, 10 were disqualified for reasons ranging from legal grounds to candidates' inability to obtain the required endorsement.

Accountability for the expenditures of campaign funds is strictly regulated by the HPEC. Candidates are liable for all expenses incurred during the campaign period and are obliged to report on their spending. The campaign conducted by the 13 candidates was generally peaceful though isolated cases of clash related to campaigning were reported. Media coverage was also regulated and candidates were provided platform on public media to present their manifestos to electorate. Egyptians were even able to watch the first televised presidential debate of their history on Thursday, 10 May 2012 on ONTV and Dream TV. The debate itself was not a substantive debate but rather about the personality of candidates. But at least it revealed that the campaign has been characterised at the start by political rivalries and polarisation between islamists, secular-minded reformists and remnants of the Mubarak regime. Due to limited campaign funding of the leftists and revolutionary candidates who had low profile during campaigning, the race ends by a bipolarisation of the campaign between islamists candidates (Abdel Moneim Abul Fotouh and Mohamed Mursi) and the officials of the former regime (Amr Moussa and Ahmed Shafiq). EISA is concerned by this strong bipolarisation which could impact the post-election political life of the Arab Republic of Egypt.

IV. Election Witnesses

The HPEC issued Decree 12/2012 which regulates the activities of election witnesses. This Decree limits the work of witnesses in the following ways: the late accreditation which did not allow the deployment of long term witnesses to cover the pre-election period, the unclear regulation on witnessing mission statements and report and the provision that witnesses should not stay more than 30 minutes in a polling station. The mission believes that such provisions are uselessly restrictive given that international witnessing teams have mostly conducted their mission in a responsible way during the parliamentary elections.

V. Security Situation

This pre-electoral period was characterized by socio-political unrest with demonstrations and violent protests by workers who demand better pay and conditions and activists repeatedly taking the streets to press their political reform agenda. The last deadly clashes of Abbaseya between security forces and protesters clearly show that the socio-political context of post-revolution Egypt remains fragile and risks of political violence must be a concern for authorities. EISA thinks that a stable and peaceful pre-electoral atmosphere is a pre-requisite for a peaceful vote. The lack of minimum consensus and the absence of dialogue between the various stakeholders are likely to have an impact on the vote and the acceptance of the result.

Conclusion

Egyptians will cast their vote on 23 and 24 May for the first round. The president will be named on 21 June after a run-off on 16 and 17 June if no candidate obtains the absolute majority. Even if there is no debate or doubt about the technical and logistical arrangements of the process so far, the political atmosphere of mistrust, accusation and counter accusation and attempts to exclude some contenders from the race will have an impact on the conduct of

the poll and the management of the result. That is why the HPEC is strongly commended to manage these historic elections with a high level of professionalism and impartiality.

At a purely political and institutional level, the mission notes that there are unanswered questions about the mandate of the new president elect, the dynamic between this new president and the parliament, the role of the military after the elections, the composition the future constitutional assembly and even the nature of the new constitution.

EISA believes that compliance with the laws and regulations and dialogue between the stakeholders of the electoral process are necessary for a good electoral and post-electoral atmosphere.

EISA Mission

Members of the EISA mission started arriving on the 15 May 2012, the mission will hold a 2-day briefing session on 17-18 May 2012. Thereafter, witnesses will be deployed to 15 governorates on 19 May 2012 to further consult with stakeholders and witness the election day activities. Witnesses will return to Cairo on 25 May for a debriefing session at which they will report back on their findings and formulate the mission's assessment of the elections.