



## **PRESIDENTIAL ELECTION ADMINISTERED IN LINE WITH THE LAW, IN AN ENVIRONMENT FALLING SHORT OF CONSTITUTIONAL PRINCIPLES**

### **PRELIMINARY STATEMENT**

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#### **INTRODUCTION**

**Cairo, 29 May 2014.** Following an invitation from the authorities of the Arab Republic of Egypt to observe the presidential election of 26 and 27 May, the European Union (EU) deployed an Election Observation Mission (EOM) led by Chief Observer Mario David, Member of the European Parliament (MEP) from Portugal. A Delegation of the European Parliament headed by Robert Goebbels, MEP from Luxembourg, joined the EU EOM to observe election day procedures.

This Preliminary Statement is issued prior to the completion of the tabulation of results, consideration of possible post-election electoral disputes and announcement of the final results. The EU EOM will publish a final report after the conclusion of the electoral process. The final report will include possible recommendations for the improvement of future elections, offered for consideration to the authorities and other stakeholders.

Due to cumulative administrative requirements to release from customs essential equipment, the 30 EU EOM long-term observers were deployed only on 21 May, after more than three weeks in Egypt. As a result, the EU EOM was not in a position to deliver its long term observation mandate in full.

The EU EOM extends its appreciation to the Ministry of Foreign Affairs and to the Presidential Election Committee (PEC) of the Arab Republic of Egypt for their cooperation. The EU EOM is grateful to the EU Delegation to Egypt and the EU Member States' diplomatic missions resident in Cairo for their support.

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#### **EXECUTIVE SUMMARY**

The 26 and 27 May 2014 presidential election constitutes the second phase of the roadmap decreed by Interim President Mansour on 8 July 2013, as part of the constitutional declaration. While broad support for the roadmap is enduring, based on the widely shared belief that stability should be a priority, opposition to the roadmap or to the environment in which it is implemented has resulted in the non-participation of some stakeholders. This undermined universal participation in the election.

While the new Constitution sets out a wide-ranging catalogue of fundamental rights, the respect for these rights falls short of these constitutional principles. Freedoms of association, assembly and expression are areas of concern, including in the context of this election. It is to be seen whether measures will be taken by the newly elected authorities to craft the legislation that will put the new constitution into legal practice. The PEL does not provide for an appeal against administrative decisions of the PEC and the absence of the right of appeal appears to challenge Article 97 of the 2014 Constitution.

With limited space for dissenting voices and activities of civil society organisations (CSO) often restricted or harassed, scattered protests by diverse groups continue. Reports on the response of law enforcement authorities attest to the disproportionate use of force. Acts of violence persist,



often targeting law enforcement personnel, although election related violence was limited during the pre-electoral period.

Two recent rulings in mass trials recommended the death penalty for hundreds of persons, in clear violation of international human rights law, raising serious concerns with regard to the respect for due process and the right to a fair trial. The authorities hold the view that expressing opinions on such cases would affect the independence of the judiciary.

Candidate Al Sisi's tightly controlled public profile and the limited resources of candidate Sabahi's campaign have impacted on the ability of both campaigns to reach out to voters. In addition to public rallies, both candidates engaged significantly on mass and social media and in public advertising.

The potential to achieve a level playing field for the campaign was prejudiced by insufficient regulation of campaign finance. There was evidence that third parties were contributing outside of the spending limits set by the PEC. The dominant visibility of the poster campaign of candidate Al Sisi illustrated that this lack of regulation operated in his favour.

The public media monitored gave approximately equal coverage to both candidates, but private media provided candidate Al Sisi with more than twice the coverage provided to candidate Sabahi. Stakeholders opposed to the roadmap received no media coverage.

There was a general climate of limited freedom of expression, reportedly resulting also in self-censorship of journalists. The imprisonment of four Al Jazeera journalists and the detention of others without charge contributed to fear of a perceived decline in freedom of the media amongst journalists.

As an element of a transitional legal framework, the PEL offered an adequate basis for the conduct of the presidential election, although it fell short of full compliance with applicable international standards for democratic elections in some respects. Notably, the right to vote<sup>1</sup> and the right to stand<sup>2</sup> for all citizens are not fully protected by the current legal framework.

The presidential election was administered by a three-tier election administration comprising the PEC, 352 District Committees and 13,899 polling stations. Electoral logistics were run by the Ministry of Interior. Legal deadlines were met by both institutions. The PEC accredited 80 domestic and six international CSO, and 5 intergovernmental missions to observe the election.

While the PEC administered the election professionally and overall in line with the law, in the late afternoon on 27 May, it decided to extend voting for a third day, contrary to earlier statements. This unpredictable act of the PEC, while not against the law, caused unnecessary

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<sup>1</sup> For citizens in pre-trial detention, naturalised citizens of less than five years duration, first time voters who turn 18 between the date of calling the election and election day, military and law enforcement personnel and citizens without identification documents.

<sup>2</sup> Most importantly, for citizens without high education and for those having a parent or spouse who hold or have held another 'nationality'.



uncertainty in the electoral process. Both candidates appealed against the extension and both appeals were expeditiously rejected.

Women have been severely underrepresented in public office, with just 1.8 per cent women in the last parliament and less than one per cent female judges. An estimated 5 million women were not included in the voter list and effectively disenfranchised due to their lack of identification documents. The coverage of women was less than 2 per cent in all the media monitored thus ignoring approximately half of the electorate. Religious communities and ethnic minorities are underrepresented as well, with minimal redress in the Constitution for this imbalance. The drafting of the new law on parliamentary elections could provide an adequate opportunity to address these concerns.

Election days proceeded in a peaceful and calm manner across the governorates overall. Following three days of voting, the PEC informed the EU EOM that voter turnout was at 47.3 per cent at the time of writing. The voting and counting process was orderly and well organised in most of polling stations and District Committees observed, with only minor procedural problems and a limited number of violations noted by the EU EOM observers.

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## PRELIMINARY FINDINGS

### Political Context

The 26 and 27 May 2014 presidential election constitutes the second phase of the roadmap decreed by Interim President Mansour on 8 July 2013, as part of the constitutional declaration. While broad support for the roadmap is enduring, based on the widely shared belief that stability should be a priority, opposition to the roadmap or to the environment in which it is implemented has resulted in the non-participation of some stakeholders, thus undermining universal participation in the election

With limited space for dissenting voices, and with activities of civil society organisations (CSO) often restricted or harassed<sup>3</sup>, scattered protests by diverse groups continue. Reports attest to the disproportionate use of force in the response of law enforcement authorities.<sup>4</sup> Acts of violence persist, often targeting law enforcement personnel, in spite of a wide effort by the authorities to curb militant attacks. Draft counterterrorism legislation potentially offers increased powers of suppression to the authorities.

While the new Constitution sets out a wide-ranging catalogue of fundamental rights, the respect for rights falls short of constitutional principles. Freedoms of association, assembly and expression are areas of particular concern. Freedom of assembly is undermined by the Protest Law<sup>5</sup>, particularly as regards the extensive powers to suppress gatherings by force, the severe penalties which apply under it, and its implementation, which has resulted in widespread

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<sup>3</sup> In the immediate run up to the election, the banning of the 6 April movement on 28 April and the raid on the Egyptian Centre for Economic and Social Rights on 22 May underscored this concern.

<sup>4</sup> For example, the 17 March 2014 Report by the National Council for Human Rights, available at <http://www.almasryalyoum.com/news/details/412470>.

<sup>5</sup> Law for Organising the Right to Peaceful Public Meetings, Processions & Protest, Law 107 of 2013.



detentions. Prosecutions continue, with heavy sentences imposed in an expedited manner even upon those peacefully expressing their views. Public uncertainty about the number of persons in detention is conducive to the perception that human rights are repressed. It is to be seen whether measures will be taken by the newly elected authorities in crafting the legislation that will put the new constitution into legal practice.

Two El Minya court rulings in mass trials in March and April 2014, which recommended the imposition of the death penalty on hundreds of persons, were in clear violation of international human rights law, and gave rise to serious concerns with regard to the respect for due process and the right to a fair trial. The authorities hold the view that expressing opinions on such cases would affect the independence of the judiciary.

## Legal Framework

The legal framework regulating the presidential election is of a transitional nature. While it constitutes an adequate basis for the conduct of these elections overall, it falls short of applicable international and regional standards for democratic elections in some respects. In addition to the 2014 Constitution, key legislation includes the 2014 Presidential Elections Law (PEL) and the 1956 Law on the Exercise of Political Rights (LEPR) as amended. A number of other laws have significance for the exercise of civil and political rights.

The right to stand for election is circumscribed by a number of constitutional and legislative provisions, contrary to Article 25 of the International Covenant on Civil and Political Rights (ICCPR), including disqualification from candidacy on the basis of origin and education.<sup>6</sup>

The exclusion from the right to vote of naturalised citizens of less than five years standing is not compatible with Egypt's international commitments, nor is the denial of voting opportunities, for eligible voters in detention.<sup>7</sup> Military and law enforcement personnel are 'exempted' from the right to vote, with the effect that they do not participate in elections while in active service.<sup>8</sup>

In the absence of a specific provision enabling all citizens who turned 18 up to and including on the election days,<sup>9</sup> voters turning 18 between the calling for the election and election days are not added to the voter register and are therefore disenfranchised<sup>10</sup>.

The EU EOM was informed by the authorities that there were some 5 million women and 375,000 men without IDs, or persons even without birth certificates, who were unable to vote. While citizens are legally obliged to have state issued IDs at the age of 16, the absence of such a

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<sup>6</sup> Candidate qualifications included obtaining of the support of no less than 25,000 registered voters, through duly notarised signatures, comprised of at least 1,000 such supports from no less than 15 of Egypt's 27 governorates. Additional conditions required candidates to undergo a medical examination, hold higher education and not to have a parent or spouse who has or held another nationality.

<sup>7</sup> Law 'On the Exercise of Political Rights', Articles 1, 2 and 3, and Article 25 of the International Covenant on Civil and Political Rights and General Comment 25, Paragraphs 10 and 14.

<sup>8</sup> Article 1 of Law 73/1956.

<sup>9</sup> LEPR Article 1.

<sup>10</sup> The official number of such citizens was not available.



significant number of citizens from the voter register suggests that the state could have been more proactive in facilitating citizens to fulfill their legal obligation.

The PEL does not achieve a transparent complaints and appeals process and the legal provisions regulating campaign finance are inadequate.

## Election Administration

The presidential election was administered by a three-tier election administration comprising the PEC,<sup>11</sup> 353 District Committees, one of which was responsible for the out-of-country voting (OCV), and 13,899 polling stations working only from the day before the election until the completion of the vote count. Legal enactments were issued in a timely manner and preparations for the presidential vote were performed efficiently.

The PEC issued 34 decrees<sup>12</sup> regulating various aspects of the electoral process. It also published guidelines for voting, counting and aggregation of results. All these decrees and guidelines were promptly published on its website. The PEC usefully translated its decrees and other documents into English in a timely manner. While voter information was broadly available, there was limited evidence of voter education and a lack of training sessions for polling station and district committee non-judicial members.

Egypt implements a 'passive' voter registration system, extracting the voter register from the national identification documents (ID) database maintained by the Ministry of the Interior. A PEC working group updates the voter register when an election is called. First time voters were added to voter register, while citizens who had their right to vote restricted<sup>13</sup> were excluded and the names of the deceased were deleted. The voter register was concluded on 30 March 2014 when the election was called, with a total number of 53,909,306 registered voters.

Electoral logistics were run by the Ministry of the Interior under the supervision of the PEC. In order to guarantee the integrity of the vote, ballot papers with high standard security features were printed under conditions of strict security. The number of ballot papers printed was equal to the number of voters included in the voter register.

On 20 May, the OCV District Committee announced the OCV results, approximately a week before the voters in Egypt would cast their ballots. While this action was in line with the legal provisions, it may have impacted on voters' decision and participation.

While the PEC administered the election professionally and overall in line with the law, in the late afternoon on 27 May, it decided to extend voting for a third day contrary to its earlier statement of 26 May that voting would not be extended. This unpredictable act of the PEC, while

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<sup>11</sup> PEL Article 3; the PEC is an independent body supervising all aspects of the presidential election. Its President and the Members are among the most senior judges of Egypt and are holding their positions at the PEC *ex officio*.

<sup>12</sup> [www.elections.eg](http://www.elections.eg).

<sup>13</sup> LEPR Article 2 - 4.



not against the law, caused unnecessary uncertainty in the electoral process with regard, *inter alia*, to potential procedural and logistical implications. Both candidates appealed against the extension and both appeals were expeditiously rejected. In addition, on 27 May, a representative of the PEC stated to the media that fines for voters who do not vote would be enforced as provided for by the PEL. The extended voting period combined with the above statement could be perceived as an attempt to boost turnout while voting was still on-going.

## Candidate Registration and Campaign

By the end of the registration period,<sup>14</sup> the PEC had registered two candidates, the former head of Egypt's armed forces Abdel Fatah Al Sisi and veteran Nasserist politician Hamdeen Sabahi, on the basis, respectively, of 188,930 and 31,555 valid endorsements.<sup>15</sup>

Al Sisi's tightly controlled public profile and the limited resources of the Sabahi campaign have impacted on the ability of both campaigns to reach out to voters to the extent that they might have wished. In addition to public rallies, both candidates engaged significantly on mass and social media and in public advertising. The EU EOM observed 12 campaign rallies.

EU EOM observers were not in a position to follow most part of the campaign outside Cairo. In the capital, the campaign was largely calm and peaceful, with only a few isolated incidents, which had a limited impact. Due to a combination of heavy security presence and legal regulations, the campaign environment was one of curtailed opposition demonstrations.

The late issuing of formal electoral programmes did not prevent the candidates from pursuing their respective campaigns. Both candidates stressed their adherence to campaign rules. The potential to achieve a level playing field for the campaign was prejudiced by insufficient campaign finance regulation, particularly in circumstances where there was evidence that third parties were contributing outside of the spending limits set by the PEC. The dominant visibility of the poster campaign of candidate Al Sisi illustrated that this lack of regulation operated in his favour.

## Media

The media legal framework for this presidential election is comprised in the 2014 Constitution, the PEL and PEC Decree 15. While the Constitution provides for a transition from the previously existing media regulatory framework to a new one, the PEC was vested with the regulation of the state media and the press, as well as media accreditation for the coverage of the presidential election.

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<sup>14</sup> From 31 March to 20 April.

<sup>15</sup> An aspiring candidate filed a case with the State Council, following a decision by the Ministry of Health to shorten the time frame for candidates' medical examination which prevented the candidate from completing his application. The PEC did not challenge the Ministry's decision and the State Council is yet to adjudicate on the case. Two other aspiring candidates made public their intention to run, but did not submit their final applications to the PEC.





A Media Monitoring Committee (MMC) was established by the Ministry of Information on 23 April 2014 to monitor the compliance of electronic media with PEC regulations to report in a balanced and neutral manner on the campaigns of candidates. The MMC did not have the authority to sanction media for non-compliance. Media outlets found responsible for possible violation of the PEC regulations were merely informed about the infringement.

Against this background, according to the EU EOM media monitoring conducted from 3 to 23 May<sup>16</sup>, the election was presented as a major event and received extensive coverage. The two candidates were allocated about half of the time and space in the vast majority of the media monitored and dominated news programmes, talk shows and other broadcasts. Major channels interviewed both candidates, and state and private media were mostly neutral in their coverage of the campaign, but less so in direct interviews.

In accordance with the PEL, the state media monitored provided approximately equal coverage to both candidates. However, in the private media, Al Sisi received more than twice the coverage when compared to Sabahi. The coverage of women was less than 2 per cent in all the media monitored. This assessment is illustrated by Table 1. There was an absence of media sympathetic to those in opposition to the roadmap whose opinions have not been covered by the media monitored, broadcasting from within Egypt.

**Table 1**

Candidate	Al Sisi				Sabahi			
	Total	Positive	Neutral	Negative	Total	Positive	Neutral	Negative
Chanel One	57	14	86	0	43	1	99	0
Radio Masr	49	2	98	0	51	0	100	0
Al Ahram	63	10	90	0	37	2	96	2
ONTV	58	7	93	0	42	0	97	3
CBC	73	17	83	0	27	0	99	1
Al Hayat TV	72	5	95	0	28	0	97	3
Al Masry Al Youm	73	13	85	2	27	12	84	4
Youm 7	69	2	98	0	31	0	91	9
Al Shorouk	81	2	98	0	19	15	83	2
Al Arabiya	49	0	100	0	51	0	100	0
Skynews Arabia	53	0	100	0	47	0	100	0
Al Jazeera Mubasher Misr	87	1	48	51	13	0	84	16

Despite the lack of comprehensive media regulation, the EU EOM assessed a general climate of limited freedom of expression, reportedly resulting also in self-censorship of journalists. The

<sup>16</sup> The sample monitoring daily during primetime included the state-owned Chanel One TV, Radio Masrh and Al Ahram newspaper, as well as the private media ONTV, CBC, Al Hayat TV, Al Masry Al Youm newspaper, Al Shorouk newspaper, Youm 7 website and the satellite channels Al Arabiya, Skynews Arabia and Al Jazeera Mubasher Misr.



imprisonment of four Al Jazeera journalists and the detention of others without charge<sup>17</sup> contributed to fear of a perceived declining freedom of the media amongst journalists.

EU EOM media monitoring carried out on 24 and 25 of May showed that several state and private channels breached the campaign silence period by broadcasting songs and favorable commentary in support of candidate Al Sisi. Newspapers also dedicated numerous editorial columns, during this period, to personalities who encouraged voters to vote for candidate Al Sisi, while describing the candidate Sabahi as the inevitable loser of the presidential election.

### **Electoral Disputes**

The PEL does not provide for an appeal against administrative decisions of the PEC and the absence of the right of appeal appears to challenge Article 97 of the 2014 Constitution.

The PEC has addressed at least three alleged breaches of campaign rules by both campaigns, with no further action taken. At least two cases were filed before the State Council in matters pertaining respectively to the electoral law and candidacy qualifications.

### **Participation of Women, Minorities and Persons with Disabilities**

Women have historically been significantly underrepresented in public office in Egypt, with just 1.8 per cent of the membership of the last parliament. Less than one per cent of the judges are women and therefore, only a very limited number of women served as polling station chairpersons. The absence of a female candidate in this election reinforces these concerns. The principal barriers to female participation in elected office are the absence of tangible political initiatives to promote women, traditional cultural attitudes and the lack of financial resources on the part of potential female aspirants.

While the Constitution mandates fair representation of the population through the electoral system, it is uncertain how the enhanced participation of women and religious communities and ethnic minorities in political life will be implemented.

The Constitution specifically obliges the state to ensure political rights of persons with disabilities, but the absence of tactile ballot papers disrespected privacy rights of voters with visual impairments.

The drafting of the new law on parliamentary elections could provide an adequate opportunity to address these concerns.

### **Election Observation**

The PEC accredited 80 domestic and six international CSOs to observe the presidential elections.

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<sup>17</sup> The Cairo Criminal Court denied bail for the detained including the Al Jazeera correspondent, Abdullah El Shamy, who has been held without charge and has been on hunger strike for more than one hundred days.





In addition to the EU EOM, four intergovernmental organisations, namely the African Union, the League of Arab States, the Common Market for East and South Africa, and L' Organisation pour la Francophonie also deployed observation missions. The EU EOM was notified by the PEC that the application of 32 domestic and seven international CSOs to observe were rejected.<sup>18</sup> Accredited domestic CSOs informed the EU EOM about the administrative burden for domestic observation stemming from requirements for individual accreditation. The PEC informed the EU EOM that it accredited 15,204 domestic observers and that 1,518 applications for individual accreditation were rejected on technical grounds.<sup>19</sup> While the PEC maintained that all individual permits were issued on time, the EU EOM was informed by a number of domestic CSOs that the permits were issued to them between 1-3 days beyond the 20 May deadline.

### **Election Day**

In total, 143 observations were made by EU EOM observers during the opening of the polling stations (PS) for the three days of voting. Observed polling stations opened on time or with a short delay. Observers generally assessed the overall conduct of opening procedures as “good” or “very good”.

EU EOM observers made 1,389 observations during voting hours of all three election days. The overall conduct of the voting was generally assessed as “good” or “very good” by observers, despite minor procedural infractions reported. Observers generally assessed that voters had a “good” or “very good” understanding of voting procedures and that PS staff performance was likewise “good” or “very good”. Observers generally reported the absence of long lines of voters and overcrowding and that there was no tension or unrest in the vicinity of observed PS. Candidate representatives for el-Sisi and Sabahi were present in 70 per cent and 30 per cent of observed PS respectively. International and CSO observers were present in 15 per cent of observed PS.

Most PS observed closed on time or soon thereafter. Closing was assessed positively in a large majority of PS observed, even though minor procedural errors were witnessed in a limited number of these. The late decision to extend voting by one day did not appear to affect the work of the PS, according to EU EOM observers. Altogether, 39 observations of counting procedures at the end of the third voting day were reported by 06.30 on 29 May. Observers assessed the conduct of the counting as “good” or “very good” in 29 of these.<sup>20</sup>

The general impression of the EU EOM observers was that military and law enforcement personnel respected PEC guidelines. Out of a total of 1,694 visits to polling stations,

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<sup>18</sup> Reasons for denial of accreditation to these CSOs included failure to register in line with the legal requirements, lack of former experience in election observation, and a lack of good reputation and a proven record of impartiality and integrity.

<sup>19</sup> Reasons for denial of accreditation to these individuals included mismatch of photograph and the photograph on the ID or bad quality photograph, mismatch between the personal data on the ID and the data submitted, and incomplete scan of the ID.

<sup>20</sup> This number includes one PS that started to count while voting was still on-going. It also includes a few PS that counted only invalid votes and votes for candidate Sabahi, and then calculated the number of votes for Al Sisi.



unauthorised presence of such personnel was reported in 77 and 63 cases, respectively. In addition, observers noted that PS were not accessible for voters with disabilities in more than a quarter of PS visited. Out of 1,694 visits to PS, observers reported that their observation activities were restricted in 30 visits. Secrecy of the vote could have been undermined in 23 observations and ballot box stuffing was noted in four cases. On election days in some governorates a number of journalists were reportedly obstructed in their work, arrested and detained while covering the polling.

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### ***Mission Information***

*The Ministry of Foreign Affairs and the PEC of the Arab Republic of Egypt signed Memoranda of Understanding with the EU Delegation to Egypt, on 13 and 14 April 2014, on behalf of the EU with regard to the modalities for election observation, in line with EU election observation methodology.. The European Union Election Observation Mission (EU EOM) was deployed to the Arab Republic of Egypt on 18 April 2014 following an invitation from the Government and the Presidential Election Committee. In total, the EU EOM deployed over 150 observers from all 28 EU Member States, Canada and Norway across the governorates to assess the entire electoral process in accordance with international and regional commitments for democratic elections as well as the laws of the Arab Republic of Egypt. The Delegation of Members of the European Parliament endorses this Preliminary Statement. The EU EOM is independent in its findings and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005.*

*On election day, observers visited over 1,694 polling stations in 26 governorates in the Arab Republic of Egypt to observe voting, counting and tabulation of results. The EU EOM will remain in Egypt until the completion of the electoral process. The mission wishes to express its appreciation to the representatives of the Egyptian authorities, political parties and civil society, and the people of Egypt for their cooperation in the course of the observation.*