

CARTER CENTER ELECTION WITNESSING MISSION  
Egypt 2011/2012 Parliamentary Elections

PRELIMINARY REPORT ON ALL THREE PHASES OF  
THE PEOPLE'S ASSEMBLY ELECTIONS

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Egypt's People's Assembly elections enjoyed broad participation from voters and a clear step toward a democratic transition. While there were shortcomings in the legal framework, campaign violations, and weaknesses in the administration of the elections, the results appear to be a broadly accurate expression of the will of the voters. However, the ultimate success of Egypt's transition will depend on the earliest possible handover of power to a civilian government that is accountable to the Egyptian people. The inclusive drafting of a new constitution that protects fundamental rights and freedoms and ensures full civilian authority over the military will establish the foundations of a democratic Egypt.

Since the departure of President Mubarak in February 2011, the Supreme Council of the Armed Forces (SCAF) has assumed interim executive and legislative authority in Egypt. In the months following, the relationship between the SCAF and many of Egypt's citizens has deteriorated, at times escalating to violence. The excessive use of force by the security apparatus, the continuation of the Emergency Law, the use of repressive measures to stifle political dissent, the use of military tribunals for trying civilian suspects, and the crackdown on civil society organizations has created an atmosphere of distrust. Further, the SCAF's lack of transparent behavior has created an atmosphere of uncertainty about the commitment to full civilian leadership. It is in this context that the People's Assembly elections have taken place.

Principal Findings of The Carter Center's Witnessing Mission:

The Carter Center mission to witness Egypt's parliamentary elections is accredited by the Supreme Judicial Commission for Elections (SJCE). The Carter Center deployed 40 witnesses from 24 countries to all of Egypt's 27 governorates. Across the three phases of the process, these witnesses assessed and observed the administrative preparations, campaigning, voting and counting, and complaints processes. Carter Center witnesses met with government officials, political parties and candidates, and religious leaders, well as representatives of civil society, academia, and media. Carter Center witnesses continue to assess the conclusion of counting and vote tabulation and will remain in Egypt to observe the political environment and the upcoming Shura Council (Upper House) elections.

Assembly Elections The full report is attached and is also available on the Center's website [www.cartercenter.org](http://www.cartercenter.org). A more detailed final report of the Center's assessment and recommendations will be published at the conclusion of the mission.

The Center assesses the elections in Egypt based on the legal framework for elections in Egypt and the obligations for democratic elections contained in regional and international agreements. The Center conducts its election observation mission in accordance with the 2005 Declaration of Principles for International Election Observation.

The principal findings and recommendations of the mission to date include the following:

- ! Parties and candidates representing a spectrum of views generally participated in the People's Assembly elections without interference, despite continuation of the Emergency Law and episodic violence in and around Tahrir Square.
- ! Voters were generally able to cast their ballots free of interference and intimidation. Within the polling station, observers found the atmosphere to be generally peaceful, but at times overcrowded. Although the secrecy of the ballot was sometimes compromised, this was usually due to election officials failing to instruct voters correctly on the voting process.
- ! Illegal campaigning on election day occurred throughout the process. Though witnesses noted a decrease by the third phase, uneven enforcement of the law was a concern for many stakeholders with whom the Center's witnesses met.
- ! Carter Center witnesses consistently found the counting process to be chaotic. Judges used different approaches to counting and invalidating ballots, due to an absence of clear procedures or training. In addition, the publication of results by the SJCE was inconsistent across the phases. Despite this, Carter Center witnesses found the counting process to be acceptable.
- ! The legal framework for the People's Assembly elections has served as a reasonable, but far from ideal, foundation for the electoral process. The election administration lacks the full legal authority necessary to be independent. In addition, inconsistencies in the legal framework were exacerbated by piecemeal and last minute amendments.
- ! The election complaints process is among the Center's most significant concerns. Many Egyptian citizens did not appear to know how to access complaints mechanisms, particularly in phase one. In several instances, the timeline of complaints and the remedy granted by the courts (specifically, the rerun of some elections) have extended the election calendar and caused legal uncertainty. Few complaints have been investigated or resolved.
- ! The lack of official instruction to electoral stakeholders and the voting public has been a major weakness of the process. In addition, the Center noted that there was poor coordination between the SJCE and security forces, as well as between UGES and their subsidiary governorate committees.
- ! The Carter Center has deep reservations about the gross underrepresentation of women. Women were failed by the lack of a quota for representation, and by the political parties who consistently chose to place women in uncompetitive positions on their lists.
- ! Carter Center witnesses observed that, in general, police and army personnel acted competently throughout the election. This observation, however, stands in sharp contrast to the behavior of the



members of the constitutional committee. The exclusive authority of the parliament, as elected representatives of the people, should be respected.

Conduct an inclusive constitutional drafting process that takes into account the views of the full political spectrum of Egyptian society. It is important that the constitutional committee selected by the parliament be representative of Egyptian society. In particular, there should be a minimum of 30 percent women, and preferably a 50 percent requirement, included in the committee, and quotas for other vulnerable groups considered.

Protect democratic principles, fundamental rights and freedoms in the constitution: Constitutions, once adopted, are difficult to change. It is important that Egypt's new constitution protects the rights and freedoms of all Egyptians, that it provides for the clear separation of powers, and that national ownership of the constitution is secured through a credible and genuine referendum.

In reference to posttransitional elections, The Carter Center stresses the following recommendations:

Establish an independent election commission. The Carter Center recommends that posttransition elections, a permanent, fully independent, and professional election management body be established. A clear, consistent, and restructured legal framework is necessary to support such a body. Both of these goals should be achieved through a consultative process.

Redesign the women's quota: In accordance with international obligations, it is essential to ensure that women are able to participate in public affairs and contribute to public debate. The Center recommends that a minimum 30 percent quota be introduced to ensure the effective representation of women in both houses of parliament. (m)-9fial8.995J 0 Tc 11.22TJ /TT0 1 -8.995Jien64(r)-2(s)]d ( )Tj /TT1 mss3(v(b)4(e)4(s)f)5(ε

## THE ELECTION ENVIRONMENT

After eighteen days of popular uprising, the resignation of President Hosni Mubarak on Feb 11, 2011, initiated a transitional process in Egypt. The Egyptian military's Supreme Council of the Armed Forces (SCAF) moved quickly after the president's resignation to establish itself as the interim authority for the country's transition. A referendum amending nine articles of Egypt's 1971 Constitution was held on March 19, 2011. These articles, some of which were changed after the referendum, and a number of other provisions from Egypt's 1971 constitution, formed the basis of SCAF's Constitutional Declaration, promulgated on March 30, 2011. The Constitutional Declaration gave the SCAF interim executive and legislative powers during the period of the transition, while acknowledging the independence of Egypt's judicial authorities.

The SCAF's roadmap for Egypt's transition has been broadly outlined to include the election of the two houses of Parliament, made up of the 500-seat lower house People's Assembly and the 270-seat upper house Shura Council. The combined 678 elected members of the Parliament will select a 100-person constitutional drafting committee to write a new constitution that will then be put to a referendum. The presidential elections will be held thereafter. The SCAF has indicated that these steps will be complete by the end of June 2012 and has publicly committed to a full transfer of power to the newly elected president by that date.

The SCAF's decision to introduce the interim Constitution Declaration and position itself as the interim authority over the transition has been controversial. Violent clashes erupted during the course of persistent opposition by political groups and protest movements, contesting the SCAF's proposed role and management of the transition. Meanwhile, the SCAF and its supporters maintain they are committed to the goals of the January 25 Revolution, arguing that the time has come for protest movements to demobilize for normalcy to return to political and economic life, and for Egyptians to rely upon legal institutions such as political parties, elections, the national legislature, and constitutional efforts (tiii2(n)-33(ur)3b(nd) ( )4(t)3(h)03 -1 1roef ele(t)4(ur)3(e)1((e)1(nt)4( )5(s)2(e)9.1)]TJ 0.0 0 Tc 37n)-3(s)

avert these tensions by appointing an Advisory Council, composed of a group of political leaders and opinion-shapers, tasked with devising formal recommendations to the SCAF on key policy issues. However, this step has also been criticized as offering few formal mechanisms to hold the SCAF accountable and check its interim powers.

This context has had a formative influence on the process of the election for the People's Assembly. Political party platforms have been shaped, and shaped, as a response to events over the extended seven-week period of the People's Assembly election, making events in Tahrir Square and elsewhere inseparable from the electoral politics of the moment. Across the political spectrum, parties have maintained an interest in ensuring that the elections proceed credibly, and the People's Assembly be seated as a legitimate body that can exert its influence thereafter. Amid these dynamics the electoral administration's ability to deliver a credible and genuine election has been a pivotal concern for all actors in the transition.

## ELECTION OVERVIEW

Under the supervision of a judicial election management body, Egypt's People's Assembly Elections were conducted in three phases across 27 governorates, with more than 50,000 polling stations allowing for a nationwide polling of an estimated 50 million eligible voters. The requirement of judicial oversight at polling stations and the limited number of judges dictated the phased election. During each phase, polling was conducted across nine governorates. Both partylist and individual candidate races were conducted together in one round of voting. If required, runoff elections for the individual candidate races, f

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appoint these seats due to its interim executive authority. While Egypt's international commitments do not prescribe the electoral system to be used, it is critical that any system adopted protect and fulfill fundamental rights and freedoms.

### Seat Distribution

The international obligation of equal suffrage, where every voter should have equal voting power, is an important feature of any electoral system. Essentially, the elected members of an assembly should represent a consistent portion of the population or registered voters. This is determined by boundaries of electoral districts and the apportionment of seats assigned to each district. In an Egyptian decree 121/2011 of Sept 26, 2011, assigned the allocation of seats to districts for the People's Assembly. This distribution of seats based on the number of eligible voters shows a wide variation across governorates. To address this inequity of representation, Egyptian leaders should consider reviewing the conditions for the distribution of seats for future elections, with a view to enhancing equal suffrage.

### Quotas

Under Egypt's Constitutional Declaration of March 30, 2011, at least 50 percent of the elected membership of the People's Assembly must be a farmer or worker.<sup>9</sup> This quota requirement, while a historical feature of Egypt's electoral systems, is nevertheless controversial under international obligations that prohibit limitations on a citizen's rights to be elected.<sup>11</sup> The Constitutional Declaration of March 30, 2011, as amended on Sept 25, 2011, however, does not require women to be present in the assembly. While the law requires parties to include at least one woman in their party list of candidates to register, this quota mechanism has failed to promote the election of women to the assembly. The Carter Center strongly urges Egypt's authorities to reconsider the farmer/worker provisions, and to consider a

Negotiations over the proportion of seats allocated to the majoritarian and proportional representation systems were reportedly the subject of extensive discussions between the SCAF, political parties and civil society. The closed list proportional representation system promotes the development of strong political parties and allows for coalition building, but does so at the expense of a direct link between voters and their elected representative.

The absolute majority system on the other hand, where a candidate must win over 50% of the vote in his or her district, promotes a strong connection between the representative and the constituency, but does not encourage coalition building. The SCAF has conceded to parties to



## ELECTION ADMINISTRATION

A fully judicial supervisory commission, the Supreme Judicial Commission for Elections (SJCE), leads Egypt's transitional electoral authority. The SJCE oversees a mixed judicial and governmental General Secretariat that is responsible for coordinating and implementing the electoral operation. The SJCE is also supported in its work by subsidiary judicial electoral committees in each governorate and general committees in each district. At polling and counting, judges directly preside over the work of staff drawn from the local civil service (predominantly teachers from the Ministry of Education), while judicial counting committees also supervise counting centers.

The institutional arrangement in place closely resembles the electoral administration that Egypt used in 2005, but has extended the judiciary's roles and authority. However, while the judiciary's role has been strengthened, the independence of the SJCE is not explicitly stated under the SCAF's Constitutional Declaration. The civil law system, which is highly prescriptive, tightly binds the SJCE. Furthermore the SCAF, as the interim executive and legislative branch during transition has the ability to define and



addition, national and international witnesses could not be accredited at the<sup>27</sup> of the voters' list preparation. The Carter Center would strongly recommend that future exhibition and challenge processes for the voters' list be the subject of extensive information campaigns and that election officials ensure that witnesses are accredited well in advance of the entire process.

The decision to assign voters to specific polling stations based on their address as recorded in the NIC was an improvement over past practices. It provides a strong level of protection against multiple voting, a principal concern based on past types of election fraud and challenges posed by the multiple election phases. The voters' list was available to political parties and voters were able to check their assigned polling station by telephone, website and text message services. In spite of initial concerns, Carter Center witnesses observed that most voters were able to locate their assigned polling station. The Carter Center notes however that the assignment of voters to polling stations did not always keep families together to vote at the same polling station, which is usually beneficial for participation. The Carter Center recommends that in future elections, the list be prepared to keep families together.

Two provisions of the electoral laws heightened the importance of the accuracy of the NIC. First, the law established<sup>28</sup> that the NIC was the only form of identification that could be used by voters for polling. Second, the law<sup>29</sup> states that if a person is recorded in the voters' database and fails to vote without excuse, he or she is liable to a fine not exceeding 500 Egyptian Pounds (LE 500). In effect, this provision imposes an onus on voters to participate. However, in so doing, it also places a reciprocal responsibility on the electoral authorities to ensure voters are well informed about the election, and that their records are accurate as possible. Together, these provisions emphasize the importance of the voters' database to credible elections in Egypt. The weak exhibition and challenge exercise was therefore a concern, and should be a focus of future efforts to ensure accuracy and confidence in the system. Overall however, the voters' list has largely been a source of positive comment and demonstrated a significant improvement for the integrity of the elections.

### Regulations, Procedures, and Training

An important weakness of the electoral administration has been its lack of capacity, and arguably its unwillingness to exert its authority to interpret and define the electoral process. While the electoral laws are detailed in some elements (such as the counting process), the level of detail is inconsistent across the entire electoral process. For example, the laws lack detail on the counting process. The SJCE appeared reluctant to clarify ambiguities or to issue definitive instructions in this area to the general committees and presiding judges. The Carter Center's witnesses commonly observed different approaches being adopted by presiding judges. As such, the Carter Center would strongly recommend that the SJCE issue full and detailed regulations and procedures on all key elements of the electoral process, to ensure standard guidance is available to all election officials and other stakeholders.

International good practice and experience indicates that training and manuals that establish a consistent procedural approach are also vital to ensure a standard level of performance across an election.<sup>30</sup> The importance of these measures is particularly heightened for an operation that occurs over separate phases. The SJCE reportedly instructed the presiding judges that it was principally their responsibility to train<sup>31</sup> poll workers. The SJCE issued a polling manual for judges shortly before the first round of elections, however many judges advised Carter Center witnesses that they did not receive it prior to the first

<sup>27</sup> As the regulation for the accreditation of witnesses was not issued until October 16, 2011.

<sup>28</sup> Law on the Exercise of Political Rights, Art. 31.

<sup>29</sup> Law on the Exercise of Political Rights, Art. 40.

<sup>30</sup> See for example, EU Handbook for European Union Election Observation, Section 3, p. 36

<sup>31</sup> Carter Center witnesses reported that polling station staff did not undergo official training regarding their roles. In general, poll workers were given instructions by judges on the morning of the first election day, forcing them to learn on the spot.

of voting. Furthermore

misinformation, emerging issues or crises). Conflicting or erroneous information announced by officials, created confusion in several instances. The deliberations by the SJCE are by law secret, which compounds these problems and is a significant concern for the transparency of the SJCE's decision making processes.<sup>38</sup>

elections. The Carter Center would recommend that the normative roles of police and military forces be asserted, where military forces would act in support of public security. Security forces should also be better trained in the appropriate and proportionate use of force, with a focus on de-escalating potential conflict or violence.

It is important for the judiciary as election administrators to be both demonstrably and visibly in control of the election process. Polling activities are a main point of interaction between the general public and the electoral administration, and are therefore critical in terms of public perception. While judges are inside polling stations, their lack of visibility and presence in and around the polling centers is a concern. Similarly, at counting centers, judges have been absent at the point of access where the public is most able to view the process. Instead, security forces have been most visible at these points, which undermines the visible authority of the judiciary. The Carter Center's earlier recommendation that extra judicial officials be assigned to liaise directly with security forces at polling and counting center access points would mitigate this concern.

## LEGAL FRAMEWORK

As noted above, Egypt's electoral laws have changed significantly since the departure of President Mubarak. The SCAF, as the country's legislative authority, has greatly amended existing laws to establish the framework for the 2011/2012 People's Assembly elections. The primary laws governing Egypt's Parliamentary electoral framework are the Law on the Exercise of Political Rights (No. 73 of 1956) and the Law Concerning the People's Assembly (No. 38 of 1972). The Law on the Exercise of Political Rights governs the right to vote and voter eligibility. It establishes the SJCE and outlines its authority over the administration of the Parliamentary electoral process. It also governs voter registration, the voting and counting processes, and election-related crimes. The Law Concerning the People's Assembly establishes the electoral system for the People's Assembly as described above.

Egypt is signatory to the following international conventions or treaties, among others: the International Covenant on Civil and Political Rights (ICCPR),<sup>39</sup> the International Convention on the Elimination of all Forms of Racial Discrimination,<sup>40</sup> the Convention on the Elimination of Discrimination against Women (CEDAW),<sup>41</sup> the Convention on the Political Rights of Women; the Convention on the Rights of Persons with Disabilities,<sup>42</sup> the United Nations Convention against Corruption,<sup>43</sup> and the Universal Declaration of Human Rights.

### The Emergency Law and the use of Military Trials

The Carter Center reiterates its concern about the continuation of the Emergency Law, which has been in effect throughout the parliamentary electoral process. The current Emergency Law runs counter to basic principles of the rule of law.<sup>45</sup> The reasons<sup>46</sup> provided by the Egyptian military when it decided to renew

<sup>39</sup> Another significant law is the Law Concerning the Shura Council (Law Number 120 of 1980, as amended), which establishes the electoral system for the upcoming Shura Council elections.

<sup>40</sup> Ratified, 08/04/1967

<sup>41</sup> Ratified 09/28/1966

<sup>42</sup> Ratified 07/16/1980

<sup>43</sup> Ratified 04/04/2007

<sup>44</sup> Ratified 02/25/2005

<sup>45</sup> United Nations, Economic and Social Council, U.N. Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, para. D. 560: "No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant's guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment; freedom of thought, conscience and religion. These rights are derogable under any conditions even for the asserted purpose of preserving the life of the nation...the ordinary courts shall maintain their jurisdiction, even in a time of emergency, to adjudicate any complaint that a non-derogable right has been violated."



that they possess, a voice in the quality of the electoral process if the process is to retain credibility.<sup>52</sup> A transparent electoral dispute resolution system is particularly important to address potential instances when sophisticated electoral stakeholders, such as political parties and candidates, attempt to manipulate inappropriately the dispute resolution system to achieve more favorable electoral outcomes.

Egypt has all the tools necessary to establish a comprehensive, transparent system for receiving,





### Potential Abuse of the Cassation Court's Authority to Remove Seated Parliamentarians

The Court of Cassation has the authority to hear complaints regarding the validity of the membership of members of the People's Assembly. Complaints must be filed within 30 days after results are announced. The Court then has 90 days to render a decision. If it finds that an accused parliamentarian did not possess valid credentials to serve Parliament, the Court may order his or her



### Candidate/Party Agents and Representatives

Candidate or party representatives, and candidate or party agents, a visible presence in polling stations and counting centers. They played an important role in the electoral process. Specifically, representatives typically serve as witnesses for the opening of polling stations. They also can act as an important check against the potential of electoral violations committed by other agents or representatives, as well as by judges and poll workers.

Carter Center witnesses reported a few areas of concern regarding the role of candidate and party representatives and agents

- ✘ In the majority of polling stations and counting centers across Carter Center witnesses, representatives and agents were difficult to identify. Officials should require that all agents and



national CSOs have access to electoral officials. One measure for managing this kind of access would be for governorate-level SJCE officials to hold regularly scheduled briefings that include a question and answer period in their governorates throughout the course

first quartile positions. 94 percent of Islamist Bloc female candidates were placed in bottom quartile of their party lists.<sup>81</sup> The perception of token female candidates was reinforced by the representation of women on the campaign posters and literature of some conservative parties. Carter Center witnesses reported that across the country women candidates' faces were replaced with a picture of a flower, and their names by the names of their husbands, on party literature.

In all, 339 women ran for office in the majoritarian races. None won seats. Only one reached a runoff competition.<sup>82</sup> The profile of women running for majority seats was generally urban (over 40 percent of the 339 came from Cairo, Giza and Alexandria) and white collar (over 74 percent), indicating that political participation may be largely inaccessible to working class and rural women. Although larger district magnitudes for closed list races tend to favor female candidates, the vast geographic size of some rural districts coupled with limited access to campaign resources and traditional restrictions on women's travel in many areas heightened the challenges for women running for office.

Women candidates often require more time to mobilize financial resources and support (or, in some cases, family permission) for their candidacies. The brief period of time allowed for candidate registration may have therefore diminished access for female candidates in the election races for the People's Assembly. Further, as the Shura Council candidate nominations were completed simultaneously with the People's Assembly, this effect is expected to carry over into the upcoming elections for the upper house.

In all, eight women won elected seats in the People's Assembly and two were appointed by the SCAF, bringing the total percent of women in the People's Assembly to under two percent. This number falls far short of the 12.6 percent guaranteed by the quota in the 2010 Parliament and regression to levels from a decade ago, when women represented 1.8 percent of the People's Assembly in 2005.<sup>83</sup>

#### Women's Participation in Electoral Administration

No women served in senior electoral administration positions within the SJCE and no special measures (such as a designated committee) were introduced to promote women's participation as candidates or voters or to examine local shortcomings in this area. Women participated in the elections as judges, poll workers, observers and political party agents or representatives. Although women only constituted 2.6 percent of judges in polling stations visited by Carter Center witnesses during the three phases, their presence was more notable (although still unequal) in other roles. In polling centers visited by Carter Center witnesses during the three phases and often, Carter Center witnesses reported that women constituted over 7 percent of political party agents and 31 percent of domestic observers. Despite SCAF Decision 69 (issued Dec 10, 2011) requiring at least one female poll worker to be present in each polling station, a number of polling stations visited by Carter Center witnesses did not have any female poll workers.

The Carter Center strongly recommends that women be represented at all levels of the electoral administration. This includes the current SJCE national committees, as well as future electoral management bodies. While the law presently stipulates that the membership of these committees is based

<sup>80</sup> The Islamist Bloc is a coalition that is comprised of the Salafist Al-Nour and Al-Asala Parties, as well as the Building and Development Party.

<sup>81</sup> Respective list positions for women running under the four coalitions are as follows: Democratic Alliance 22% 1st quartile/48% 4th quartile; Egypt Bloc 6% 1st quartile/33% 4th quartile; Islamist Bloc 0% 1st quartile/94% 4th quartile; Completing the Revolution 3% 1st quartile/38% 4th quartile.

<sup>82</sup> "0B637",3CD3E"F5D360E">G52H02."!2E"/D32?0I3"JKC72KL7@:

<sup>83</sup> Gender Assessment USAID/Egypt (2010).

on incumbents within key judicial posts, the addition of female representatives as a special measure is strongly recommended.

#### Participation of Women Voters

A lack of adequate voter education negatively impacted women's participation, especially given lower rates of literacy among women. Carter Center witnesses reported widespread pressure on women voters, including, for example, the threat that a woman voting for a candidate not chosen by the family or tribe constitutes legal grounds for divorce. Although witnesses reported that many voters failed



electorate.<sup>88</sup> Although The Carter Center



line into active campaigning. To eliminate the need to police entire electoral districts for illicit campaigning, the Carter Center ~~also~~ recommends that lawmakers establish distance or other physical restrictions on campaigning outside of polling centers ~~on~~ election days



- ¥ Prohibitions against allowing candidate and party representatives from handling ballot boxes during transport or from otherwise participating directly in any aspect of the make or counting process that should be handled exclusively by election officials;
- ¥ Establishment of uniform guidelines for the proper conduct of party and candidate representatives, candidates, domestic and international witnesses, judges, poll workers, and security personnel inside counting centers; and
- ¥ As with polling centers, a requirement that every counting center committee include a judge who is