



EGYPT'S ELECTIONS: GREATER TRANSPARENCY TO STRENGTHEN CONFIDENCE

SUMMARY

The upcoming elections will be held on the basis of rules that have until very recently kept shifting. The process of amending Egypt's flawed electoral laws began in May but was only finalised in October. Significant changes include the introduction of a new election system, compiling a new database of electors, appointing a new High Election Commission (HEC), drawing of new election boundaries, introducing out-of-country voting. During this period a large number of new parties have been formed, and their candidates registered to contest the elections.

While several aspects of the electoral legislation still merit significant revision, this will be a longer term undertaking. Nevertheless, a small window is still available before the first polling day for the electoral authorities to ensure that the polling arrangements are as clear as possible. The overriding objectives should be to enhance the transparency of the process. Action in this regard would improve voters' understanding of the process and better ensure the electoral integrity; factors which can positively contribute to public confidence and a calm polling atmosphere.

Factors that enhance transparency include: consultation with stakeholders (voters, candidates, parties and civil society organisations); the clarity of the electoral rules; the visibly equal application and enforcement of laws and regulations; open decision making; effective communication; and ensuring the public's access to information and processes.

The need to introduce some late changes to the electoral framework arose in large part because of insufficient public **consultation** between the authorities, the political parties, civil society and other interest groups on the legislation, which lessened the sense of common purpose. While the

concessions to the parties and citizens were welcomed by most Egyptians the late changes necessitated hasty and reactive planning. Importantly, some important issues have yet to be clarified causing a sense of growing uncertainty.

The HEC was appointed on 19 July. It has had to overcome significant challenges to ensure that all electoral preparations were in place by the first polling day on 28 November. While it has adopted numerous regulations to implement the law, it has rarely consulted with stakeholders prior to taking decisions. This approach is at odds with the need for an election to be an open and public process in which citizens are the central actors, and caused some frustration among parties and civil society organisations.

While the HEC's regulations contain a number of positive provisions and clarifications, some crucial gaps in the electoral framework remain, and in the interest of **clarity and comprehensiveness** these should be addressed. It is anticipated that the HEC will adopt regulations for the voting and counting procedures before Election Day. Certainly these are needed, particularly to ensure transparency and certainty during the counting of votes, aggregation of vote totals and the announcement of election results, as the law is almost silent on these crucially important phases.

The HEC may also be considering adopting an additional regulation to clarify all procedures for out-of-country voting, although this may require a new law rather than a 'sub-legal' regulation. It would also be beneficial if the HEC would issue some form of clarification to ensure there is no misunderstanding by all Polling Committees that observers are permitted to follow all stages of the elections including witnessing the voting, counting and vote aggregation stages, provide details on how stakeholders and ordinary voters can make complaints if they suspect or detect any electoral practice, and clarify the provisions to enforce campaign finance requirements.

More could be done to ensure citizens have **access to sufficient information** and **effective communication**. More public interest data could be made available on the HEC's website, in particular information on the number of registered voters. Positively a mechanism has just been established on its website for voters to identify the location of their polling station.

The HEC should also consider steps it could take to diffuse tensions, which could arise due to misunderstandings of how votes translate into seats. Although the law appears to contain a clear provision that votes will be allocated proportionally using the 'largest remainder' method – a standard system used in a number of countries around the world – a doubt remains about how the provision will be actually implemented in practice by the HEC. It is essential that this issue is clearly understood by the contestants and the voters before any vote has been cast and the HEC should seriously consider issuing an explanatory memorandum before election day to set out the procedures it will use to implement article 15 and 15 bis of the Law on the Exercise of Political Rights.

The suggestions made here are elaborated in more detail at the end of this report.

I. INTERNATIONAL STANDARDS FOR ELECTORAL TRANSPARENCY

Various international treaties set out states' obligations towards their citizens *inter alia* regarding elections, most notably, the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt in 1982. Various General Comments (GC) of the U.N. Human Rights Committee (HRC), the body monitoring ICCPR implementation, include elaborate principles to enable greater understanding of the obligations and to assist states in meeting them.¹

General Comment 25 on the ICCPR (GC25) requires that "An *independent* electoral authority should be established to supervise the electoral process and to *ensure that it is conducted fairly, impartially and in accordance with established laws* which are compatible with the Covenant. [...]" (emphasis added). However, the 'independence' and 'impartiality' of an electoral authority can only be determined if there is sufficient access to its work and the election process. GC25 also requires: an '*informed community*';² the counting of votes in front of candidates or their agents; '*independent scrutiny*' of the voting and counting processes; access to judicial review, and *informing electors of 'guarantees'* in order to ensure *public confidence* (emphasis added).

Hence transparency is necessary for public confidence and the principle that elections be subject to 'independent scrutiny' provides a strong basis to argue that election observation is a requirement. Election observers require access to information and processes if their activity is to be conducted effectively and is considered a pre-condition for deploying observers.³

The clearest statement that the principle of 'transparency' being applicable to elections is set out in General Comment 34 on the ICCPR (GC34) issued by the HRC in July 2011, which states that "the principles of transparency and accountability [...] are [...] essential for the promotion and protection of human rights" (the main text of article 25 of ICCPR establishes that a *genuine* election is a human right). In addition, GC34

¹ General Comments are considered as authoritative interpretations of specific articles of ICCPR. The U.N. HRC is the body with jurisdiction to receive and issue opinions on states' periodic reports on ICCPR.

² Paragraph 11 of General Comment 25.

³ The Declaration of Principles for International Election Observation (commemorated at the UN in October 2005), states that: "An international election observation mission [...] should not be organized unless the country holding the election [...] guarantees unimpeded access of the international election observer mission to all stages of the election process" and that international observer missions "should evaluate as an important aspect [...] whether the political contestants are, on a nondiscriminatory basis, afforded access to verify the integrity of all elements and stages of the election process".

has interpreted article 19 of the ICCPR to mean that citizens have a right to access public information.⁴

II. EGYPT'S ELECTORAL LAWS

The legal arrangements for the upcoming elections are set out in three Acts:⁵ the Law on the Exercise of Political Rights (LEPR), the Law on the People's Assembly (LOPA), the Law on the Formation of the Shura Council (LFSC), which were significantly amended between May and October 2011. In addition, the Supreme Council of the Armed Forces (SCAF) adopted two laws establishing new electoral multi-seat districts and individual candidate constituencies for the People's Assembly and Shura Council elections.⁶

Unlike some other countries in the region, Egypt's laws contain no general requirement for elections to be conducted transparently.⁷ Indeed, some of the LEPR's provisions restrict transparency, e.g. article 3 bis (d) stipulates that "Deliberations of the HEC shall be secret", while article 35 states that the deliberations of the vote counting committees "shall take place behind closed doors". Many other Election Management Bodies (EMBs) permit stakeholders, the media, observers and even the general public to attend their sessions as it enhances transparency and contributes to public confidence. Where sessions are not public, it is common to find consultative forums established between the EMB and stakeholders.

Egypt's electoral laws contain a number of ambiguities and some crucial aspects of the process are insufficiently detailed. The change of the election system from one based solely on individual candidates to one where most seats will be allocated to party lists by proportional representation was a major development. However, some articles of the law were not amended to take full account of the consequences of the change, e.g. while the LOPA foresees the formation of coalitions⁸ it does not provide any detail on how coalitions will be registered or how their votes are attributed in determining if a party has surpassed the 0.5% registration threshold.⁹

⁴ Paragraph 18 of GC34 states: "Article 19, paragraph 2 [of the ICCPR] embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production", and paragraph 19 states "To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information".

⁵ Reformists have long advocated for adopting an Electoral Code to unify the texts. This would make the procedures clearer to non-experts and hence would enhance transparency.

⁶ An analysis of these laws can be found at: <http://www.democracy-reporting.org/publications/country-reports/egypt/report-part-ii-august-2011.html> and <http://www.democracy-reporting.org/publications/country-reports/egypt/report-11-july-2011.html>

⁷ For example, article 113 of the Palestinian election law requires that "All phases of the electoral process [...] shall be public and transparent in a manner that enables observers to monitor the different stages of [the] processes, and give local and international media representatives the opportunity to cover the elections."

⁸ For example LOPA, article 15.

⁹ Article 15 of the Law on the People's Assembly.

The legislation, including the two laws on districting, do not contain any criteria to establish the electoral districts and constituencies e.g. to ensure they contain a broadly equal number of citizens. This opened the door to possible gerrymandering. There was no public consultation before electoral boundaries were announced and there was no possibility to file challenges against the decisions.

THE HIGH ELECTION COMMISSION

Following a May amendment to the LEPR, the High Elections Commission (HEC) was re-composed as a body comprised solely of judges. However, unlike many other election commissions, the law does not establish the HEC as an 'independent' body, although by its judicial composition and in practice it appears to have enough authority to act independently if it decides to do so.¹⁰

Despite the fact that the legal amendments were adopted on 19 May, the HEC was only appointed on 19 July. This delay gave it little lead time before the elections were announced on 27 September, to appoint its staff, organise electoral operations and adopt the regulations required by law. The HEC has responded reasonably well to these challenges, but some Egyptian commentators perceive that the HEC waits for a lead from the SCAF before acting and is over reliant on the Ministry of Interior to organise the elections – factors which have led some commentators to question the HEC's independence, and because of the Ministry's questionable role in previous elections, lessened confidence.

Many Egyptian analysts regard the HEC's composition as a mixed blessing. The judiciary was one of the few state institutions which retained a degree of public confidence during the Mubarak years. However, the HEC has not, in general, sought to consult with stakeholders prior to taking decisions, e.g. it did not discuss the modalities for registering party lists or coalitions or the regulation on campaigning with parties, or with civil society organisations (CSOs) prior to adopting the regulation on election observation. This approach is at odds with the need for an election to be an open and public process in which citizens are the central actors because it is the means by which they choose their representatives. Furthermore, prior consultation tends to increase the quality of decisions because all perspectives and possible complications can be considered.

A peculiarity of Egypt's legislation is that the HEC is mandated to '*supervise*' elections whereas election commissions in most other countries are considered to '*manage*' or '*administer*' elections. Notwithstanding this difference the mandate of the HEC appears to be broadly similar to commissions elsewhere i.e. in practice they administer the process. However, judges, for all their legal wisdom are not necessarily experienced managers. Despite the fact that the legislation grants the Ministry of Interior a very limited role in the elections process,

¹⁰ For example, as was recently established in Tunisia.

in practice, the HEC is reliant on the organisational capacity of the Ministry of Interior. With the HEC de facto requiring the assistance of a body such as the Ministry, in hindsight it may have been better to set out in law the details of the Ministry's role.

HEC REGULATIONS, RESOLUTIONS AND DECISION MAKING

The HEC adopts regulations and binding decisions on the implementation of the primary legislation. The LEPR sets out the general arrangements by which the HEC takes decisions: minimum quorum required; vote of the majority of its membership, and the requirement to publish its decisions and regulations in full in the Official Journal, and summaries in two mass-circulation newspapers.¹¹ The LEPR does not mention any procedure for appeals to be filed against HEC decisions or regulations,¹² or require the HEC to adopt 'Rules of Procedure' for decision making, and as noted, it specifically requires that its conducts its deliberations in 'secret'.

The regulations adopted by the HEC to date do not answer all outstanding issues e.g. the regulation on campaigning sets a financial limit on candidates' campaign spending but gives no further details on how it will be enforced. Many regulations were adopted only just before the specific electoral phase they covered was due to commence, giving interested parties little time to become familiar with the procedures or organise themselves.

The HEC has on its website a form for submitting enquiries, but the election legislation does not specifically provide a right for citizens to request and receive information of documents from the HEC – although there appears to be nothing in law which would prevent this.

COMPLAINTS AND APPEALS

Access to an effective remedy and the proper enforcement of provisions is a 'transparency' issue in so far as justice needs to be visible and consistent if it is to positively influence public confidence.¹³ The legislation provides for the possibility of filing legal challenges with the courts on most aspects of the process including electoral results.¹⁴

The LEPR provides that the HEC "receives, verifies the authenticity of, and addresses reports and complaints in connection with the electoral process" (article 3 Bis F). To date, with the partial exception of the regulations on campaigning, the HEC has not set out in an official document

the procedures by which it will hear and decide complaints.¹⁵ There appears to be no obligation for the HEC to issue formal decisions on the complaints it receives.¹⁶ The requirement that the HEC conducts deliberations in secret necessarily lessens transparency in its functioning as a complaint handling body.

Nevertheless, the regulation on campaigning does foresee a general procedure for the HEC's Secretariat to present the Commission with received complaints or reports from the police public prosecution, Governorate Election Committees or others in order to 'take appropriate action', specifically order the removal of posters that violate the law of campaign regulations. The HEC Secretariat is required to keep a record of complaints and actions that were taken to address them. However, this does not appear to be a public record.

According to the LEPR, the Polling Committee (PC) decides on any complaints it receives. In practice this is likely to be done by the head of the PC, who is a judge. However, the legislation does not establish procedures to file an appeal against the PC decision e.g. to a higher electoral committee.

ELECTION COMMITTEES

The HEC appoints the three sub-levels of election management – Governorate Electoral Committees (GECs), General Committees at constituency level (GCs), and PCs. The PCs' work and composition is fairly well elaborated in law, but there is no requirement to publish the names of appointed PC members. There is very little information on the roles of the GECs and GCs. According to the LEPR, the GECs' only defined tasks are to receive applications from candidate/party representatives to monitor polling (article 24), to review the reports of the GCs on the vote count, to prepare a report on the vote count, and to declare the number of valid votes each list received (article 34).¹⁷ The Executive Regulations of the LEPR also ascribe to the GECs a tasks regarding displaying the voter register and identifying polling locations.

The composition of the GCs is not set out in the law, but a few further details are contained in the Executive Regulations.¹⁸ The GCs play a central role in organising the counting of votes, including appointing and supervising the committees tasked with sorting and counting votes ('Sorting Committees' - SCs). The SCs are entitled to appoint a Secretariat. However there are no details in the law regarding who may be appointed to an SC Secretariat.

¹¹ The legislation also requires the HEC to publish the preliminary and final names of registered candidates and party lists.

¹² This could be however covered by administrative law provisions.

¹³ Article 2, ICCPR provides "any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity".

¹⁴ The HEC's regulation on campaigning establishes that the courts of first instance and the Supreme Administrative Court have jurisdiction to adjudicate campaign violations and deregistration of candidates, respectively.

¹⁵ The Executive Regulations to the LEPR article 2 (fourth) delegate the Secretariat with making proposals in this regard, but no decision or regulation on complaints procedures has appeared on the HEC website.

¹⁶ In many jurisdictions, in order to file an appeal against a decision of an administrative body a copy of the original decision must be deposited to the court.

¹⁷ The Executive Regulations on the LEPR (article 34) stipulate that it will be the General Committees (GCs), which announce the number of valid votes per candidate and list and not the GECs.

¹⁸ The law appears to set out the composition of the GCs' Secretariats in more detail than for GCs.

THE DATABASE OF VOTERS

According to new arrangements adopted in May 2011, citizens are automatically registered to vote in a database of electors if the citizen has been issued with a national identity card. The preliminary database of electors was compiled by the Ministry of Interior. The compilation process ended on 20 July, one day after the appointment of the HEC. The LEPR provides that from 20–31 August, voter lists (extracts of the database) were available for public scrutiny, and until 15 September, citizens could file challenges with special election committees and the courts. The HEC placed a search tool on its website for citizens to check their registration entry. The database was finalised in late September, after which no further changes to the database may be made.

The Regulation on CSO election observers was adopted on 16 October. While this entitles observers to follow most stages of the election process, it does not entitle them to follow voter registration, and in any case, the regulation was adopted after the period when the database of electors was available for public inspection and the voter registration challenges and adjudication periods. Hence there was limited scrutiny of the voter registration process, and the reliability of the voter registers remains one of the main ‘unknowns’ of the election.

Media reports indicate that in the region of 50 million electors are listed in the database. However, the HEC has not yet formally announced the total number of registered voters or the numbers registered at governorate, district, precinct, *markaz* or village levels, despite the fact that this information is held by the HEC.¹⁹ Candidates and contesting parties may obtain a copy of extracts of the database on CDs upon payment of a modest fee. It is not known how the data on the CDs is organised i.e. whether it lists all electors by polling station or some other form of segmentation.

OUT OF COUNTRY VOTING

A decision by the Administrative Court to permit Egyptian citizens resident abroad to vote at centres outside Egypt significantly complicates the work of the HEC. On 7 November, the HEC decided to allow expatriates to ‘re-register’ according to their place of residence outside Egypt providing that they were already included in the Database of Voters on 27 September. The period for re-registration is for 10 days (10–19 November). The Commission established an online tool – accessible only from outside Egypt – to record the details of those wishing to re-register.

Nevertheless, the Court ruling creates numerous legal questions which have yet to be fully answered e.g. what will be the voting arrangements for these citizens, to which constituencies/districts will their votes be attributed, who will administer voting, what are the counting arrangements and

will the elections outside Egypt have the same phases as for polling inside Egypt. The formalisation of the arrangements may require the adoption of a ‘special’ law or at least the adoption of a specific HEC regulation.

CAMPAIGNING

Article 11 of the LOPA establishes the main rules for election campaigning; albeit not in great detail. The article deals more with prohibitions during the campaign than candidates’ and parties’ rights to advertise their platforms e.g. it does not establish candidates’ and parties’ right to display electoral posters, hold public campaign events, meet with voters on equal terms or require the state authorities to treat electoral contestants equally.

The HEC regulation on campaigning issued on 16 October grants candidates “the right to expression and to carry out any activity that aims to persuade the voters to choose him, advertise his electoral program and through holding specific and general meetings” as well as the full freedom to “publish and distribute electoral promotional items, display posters and banners, use audio-visual, electronic and printed media”. The regulation also establishes campaign spending limits, but as noted earlier does not elaborate any more details on how the spending will be verified or any requirements for candidates regarding submitting their campaign accounts.

The LEPR requires the HEC to establish rules for the equal distribution of air time for election campaigning on state-owned and private media outlets. The campaign regulation provides that airtime will be distributed among parties and candidates in normal programming and special slots on the basis of full equality covering advertising and general broadcast time. While the regulation provides for equality on a ‘quantitative’ basis, it does not require media to treat candidates and parties equally ‘qualitatively’ i.e. in the tone of their coverage and commentaries. Moreover, the regulation does not establish the precise amount of airtime that will be given to parties and candidates or its exact scheduling or frequency, but appears to delegate this to the Ministry of Information and the Egyptian Radio and TV Union (ERTU).²⁰ The campaign regulation also implies that the Ministry and the ERTU are responsible for enforcing the law regarding campaigning in the media. However, this is not set out in the electoral legislation and there appear to be no procedures for enforcement.

ELECTION OBSERVATION AND CANDIDATE REPRESENTATIVES

The need for scrutiny which is independent of an EMB is an established election principle that exists regardless of which ever person is supervising/administering an election.

¹⁹ The Executive Regulations (article 9) provide that this information is recorded by a special committee established by the HEC.

²⁰ The campaign began on 3 November, but as of 13 November, the Regulation by the Ministry of Information / the ERTU on the allocation of media airtime had not been posted on the HEC’s website.

Observation has become an accepted feature of elections in most countries.²¹ The previous Egyptian authorities did not establish the right to scrutinise an election, and was against scrutiny by any intergovernmental body, including those organisations to which Egypt is a member or an associate member. In practice observation by Egyptian citizen groups did take place, although they had serious difficulties entering polling places.

The May amendments to the LEPR opened the door to election observation by tasking the HEC with “laying down the rules regulating the engagement of Egyptian as well as international civil society organizations in monitoring all electoral processes”.²² However, the law still does not contain a clear provision firmly establishing the right to scrutinise. Moreover, the use of the Arabic term (*mutaba*'), the meaning of which is closer to ‘follow’ than ‘observe’, reinforced CSOs’ concerns that they would not be granted full rights to scrutinise all aspects of the process and enable observers to receive the required information. Indeed, even after the adoption of the amendments some in governmental authority appeared to question the need for election observation when the process was ‘supervised’ by judges.²³

The HEC’s regulation on election monitoring was adopted on 16 October – after the completion of the voter registration process and after the start of the candidate registration process. The regulation states that monitoring “shall mean all the actions of ‘observing’, ‘following’ and ‘watching’ the stages of the electoral process” and that “the electoral process shall mean all the procedures of nomination, campaigning, voting, counting and the announcement of results”. The regulation also establishes reasonable deadlines for observer groups to apply for accreditation.

Certainly the regulation constitutes progress but it would have benefitted from further elaboration of observer’s rights and duties, specifically clearer guarantees for observer access to the premises of all types of electoral committee and to request and receive information. Subsequently, the National Council for Human Rights (NCHR), after consultation with CSOs, adopted a Code of Conduct for election observers.

The LEPR provides that candidates and party lists may nominate a delegate to serve on a Polling Committee. In the event that more than eight delegates are nominated, a selection shall be made by the casting of lots. In the case that a party’s or candidate’s delegate is not selected the contestants would have no means of scrutinising the process.

The law provides that each candidate has the right to nominate a representative to the Sorting Committee,²⁴ but unlike other articles which were amended to take account to the new election system, article 34 does not specifically mention this right for party lists. It is therefore assumed that all candidates on a party list may attend the count.

VOTING, COUNTING AND VOTE AGGREGATION

DRI’s Comprehensive Assessment of Egypt’s Revised Electoral Framework of July 2011²⁵ set out a number of issues that were potentially problematic but which could be addressed through HEC regulations, including: a requirement for voters to prove their identity *before* they receive a ballot; the absence of a requirement for PCs to verify if voters’ fingers bear any trace of indelible ink *before* the voter receives a ballot; requiring voters to hand folded marked ballots to a PC member to deposit in the ballot box (which creates a risk that their choice will be seen). To date, the HEC has not issued a regulation on voting arrangements.

The LEPR provides that the votes will be counted at General Committees’ (GC) premises, not at polling stations. Not counting votes immediately after the end of voting at the polling station contains a certain risk for the integrity of the process. The boxes containing the votes are to be delivered by heads of the PCs to the head of the Sorting Committee (SC). However, the law does not set out clear procedures to ensure propriety during the transportation. Furthermore, the law is ambiguous as to who is the head of the Sorting Committee.²⁶

It is of potential concern that the LEPR provides only very sketchy details of the vote count procedures.²⁷ The counting of votes is one of the most crucial phases of an election and should be set out in law in sufficient detail. Transparency during the actual vote counting, tabulation and result announcement phases are essential to retaining public confidence.

Article 35 of the LEPR states that “Sorting Committees shall decide on all the issues connected with the election [...] process and the validity or invalidity of the expression of voters’ views”, and that “the deliberations shall take place behind closed doors, and shall not be attended except by the head and members of the Committee.” This could preclude

²⁴ The law does not specifically permit parties/candidates to nominate representatives to the HEC, GECs and GCs, although this could be included of candidate/party ‘agents’, which have a role distinct to those of party/candidate representatives.

²⁵ See: <http://www.democracy-reporting.org/publications/country-reports/egypt/briefing-paper-14-11-july-2011.html>

²⁶ One interpretation of LEPR article 34 is that the head of a Sorting Committee could be, *ex officio*, the Head of the GC.

²⁷ Article 34 states only that: the sorting of the ballot boxes for the party-lists shall be conducted at the GC, the vote counts for individual candidates and party lists shall be conducted separately; a report on the counting and sorting process for each ballot box shall be made and signed by the head and Secretary²⁷ of the SC as well as the head of the PC, and that the SC has until the end of the day after the election to complete its work. The requirement for the Secretary of the Sorting Committee to sign the official report of the vote count is potentially problematic because the rules for who can be appointed to this position not clear in law.

²¹ In the recently amended Constitution of Morocco, it became a constitutional right.

²² The amended law did not mention the possibility for intergovernmental organizations to monitor the process, and subsequently it became apparent that they would not be invited to do so.

²³ This confuses the separate requirements for ‘supervision’ (management / administration) and ‘independent scrutiny’.

observation of part of the vote count by candidate/party representatives and observers – which would be at odds with ICCPR GC25.²⁸

According to the LEPR (article 34) although the GCs are responsible to organise the vote count, they do not declare any results. Instead their reports are sent to the HEC, GECs and (inexplicably) to the Ministry of Interior. Instead it is the GECs, which declare the number of valid votes each list received (article 34). However, the Executive Regulations (article 34) appear to contradict the LEPR and state that the results *are* to be declared by the GC and establish a different sequence for the delivery of the reports.

Article 37 of the LEPR provides that “the HEC shall within three days of the announcement of the results of the election or referendum in electoral districts by heads of polling centres, *or after the completion of the final phase of the election in the case the vote is conducted in several phases* and according to the electoral system in place, announce *the overall results* of the election [...] by decree”. However, as noted, it is the GECs (or if the Executive Regulations are followed, the GCs) which will announce actual vote totals, it is assumed as soon as these figures are available.

Without prejudice to article 37, it may even be legally possible for the HEC to make an announcement of the provisional allocation of mandates after each phase. An announcement of the actual final mandate allocation (overall result) might have to be delayed until after the last election phase because of the need to calculate the 0.5% representation threshold.

ALLOCATION OF PARTY LIST MANDATES (SEATS)

Egypt has introduced a new, mixed election system under which two-thirds of the mandates (seats) will be allocated by proportional representation to party lists. Article 15 of the LOPA provides that “the election of the closed party list representatives shall be determined by giving each party list a number of district seats proportional to the number of valid votes received by the list from among the voters who participated in the party list election in the district, [...]. Any remaining seats shall be distributed to the lists with the respective largest remaining votes.” Article 15 establishes a ‘standard’ largest remainder method of allocating mandates. As this system is new to Egypt, many of the contestants may not be fully familiar with the ‘largest remainder’ allocation method.²⁹ Already there are indications that some Egyptians are confusing the ‘largest remainder method’ with other mandate allocation systems including the system that was used in Egypt in the 1984 and 1987 elections but which is no

longer applicable. Thus, it would be useful for the HEC to confirm it will apply the standard largest remainder system and explain to the public how the system works by giving hypothetical examples.

III. SUGGESTIONS

The following suggestions are offered for the HEC’s consideration:

CONSULTATION

1. Establishing a consultative forum for regular dialogue with political parties and accredited monitoring organisations could improve dialogue and information flow.

RIGHT TO SCRUTINISE THE ELECTION

2. A formal clarification of its regulation on election monitoring to the effect that accredited observers have guaranteed access to the premises of all types of electoral committees to observe electoral processes (subject to their respect for the duties set out in the regulation on monitoring elections), as well having the right to request and receive information, may lessen the risk that individual committee members apply the regulation differently.

3. If and when the HEC issues additional regulations or resolutions on the voting, vote counting and result aggregation processes, it would be beneficial to include a ‘catch all’ provision that all rights given to individual candidates (or their representatives or agents) apply equally to party list candidates (or their representatives or agents).

4. Observers and candidate agents should be able to observe the actual counting of votes and the aggregation of polling results subject only to reasonable limitations. Any limitations should be specified, but should not impede observers’ ability to properly scrutinise the processes.

5. Ideally, candidate representatives and accredited observers should have the right to receive certified photocopies of the official election results sheets.

THE RIGHT TO INFORMATION

6. Within the limits of the law which require that HEC deliberations are held ‘in secret’, the HEC could consider methods to inform the public of its reasoning for decisions e.g. by issuing explanatory notes, holding frequent meetings with the media, and publishing summary transcripts of its formal meetings on their website.

²⁸ Paragraph 20 of GC25 provides that “votes should be counted in the presence of the candidates or their agents” and that there is independent scrutiny of the election.

²⁹ For an authoritative description of the largest remainder allocation method consult David M Farrell, ‘Electoral Systems – A Comparative Introduction’ (2001), Palgrave, (pp. 71-73).

7. The tool on the HEC's website for the public to submit enquiries to the HEC could be expanded to allow citizens to request specific documents held by the HEC.³⁰ The HEC could also consider creating an online, searchable archive of official documents.

8. The transparency of the election results process would be enhanced if the HEC announced on its website: the total number of registered voters, the number registered at governorate, district, precinct, *markaz* and village levels; the number of electors registering to vote outside Egypt and per country, on a daily basis.

9. The names of Polling Committee members could usefully be recorded in a journal held by the GCs, which could then be consulted by the parties and accredited observer groups.

CLARIFICATION OF REMEDIES

10. It would be beneficial if the HEC decided to set out and announce the procedures for filing complaints (article 3 bis (F) of the LEPR), as well as the procedures by which it will address complaints, and (if legally permissible) establish reasonable deadlines for considering complaints. The HEC issuance of formal decisions on the complaints it receives and opening the HEC's register of complaints for public scrutiny would also be beneficial.

11. The possibility of filing an appeal against any action or inaction of a Polling Committee with a higher-level committee e.g. a General Committee could enhance citizens' access to effective remedy.

12. Setting out the penalties for non-compliance with the limit of campaign spending and violations of rules for campaigning in the media in law or (if legally permissible) in regulations, could enhance respect for these legal norms.

CLARITY OF PROCEDURES

The HEC could consider issuing additional regulations, resolutions or explanatory memoranda to enhance procedural clarity and transparency in the following areas:

ELECTION CAMPAIGNING

13. A supplementary regulation detailing the requirements for parties to deposit their campaign expenses, including the format in which the accounts should be presented, submission deadlines, the methods the HEC will apply to verify the propriety of the accounts, and a requirement to publish campaign spending accounts on its website.

14. The procedures to enforce the rules regarding campaigning by contestants in the media.

THE VOTING PROCESS

15. Requirement that voters prove their identity *before* they receive a ballot and that Polling Committees are to check voters' fingers *before* a voter receives a ballot to verify if they bear any trace of indelible ink, i.e. have already voted elsewhere).

THE COUNTING PROCESS

16. Adopting a regulation covering all procedures between the end of voting and the announcement of election results to:

- Set out the steps between the end of voting and the receipt of the polling material by the General Committees to require the Polling Committees to record the number of ballots received before the start of polling, and at the end of polling for Polling Committees to: establish and record the number of signatures on the voter list; establish and record the number of unused ballot papers and seal them in tamper-proof envelopes; seal all other sensitive electoral material in tamper-proof containers, and seal all ballot box apertures to prevent any object being deposited in the box; record the time of departure from the Polling Station and arrival at the General Committee in the official minutes; and for receipts to be issued for all materials handed over to the General Committees.
- Include 'standard' vote count procedures, such that the procedures before opening a ballot box require Committees to: scrutinise the reports of the Polling Committees; record the number of signatures on the voter list, the number of 'spoilt' ballots, and the number of unused ballots on the official results form, and to check that the seals on ballot boxes are intact and that the box has not been tampered with. After opening the box, requiring the Polling Committee to: determine which (if any) of any votes are invalid (according to the criteria set out in the law); sort votes into different piles for each contestant; count the number of votes in each pile individually and record the figures; reconcile the figures to ensure the mathematical logic is correct; record the figures on the official form, after which the designated committee members should then sign the official results form.

17. Setting out the arrangements for securing and storing the used and unused ballots and other electoral material to ensure it cannot subsequently be tampered with, would also possibly enhance integrity and confidence.

18. The procedures for appointing the Sorting Committee's Secretariats could usefully be set out in the regulation, and the names of the appointed persons could be recorded in a journal, which should be open to public inspection.

³⁰ For example, the reports of the committees established under the Executive Regulations (articles 8 and 9).

ANNOUNCEMENT OF RESULTS

19. Addressing the apparent contradiction between LEPR (article 34) and the Executive Regulations (article 34) regarding whether Governorate Election Committees (GEC) or General Committees (GCs) announces the number of votes received by each candidate / party list. In addition to announcing the number of votes received by each candidate / party list, the public may wish to know the number of registered voters as well as the total number of votes cast in each of the constituencies / districts units under GEC/GC jurisdiction. Setting a reasonable deadline for the announcement to be made e.g. as soon as these figures are available and not later than 'x' hours after voting is finished, could help lessen possible post-election tensions.

20. Publishing the polling results of all polling stations as well as the aggregation of these results at constituency, district and national level on the internet as soon as they are available would enable interested parties e.g. candidates to verify that the results have been aggregated correctly, and would thus enhance confidence in the counting of votes.³¹

ALLOCATION OF MANDATES

21. The issuance of a HEC resolution detailing the procedures it will apply for the allocation of mandates to party lists, would improve the public's understanding of how votes translate into parliamentary seats, and serve to end any unnecessary doubt about this crucial part of the election process. Useful clarifications include:

How will votes given to coalitions be treated when determining whether a party surpassed the 0.5% threshold?

- In the calculation to determine the allocation of seats, how will votes for parties that did not surpass the 0.5% national threshold be treated?
- setting out precisely the formula for allocating mandates – ideally by presenting hypothetical mathematical examples for multi-member districts with 4, 6, 8, 10 and 12 seats

OUT OF COUNTRY VOTING

22. The legislator (and the HEC) should consider whether a special law is required to ensure a solid legal basis for actions regarding voting outside Egypt.

ABOUT DEMOCRACY REPORTING INTERNATIONAL

Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit organisation registered in Berlin, Germany. DRI promotes political participation of citizens, accountability of state bodies and the development of democratic institutions world-wide. DRI helps find local ways of promoting the universal right of citizens to participate in the political life of their country, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

<http://www.democracy-reporting.org>

Or contact:

info@democracy-reporting.org

ABOUT THE EGYPTIAN ASSOCIATION FOR COMMUNITY PARTICIPATION ENHANCEMENT

The Egyptian Association for Community Participation Enhancement (EACPE) is a nongovernmental, non-profit organisation, founded in May 2001, and registered with the Egyptian Ministry of Social Solidarity under the number (5481) in February 2004. EACPE actively supports capacity building of a number of organisations, networks and coalitions most active in implementing the UN Convention on the Rights of the Child (CRC), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Beijing Platform of Action, and works on different activities of civil society on the national, regional and international levels.

<http://www.en.mosharka.org/>

³¹ The practice of publishing all polling results from polling station upwards is regarded as an essential element of electoral transparency and already occurs in other elections in the region such as Lebanon (2009) and Palestine (2006).