



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

### **Interim Statement**

**14 and 15 December 2011**

#### **1. Introduction**

At the invitation of the Higher Election Commission (HEC) of the Arab Republic of Egypt, the Electoral Institute for Sustainable Democracy in Africa (EISA) deployed an Election Witnessing Mission for the 2011-2012 People's Assembly Elections. The Mission has already issued a preliminary statement on the first phase that took place from 28 to 29 November 2011 followed by a run off that took place from 5 to 6 December 2011.

The EISA Mission has made its assessment of the second phase of the People's Assembly elections process held on 14 and 15 December 2011, and its preliminary observations, findings and recommendations are presented in this Interim Statement. Our observations and views 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 final, more comprehensive report on the entire election process after the last phase of Shura Council elections. The report will provide an in-depth analysis, detailed observations, findings and recommendations.

EISA noted the improvement in voter turnout from 62%<sup>1</sup> to 67%<sup>2</sup> in the second phase and the delivery of ballot boxes and material the day before the elections took place, which helped to ensure that voting started on time in most polling stations visited. On the negative side witnesses from different organisations, including EISA, were denied access to the counting centres by security forces.

Although the election environment of this phase has been generally peaceful, it has been overshadowed by scenes of violence that erupted outside the cabinet and parliament building in central Cairo in the past few days, where demonstrators clashed with security forces, resulting in deaths and injuries. The Mission notes with deep regret the loss of life and is concerned by the violence and the disproportional use of force by security forces and urgently recommends that this matter be investigated.

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<sup>1</sup> Daily News Egypt Saturday-Sunday December 3-4, 2011

<sup>2</sup> Egypt News.net 18<sup>th</sup> December, 2011

## **2. Mission Composition**

During the second phase the Mission deployed eight Long Term Witnesses drawn from Civil Society Organisations from a variety of countries in Africa.

## **3. Mission Methodology**

In order to have a holistic approach to election assessment, the Mission continued to meet various electoral stakeholders including HEC's governorate branches, political parties, Civil Society Organisations, the media and domestic and other international witnessing teams.

Following a one-day debriefing in Cairo after the first phase, EISA deployed 4 teams of witnesses on Thursday, 08 December 2011, covering the following governorates: Giza, Aswan, Suez and Ismailia. Upon arrival in their areas of deployment, the EISA teams held further meetings with the main local stakeholders. This period was also used by the teams to familiarise themselves with the local context and witness the last days of campaigning.

During the second phase of voting, the EISA teams visited a total of 103 polling stations and witnessed the voting at the polling stations. The Mission also attempted to witness the counting of results at the counting centres of the areas of deployment. Regrettably EISA witnesses were denied access to the counting stations by security forces.

## **4. Preliminary Findings**

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

### **4.1 The Legal Framework for Elections**

The Mission notes that there are several pieces of legislation that govern the conduct of these elections. These include Law No 73 of 1956 Exercise of Political Rights and Law No 38 of 1972 concerning the People's Assembly. The basic requirements for participation by citizens in the electoral process are provided for in Article 1 of Law No 73 of 1956. The Mission noted that several stakeholders raise concern with the provision in Law No 73 of 1956 making it mandatory for voters to cast their vote or face a fine.

In terms of addressing grievances Law No 38 of 1972 makes provision for addressing disputes in the electoral process and a right of appeal for aggrieved persons in regard to the nomination process and validity of the membership of the People's Assembly. However because of the short period between the different rounds of phases, unresolved complaints delayed the announcement of results.

As highlighted in EISA's first interim statement, the quota of at least 50% of elected seats reserved for farmers/workers is inconsistent with the key democratic principle of equality between candidates and EISA reiterates that this be reconsidered in future parliamentary elections. A further area that requires

reconsideration is that the electoral law needs to provide clear rules and mechanisms in regard to party financing. The absence of a Code of Conduct for Political Parties should also be addressed.

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

The current electoral system provides for two-thirds of the 498 seats (332 seats) for the People's Assembly will be elected through the PR system and one-third (166 seats) will be elected through the individual candidacy (IC) system. The country has been divided into 83 IC districts and 46 PR districts, the average size of the People's Assembly multi-member districts is 7.2 seats per district, while the two-member majoritarian districts are much larger in size. Up to 10 seats will be appointed by the Supreme Council of the Armed Forces (SCAF). The electoral law introduced in October 2011 revoked the 64-seat quota for women members of parliament.

A minimum of 50 percent (249) of all PA members must fulfil the worker/farmer quota. On the PR lists, workers/farmers do not need to top the list, but professional candidates cannot be placed consecutively on a list. IC seats from each district must include at least one worker/farmer. Meetings with stakeholders have drawn the Mission's attention to the need for the electoral system to be reviewed and simplified.

#### **4.3 The Election Management**

The Mission notes that the first post-Hosni Mubarak PA elections are organised by a Higher Election Commission controlled by the judiciary rather than by the Ministry of interior. The HEC is chaired by the President of the Cairo of Appeals. The Mission also noted that Egyptian people generally welcomed the judicial supervision of the electoral process because they trust the impartiality and credibility of the judicial.

Voting was extended to 21:00 pm on the first Election Day. The news about the extension arrived late as some polling stations visited received the information either when they were about to close or after they had already closed.

The Mission congratulates the Higher Election Commission for its integrity and dedication to hard-work in the management of these rather complex People's Assembly elections under politically difficult circumstances. While the Mission noted that from phase 1 to phase 2, the polling staff have gained more control of the polling station management, the varying levels of professional amongst election staff needs to be addressed and some procedural aspects need to be improved such as systematic checking on indelible ink, the finger used to apply the ink must be specified for the sake of consistency and the verification of the identity of voters prior to voting.

#### **4.4 Voter Registration**

The Mission was informed that there was no voter registration as such. The Egyptian registration process is based on the National Identification Database. Eligible voters are registered according to their home address listed on their National ID card. Therefore voters were only required to present the ID card to cast their vote. Best electoral practice recommends that voter registration processes should include legislative prescription for sufficient time for the inspection of the voters' roll and easy access of political parties to the voters' roll. Both requirements were not met.

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

In order to operate as legally recognised entities, political parties are required to be registered. Political parties and independent candidates were free to register to compete, provided that they do not use

religious slogans, or discriminate on the basis of gender, language, origin, or religion. The Mission commends the Egyptian political stakeholders for the respect of this provision, even if in some rare cases some candidates' eligibility was challenged due to alleged dual nationality.

The Mission notes the tendency by political parties not to place female and minority candidates in top positions on the PR list. Female candidates have been penalised not only by the removal of the nomination quota, but also by the fact that parties are not required to put them in winnable positions on the lists. These practices are not in line with international and regional best practices for democratic elections to facilitate the election of women candidates.

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

The Mission noted the enthusiasm with which the election campaign was conducted during phase 2. Campaigning took the forms of posters, advertisements on billboards, and other types of outreach. The campaign process took place without major incidents. The issuing of Resolution No (67) of 2011 on 10 December 2011 by the Chairperson of the HEC, contributed to a reduction in overt illegal campaigning which was decried during phase 1. Isolated incidents of illegal campaigning such as display of posters on the walls of polling centres were noted and the Mission urges the HEC to enforce Resolution No. 67 during the next phase.

The Mission received no report of campaign-related incidents of violence perpetrated by supporters of political parties, and witnessed no incident in the areas of deployment. The Mission has an overall positive assessment of the level of peacefulness of the electoral campaign.

Law No. 38/1972 concerning the People's Assembly Elections, amended by Decree Law No. 108/2011, prohibits the use of public funds for campaigning purposes. Although there is a mention of ceiling on campaign expenses in the law, it does not provide for a specific amount. Furthermore, the law prohibits parties from receiving and utilising funds from foreign donors for the purpose of campaign financing. The Mission notes that the law is conspicuously silent on the disclosure of source of campaign funds. The Mission recommends the introduction of relevant legal mechanisms and their enforcement in order to ensure transparent and fair campaign financing.

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

Security forces were visible in phase 2 of the People's Assembly as in the first phase. The military still maintains a large presence on the ground as opposed to the police. In most polling stations visited the military had a noticeable presence at entry of the polling centres and the counting centres. This has contributed to the peaceful atmosphere of the voting day.

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

The provision of civic and voter education is not one of the responsibilities of the HEC according to Law No. 73 of 1956 on Exercise of Political Rights. Most local NGOs met by the Mission did not conduct civic and voter education as such. The Mission was informed that a few political parties have reportedly done door-to-door voter education as well as handing out flyers to voters. Political parties also carried out voter education campaigns through the use of social media such as Twitter and Facebook.

The Mission noted that many voters at polling stations visited displayed a lack of knowledge of voting procedures and were indecisive over whom to vote for. It was also witnessed that the secrecy of the vote was compromised in several instances with voters being encouraged to vote for a particular candidate or

party. The Mission believes that provision of civic and voter education is of greater significance given Egypt's complex electoral system, its illiteracy rate and the fact that many voters cast their vote for the first time in a competitive election.

#### **4.9 Party Agents and Witnesses**

The Mission noted the visible presence of party and candidate agents at polling stations visited. However, a number of smaller political parties complained that they were unable to deploy agents due to the lack of resources. The Mission also noted the efforts of local NGOs to deploy domestic witnesses, though their numbers were limited.

Law No. 73 of 1956 on Exercise of Political Rights confers upon the HEC the power to formulate regulations on the participation of domestic and international civil society organisations in witnessing the electoral process. The Mission commends Egyptian authorities for having allowed international witnesses for the first time in the electoral history of the country. Besides the Electoral Institute for Sustainable Democracy in Africa (EISA), other international organisations such as The Carter Center (TCC), the International Republican Institute (IRI) and the National Democratic Institute (NDI) were granted accreditation by the HEC to witness the elections in 2011 and 2012. The Mission is grateful to the HEC for having accredited EISA election witnesses prior to the start of the first phase of the People's Assembly Elections in November 2011.

Regrettably, the Mission noted that election witnesses, international and domestic witnesses alike, had difficulties accessing polling and counting centres. Security forces were not aware of the presence of international witnesses. As a result, accreditation badges and the invitation letter from the national authorities often required by the security forces, did not serve their purpose. The lack of procedural guidelines did not help the case of witnesses especially when there was no chain of command at the polling and counting centres.

#### **4.10 Gender Representation**

The Mission noted a fair representation of women among the electorate and the polling staff in most polling stations visited. However, there were few female judges. Participation of women as party agents and domestic witnesses was also not highly visible.

The electoral law introduced in October 2011 revoked the 64-seat quota for women members of parliament. Under the new electoral law every party contesting the elections has the legal obligation to field a female candidate on its proportional representation list. The EISA Mission recommends that the law be amended to ensure greater representation of women in decision-making positions.

#### **4.11 Election days**

##### **4.11.1 Polling Stations**

Most polling stations were located at schools. The Mission noted that a number of polling centres and polling stations visited were not accessible to physically challenged voters. The layout and size of some polling stations did not promote the easy flow of voters nor did they ensure secrecy of the vote. The size was further reduced in polling stations where voters queued up inside the polling station.

Article 29 of the Law on Exercise of Political Rights provides for disabled voters to be assisted. The degree of assistance provided to illiterate voters is not provided for and varies from one station to another. The Mission recommends that the law should clearly state the nature of such assistance with a view to limit the manipulation of the voter's choice.

Most polling stations visited opened at the legislated time, 8:00 am. The Mission commends the HEC for having deployed ballot boxes and voting booths to the polling stations on the eve of the first polling day in an effort to avoid delays experienced during the first phase of the People’s Assembly.

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

The HEC used wooden ballot boxes with a glass at the front of the boxes to enable voters and stakeholders to see the ballot papers. The boxes were locked but they were not sealed.

The HEC handed over ballot papers to the judges on the eve of the first Election Day to avoid delays experienced in phase 1. Although security was reportedly not provided for the overnight storage of ballot papers at the judges’ residence, stakeholders expressed confidence in the integrity of judges to safeguard the material overnight. The Mission did not record any shortage of election materials as they were available in adequate quantity in all polling stations visited.

#### **4.11.3 The Voting Process**

Secrecy of the vote was a concern as the Mission witnessed group voting, voting on the ballot box, on the table and against the wall in a number of polling stations visited. Secrecy of the vote was largely undermined because a good number of voters were not familiar with the voting procedure nor did they know who to vote for.

There were consistently no checks on the ink before voters were given ballot papers. The application of the ink was a procedural inconsistency as it was applied on different fingers.

In some stations veiled women were not identified.

#### **4.11.4 Closing, Counting and Tabulation Process**

Most polling stations visited closed at 19:00 pm on the second day of voting. Voters in the queue at the legislated closing time were all allowed to vote on both Election Days. Most polling stations visited followed the closing procedures: ballot boxes were sealed with wax; the slot of the boxes was equally sealed and the minutes of closing were completed. After closing on the first Election Day, ballot boxes were stored overnight at all the polling stations visited under the supervision of the security forces. The Mission witnessed the arrival of ballot boxes at the counting centres. The counting centres lacked a coherent system of receiving the ballots.

The Mission was able to follow the transfer of ballot boxes from the polling centre to the counting centre. The Mission is unfortunately not in a position to make a pronouncement on the counting and tabulation process as EISA election witnesses were denied access to the counting centres. The Mission recommends that consideration be given for future elections for counting to be conducted at the polling station to avoid delays in commencing the count, staff fatigue and to facilitate a smooth reconciliation, counting and tabulation process.

## **5. Recommendations**

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

### **1. The Legal Framework for Elections**

The Mission encourages the enactment of a comprehensive Electoral Law in line with international principles.

## **2. The Electoral System**

In the light of the complexity of the present electoral system, it is clear that a discussion on the most appropriate electoral system for Egypt has not been concluded. The Mission encourages Egyptians to debate during the constitution-making process and reach an agreement on an electoral system that encourages the translation of votes cast into legislative seats. Such debates should pay particular attention to the relationship between the electoral system and the fair representation of women.

## **3. Election Management**

The Mission recommends that in the forthcoming Phase 3 of the People's Assembly elections, Shura Council elections, the presidential elections and the constitutional referendum, due consideration be given to a process of thorough training of electoral staff. With the full judicial supervision of the elections, judges have now become key stakeholders of the electoral process. It is necessary that they be trained in election management and be provided with procedures manual, so as to avoid the procedural inconsistencies witnessed in phase 1 and to a lesser extent during phase 2.

## **4. Stakeholder Dialogue**

The Mission calls upon the HEC and the authorities to create an inclusive dialogue platform between all the stakeholders to favour information sharing, the transparency of the process and the acceptability of the results of elections.

## **5. Electoral Code of Conduct**

A stronger effort should be made in future elections to introduce and enforce a Code of Conduct which can bind political parties and ensure a peaceful atmosphere during election and in the post-election period.

## **6. Registration of Political Parties and Nomination of Candidates**

The Mission strongly recommends that political parties be encouraged by law and through codes of conduct to enshrine internal democratic practices in relation to the selection of candidates. Parties should implement mechanisms aimed at ensuring a meaningful representation of women.

## **7. Political Party and Campaign Finance**

The Mission recommends a review of the electoral law to allow for the inclusion of legal rules on political party finance; and for the provision of public funding for political parties and election campaign. The revised law should state the amount of ceilings on election campaign expenses. Strong enforcement mechanisms should be put in place to ensure compliance with the regulations and to hold accountable violators of the law. In order to encourage transparency and accountability, an audit of the accounts of political parties should be required by law.

## **8. Civic and Voter Education**

For the next elections, the Mission calls upon the HEC to closely work with local NGOs and political parties on civic and voter education in order to ensure consistency in quality and balanced geographical provision of civic and voter education. The Mission encourages local NGOs to be more involved in civic and voter education. A systematic and robust approach to civic and voter education will be critical in developing a culture of participative democracy.

## **9. Gender Representation**

The Mission strongly recommends legal reforms and consideration of mechanisms to ensure the election of female representatives from both the party and individual candidate lists, by compelling political parties to not just field female candidates but to place them in winnable positions.

## **10. Polling Stations**

The Mission recommends that due consideration be given to the question of accessibility of polling centres and stations to physically challenged voters to guarantee that all eligible voters stand an equal chance to cast their vote.

The Mission also suggests that the HEC takes the size of polling stations into account to avoid congestion. Easy layout will contribute to better placement of voting booths and to safeguarding the secrecy of the vote and to ensure easy flow of the electorate and to make room for party agents, domestic and international witnesses for greater transparency.

## **11. Ballot Papers, Ballot Boxes and Election Material**

The Mission calls upon judges and polling officials to be firmer and stricter towards voters' regarding the importance of using the voting booths to ensure secrecy of the vote.

The Mission strongly recommends that the HEC opts for transparent ballot boxes and the use of seals for greater security of the ballot papers.

## **12. The Voting Process**

The Mission strongly recommends the development of procedural guidelines for polling and counting officials to address the question of procedural inconsistencies and ensure harmonisation in the execution of tasks. Thus, the Mission also suggests that polling officials attend orientation workshops on voting and counting procedures

The Mission strongly recommends the assignment of female polling officials to women and mixed polling stations to ensure that fully veiled women are appropriately identified.

Because of the extension of voting during the first two phases, the Mission suggests that the HEC officially announces beforehand the extension of voting for the final phase of the People's Assembly Elections to avoid last minute improvisations.

## **13. The Counting Process**

For the next phase onwards, the Mission appeals to the HEC to provide a set of procedural guidelines to the security forces on the presence of international witnesses at the counting centre.

The Mission strongly recommends to the HEC that the vote count be conducted at every polling station in order to do away with logistical challenges related to the transfer of election materials, the transportation of polling officials and as one of the solutions to the question of access of international witnesses and domestic witnesses. Should counting continue to be conducted at counting centres the Mission recommends that additional staff be made available to ensure adequate procedures are in place for ballot reconciliation.

## 6. Conclusion

At the time of the release of this statement, the tabulation and announcement of results were still in progress. Our conclusion on the conduct of the first round of the second phase of the People's Assembly Elections is restricted to the witnessing period up to 19 December 2011. Based on its findings and the guidelines enshrined in the PEMMO, the AU Guidelines and the Declaration of Principles on International Election Observation, the EISA Election Witnessing Mission concludes that the first round of the second phase of the People's Assembly Elections held on 14-15 December 2011 in nine governorates in Egypt were conducted in a manner that allowed the active participation of Egyptians from these governorates in this election. The Mission trusts that the announcement of results will be conducted in a peaceful manner to ensure that the final outcome reflects the choice of these Egyptian voters. The Mission appeals to the people, all political parties and candidates to remain calm until the declaration of the results, and to use legal means to resolve any disputes related to the elections.

The EISA Election Witnessing Mission is grateful to the people of the Arab Republic of Egypt for the warmth and hospitality extended to our teams. The Mission acknowledges and appreciates the courteous and friendly manner in which the Ministry of Foreign Affairs and the Supreme Judicial Commission for Elections assisted its teams.

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### **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 and Sudan, a reflection of its broader geographical mandate.*

*The Mission is based at the Tower Meeting at the Novotel Hotel El Borg, Zamalek, Cairo. For further information about the Mission, please contact Mr. Justin Doua, the Field Director, who can be reached on +201014587159 or email: [justin@eisa.org.za](mailto:justin@eisa.org.za)*