



EUROPEAN UNION



Election Assessment Team

General National Congress Election, Libya 2012

PRELIMINARY STATEMENT

Historic elections lay foundation for democratic development of Libya

Tripoli, 9 July 2012

*Following an invitation from the **Government of Libya** to assess the General National Congress Election on 7 July 2012, the European Union Election Assessment Team (EU EAT) was established in Libya on 8 June 2012. The Head of the EU EAT is **Mr. Alexander Graf Lambsdorff**, Member of the European Parliament. A total of 21 election experts from 19 Member States of the European Union, were deployed to assess the electoral process and legal framework against international standards for democratic elections and the laws of Libya, in accordance with EU methodology and 'The Declaration of Principles for International Observers' adopted under the auspices of the United Nations in October 2005. Our Team has assessed the opening, voting, closing and the beginning of the counting process.*

The EU EAT will remain in the country to assess post-electoral developments. Within two months of the conclusion of the process, a Final Report will be made public, offering the Team's detailed evaluation of the elections and including recommendations towards improvements for future elections. The EU EAT is independent in its findings and conclusions.

Preliminary Findings

EXECUTIVE SUMMARY

- Libya has endured a 42-year dictatorial regime forbidding all forms of independent political activity. The Constitutional Declaration of 3 August 2011 mandates the National Transitional Council (NTC) to organise general elections on 19 of June, which were later postponed to 7 July 2012.
- A total of 2,501 independent candidates and 1,206 candidates on the political entities' lists were registered. Among them, 85 of the independent candidates and 540 of the candidates on the lists were women.
- A number of violent incidents, which occurred before and during election day, including attacks on election premises and the destruction of sensitive election materials such as ballots papers, were intended to disrupt the election in Benghazi, Tobrouk, and in Ajdabiya districts. The HNEC showed competence and determination in quickly responding to these security challenges and was able to guarantee the functioning of the polling centres in the affected areas.

- As a move towards appeasing the tensions over federalist claims in Cyrenaica, the NTC changed the appointment procedure of the constitution drafting committee just two days before the election. Instead of being appointed by the General National Congress, the committee would be elected directly by Libyan voters. This new procedure which demands a new round of elections could delay the adoption of the next constitution.
- The legal framework is conducive to democratic elections, albeit that it includes only basic provisions. However, numerous *ad hoc* regulations were introduced to address the existing loopholes in the law and to clarify ambiguities. This resulted in a high level of fragmentation of the electoral framework and undermined legal certainty.
- The High National Election Commission (HNEC) administered the election in a professional and resolute manner, aiming at guaranteeing the universal suffrage to more than 2,800,000 registered voters. The HNEC showed confidence and considerable openness in the conduct of the election preparations. The EU EAT assessed the performance of the election administration at the local level as efficient, prepared and well organised.
- Voter registration conducted in May in all 13 districts captured on average 78 per cent of the approximate estimate of 3.5 million eligible voters. Special registration centres were made available for internally displaced persons (IDPs) in six districts, mainly for the IDPs from the Tuwargah area. Out-of-Country Voting was prepared in six countries, starting on the 3 until the 7 July. Countries, such as Egypt and Tunisia, where a large community of Libyans are living, were not included.
- Campaign regulations were in line with international standards. The campaign officially started on 18 June and ended on 5 July at midnight. The environment during the run up to election day was defined by a calm and an uneventful campaign and with the absence of confrontational speech.
- Freedom of expression was generally respected. The media were actively promoting voters' participation in polls and the voting procedures. The State media by and large adhered to the legal framework, but their role in providing voters with sufficient information to make an informed choice was partially reduced as their editorial coverage of elections was limited and only a small number of contenders used the state media to address the voters.
- The expedited deadlines foreseen for the consideration of election complaints raise doubts as to the adequate respect for the principles of due process and effective guarantee of the protection of suffrage rights. Nevertheless, the courts have so far given due consideration to the complaints and appeals and adjudicated them in an overall impartial, albeit not always systematic, manner.
- Although the law provides a sound basis for the participation of women in the electoral process, societal, religious, economic and cultural factors compromise women's ability to run as candidates on an equal footing with men.
- Election day unfolded in a festive atmosphere, and, overall the EU EAT rated the process as either "very good" or "good" in all 123 polling stations that were visited. Polling stations procedures were assessed to have been applied evenly and polling staff were eager to perform well.

POLITICAL CONTEXT

Having just emerged from a long and oppressive regime, Libya is undergoing a political transition. The Constitutional Declaration on 3 August 2011 mandates the National Transitional Council (NTC) to organise general elections on 19 June, which were later postponed to 7 July 2012.

Out of the 142 registered political entities, 125 competed for the 200 seats of the General National Congress (GNC), along with 2501 independent candidates. The newly elected interim legislative assembly will appoint a Prime Minister, who in turn shall nominate the members of his cabinet, provided that all of them receive the confidence of the General National Congress prior to undertaking their duties. The GNC was also supposed to appoint the constitution drafting committee; however, just two days before the election itself, the NTC modified the procedure. Instead of being appointed by the GNC, the committee would be elected directly by Libyan voters. This last minute change was a move towards appeasing the tensions over federalist claims that had led to violence in Cyrenaica. This new procedure involving a new round of election could delay the adoption of the next constitution. While it might have created confusion, this change did not have any impact on the election.

In spite of a very competitive campaign, the environment during the run up to election day was defined by an uneventful campaign and the absence of confrontational speech. The main issues at stake between the parties and individuals competing in the election concerned the role of religion in the State, the revolutionary credentials of candidates and the geographical representation in the future GNC. The last campaign week was dominated by claims over unequal distribution of seats and the armed conflict in Al Kufra.

LEGAL FRAMEWORK

Overall, the constitutional and legal framework, albeit including only basic provisions, is in line with international standards and best practices, thus providing an adequate basis for the conduct of democratic elections. Libya has ratified the International Covenant for Civil and Political Rights (ICCPR) which is the main source of international legal rights in relation to elections, as well as other international and regional legal instruments.

The numerous *ad hoc* regulations introduced by the HNEC attempted to considerably supplement the inconclusive provisions and clarify the various ambiguities contained in the electoral legislation. Nonetheless, the adoption of such a large number of regulations even a few days before the polling resulted in a high level of fragmentation of the electoral framework and undermined legal certainty. Moreover, this allocated a wide legislative authority to an administrative body acquiring *de facto* a quasi-judicial status.

For the purpose of administering the elections, the country is divided into 13 districts and 73 constituencies. The Election law stipulates that constituency delimitation is based on population and geography criteria. However, there appeared to be a certain lack of transparency in the manner in which electoral units were drawn up. The adoption of a mixed electoral system, that was not easy to comprehend both by the electorate and the contestants, added to the complexity of these first generation elections.

ELECTION ADMINISTRATION

The HNEC organised the elections to the GNC in five months and its 13 district commissions were made operational three months before election day. The HNEC has, so far, acted with impartiality, resolve and in a professional manner. It has demonstrated competence in planning for key stages of the electoral process and this has been reflected in its delivery and organisational preparations.

A well-designed electoral calendar, and the decision to postpone the election on 7 July, ensured that logistic and technical deployment of material into district centres was carried out in advance of polling. The production of ballot papers, which was particularly complex due to the electoral system and the combination of individual candidate and entity's lists, was managed with professionalism and efficiency. However, despite HNEC's efforts to introduce a fitting degree of transparency with the promotion of an open public outreach and public relations policy, key confidence building measures such as stakeholder meetings and a more inclusive environment for the administration of elections were found to be lacking.

In all, 1,453 polling centres (PC) were operational in Libya on election day, including dedicated polling stations (PS) for internally displaced persons in five districts and additional out of country voting in six countries. National observers, entity and individual candidate agents were given access to observe the polling and counting procedures.

Localised violent incidents in the eastern region, before and during election day, did not impact the HNEC's resolve to operate polling stations, nor the voters' determination to exercise the right to freely participate in the vote.

VOTER REGISTRATION

The HNEC conducted a successful active voter registration exercise in May, capturing a total of 2,800,000 voters, out of an approximate estimate of 3.5 million eligible citizens. The registration turnout was high, with 78 per cent on average in all 13 districts. Generally, documentary requisites of citizenship were adequate, and there appears to be a broad confidence in the integrity of the voter register. However, corrections were made in Al-Kufra district (see under Complaints and Appeals).

CIVIC EDUCATION

The HNEC is mandated to conduct a comprehensive civic education campaign, more so in view of the complex electoral system in Libya. Overall, voters and candidates received insufficient information on the electoral framework. It is important to also take into account that information about polling procedures was disseminated before election day. Civil society organisations were also active in delivering voter and civic education prior to election.

REGISTRATION OF CANDIDATES

Legal requirements to stand for elections are objective and reasonable according to international standards. The registration period for candidates, announced 48 hours before its opening, did not leave enough time for entities and candidates to prepare all required documentation. It was announced in a manner that did not allow stakeholders to be informed efficiently. In general, communication between HNEC and political stakeholders lacked efficiency.

The registration of lists and individual candidates initially opened from the 1 to the 8 of May. That deadline was subsequently extended to the 15 of May, in order to accommodate the demands of political entities for a longer registration period. To stand for elections, candidates were required to meet the standards and regulations of national integrity validated by the High Commission for Transparency and Patriotism Standards. The objective of this vetting committee was to prevent former regime members to stand for elections. The independence and impartiality of this vetting process was guaranteed by a right to appeal to the judiciary. The criteria used by the committee were objective and reasonable. Its work has been overall perceived as effective and transparent. At the end of the vetting process, a total of 163 candidates had been disqualified while 53 candidates' petitions against the decisions of the High Commission for Integrity and Patriotism Standards were upheld by the Primary courts.

A total of 2,501 individual candidates and 1,206 candidates on the political entities' lists were registered. Among them, 85 of the individual candidates and 540 of the candidates on the lists were women. The higher representation of women on the candidates' lists is the consequence of the legal obligation to alternate men and women horizontally and vertically on the lists. However, the very low number of women who were individual candidates reflects the limited inclusion in the political sphere of women where quotas are not required.

In terms of number of candidatures submitted, four parties were considered as main contestants. The Alliance of National Forces, of Mahmoud Jibril who was a former chairman of NTC executive office, the Justice and Construction Party, which is the political branch of the Muslim Brotherhood, Al Watan, also based on an Islamist ideology, and finally the National Front party, which is the longest serving anti-Qadhafi party but is hindered by a 30 year absence from the country.

ELECTORAL CAMPAIGN

Campaign regulations were globally in line with international standards. The campaign officially started on 18 June and ended on 5 July at midnight to comply with the prohibition of campaigning for the 24 hours before polling day.

The campaign was generally low key and remained relatively peaceful, with the exception of Benghazi city. On 13 May, Dr. Khalid Saad Ab Slah, one candidate, who had just registered, was shot dead. On 1 July a demonstration formed outside the HNEC regional offices of Benghazi and ultimately entered and vandalized part of the building. A crowd of between two and three hundred people burned documents and computers. Protests against the alleged over-representation of Tripolitania in the future GNC, has fuelled even more unrest in Cyrenaica. The last week of the campaign has also seen similar protests in Ajdabiya along with some occurrences of posters being vandalized and torn up.

MEDIA ENVIRONMENT

One of the most positive developments in Libya since the revolution has been the significant improvements in regards to freedom of the press and the increased pluralism afforded by it. Freedom of expression was generally respected during the campaign. The State media and the private broadcast companies were actively promoting voters' participation in polls and voting procedures. However, the

electorate would have benefited from a more systematic and profound educational campaign about civic and political participation.

The State media adhered to the legal framework requiring equal opportunities for all contestants, and provided contenders with access on an equal basis to convey their free of charge messages to voters. However, the procedures on allocation of the free airtime and space were adopted late, and only a relatively small number of contenders took advantage of the opportunity to address voters through the state media. Equal editorial coverage of candidates and political entities, required by the legal framework was practically not achievable, given the large number of contenders.

The private broadcast media were *de facto* free of any formal rules for their presentation of political actors and their campaign. The contestants were able to purchase airtime, but in the absence of regulations, they were not guaranteed equal conditions. Major political entities and some individual candidates took advantage of the paid programmes, but finances were a discriminatory factor weighing against individual candidates. Nonetheless a few private media offered the contestants a possibility to air short campaign spots free of charge.

COMPLAINTS AND APPEALS

The dispute resolution provisions of the law offer two legal avenues for protecting electoral rights, the judiciary and the election administration authorities. The absence of a clear demarcation of the respective jurisdictions of the courts and the election administration was addressed through various HNEC regulations. An expedient procedure is foreseen for all complaints. Although timeliness is essential in election processes, the very short deadlines foreseen raise doubts as to the adequate respect for the principles of due process and effective guarantee of the protection of suffrage rights.

The vast majority of complaints filed with the courts were related to candidates' nomination. Overall, the courts have so far given due consideration to the complaints and appeals and adjudicated them in an overall impartial, albeit not always systematic, manner. The only complaints challenging voter registration were filed at the District court of Al Kufra, which subsequently ordered the de-registration of some 1,008 voters from two polling centres.

Campaign violations are dealt with either by the HNEC or by the normal judicial channels, if they constitute criminal offences. The Election law includes a comprehensive set of election offences and related penalties, in line with international best practices. Until now, very few violations were officially reported to the HNEC sub-offices, all of minor nature related to the destruction of campaign material. Similarly, it appears that there are no electoral criminal offences being investigated by the district courts, to date.

NATIONAL AND INTERNATIONAL OBSERVERS

The HNEC accredited some 180 international observers from various organisations, apart from the EU EAT, and 253 Guest observers, some 11,344 observers from national civil society organisations, including the Shaded Network which intended to deploy 2,200 observers and the Libyan Association of Election Observers (LAEO) which intended to deploy some 686 observers.

HUMAN RIGHTS – PARTICIPATION OF WOMEN

In the run-up to the election, fundamental freedoms were respected in general. In addition, no threats or intimidation of candidates or activists marred the pre-election period with the exception of one case (see under Electoral Campaign).

Libya signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), with the reservation that its accession “cannot conflict with the laws on personal status derived from the Islamic *Shariah*”. The Constitutional Declaration guarantees equal civil and political rights as well as equal opportunities for women and men.

Although the law provides a sound basis for the participation of women in the electoral process, societal, religious, economic and cultural factors compromise women’s ability to run as candidates on an equal footing with men. When not obliged by law the inclusion of women has represented only 3 per cent, whereas when the law requests inclusion of women, they become 44 per cent of the candidates.

VOTING AND COUNTING

On 7 July, the HNEC operated a total of 1,453 polling centres throughout the country. Localised incidents before and during election day erupted and were aimed at disrupting the election, namely in Benghazi, Tobrouk, Adjabiya, and Al Kufra districts. However, the HNEC was adamant to overcome security challenges and reacted swiftly. In the case of Adjabiya, where the HNEC office was attacked and ballots destroyed, the HNEC was able to re-print ballots papers and place them at the district office for distribution on election day.

Nationwide only 24 polling stations did not open on 7 July, and a number of stations opened late and were allowed to remain open until all registered voters were able to cast a ballot. Polling was allowed to re-open on 8 July in five centres in Sirte and in two centres in Al Kufra.

EU EAT expert teams reported on an overall peaceful and smooth voting and counting process, during which procedures were adhered to, and they assessed the counting as being both ‘very good’ and ‘good’.

Adequate security measures were in place for the subsequent handing over of original results forms to the district election offices, with full custody of sensitive materials at all times. The EU EAT will remain in country to follow the declaration of preliminary results and the complaints and appeals until the final results.