



**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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**Contact:** Cairo, Sanne van den Bergh +20 1013511710 or Atlanta, Deborah Hakes +1 404 420 5124

Egypt's People's Assembly elections enjoyed broad participation from voters and are a progressive 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 debate and 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 a sense of uncertainty about their 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 voting, 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, as 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 post-election environment and the upcoming Shura Council (Upper House) elections.

This is an executive summary of The Carter Center's principal findings on all three phases of the People's

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 and Egypt's obligations for democratic elections contained in regional and international agreements. The Center conducts its election observation missions 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 at times 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 three 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 the SJCE and their subsidiary governorate committees.
- The Carter Center has deep reservations about the gross under-representation 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

security forces toward the demonstrators in Tahrir Square, where the excessive use of force undermined public confidence.

The Carter Center's mission respectfully offers the following key recommendations for future elections:

***Clarify the process for electoral complaints and impose a reasonable deadline for the resolution of disputes:*** Egypt has all the tools necessary to establish a credible and expeditious election complaints process. The Carter Center recommends that steps be taken to clarify the process for accessible and timely resolution of electoral disputes.

***Complete the procedural framework for elections and train election officials:*** Election day and counting processes were inconsistent because of the lack of a clear and complete procedural framework and inadequate training for election officials. This should be rectified by the timely publication of full procedures and training of election officials.

***Conduct civic and voter education:*** An electorate that is informed about its rights and the steps necessary to exercise them is vital to the democratic health of a nation. The deficiency of voter information campaigns was notable. The Carter Center therefore recommends that the SJCE be given a clear mandate for voter education that is established in the law, and that they fulfill that responsibility.

***Increase transparency and accountability measures:*** Election authorities must be proactive in building trust with their electoral stakeholders and the public. This responsibility is amplified in the context of political transitions. A commitment to transparency and accountability at all levels of the administration is essential. Specific measures that should be considered include amending the law regarding the secrecy of the SJCE's deliberations and, publicly posting count results outside polling stations during the Shura Council elections.

***Enforce campaign finance regulations:*** Campaign finance regulations do not include any reporting requirements for parties or candidates, or explicit enforcement mechanisms against violators. The Carter Center recommends that parties and candidates be required to fully and accurately disclose campaign expenditures and donations to a regulatory body with the capacity and authority to investigate and prosecute allegations of campaign finance violations.

### **Completing the Democratic Transition**

The People's Assembly elections are one step in Egypt's democratic transition. Maintaining the momentum of the transition to full democratic rule necessitates further key steps, including the following:

***Lift the Emergency Law and end use of military trials for civilian suspects:*** Emergency laws are special measures that must be continuously justified. They should only be used in situations that threaten the security of the nation. When introduced, they should be limited in duration and geographic scope. The Emergency Law and the use of military trials for civilian suspects are not appropriate in the current climate in Egypt and should be ended.

The Carter Center also notes with regret the deaths and injuries of demonstrators arising from violence around the Parliament and Tahrir Square. The Carter Center condemns the violence and excessive use of force by security forces and urges a detailed investigation into these events. Such violence undermines the fundamental right of security, which is vital for all Egyptian citizens and essential to ensure their rights of freedom of expression and of association, which are especially critical during elections.

***Ensure the parliament has exclusive authority to select the constitutional committee:*** The newly elected membership of the People's Assembly and Shura Council will bear responsibility for selecting the 100

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 post-transitional elections, The Carter Center stresses the following recommendations:

***Establish an independent election commission:*** The Carter Center recommends that for post-transition 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.

***Remove farmer/worker quota:*** The use of occupational categories as the basis for candidate eligibility arbitrarily undermines the right to be elected. The Carter Center recommends that this provision of the constitution be reconsidered.

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## 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 the 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 508-seat lower-house People's Assembly and the 270-seat upper-house Shura Council. The combined 678 elected members<sup>1</sup> 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 self-appointed 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 (rather than demonstrations and sit-ins) as vehicles for advancing the process.

Opponents of the SCAF maintain that the January 25 Revolution remains an inconclusive struggle, highlighting that political institutions have not been overhauled to remove the authoritarian machinery and practices of the Mubarak regime. The SCAF's continuation of the Emergency Law, which allows for the military trial of civilians and limitations on the freedoms of assembly and association, is an ongoing source of tension and conflict. While the SCAF has been self-restrained in applying the Emergency Law provisions in connection to the electoral process, some groups view it as a form of intimidation and persistent threat. Equally, the use of excessive and deadly force against demonstrators, the sudden enforcement of laws over non-governmental organizations, and a lack of transparency and accountability have heightened an atmosphere of suspicion and distrust.

Ambiguity in the Constitutional Declaration over the powers of the elected parliament, the schedule and sequencing of presidential and legislative elections, and the exact method for selecting the constitutional drafting committee, allows the SCAF to determine the terms and pace of the transition. Opponents of the SCAF's ongoing role in the transition have highlighted that the People's Assembly, as the democratically elected representatives of the people, should assume leadership over the transition as the entity with popular legitimacy, and that its discretion should not be limited by the SCAF. The SCAF has sought to

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<sup>1</sup> The People's Assembly is constituted of 498 elected and 10 SCAF-appointed members. The Shura Council is made up of 180 elected members and 90 members appointed by the Executive.

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 salient 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 re-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 necessitated the phased election. During each phase, polling was conducted across nine governorates. Both party list and individual candidate races were conducted together in one round of voting. If required, runoff elections for the individual candidate races, were scheduled a week afterward, to determine the final winners.<sup>2</sup>

It was announced on Sept. 27, 2011, that the elections would be held on Nov. 28, 2011, (Dec. 5, runoffs), Dec. 14, 2011, (Dec.21 runoffs) and Jan. 3, 2012 (Jan. 10 runoffs).<sup>3</sup> On Nov. 25, 2011, three days before the first round of polling, the SCAF issued decree 262/2011 making each polling exercise a two-day process. Furthermore, in response to a range of complaints, more than 18 districts across Egypt were subject to re-run races. These races were held on various schedules over Jan. 10-11, 16-17, 17-18 and 18-19. In each round of polling, counting and tallying operations were conducted immediately following the close of polls at counting centers in each party-list district constituency. Out-of-country voting (OCV) was conducted three days before each round of elections in Egypt. The votes were tallied at Egypt's embassies and the results transmitted to the national election authority.

## **ELECTORAL SYSTEM**

The electoral system for the 498 elected seats of the People's Assembly is a mixed system. Two thirds (332) of representatives are elected using a closed list proportional representation system across 46 multi-seat constituencies. For a party or coalition to be eligible to win these seats, they must win at least 0.5 percent of all votes cast in the list races across the country. The remaining third (166) of the representatives is elected from 83 two-seat constituencies. The electoral system must ensure that at least 50 percent of the People's Assembly is composed of designated farmers or workers. The President also appoints an additional 10 seats of the People's Assembly.<sup>4</sup> In this instance, however, the SCAF will

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<sup>2</sup> Law Concerning the People's Assembly (Law Number 38 of 1972, as amended), Article 15, states that the electoral system requires individual candidate winners receive an absolute majority of votes, that is, they must receive at least 50%+1 votes to win.

<sup>3</sup> SCAF decree 199/2011, September 27, 2011. Phase one governorates included: Cairo, Alexandria, Port Said, Damietta, Kafr El Sheikh, Fayoum, Assiut, Luxor and the Red Sea. Phase two governorates included: Ismailia, Suez, Sharkeya, Menoufeya, Beheira, Giza, Beni Suef, Sohag and Aswan. Phase three governorates included: Qalubeya, Dakahleya, Gharbeya, Minya, Qena, Matrouh, New Valley, North Sinai and South Sinai.

<sup>4</sup> SCAF Constitutional Declaration of March 30, 2011, Art. 32.

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.<sup>5</sup>

### ***Seat Distribution***

The international obligation of equal suffrage, where every voter should have roughly equal voting power, is an important feature of any electoral system.<sup>6</sup> Essentially, the elected members of an assembly should represent a consistent portion of the population, citizens or registered voters.<sup>7</sup> This is determined by boundaries of electoral districts and the apportionment of seats assigned to them.<sup>8</sup> SCAF decree 121/2011 of Sept. 26, 2011, assigned the allocation of seats to districts for the People's Assembly elections. 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,<sup>10</sup> 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 meaningful and effective quota for women's representation that is consistent with its international obligations.

### ***"Mixed" Electoral System***

Electoral systems are not neutral. Different electoral systems promote different types of representation and political behavior, which are highly influential on the subsequent focus of the elected assembly. As such, informed and broad debate should accompany decisions on the electoral system to be used.

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<sup>5</sup> UNHRC, General Comment 25, para 21: "Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors."

<sup>6</sup> United Nations Human Rights Committee, General Comment Number 25 on the ICCPR, para. 21: "The principle of one person, one vote must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another." UN, ICCPR, art. 25 (b)

<sup>7</sup> Organization for Security and Co-operation in Europe (OSCE), Existing Commitments For Democratic Elections In OSCE Participating States, p. 55: "Elections conducted on the basis of equal suffrage require equality of voting power. In principle, no vote should carry proportionally more weight than another, so that there is an approximately equal number of voters per elected representative in each district."

<sup>8</sup> UNHRC, General Comment 25, para 21: "The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely."

<sup>9</sup> The terms "farmer" and "worker" are defined in Article 2 of the Law Concerning the People's Assembly. The term "farmer" is defined as a person whose sole work and main source of living is cultivation, and who is residing in the countryside, providing he, his wife and minor children do not own or lease more than a certain amount of land. The term "worker" is defined as a person who depends mainly on income from manual or non-manual work in agriculture, industry, or services. He or she must not be a member of a professional syndicate, recorded in the commercial register, or a holder of a higher degree of education. (Any person who was a worker and then obtained a higher degree of education is exempt from this restriction, however.) In all cases, for any person to be considered a worker he or she must be enrolled in a trade union.

<sup>10</sup> SCAF Constitutional Declaration of March 30, 2011, Art. 32.

<sup>11</sup> International Covenant on Civil and Political Rights (ICCPR), Art. 25.

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 percent 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's concession to parties to allow individual candidates in majoritarian races to be party affiliated was an important decision.<sup>12</sup> The decision permitted voters a broader choice of representative – allowing for both independents and party affiliated candidates to compete in these races. Also, in the elected assembly the pre-existing party affiliation allows for these elected members to be part of broader coalitions, off-setting some of the drawbacks of the majoritarian system.

*The Proportional Representation System:* The use of the closed list proportional representation (PR) system and the 0.5 percent national threshold provided an incentive for national coalitions to form, in preference to single-governorate parties competing alone. This design of the electoral system is therefore a positive step towards forming an assembly with a national focus, rather than one that is bound to sub-national localized interests. The formation of national coalitions also appears to have largely mitigated some concerns that the relatively small size of the proportional districts would result in a fragmented assembly.

The law did not define a specific formula for the calculation of the PR seats. It did however assert that seats would be allocated on a proportional basis, and that vacant seats would be distributed by the 'highest remainder' method. To meet the farmer/worker quota requirement, party lists were required to be submitted with at least one farmer/worker candidate in every two ranked positions. If a list district failed to elect at least 50 percent farmer/worker candidates, an electoral coefficient is calculated by dividing the valid votes for each list in the district by the number of seats they won.<sup>13</sup> The lists with the lowest coefficient and non-farmer/worker winners are then required to reorder their list to provide the necessary farmer/worker winners.

*The Majoritarian System:* In the 83 two-seat constituencies, the use of the absolute majority system and the requirement that at least one winner be a worker or farmer, necessitated voters to cast two votes. If two candidates do not receive absolute majorities or, if at least one of the winners is not a farmer or worker, a runoff race is required. In most districts a runoff race was necessary to determine the final winners. A simple majority system (where the highest vote winning candidates are awarded the seats) would alleviate the pressure and costs of conducting runoff elections. Furthermore, for any future replacement of elected officials, rather than conducting a supplementary election (as is currently the case), the substitute official could be identified as the next most popular candidate. The Carter Center therefore recommends that Egypt's authorities consider a simple majority system to replace the absolute majority approach.

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<sup>12</sup> See Law Concerning the People's Assembly, Art. 5, which was repealed as of Oct. 8, 2011.

<sup>13</sup> Law Concerning the People's Assembly, Art. 15-bis.

## ELECTION ADMINISTRATION

A fully judicial supervisory commission, the Supreme Judicial Commission for Elections (SJCE), leads Egypt's transitional electoral authority.<sup>14</sup> The SJCE oversees a mixed judicial and governmental General Secretariat that is responsible for coordinating and implementing the electoral operations.<sup>15</sup> The SJCE is also supported in its work by subsidiary all-judge 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.<sup>16</sup> 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 this transition has the ability to define and bind the actions of the SJCE through legal amendments, which undermines the SJCE's independence both in law, and in practice. The recent major revisions to the electoral laws made from May 19, 2011, onward have been subject to ongoing piecemeal amendments, making the electoral administrative process difficult to manage.

The SJCE was appointed on July 19, 2011, and the People's Assembly elections announced on Sept. 27, 2011. The SJCE, therefore, had a critically short period in which to become established, define inter-institutional relationships, develop electoral procedures, and train staff. As a result, the SJCE has relied heavily on the Ministry of Interior (MoI) to implement the electoral process. Operating through the General Secretariat, the MoI has been responsible for organizing the procurement and distribution of materials, logistical support, and operational arrangements.

An independent and impartial authority that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuine democratic process, and that other international obligations related to the democratic process can be met.<sup>17</sup> The Carter Center therefore recommends that the future constitution explicitly provide for the independence of Egypt's election authority. However, independence is also affected by the ability of the electoral authority to not only supervise, but to implement an election. The SJCE has been dependent on the Ministry of Interior (MoI) to implement key electoral processes, but has not necessarily had the capacity to fully supervise these activities. A further recommendation of The Carter Center is therefore to suggest the establishment of a professional and permanent election administration, with a presence in all of Egypt's 27 governorates.

The Shura Council elections will be conducted in two phases under the SJCE. The presidential election however, will be conducted under a separate judicial commission (headed by the president of the Supreme Constitutional Court<sup>18</sup>). The current tenure of the People's Assembly (five years<sup>19</sup>), the Shura Council (six

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<sup>14</sup> The SJCE was originally titled as the High Elections Commission (HEC) per the Law on the Exercise of Political Rights (Law Number 73 of 1956, as amended), but its name was changed by the Commission.

<sup>15</sup> Law on the Exercise of Political Rights, Art. 3-bis(i). The General Secretariat, which is responsible for the implementation of the election, is constituted of judges, and a representative from the Ministries of the Interior, Telecommunications and IT, and Local Development.

<sup>16</sup> SCAF Constitutional Declaration of March 30, 2011, Art. 39.

<sup>17</sup> United Nations Human Rights Committee, General Comment Number 25 on the ICCPR, Paragraph 11.

<sup>18</sup> SCAF Constitutional Declaration of March 30, 2011, Art. 28.

<sup>19</sup> SCAF Constitutional Declaration of March 30, 2011, Art. 34.

years<sup>20</sup>) and the presidency (four years<sup>21</sup>) highlights that, as they will all be elected in 2012, the next major round of elections will occur in 2016 (presidential), 2017 (People's Assembly) and 2018 (Shura Council). This electoral calendar, which does not yet include local elections, highlights future risks of voter exhaustion and the high cost of elections. These likely costs are not trivial, especially given the associated indirect expense of closing courts (by the absence of judges) and schools for polling.

### ***Electoral Operations***

The SCAF's decision to extend polling to two days strengthened inclusiveness by enhancing the opportunity for voters to participate. However, it also heightened the challenges for the election administration. Procedural changes were necessary to arrange for the overnight security of used ballot boxes and other sensitive materials. Protocols for reconciling voter turnout and the use of ballots became more complex, and for poll workers, fatigue became a serious concern, especially as they had to conduct counting immediately after the second day of polling. The SJCE and election officials made a series of credible adjustments, although the extremely short timeframe and the lack of clear instructions, led to the inconsistent implementation of procedures between and within governorates.

For counting activities, the SJCE implemented a semi-centralized count process. Votes (sealed inside the ballot boxes), polling materials, and the polling committees were transported to counting centers located in each of the proportional representation districts. While polling committee staff was meant to travel with the votes and materials, the Carter Center's witnesses observed that on many occasions several staff members would travel separately due to inadequate space. Upon arrival at counting centers, it was widely witnessed that there was no formal system to intake<sup>22</sup> the arrival of votes, materials, and staff. The absence of an intake process contributed to a chaotic atmosphere at entry in most centers. Overseen by counting committees, judges that presided at polling stations then supervised the counting of those votes, assisted by the same polling staff. In addition, results from the out-of-country Voting (OCV) were transmitted by the SJCE to the counting committees for inclusion into the final count.

### ***Voters' Registry***

Voter registration is recognized as important means to ensure the right to vote, and should be made available to the broadest pool of citizens possible to ensure universal and equal suffrage are protected as required by Egypt's international commitments. The National Identity Card (NIC) database was adopted as the basis for the voters' list for the People's Assembly election. This move was widely accepted by stakeholders as a positive step for the integrity of the election, as the old voters' registry was reputed to have been a source of electoral manipulation under past regimes. In accordance with the law, the initial compilation of the voters' list was completed on July 20, 2011.<sup>23</sup> However, the SJCE is mandated by law<sup>24</sup> to oversee the preparation of the election list and was only appointed on July 19.<sup>25</sup> As such, the requirement that the SJCE fulfill this part of its mandate within this timeframe was unreasonable.

The voters' list was publicly displayed for examination between Aug. 20- 31, 2011, and challenges to the accuracy of the records could be made up until Sept. 15, 2011.<sup>26</sup> However, information to the public about the exhibition and challenge process was poorly communicated. Many groups interviewed by Carter Center witnesses reported that most voters were unaware of the opportunity to inspect the records. In

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<sup>20</sup> SCAF Constitutional Declaration, March 30, 2011, Art. 36.

<sup>21</sup> SCAF Constitutional Declaration, March 30, 2011, Art. 29.

<sup>22</sup> "Intake" here refers to procedures for ensuring that all polling station materials and staff have arrived at the Counting Center.

<sup>23</sup> Law on the Exercise of Political Rights, Art. 5-bis.

<sup>24</sup> Law on the Exercise of Political Rights, Art. 3-bis(f)(2).

<sup>25</sup> Law on the Exercise of Political Rights, Art. 3-bis(f)(2).

<sup>26</sup> Law on the Exercise of Political Rights, Art. 5-bis.

addition, national and international witnesses could not be accredited at the time<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 to view 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 the 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 process, and their records are as 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 polling 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 round

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<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, Second Edition, 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, a counting manual was not produced. The lack of training was evidenced by inconsistencies in the implementation of activities by presiding judges, and caused uncertainty over their scope and application of authorities. In particular, there was wide variation in the treatment<sup>32</sup> of illiterate voters at polling, and during counting, inconsistency in the determination<sup>33</sup> of a ballot as valid or invalid. The Carter Center recommends that full training materials be developed, and election officials be better trained for future elections.

### ***Public Outreach and Voter Education***

Voter education efforts are necessary to ensure an informed electorate is able to effectively exercise their right to vote.<sup>34</sup> The Egyptian legal framework does not establish a clear institutional mandate for voter education. However, even in the absence of an official mandate, an election authority has a responsibility to inform voters, political contestants, and stakeholders about the election process.<sup>35</sup> In particular, when there is a prospect of a fine for failing to participate, the electoral authority and government has a greater responsibility to inform voters.

Political parties and civil society organizations were both active in voter education, but their efforts suffered due to a lack of authoritative information from the SJCE or governorate committees to inform these efforts. In almost all governorates, Carter Center witnesses observed little to no evidence of official voter education and/or ballot education campaigns during the pre-election periods. For future elections, the law should establish a clear mandate for the election authority to undertake voter and civic education campaigns.

The lack of ballot education is a particular concern, especially in communities of illiteracy. At polling, voters were given two ballots, one for the party-list race and another for the individual candidates' race. The law<sup>36</sup> requires that when voters mark the ballot for the individual candidate races, they must select exactly two candidates. If fewer or more candidates are selected, or if there is any mark on the ballot that would indicate the voter's identity, it is ruled invalid. Similar legal provisions apply for the party-list race; the voter must select only one party. These strict rules impose a strong requirement for voters to receive extensive ballot education to ensure their vote is valid. Initial analysis of invalid ballot information from the SJCE indicates that the invalid ballot rate is over seven percent. This is a high rate of invalid ballots and emphasizes the demand for greater efforts in ballot education and voter education generally.

The frequent amendment of laws and procedures<sup>37</sup> imposed an additional onus on the authorities to communicate with electoral stakeholders in order to avoid confusion, misunderstandings, and misleading expectations. The SJCE however demonstrated a weak capacity for reactive messaging (responding to

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<sup>32</sup> Witnesses observed that judges lacked a uniform method when dealing with illiterate voters. On several occasions judges would mark the ballot for a voter, while in other instances, they would read out the names of individuals and parties or describe their respective symbols. Uniquely, one Carter Center witness reported that a judge allowed illiterate voters to first test-try a ballot outside the polling station before marking an official one inside.

<sup>33</sup> Carter Center witnesses observed that judges lacked consistency in the classification of invalid ballots. Judges appeared to have different decision-making criteria in deciding whether anti-government slogans or other extraneous writing on a ballot rendered it invalid.

<sup>34</sup> UNHRC, General Comment 25, para. 20

<sup>35</sup> See for example, international good practice as indicated by the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 14: "The State has the responsibility to take legislative, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights."; European Union, Handbook for European Union Election Observation, Second Edition, p. 39: "Responsibility for impartial voter education often rests with the [electoral management body], frequently in conjunction with civil society and the media."

<sup>36</sup> Law Concerning the People's Assembly, Art. 5-bis.

<sup>37</sup> For example, there was a lack of clear information from the SJCE regarding the use of expired national identity cards as a form of identification at polling.

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>

The SJCE's weak public outreach capacity was also evident in the critical process of announcing election results. In each round, results were often announced late and, due to the complaints process, subject to on-going amendments. Delays and uncertainty directly impacted the time available for runoff candidates to campaign between rounds of elections. The uncertainty over results also detracted from the authoritative credibility of the SJCE. The Carter Center would therefore recommend that the SJCE take definitive steps to enhance its communication capabilities, including its reactive media capabilities, and to develop streamlined processes for the timely announcement of results and other information.

### ***Out of Country Voting***

After a successful legal challenge by several Egyptians abroad and a national non-governmental organization in late October 2011, the election for the People's Assembly included provisions for out-of-country voting (OCV) through Egypt's embassies abroad. The system in place allowed for OCV voters to register online using their National Identity Card number and personal information, download and mark their ballots, and submit them in a double-envelope procedure to the nearest embassy by mail, or in person. In total, just over 356,000 Egyptians abroad registered. The process has been the subject of minimal scrutiny and did not allow for direct judicial oversight of polling. While this system was rapidly designed and implemented, the lack of transparency associated with the process, the extent of judicial oversight, and the opaque process of how OCV votes are integrated into the election results should be a focus of improvement for future elections.

### ***Election Security***

As the principal security provider for the electoral process, the role of Egypt's security forces (military and police forces) has been a sensitive issue throughout the elections. Events in Tahrir Square and elsewhere during the election period marred the image of and public confidence in the security forces. As is normal, election security plans are not available to the public for operational reasons, but in Egypt's circumstances, this secrecy contributed to suspicion and speculation. Operational secrecy aside, the level and means through which security efforts are coordinated with the electoral authority do not need to be opaque. In addition, because election security can limit the principles of freedom of assembly, freedom of association, and freedom of speech, efforts to explain and build confidence in the role of security forces should be stressed. As such, intensified efforts to explain and repair public confidence in the role of security forces are strongly recommended.

Carter Center witnesses generally observed the performance of security forces in connection to the election process as consistently competent. The security of the electoral environment throughout the three phases was peaceful overall, but witnesses still observed several cases of electoral violence. These incidents included verbal harassment and some instances of physical violence between candidates and parties. There were also several instances of security forces acting beyond their authority, denying national and international witnesses access to polling and counting centers, and appearing to enter these sites without the required invitation from presiding judges. Also, it was broadly observed by Carter Center witnesses that military personnel appeared to have a leadership responsibility over police forces. Carter Center witnesses reported at least a few instance in which army personnel released gunfire into the air and threatened to use *tasers* to control crowds at polling centers. The use of these inappropriate crowd control measures may be the result of a lack of adequate training and guidance on proper conduct during

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<sup>38</sup> Law on the Exercise of Political Rights, Art. 3-bis(d),

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 police-led 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 and voters 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, as well as election-related crimes. The Law Concerning the People's Assembly establishes the electoral system for the People's Assembly as described above.<sup>39</sup>

Egypt is signatory to the following international conventions or treaties, among others: the International Covenant on Civil and Political Rights (ICCPR);<sup>40</sup> the International Convention on the Elimination of all Forms of Racial Discrimination;<sup>41</sup> the Convention on the Elimination of Discrimination against Women (CEDAW);<sup>42</sup> the Convention on the Political Rights of Women; the Convention on the Rights of Persons with Disabilities;<sup>43</sup> the United Nations Convention against Corruption,<sup>44</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

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<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. Sub-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. 58-60: "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 or punishment... freedom of thought, conscience and religion. These rights are non-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 public emergency, to adjudicate any complaint that a non-derogable right has been violated."

the law in September 2011, a renewal that many feel was in and of itself an illegal act,<sup>47</sup> may be addressed effectively through Egypt's civil law system. Although the military or police have appeared to refrain from implementing the Emergency Law to enforce restrictions on electoral speech and activities, its existence still produces a chilling effect that stifles free expression and assembly, which are absolute conditions for a healthy electoral process within a functioning democracy.

The Carter Center also reiterates its concern regarding the use of military trials for civilian suspects. To date, it has been reported that 12,000 civilians have been brought before military tribunals.<sup>48</sup> Such measures can stifle political dissent and instill fear among Egypt's citizenry, ultimately limiting the civil and political rights of citizen electors as defined by both national laws and international commitments regarding democratic elections.

For these reasons, The Carter Center recommends that the Emergency Law be rescinded and that any future application of the Emergency Law be narrow in scope, based on absolute and verifiable necessity, and tightly limited in duration. It should ensure due process rights before civilian courts for any civilians charged under its provisions.

### ***The Law Against Political Corruption***

In November 2011, the SCAF enacted a law banning political corruption, defined in part as crimes committed by those who seek to corrupt "political life."<sup>49</sup> The law, which requires that an alleged perpetrator be tried and convicted in criminal court, carries with it a penalty of a ban from serving as an elected official, or from being a member of a party, for a period of five years. The law was widely reported<sup>50</sup> to have been adopted to address the participation of some former members of Hosni's Mubarak's NDP in Egyptian politics.

The Carter Center recognizes that certain elected officials or other officials from previous regimes may be responsible for corrupt acts, and should be tried in accordance with existing laws governing abuse of power, financial corruption, or other relevant laws. The Carter Center is concerned, however, that any Egyptian government could use provisions of the Law Against Political Corruption, which include vague references to "political" crimes, in an unjust manner against political opponents. The Carter Center hopes that lawmakers or the courts will establish clear, fair standards for each of the elements of "political corruption" under this law, or if this cannot be done, will repeal these provisions of the law.

## **ELECTORAL DISPUTE RESOLUTION**

Effective, clear, and fair procedures for electoral dispute resolution are an essential part of a well-functioning electoral process.<sup>51</sup> Voters and other electoral stakeholders must be given, and must perceive

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<sup>46</sup> This included concerns reported to have been expressed by leaders regarding an attack by protestors on the Israeli Embassy in Cairo, the existence of "thuggery" generally, and other alleged criminal activities. See for example Tamim Elyan, "Egypt's army says that emergency law in place till June," Reuters, September 21, 2011: <http://www.reuters.com/article/2011/09/21/us-egypt-emergency-idUSTRE78K3WK20110921>.

<sup>47</sup> Pursuant to the SCAF Constitutional Declaration of March 30, 2011, Art. 59, a state of emergency must be for a time period of no greater than six months. It is not permissible to extend it beyond six months without a public referendum.

<sup>48</sup> Human Rights Watch, "Egypt: Retry or Free 12,000 after Unfair Military Trials," September 10, 2011:

<http://www.hrw.org/news/2011/09/10/egypt-retry-or-free-12000-after-unfair-military-trials>.

<sup>49</sup> SCAF, press release entitled "SCAF Adopts Political Corruption Legislation", November 19, 2011, for additional details in English on the amended law's new provisions: <http://www.sis.gov.eg/vr/policy/policy.pdf>.

<sup>50</sup> Human Rights Watch, "Egypt: Draft 'Political Corruption' Law Invites Abuse," October 26, 2011:

<http://www.hrw.org/news/2011/10/26/egypt-draft-political-corruption-law-invites-abuse>.

<sup>51</sup> ICCPR, Art. 2(3), "Each State Party to the present covenant undertakes: (a) to ensure that any person whose rights or freedoms are herein recognized as violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto

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, investigating, and adjudicating all electoral complaints fairly and expeditiously. This is due in part to the constitutionally mandated supervision of the electoral process by judges, including the prominent role played by judges within the SJCE, and because of the existence of Egypt's well-established and well-respected courts. In spite of these resources, however, Egypt has an electoral dispute resolution system that is not only largely ineffective, particularly for ordinary voters, but that actually causes significant damage to the electoral process itself, through the high number of court-ordered "re-run" elections.

Carter Center witnesses found in many instances a lack of understanding about the process for registering a complaint among Egyptian voters, some party and candidate representatives, and some candidates themselves. Furthermore, a wave of late court decisions issued shortly before, on, or shortly after election days, including some apparently resulting from complaints filed by parties after the legally mandated deadline for filing challenges to candidate or party lists, have caused serious disruptions of the electoral process. As a result, districts in several governorates across Egypt have been forced to re-run individual candidate or list elections in accordance with these last-minute court decisions.

### ***Consolidating and Clarifying the Electoral Complaints Process***

Many Egyptians do not seem to be aware of their full rights to initiate complaints regarding the electoral process, including the processes for filing a complaint and what constitutes electoral misconduct.<sup>53</sup> It may be that most Egyptians are aware of the role of the judge within a polling station as the authority on alleged violations, and Carter Center witnesses did report that many judges at the polling station level made a conscientious effort to resolve complaints occurring within their polling stations. However, voters appeared to have little knowledge of or guidance on how to make allegations of electoral misconduct in a variety of other circumstances. Examples of such circumstances include allegations of misconduct occurring before election day; allegations of misconduct occurring within polling centers but outside polling stations; allegations of misconduct by police, military, and other security personnel; and allegations of misconduct by the polling station judges themselves.

Political parties, candidates, and other more sophisticated actors, however, seemed to largely bypass the SJCE and avail themselves directly of Egypt's courts<sup>54</sup> to resolve complaints regarding alleged irregularities in the electoral process. Unlike filing complaints through the polling station judge or with the SJCE, complaining parties in the courts are guaranteed a decision on their complaint, and the court, through executed judgments, has the authority to compel remedies. Court decisions are recorded, and copies of the decisions are provided to parties in the case.

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determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies when granted."

<sup>52</sup> United Nation Human Rights Committee, General Comment No. 32 on the ICCPR, para. 25: "The notion of fair trial includes the guarantee of a fair and public hearing."

<sup>53</sup> Law on the Exercise on Political Rights, Art. 3-bis(f)(4), designates the SJCE for "[r]eceiving reports and grievances in connection with the electoral process and verifying the validity and eliminating the causes thereof."

<sup>54</sup> Egypt's State Council or Administrative Court system has jurisdiction over complaints regarding the electoral process up until the moment that results in an election are officially announced. Egypt's Court of Cassation has the authority to hear challenges to the membership of candidates to the Parliament for a period of 30 days from the moment that results are announced.

As a matter of basic fairness, whether it is through the courts, through an electoral management body, or through some other entity, Egypt's leaders should take steps to consolidate and clarify its electoral dispute resolution system. This includes taking greater steps to educate the public on the right to file a complaint, easing the process for ordinary citizens to file complaints (for example, through the use of standardized complaint forms), and by lowering barriers to access (for example, ensuring there are no fees for filing complaints and establishing multiple sites within a governorate where individuals may file complaints). Such a system should ensure that every complaint is considered, even if it is rejected, and that decisions on allegations are publicized in a way that will instill confidence in any Egyptian complainant that his or her complaint was heard.<sup>55</sup>

### ***Untimely Disruption of the Electoral Process through the Courts***

Recent court decisions have resulted in a serious disruption of the electoral process. Specifically, the Egyptian administrative courts have issued a number of rulings during the first, second and third phases of elections that have resulted in decisions to re-run elections in various districts. Many of these decisions appear<sup>56</sup> to be related to matters that should have been resolved during the candidate challenge phase.<sup>57</sup> It is needlessly wasteful and potentially damaging to the credibility of the electoral process to require re-run elections in many of these cases. The Law Concerning the People's Assembly and the Law Concerning the Shura Council contain clear deadlines for candidate challenges, the publication of party and individual candidate lists, and other aspects of the electoral timeline. The Carter Center urges the SJCE and the courts to adhere to the deadlines contained within these laws to prevent the needless re-running of elections going forward.

### ***Potential Conflicts of Interest***

The Carter Center also notes with concern the possibility of a conflict of interest existing for judges adjudicating election-related cases, given that elections are largely administered at the national, governorate, and sub-committee level, by their fellow judges. In accordance with internationally recognized standards regarding judicial independence and ethics, Egyptian judges should take transparent steps to ensure that judges adjudicating election-related cases have no conflicts of interest, or appearances of conflicts of interest, with judges supervising the electoral process who might be associated with the case at issue.<sup>58</sup>

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<sup>55</sup> The Egyptian electoral dispute resolution system renders analysis of decisions, and consequently the development of the steps necessary to address in future elections the causes of electoral violations, extremely difficult. It does not appear that the SJCE records or publishes the outcome of electoral complaints that it has received. Although courts issue decisions in election-related cases, there is no easy method to access and compile these decisions. An additional advantage of a consolidated electoral dispute resolution system would be the facilitation of recordkeeping regarding election-related remedies and penalties, so that results can be analyzed, and problem areas pinpointed for future elections.

<sup>56</sup> Administrative court decisions in Egypt are extremely difficult to obtain. They are often hand-written documents that are provided to interested parties only. Decisions are not officially compiled and published until a significant period of time after judgments are issued. Decisions are not posted on-line, and are not available for public scrutiny at the courthouse itself.

<sup>57</sup> This is spelled out in Articles 9 and 9-bis of the Law Concerning the People's Assembly. The Carter Center has also heard reports that litigants in election-related cases have obtained judgments, which they have purposefully had executed only shortly before election results are announced to affect electoral outcomes. We have also heard reports that some litigants are using unexecuted judgments as a bargaining chip to obtain benefits or extract concessions from other parties or candidates. Lawmakers and courts should ensure that the execution of all administrative court judgments occurs within a short-time period after the judgment is issued, so that litigants may not unfairly spring executed judgments upon the SJCE shortly before the announcement of election results.

<sup>58</sup> Impartiality, and the perceived impartiality, of the judiciary is a widely recognized condition for an equitable judicial process. See for example, the Bangalore Principles of Judicial Conduct (2002), Application 2.5, "A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially..." See also, General Comment, 32, para 21: "the tribunal must also appear to a reasonable observer to be impartial."

### ***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.<sup>59</sup> Complaints must be filed within 30 days after results are announced. The Court then has up to 90 days to render a decision. If it finds that an accused parliamentarian did not possess "valid" credentials to serve in Parliament, the Court may order his or her removal.

Undoubtedly, there are cases where a sitting parliamentarian should be removed, for example, if evidence emerges of fundamental fraud in his or her nomination application. However, it is unclear what standards the Court will apply generally in hearing these cases. Disqualification of a large number of seated parliamentarians, especially if the court's actions are perceived as favoring or disfavoring any political party or faction in particular, could destabilize Egypt's new democracy.

The lengthy timeline for consideration and adjudication of these complaints is also cause for concern. During the first 120 days of the People's Assembly, members will likely make momentous decisions regarding the appointment of a constitutional drafting committee and the development of the new Constitution itself. The People's Assembly will weigh in on sensitive topics such as the future role of the military in government, the language of Article 2 of the previous Constitution governing Egypt's Islamic character, and the power and authority of the President of Egypt. The Carter Center recommends that Egyptian lawmakers shorten the timeline for submission and adjudication of complaints so that potential decisions to remove members do not result in the likely disruption of the operation of the People's Assembly once it has been seated.

## **CANDIDATES, PARTIES, AND THE CAMPAIGN ENVIRONMENT**

Equitable treatment of candidates and parties during an election as well as the maintenance of an open and transparent campaign environment are important to protecting the integrity of the democratic election process.<sup>60</sup> Carter Center witnesses observed a vibrant campaign process. Campaign rallies appeared to take place with little or no restrictions throughout Egypt. Candidates and parties posted campaign posters and banners in all areas of the country. It is worth noting, however, that as The Carter Center previously reported, some parties suspended their campaigns in response to events in Tahrir Square.

### ***Campaign Silence Period Violations***

The single most common, and most visible, electoral violation observed by Carter Center witnesses was unauthorized campaigning during the two-day campaign silence period before the first polling day for each of the three electoral phases, and the one-day campaign silence period before the first polling day of runoff elections for each phase.<sup>61</sup> Campaign tactics employed during silence periods included the use of mobile loudspeakers and the dissemination of flyers. Although campaigning during the campaign silence periods appeared to decrease in subsequent phases,<sup>62</sup> witnesses continued to report violations in several governorates during the third phase of polling. Both political parties and several individual candidates violated the campaign silence provision.

Given the extreme difficulty in defining what constitutes "campaigning," and in enforcing silence time provisions throughout an entire electoral district, The Carter Center recommends that lawmakers abandon

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<sup>59</sup> Law Concerning the People's Assembly, Art. 20.

<sup>60</sup> UN, ICCPR, art 25(b)

<sup>61</sup> SJCE Regulation Number 21, Section 3.

<sup>62</sup> It is likely that campaigning during the campaign silence period decreased during phases two and three for several reasons, including because of efforts by political parties to curb illegal campaigning by its members, public statements by the SJCE reminding Egyptians of prohibitions against campaigning, and widespread denunciations of silence time campaigning in Egyptian media, including Egyptian social media, following phase one.

the use of a campaign silence period altogether and adopt campaign limitations based on proximity to polling centers on election days. Doing so will facilitate enforcement as officials need only ensure that there is no unauthorized activity occurring within, perhaps, 50 or 100 meters of a polling center, rather than having to determine whether any activity occurring anywhere within a governorate constitutes illicit campaigning.

### ***Religious Slogans***

One of the most serious allegations of misconduct that can be made in Egyptian electoral politics is that a candidate or party is engaging in the use of religious slogans for campaign purposes. According to the Law Concerning the People's Assembly and SJCE regulations,<sup>63</sup> the use of religious slogans will result in the removal of the offending candidate from the electoral process. Despite this, Carter Center witnesses regularly received reports of the use of religious references during the campaign period without penalty.

This provision, however, appears to be excessively vague. It is easy to imagine slogans or other campaign rhetoric that falls within gray areas under this prohibition. A significant debate, for example, has taken place in Egyptian political circles regarding the legality of the slogan, "Islam is the Solution," the traditional slogan of the Muslim Brotherhood. Opponents have claimed that the phrase is religious in nature and that candidates that employ this phrase in their campaigns should be disqualified. Supporters contend that the phrase is derived from Egypt's Constitution and is therefore allowable. A court recently ruled that the use of this phrase was permissible. The Carter Center urges lawmakers and other election officials to take steps to clarify further provisions regarding the use of religious slogans, to prevent it from being applied unevenly, and potentially from being used to persecute certain candidates or parties.

### ***Campaign Finance***

Regulatory provisions regarding campaign finance do not include any reporting requirements for parties or candidates, or explicit enforcement mechanisms against violators.<sup>64</sup> The SJCE currently lacks both the authority and the capacity to investigate alleged violations. The failure to include reporting and enforcement provisions in the law and regulations governing campaign finance render the explicit restrictions on spending by candidates and parties effectively meaningless.<sup>65</sup>

The Carter Center recommends that parties and candidates be required to fully, accurately, and periodically disclose contributions received and expenditures made on behalf of their campaigns. These reports should be made public. Egypt's lawmakers should invest election officials, or other law enforcement officials, with clear authority to investigate and prosecute allegations of campaign finance violations. Additionally, lawmakers should also address potential loopholes<sup>66</sup> in campaign finance regulations, so that parties and candidates may not skirt campaign-finance restrictions by improperly relying upon independent spending by individuals, charities, or other domestic or foreign sources.

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<sup>63</sup> Law Concerning the People's Assembly, Art. 11(2); SJCE Regulation No. 21, Art. 5; and SJCE Resolution No. 67 of 2011.

<sup>64</sup> The United Nations Convention Against Corruption, art. 7 (3) states that "Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties."

<sup>65</sup> SJCE Regulation No. 21, Sec. 4 states that the maximum amount that a candidate for either an individual district or party list seat may spend on a campaign is 500,000 LE (approximately US \$83,333), with a maximum of an additional 250,000 LE (approximately US \$41,667) for runoff election campaign expenditures.

<sup>66</sup> Spending by wealthy individuals on behalf of parties, and by charities, have been reported. Additionally, there are reports that some parties or candidates have received funding from charities that in turn have received foreign funding.

### ***Candidate/Party Agents and Representatives***

Candidate or party representatives, and candidate or party agents,<sup>67</sup> were 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 accessed by Carter Center witnesses, representatives and agents were difficult to identify. Officials should require that all agents and representatives wear a badge, armband, or other identifying mark to ensure that all present are aware of their status and role in the process.
- Some Carter Center witnesses reported that representatives were assisting judges and poll workers in the sealing of ballot boxes, and in the transporting of ballot boxes from delivery trucks to counting centers. As part of a more comprehensive training program, electoral officials should ensure that all electoral functions are performed impartially and by authorized personnel only.
- In a few instances, Carter Center witnesses observed incidents of representatives campaigning on behalf of their parties or candidates within the polling center. Electoral administrators should take steps to ensure that no campaigning takes place on the grounds of the polling center, and that representatives and agents are educated on campaign law and regulations.

## **WITNESSING THE EGYPTIAN ELECTIONS**

### ***The Process and Timing of Electoral Witness Accreditation***

Consistent with international good practices that encourage transparency in elections, Egyptian law recognizes the importance of impartial scrutiny of the election process by making specific provision for witnessing by national and international civil society organizations (CSOs). The Law on the Exercise of Political Rights mandates<sup>68</sup> the SJCE to regulate the engagement of Egyptian and international civil society organizations in witnessing all electoral processes. The SJCE issued Regulation No. 20 on Oct. 16, 2011, articulating the rules for CSOs to witness the election. The deadline for CSOs to apply for witness status was Nov. 19, 2011.<sup>69</sup>

The decree identified the Egyptian National Council for Human Rights (NCHR) as the entity responsible for collecting, examining, and transmitting national CSO applications to the SJCE.<sup>70</sup> In elections during the Mubarak era, the NCHR also oversaw applications for national witness status. Reportedly, it was a more burdensome, expensive process during this era; for example, CSOs were charged a fee for each witness application. The Carter Center supports the SJCE's decision to end the fee requirement and the NCHR for facilitating a more inclusive accreditation process for national witnesses.

Unfortunately, the timing of the decree to allow for CSOs to participate in the process was late. The compilation and exhibition of the voters' list was complete by mid-September, and several key negotiations over the electoral process were already complete. Effective scrutiny and transparency of the election process should allow domestic and international CSOs to have access to all significant electoral activities, as well as direct access to the election authorities. We would encourage Egyptian authorities to

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<sup>67</sup> Representatives are drawn from the registered voters of a particular electoral district and are generally based at the polling station during Election Days. Agents may act on behalf of candidates or parties in polling centers and counting centers.

<sup>68</sup> Law on the Exercise of Political Rights, Art. 3-bis(f)(5).

<sup>69</sup> SJCE Regulation No. 24, Art. 1.

<sup>70</sup> SJCE Regulation No. 20, Art. 3.

consider and approve applications to observe from electoral observation organizations at the earliest possible instance, and before the commencement of the electoral process.

### ***“Witnesses” versus “Observers”***

Egyptian authorities objected to the term “observer,” which they felt might incorrectly connote a supervisory role for observers over the electoral process. Egypt ultimately accepted both domestic and international CSOs to serve as “witnesses” to the electoral process and allowed them to operate in a manner consistent with internationally recognized standards for observation. For future elections, however, The Carter Center recommends that Egypt allow CSOs to use the commonly recognized term “observer”<sup>71</sup> for all electoral observation missions, both domestic and international. This will prevent the incorrect characterization of election “witnesses” as having less than internationally recognized rights concerning the electoral process.

### ***Witness Access to the Electoral Process***

In the course of the People’s Assembly election, Carter Center’s witnesses were present in every governorate during all rounds of the electoral process, including runoff elections. In the first phase, witnesses faced several difficulties, albeit isolated, with access to polling and counting locations. In certain cases, presiding judges were unaware of the role and rights of international CSOs as witnesses, and were unfamiliar with the official accreditation provided to them by the SJCE. During the second phase, this improved. On occasion, however, witnesses were denied access by security forces controlling access to polling and counting centers.<sup>72</sup> In several instances, witnesses were also informed that overcrowding in counting centers was the reason for the denial of access. During the third phase of polling, Carter Center witnesses noted that access of observers, party agents, and candidates at a few sites was obstructed by security officials, claiming they had received instructions to restrict access.<sup>73</sup> Overall, restrictions on access occurred with more frequency in rural rather than urban governorates. In spite of these difficulties, Carter Center witnesses were in most cases welcomed by voters, election officials, and security officials. It is noteworthy that national witnesses also reporting facing difficulties at times accessing polling stations and counting centers. Freedom of access to all parts of the electoral process is essential for proper electoral observation. For future elections, The Carter Center recommends that information and awareness about the role of CSO witnesses be better communicated to election and security officials and that full access is given to the entire electoral process.

Ensuring access, and particularly equitable access, to electoral officials demonstrates a commitment to the principles of transparency and accountability. The Carter Center would like to express its appreciation to Egypt’s electoral officials and other decision makers for demonstrating this commitment through their helpfulness and willingness to provide information about the electoral process when that information was available. The Carter Center notes with concern, however, that accredited national CSOs did not enjoy the same level of access to the SJCE, but rather had to work through the NCHR as an intermediary.. The Carter Center recognizes the difficulties faced by the SJCE in providing access to information for some 134 accredited CSOs regarding the elections. These CSOs, however, are important stakeholders in the electoral process and The Carter Center would urge the SJCE to take extra measures to ensure accredited

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<sup>71</sup> The closest word in Arabic to “observer” would be “muraqib”. Witnesses were designated in Arabic as “mutaba” on badges issued to them by the SJCE.

<sup>72</sup> Of the 2027 polling stations visited by Carter Center witnesses in each of the three phases of the election, witnesses were denied access to only 23 of them. Of the 80 counting centers accessed by Carter Center witnesses, witnesses were ultimately granted access to all but two of them.

<sup>73</sup> Security officials added in some cases that these instructions were issued as a result of the raids on international and domestic CSOs that took place on December 29, 2011. These officials were unable to provide written confirmation of the instruction, and declined to identify themselves. It should be noted that the Ministry of Foreign Affairs (MoFA) and the SJCE have assured The Carter Center that no such instructions were issued.

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 of the election process.

## **PARTICIPATION OF WOMEN**

Women enjoy the same fundamental right as men to participate in the public affairs of their state, including voting in elections and participating in other aspects of the electoral process.<sup>74</sup> However, Egypt's historic leadership in advancing women's political participation has reversed in the past decades and the People's Assembly elections were catastrophic in this regard. Barriers to women's participation in politics are related to cultural and structural factors (family requirements, fewer financial resources, norms of male leadership)<sup>75</sup> as well as election-specific factors, such as the choice of electoral system, district magnitude, and gender quotas.

Women's political empowerment in Egypt consistently ranks among the bottom 10% of countries worldwide<sup>76</sup> and the subject has been an area of intense debate over the past year. Former First Lady Suzanne Mubarak was promoted as the national face of the women's movement from 2000 until the revolution. In the backlash against the Mubarak regime, laws advancing women's rights have largely been attacked as "Suzanne's Laws" (e.g., tools of Mubarak-era repression) by many, including some women's rights groups.

### ***Women Candidates in the 2011-2012 People's Assembly Elections***

The Constitutional Declaration of March 30, 2011, eliminated the quota for women's representation in the People's Assembly that had been employed during the 2010 election (64 seats reserved out of 508). Instead, minimal participation for women in the People's Assembly and Shura Council was recognized in Article 38 of the Constitutional Declaration of March 30, 2011. However the term "minimal" was not defined by a specific percentage or number of reserved seats. This meager protection was eliminated entirely from the Constitutional Declaration through a Sept. 25, 2011, amendment.<sup>77</sup>

Women's participation is legally guaranteed only by a token quota for party lists, but there is no requirement for women to be present in the elected People's Assembly. The electoral legislation<sup>78</sup> requires at least one woman candidate to be included on closed party lists, but the failure to specify their position within the list resulted in over 70 percent of female candidates being ranked in the bottom half of their party lists.<sup>79</sup> In all, only seven percent of the 670 female candidates recorded in party list races were placed in the first quartile of their party lists.

Although consistently weak, placement of female candidates on the lists varied somewhat between coalitions. Parties unaffiliated with a coalition placed women in the first quartile of list positions 9.5 percent of the time and were more likely to include more than one female candidate on a list. In contrast, none of the 46 female candidates running under parties affiliated with the Islamist Bloc were placed in

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<sup>74</sup> UN, ICCPR, article 25 (b); UN, CEDAW, art. 7

<sup>75</sup> Ministry of Economic Development, *Egypt Achieving the Millennium Goals: A Midpoint Assessment*, 2008.

<sup>76</sup> Global Gender Gap Project, World Economic Forum: [www.weforum.org/issues/global-gender-gap](http://www.weforum.org/issues/global-gender-gap).

<sup>77</sup> The SCAF issued on September 27, 2011, a decree amending some provisions of the Law Concerning the People's Assembly, and the Law Concerning the Shura Council. Article 2, Paragraph 5 of the decree indicates that party lists should include at least one female candidate.

<sup>78</sup> Law Concerning the People's Assembly, Art. 3, which states in part: "In all cases, each list should include at least one female candidate."

<sup>79</sup> Data presented here was compiled by the Carter Center from party lists made publicly available by the SJCE. The data reflects the state of the party lists at the time of the elections to the best of Carter Center knowledge at this time. Note that several lists were the subject of legal rulings at the time of writing and some discrepancies may exist.

first quartile positions. 94 percent of Islamist Bloc<sup>80</sup> female candidates were placed in the 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 at times 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 run-off 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 just under two percent. This number falls far short of the 12.6 percent guaranteed by the quota in the 2010 Parliament and reflects a regression to levels from a decade ago, when women represented 1.8 percent of the People's Assembly from 2000-2005.<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 legal 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 run-offs, Carter Center witnesses reported that women constituted over 37 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

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<sup>80</sup> The Islamist Bloc is a coalition that is comprised of the Salafist Al-NourAl-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 2% 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> Ne’mat Rashad Mohamed (worker, 3rd Gharbeya District).

<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.<sup>84</sup> Carter Center witnesses reported widespread pressure on women voters, including, for example, the threat that a woman voting for a different candidate than that chosen by the family or tribe constitutes legal grounds for divorce. Although witnesses reported that many voters failed to protect the secrecy of their ballots by choice, the lack of awareness and enforcement of secrecy provisions may have reinforced the pervasive practice of family voting. The Carter Center did not have access to gender disaggregated voter turnout data and recommends that the SJCE make this data publicly available.

### ***Recommendations regarding Women in Egypt's Electoral Process***

Without a concerted effort on the part of the political and electoral leadership, women's representation in government is likely to remain well below levels specified by Egypt's international commitments. In order to meet these obligations,<sup>85</sup> The Carter Center urges stakeholders to take definite steps on improving women's participation and representation. At this stage of Egypt's transition, an imperative exists for women to be extensively represented in the constitutional drafting committee, and future representation to be secured in the new constitution. The Center recommends that a minimum 30 percent quota be introduced to ensure the effective representation of women in both houses of the legislature.<sup>86</sup> As noted above, women should be represented in the senior electoral administration and the electoral management body should proactively address the specific needs of female candidates and voters. Any revisions to the electoral system should be assessed for their gender impact.

Women's participation would be enhanced by encouraging and supporting state and non-state organizations mandated to support women's participation, especially voter education and the training of female candidates. This may include taking rapid action to resolve the lingering disagreements that have rendered the National Council for Women<sup>87</sup> ineffective since the revolution and empowering it, or a similar body, to actively promote women's participation in all levels of state activity. Alleged acts of sexual violence against female protesters and journalists by civilians, military, and police should be investigated and Egyptian authorities should adopt a firm, public stance against impunity on sexual assault.

## **MEDIA ENVIRONMENT**

Broadcast media plays a pivotal role in the electoral process. Information to the public about voters' rights, the electoral process and, candidate and party information are essential to creating an informed

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<sup>84</sup> Adult female literacy as a percentage of male literacy is 77 percent (2005-2008), UNICEF: [http://www.unicef.org/infobycountry/egypt\\_statistics.html](http://www.unicef.org/infobycountry/egypt_statistics.html).

<sup>85</sup> CEDAW, Art. 7, requires States to eliminate discrimination in public and political life, and especially ensure the rights to: vote and be eligible for election; participate in the formulation and implementation of government policy; hold public office and perform public functions at all levels; and participate in non-governmental and civil society organizations.

<sup>86</sup> CEDAW Committee, General Recommendation No. 5, para 15: "Where countries have developed effective temporary strategies in an attempt to achieve equality of participation, a wide range of measures has been implemented, including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies."

<sup>87</sup> Established by Presidential Decree Number 90 of 2000.

electorate.<sup>88</sup> Although The Carter Center was not able to conduct a comprehensive media monitoring effort, it conducted meetings with members of the Egyptian media and national CSOs that undertook media monitoring activities in order to provide a general assessment. During an election, the media and most importantly the publicly funded state media should be accessible on a fair and equitable basis to all political contestants.

The SJCE, in accordance with decision 21/2011 regarding campaign regulations, has a responsibility to monitor the media coverage of election campaigns. Article 2/14 establishes the right of candidates, parties and coalitions to advertise their electoral program through public and private broadcasting networks. Distribution of airtime among political contestants, during the normal and distinguished periods of transmission, is to be made on the basis of full equality and without discrimination. Electoral contestants with firsthand complaints about on-air campaign violations or unequal distribution of airtime were able to notify the Ministry of the Media and the Egyptian Union of Radio and TV (ERTU), who were in turn required to notify the SJCE. However, The Carter Center was not able to ascertain the detailed procedures for filing complaints or the number of complaints that were filed. The Center urges the SJCE to take steps to clarify this process and make public any complaints filed that pertain to media coverage of elections.

The SJCE also appears to lack a system for directly liaising with the media and responding to media inquiries. The SJCE's primary method of communicating with the media was the use of press conferences. These press conferences, however, were limited in scope, infrequent, and insufficient, as the only mechanism for media engagement. Media seeking definitive information about the electoral process had no direct source of information outside of press conferences and the SJCE website. As such, there is a risk that the media may have underreported or reported incorrectly, on aspects of the electoral process. Since election management bodies have a responsibility to provide the public with accurate and timely information about the electoral process,<sup>89</sup> the SJCE should consider creating an office of public information to liaise with media.

## VOTING

In a genuine democracy, the right to vote is fundamental.<sup>90</sup> In order to exercise this right in a meaningful manner, other important rights must also be preserved and protected, including the right to speak freely, to assemble, and to exercise political rights without fear of violence or other negative repercussions.<sup>91</sup>

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<sup>88</sup> Norwegian Helsinki Committee, Election Observation: An Introduction to the Methodology and Organization, sec. 5.5 "People must know their rights to use them; hence sufficient civic and voter education is a prerequisite for the facts of universality and equality."; EU, Handbook for European Union Election Observation, Second Edition, p. 39: "Responsibility for impartial voter education often rests with the EMB, frequently in conjunction with civil society and the media." UNHRC, General Comment 34, para 20: "The Committee, in general comment No. 25 on participation in public affairs and the right to vote, elaborated on the importance of freedom of expression for the conduct of public affairs and the effective exercise of the right to vote. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint."

<sup>89</sup> EU, Handbook for European Union Election Observation, Second Edition, p. 65: "While political parties, civic organizations and even international organizations may contribute to voter/civic education efforts, it is ultimately the responsibility of the government and the election authorities to ensure that voters receive objective and impartial information."; UN, ICCPR, Art. 25 (b)

<sup>90</sup> UN, ICCPR, Art. 25 (b); Universal Declaration of Human Rights, Art. 21(3): "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

<sup>91</sup> ICCPR, Art. 25(a): "Every citizen shall have the right and the opportunity, ... without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives"; ICCPR, Art. 19(2): "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."; ICCPR,

Furthermore, the experience of voting creates a powerful impression about the health and credibility of democracy in the mind of most citizens. Election day is, for most Egyptians, their only real interaction with the electoral administration. It is not only important that votes are cast freely and fairly, but that the experience of voting conveys confidence in the electorate that the electoral administration is committed to ensuring that vote results reflect the will of the voters.

One of the Carter Center's overall observations on the voting process is that there was a largely positive spirit among voters, judges, poll workers, party and candidate agents, and others in polling stations on election days during all phases. In most instances, all involved in the electoral process adopted a spirit of collaboration and cooperation to ensure that the voting process was smooth and efficient. Nonetheless, there were also significant deficiencies in the voting process, and substantial room for improvement.

Carter Center witnesses reported the following in connection with the voting process:

### ***Poll Opening Delays***

On election days, witnesses generally observed that polling centers opened later than the scheduled time of 8:00 a.m. Particularly during phase one of the elections, late openings were attributed to judges and/or party and candidate representatives arriving late, or that sensitive materials, such as ballots, were not delivered on time. During phase two and to a lesser extent phase three, many polling centers failed to open at 8:00 a.m. because of lateness in the execution of protocols required by law for the opening of polling stations. In some cases, party or candidate representatives (a minimal number of whom are required to witness the opening of polling stations) were kept outside of polling centers by security until 8:00 a.m., and thus could not perform their functions as witnesses to the opening of polling stations until after 8:00 a.m. In other cases party or candidate representatives failed to arrive by 8:00 a.m., forcing the judge to delay opening of polling stations for up to one hour as stipulated by the law.<sup>92</sup> The Carter Center recommends that all stakeholders work to ensure that preliminary procedures for the opening of polling stations are concluded by 8:00 a.m.

### ***Illicit Campaigning on Election Day***

As noted above, and in a previous Carter Center statement,<sup>93</sup> Carter Center witnesses observed numerous examples of illegal campaigning occurring on election days, particularly during phase one. Election day campaigning took numerous forms, including the dissemination of flyers and other campaign materials outside of polling centers and the use of loudspeakers to promote candidates and parties. A few well-resourced political parties set up information tables or tents just outside polling centers, using computers with databases to direct voters to their assigned polling stations. Parties often, but not always, provided information to voters on a card bearing the logo and other information regarding the political party or candidate for whom the voter should cast his or her vote. Election witnesses saw voters in several instances carrying this information with them into the polling station and to the voting booth itself.

It should be noted that Carter Center witnesses reported that in some instances political party representatives at these tables attempted to refrain from overtly campaigning, neutrally offering only objective voter information. In other instances, however, the party representatives appeared to cross the

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Art. 21: "The right of peaceful assembly shall be recognized."; ICCPR, Art. 9(1): "1. Everyone has the right to liberty and security of person... ."

<sup>92</sup> Law on the Exercise of Political Rights, Art. 24, which states in part that a polling station judge shall commence operations at a polling station one hour after the designated opening time if a sufficient number of representatives of agents are not present to serve as witnesses to the opening, and the judge is unable to designate other registered voters present to serve as witnesses..

<sup>93</sup> The Carter Center Preliminary Statement on the First Round of Voting in Egypt's Peoples Assembly Elections, released on Dec. 2, 2011: <http://www.cartercenter.org/resources/pdfs/peace/democracy/Carter-Center-Egypt-Preliminary-Statement-120211.pdf>.

line into active campaigning. To eliminate the need to police entire electoral districts for illicit campaigning, the Carter Center again recommends that lawmakers establish distance or other physical restrictions on campaigning outside of polling centers on election days, as opposed to an overall ban on campaigning on election days and during silence time periods.

### ***Inside the Polling Station***

In general, Carter Center witnesses reported that the process of voting within polling stations was calm and orderly. Polling station judges and workers were generally cooperative; voters generally respectful of the officials administering the vote within the station. Additionally, the procedures for using voter identification cards and numbers to identify voters within the station, and for checking off voters after they had cast their votes, seemed to be a great success, and apparently a significant improvement over procedures used in elections prior to 2011.

However, Carter Center witnesses continued to report serious inconsistencies in the use of indelible ink to mark the fingers of voters once they had voted. In almost no cases were poll workers or others inspecting voters' hands to ensure that their fingers were not already inked. Some poll workers used the cap of the inkbottle as the vessel in which a voter was to dip his or her finger. If the use of ink is continued, election administrators must do more to train judges and poll workers on its appropriate use. They should ensure that fingers are checked both upon entry to the polling station and again upon departure, to ensure that a voter's finger, including the finger of a voter wearing gloves, has been properly inked. To facilitate procedures in this area, election officials should require that a particular finger, such as the right index finger, be the finger that is to be inked.

Carter Center witnesses observed in many polling stations that voters were not casting their votes in absolute secrecy. This appeared to be occurring for a number of reasons. First, polling booths are small, and not constructed to allow voters to bring easily the large, individual candidate ballot behind the metal privacy screen. Some polling booths faced the wrong way, so that voters were exposed to the queuing area as they voted. Voters in several instances found it easier to vote on a tabletop or elsewhere outside of the voting booth. In a rare number of instances, voting booths were not available. In the overwhelming number of cases, however, voters themselves appeared to disregard the opportunity to vote secretly, and instead voluntarily chose to vote in a common area where others could potentially view their votes. In future elections, The Carter Center encourages election administrators to consider acquiring larger polling booths to ensure the secrecy of the vote. Election officials should also ensure that the important right to vote secretly is incorporated into voter education efforts.<sup>94</sup>

### ***Securing Ballot Boxes at the End of the First Polling Day***

Carter Center witnesses reported that judges took different approaches to closing procedures, including the waxing of ballot boxes and ballot box locks; the securing of the rooms where ballot boxes were to be stored; and the recording of numbers of, and securing of, unused ballots and other sensitive materials. In some cases, unauthorized persons, such as party representatives, domestic observers, and others assisted the judge and poll workers in applying the wax to the ballot boxes. To bolster public confidence in these processes, The Carter Center encourages the SJCE to ensure that judges and poll workers are consistent in their application of protocols for the securing and storage of ballot boxes and other sensitive materials and that protocols are implemented by authorized persons only.

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<sup>94</sup> ICCPR, Art. 25(b), which codifies the rights "[t]o vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the voter."

## COUNTING

Although witnesses reported no clear evidence of fraud or other subversions of the counting process,<sup>95</sup> they did report that counting centers were often chaotic and disorganized. Above all, a lack of clear procedures resulted in different approaches being adopted. In particular, a lack of intake process at counting centers, the sorting and counting of votes, the criteria to determine valid and invalid ballots, and the reporting of results by Counting Committees undermined the organization of the counting process.

According to Carter Center witnesses, accessing counting centers was challenging at times. Party agents and representatives attempting to maintain sight of the ballot boxes as they were being transported and delivered to the counting centers pushed against vehicle access gates, and the security forces guarding them, to attempt to gain access. Inside some counting centers, particularly during phase one, the scene was nearly as chaotic.<sup>96</sup> In general, efficiency was undermined by waiting in cold, uncomfortable premises, into the early morning hours, to conduct the count.

The Carter Center strongly recommends that the SJCE promulgate standard procedures that include the following:

- Intake – to record and track the arrival and receipt of materials to centralized count or tally centers;
- Sorting and counting – to standardize the process of sorting and counting ballots;
- Valid and invalid ballot classification – clear and prescriptive criteria for determining if a ballot is valid or invalid;
- Definition of election official roles – a clear definition of the roles of election officials and committees;
- Complaint and appeal process – a clear definition of who, how and when complaints and appeals about the sorting and counting process can be submitted;
- Announcement of results – defining results as preliminary, provisional and final;
- Posting of results by polling station – physically at counting locations and via the official website;
- Disposal of materials – clear procedures for the disposal or archiving of election materials at the conclusion of the counting process; and
- Forms – where appropriate, to support the above procedures, standard forms be designed and produced for use by all election officials.

Protocols regarding access and the physical space of, and around, counting centers or tally centers, should include the following:

- Criteria to ensure that counting centers can comfortably hold the required number of personnel, ballot boxes, candidates, candidate and party representatives, media, domestic and international witnesses, and others;
- The use of separate entrances for materials and authorized personnel, to safely and better manage controlled access;
- Consider the use of a secondary staging area to control and manage the flow of vehicles into centers;

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<sup>95</sup> In the case of the counting center in the Al-Sahel/Shubra district of Cairo, where there were credible accusations of potential fraud or mismanagement of ballot boxes during phase one, electoral authorities acted expeditiously by ordering a nullification of results in that district and a rerun election.

<sup>96</sup> For example, poll workers and others chanted for pay increases in one case, while intermittent scuffles broke out in other centers.

- Prohibitions against allowing candidate and party representatives from handling ballot boxes during transport, or from otherwise participating directly in any aspect of the intake 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, media, 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 responsible for liaising with security personnel outside the counting center and otherwise resolving issues involving security and access.

### **About The Carter Center**

The Carter Center mission to witness Egypt's Parliamentary Elections is accredited by the Supreme Judicial Commission for Elections (SJCE). The Carter Center deployed the first phase of its international delegation on Nov. 6, 2011. The Carter Center deployed 40 long-and medium-term observers from 24 countries including: Australia, Austria, Brazil, Canada, France, Germany, Iraq, Ireland, Italy, Kenya, Lebanon, Malaysia, Morocco, the Netherlands, Norway, Palestine, Philippines, Slovakia, Somalia, Spain, Sudan, Tunisia, United Kingdom, and the United States. While deployed, these witnesses observed the election administration, campaigning, voting and counting operations, among other activities related to Egypt's electoral process. Carter Center observers continue to assess the conclusion of counting and vote tabulation and will remain in Egypt to observe the post-election environment and the upcoming Shura Council (Upper House) elections. All assessments are made in accordance with international standards for elections, and the observation mission is conducted in accordance with the Declaration of Principles for International Election Observation adopted at the United Nations in 2005.

**This statement is preliminary. A final report will be published four months after the end of the electoral process.**

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production. Visit: [www.cartercenter.org](http://www.cartercenter.org) to learn more about The Carter Center.