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**Center Preliminary Statement on the First Round of Voting in Egypt's Shura Council Elections**

Carter Center witnesses in Egypt observed low levels of interest and participation among voters, political parties, and nongovernmental organizations during the first stage of the country's Shura Council elections. Despite the brief respite between the People's Assembly and Shura Council elections, Egypt's election authority was able to introduce several technical amendments for the Shura election including the use of more secure ballot boxes and the counting of votes at polling stations. While improving operational electoral processes, these changes also introduce new challenges for the training of election officials and to ensure the transparency of the process.

The schedule for the Shura elections, occurring only nine days after the final rerun race of the People's Assembly, and mere days after the anniversary of the Revolution, contributed to an unenthusiastic electoral process. In addition, the continuation of key parts of the Emergency Law, criticism of the Supreme Council of the Armed Forces' (SCAF) leadership of the transition, and uncertainty over investigations into civil society organizations have negatively influenced the overall election environment. The Carter Center notes that the environment in which elections are conducted has an important effect on the credibility of the process. To successfully complete Egypt's democratic transition, it is critical to resolve key points of contention about the transition expeditiously, transparently, and fairly. As part of these efforts, the Center urges authorities to lift the Emergency Law in its entirety.

The first stage of the two-phase election of the Shura Council was conducted across 13 of Egypt's governorates on Jan. 29-30, 2012. Carter Center witnesses were present across 11 governorates and will remain in place to witness runoff and rerun races. This election process is ongoing and therefore the findings of The Carter Center are preliminary. Additional statements regarding the process will be released as it unfolds. The Carter Center's full preliminary statement may be found at [www.cartercenter.org](http://www.cartercenter.org).

The Carter Center has been present in Egypt since November 2011 and also witnessed all three phases of the People's Assembly elections.

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This preliminary statement summarizes the observations of the Carter Center’s mission to witness the first phase of Egypt’s Shura Council (the upper house of parliament) elections held Jan. 29-30, 2012.<sup>1</sup> Runoff and rerun elections for the first phase will be held on Feb. 7. The second phase of the Council’s election will be held Feb. 14-15<sup>2</sup>, with any runoff or rerun races to be held Feb. 22. The Shura Council is then scheduled to hold its first session on Feb. 28, 2012<sup>3</sup>.

### **The Election Environment**

The election of the Shura Council<sup>4</sup> is the second representative election to be held since the fall of the Mubarak regime in February 2011. It is administered under the authority of the Supreme Judicial Commission for Elections (SJCE) as the supervising judicial authority for elections. Under the transition plan outlined by the interim-governing regime, the Supreme Council of the Armed Forces (SCAF), the 180<sup>5</sup> elected members of the upper-house Shura Council will join with the 498<sup>6</sup> elected members of the lower-house People’s Assembly to select the 100 members of a constitution drafting committee. Under the SCAF’s plan, the committee is expected to draft a constitution to be put to a national referendum and then followed by a presidential election to be completed by the end of June 2012. The SCAF has publicly committed to a full transfer of power to the elected president.

The SCAF’s self-appointed role, and loosely-defined transition plan, has been a source of ongoing tension that has escalated since the election of the People’s Assembly. The People’s Assembly was elected over a three phase<sup>7</sup> process between Nov. 28, 2011, and Jan. 19, 2012, convening on Jan. 23; two days before the first anniversary of the Jan. 25, 2011, revolution. The broadly recognized credibility of the elections

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<sup>1</sup> Phase One Shura Council elections include districts in 13 governorates: Cairo, Alexandria, Gharbiya, Dakahliya, Menoufiya, Damietta, South Sinai, North Sinai, Fayoum, Asyut, Qena, Red Sea, and New Valley.

<sup>2</sup> Phase Two Shura Council elections include districts in 14 governorates: Giza, Qalyubia, Sharqiya, Beheira, Kafr El Sheikh, Ismailiya, Port Said, Suez, Matrouh, Beni Suef, Minya, Sohag, Luxor, and Aswan.

<sup>3</sup> SCAF Decree 315/2011 of Dec. 31, 2011.

<sup>4</sup> The Shura Council was first established in 1980 under the regime of President Anwar el-Sadat. The Shura Council is not co-equal with the People’s Assembly and has only a limited authority to affect law making. Under Egypt’s Constitution of 1971, as amended, it had authority to conduct studies and make proposals conducive to national unity, and along with the People’s Assembly, ratify treaties and approve constitutional amendments. Under the SCAF’s Constitutional Declaration of March 30, 2011, the Shura Council is empowered primarily to “consider” draft laws, public policy, and foreign affairs matters referred to it by the president of the republic, and to assist in selecting the membership of the constitutional drafting committee.

<sup>5</sup> The upper house of Parliament, the Shura Council, is a 270 seat body. 180 seats are elected and 90 seats are appointed.

<sup>6</sup> The lower house of Parliament, the People’s Assembly, is a 508 seat body. 498 seats are elected and 10 seats are appointed.

<sup>7</sup> The elections for the People’s Assembly were conducted over three phases, with nine of Egypt’s 27 governorates polled in each phase.

for the People's Assembly<sup>8</sup> has strengthened the popular legitimacy of the assembly, and increased pressure on the SCAF to either accelerate the transitional timeline or to cede its management of the process entirely.

The sequence and schedule of events for the transfer of power to civilian rule is of particular concern to many of Egypt's political groups, as is the extent to which the SCAF may be negotiating decisions on key issues of public concern that are outside the purview of an interim regime. In particular, the SCAF's Jan. 19, 2012, issuance of the law to elect the future president is catalyzing debate over legislative control, irrespective of conflicting provisions<sup>9</sup> within the Constitutional Declaration of March 30, 2011. Similarly, the SCAF's narrowed definition of the Emergency Law, announced on Jan. 24, 2012, which continues to contain an undefined term of "thuggery," fails to adhere to Egypt's international obligations<sup>10</sup> on the use of such instruments and may lead to censure from the People's Assembly. As well, the ongoing investigation of national and international non-governmental organizations (NGOs) promotes an atmosphere of uncertainty over the authorities' intentions toward an active civil society as a key participant and stakeholder in a democratic society.

The Carter Center reiterates its call for the State of Emergency to be lifted in its entirety. In addition, the Center underscores that the treatment of domestic and international NGOs are critical aspects of a healthy electoral environment, where transparent, expeditious, and fair judicial processes are essential to support credible election processes.<sup>11</sup>

### **Voter Participation**

The Carter Center deployed 28 witnesses across 11<sup>12</sup> of the 13 governorates that were polled in the first stage of the Shura Council's two-phase elections.<sup>13</sup> In each of these 11 governorates, the Carter Center's witnesses noted a very low turnout of voters compared to the People's Assembly elections. Media reporting, as well as Carter Center witnesses' interviews with local political party representatives, civil society organizations, and government officials, highlighted a range of common concerns that may have contributed to the poor turnout, including: Shura Council elections typically experience low turnout,<sup>14</sup>

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<sup>8</sup> Carter Center statement issued on Jan. 24, 2012.

<sup>9</sup> The Constitutional Declaration was unilaterally issued by the SCAF on March 30, 2011, after a referendum to amend the 1971 Constitution. The extent and supremacy of legislative authority between the People's Assembly and SCAF is unclear under conflicting provisions, elaborated under articles 33 and 61.

<sup>10</sup> UN, ICCPR, Art. 4 identifies that public emergencies which derogate rights must "threaten the life of the nation." The narrowed application of the Emergency Law applies to an undefined term of "thuggery," which appears to be a criminal act that is most appropriately covered by Egypt's existing penal code.

<sup>11</sup> African Union, African Charter on Democracy, Elections, and Governance, Art. 12(3): "State Parties undertake to implement programmes and carry out activities designed to promote democratic principles and practices as well as consolidate a culture of democracy and peace. To this end, State Parties shall... [c]reate conducive conditions for civil society organizations to exist and operate within the law." EU, Handbook for European Union Election Observation, Second Edition, p. 73: "All persons have a right to participate in public affairs, including in civil society activities and, through their right to freedom of association, to form and join civil society organisations."

<sup>12</sup> The Carter Center mission deployed observers to the governorates of: Cairo, Alexandria, Gharbiya, Dakahliya, Menoufiya, Damietta, South Sinai, Fayoum, Asyut, Qena, and New Valley.

<sup>13</sup> SCAF Decree 314/2011 of Dec. 31, 2011, modified the Shura Council election schedule to occur in two phases conducted on Jan. 29-30, with runoff races on Feb. 7, and Feb. 14-15 with runoff races on Feb. 22.

<sup>14</sup> Since its inception in 1980, the Shura Council is only mandated to offer consultative activities.

voter fatigue and the exhaustion of party resources from the People's Assembly elections that only completed rerun races on Jan. 19, the convening of the first session of the People's Assembly on Jan. 23, and the focus of attention on the first anniversary of the Jan. 25 Revolution.

**Party Participation** The voter list and candidate and party registration processes for the Shura Council election were conducted simultaneous to those of the People's Assembly election. As such, voters were not provided with an opportunity to update their records between elections, and candidate and party registration for the Shura Council was conducted in October 2011. For the 60 majority seats allocated to the Shura Council's 30 electoral districts 2,036 candidates registered to compete.<sup>15</sup> In contrast, 6,591 candidates competed for the People's Assembly 166 majority seats. In addition, the election administration reported<sup>16</sup> that 590 party lists registered to compete for the People's Assembly 332 proportional representation seats, while 272 lists registered for the Shura's 120 proportional representation seats.

### **Women's Representation**

The larger size of the Shura Council's election districts, where each district is a governorate (with the exception of Cairo, Giza, and Dakahlyia)<sup>17</sup> contributed to several challenges for independent candidates and smaller political parties with fewer resources. The size of these districts may have been especially daunting for females in majority races, where women represent only slightly more than 7 percent of candidates. Under the list competition rules, each list is required to have at least one female candidate, but does not specify a minimum position on the list. With the maximum size of lists being four, this has meant that at least 25 percent of list candidates are female. However, similar to the experience in the People's Assembly election, the position of female candidates within these lists is principally in the bottom half, with more than 80 percent in third and fourth positions. It is anticipated that as a result, similar to the People's Assembly election, the number of female candidates to gain representation will be extremely poor.

The Carter Center strongly urges the Egyptian authorities to implement effective measures ensuring the appropriate representation of women in future elections.<sup>18</sup> In addition, given that the elected houses of

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<sup>15</sup> The Shura Council electoral system is the same as that of the People's Assembly election. Two (2) individual candidates are elected in each district by an absolute majority. At least one candidate must be a farmer or worker. A total of 60 members of the Shura Council are elected through this system. Four (4) candidates are elected in each district under a closed list proportional representation system. At least two of the four candidates elected through the proportional representation system in each district must be a farmer or worker. A total of 120 members of the Shura Council are elected through this system. There is no female quota for the Shura Council but each list must include at least one female candidate.

<sup>16</sup> Via its website, <http://www.elections2011.eg>, accessed on Oct. 25, 2011.

<sup>17</sup> The determination of the districts and allocation of seats was announced through SCAF decree 122/2011 on Sept. 26, 2011. Cairo, Giza, and Dakahlyia were each split into two electoral districts, while all other governorates were treated as one district, creating 30 electoral districts.

<sup>18</sup> UNHRC, General Comment No. 28(68): Equality of rights between men and women (Article 3), para. 3: "The State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women."; UN, CEDAW Committee. General Recommendation No. 23, para. 15: "While removal of de jure barriers is necessary, it is not sufficient...The formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life...States parties have an

Parliament will have so few women, the Center reiterates its recommendation that the People's Assembly and the Shura Council takes steps to ensure that women constitute at least 30 percent of the 100-member constitution drafting committee..

### **Voter Information**

In general, Carter Center witnesses noted an absence of official public information<sup>19</sup> campaigns about the Shura Council elections in the days preceding the first round of polling. Where official public information was in evidence, it was observed that the information was often drowned out by other news, such as the anniversary of the Revolution. Similarly, the Carter Center's witnesses noted that there was little visible campaigning among political contestants in the days ahead of the election. Whereas political party campaigning compensated for minimal official information campaigns in the People's Assembly election, its diminished presence in these elections may have contributed to the lack of voter interest and participation.

Reiterating the Carter Center's earlier recommendations of the People's Assembly, the election administration should take significant steps to improve voter information campaigns.<sup>20</sup> On a positive note, while political campaigning during the 48-hour campaign-silence period was a significant problem in the first phases of the People's Assembly election, Carter Center witnesses only saw rare instances of illicit campaigning outside polling centers on this occasion.

### **Polling Operations**

In spite of the brief period between the end of the People's Assembly election and the start of the Shura Council elections, the electoral authorities were able to introduce a range of technical improvements. Across all governorates visited by The Carter Center, older wooden and plexi-glass constructed ballot boxes were replaced by plastic-molded and lidded ballot boxes with a securable ballot slot is located in the center of the lid. These new ballot boxes use uniquely numbered security seals to replace padlocks and waxing procedures that were used in the People's Assembly. As reported by Carter Center witnesses, this new equipment improved accountability, transparency, and the secure storage of votes, especially overnight. Witnesses noted that while some presiding judges had some initial difficulties with the seals, overall, the use of the new ballot boxes and security procedures was an improvement for the integrity of the process. The efficiency of this new equipment and procedures allowed for better management of operating, on average, three polling stations in each polling room.<sup>21</sup>

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obligation to ensure that temporary special measures are clearly designed to support the principle of equality and therefore comply with constitutional principles which guarantee equality to all citizens."

<sup>19</sup> UN, ICCPR, Art. 2, requires States to take the steps necessary to give effect to human rights. Such a requirement infers that the electorate must be sufficiently educated and informed about the electoral process allowing them to exercise those rights. UNHRC, General Comment 25, para. 11 UNHRC on the ICCPR. "...Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community."; UNHRC General Comment 25, para. 25. "In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential..."

<sup>20</sup> Carter Center Preliminary Report on all Three Phases of the People's Assembly Elections, Jan. 13, 2012.

<sup>21</sup> The decision to conduct the Shura Council elections in two rather than three phases, required in general for presiding judges to oversee three polling stations in one polling room (rather than two, as had been the case in the People's Assembly election).

While notable advances were achieved in the polling process, several concerns witnessed in the People's Assembly election were still evident. The most commonly reported problems appear to stem from an ongoing lack of procedural definition, training, and clarity of institutional duties. Numerous incidents were reported of polling stations opening after the official start time of 8:00 a.m. due to the late arrival of judges or party representatives.<sup>22</sup> The procedures for the use and application of indelible ink also remained problematic, with voters commonly not checked for existing ink stains on their fingers.<sup>23</sup> Security personnel, who should only enter the polling center at the explicit request of judges, were seen on several occasions to be inside polling centers without invitation. Further, voters in general appeared to be unaware of the process or their rights to file complaints about the process.<sup>24</sup>

### **Counting Operations**

In a significant technical change from the People's Assembly elections, the counting of votes for the first phase of the Shura Council elections were conducted in the polling station rooms. This enabled presiding judges and their polling committees to finalize polling activities, rearrange the facilities and immediately commence counting activities. Carter Center witnesses noted that this change in procedure allowed for a significantly more orderly and efficient counting process than had occurred in the counting centers that were used in the People's Assembly. The Carter Center is encouraged by this development, and hopes that steps will be taken to ensure efficiency in future elections in which there may be a higher voter turnout.

However, counting at polling stations can limit the number of observers and candidate and party agents that are able to directly observe the counting process<sup>25</sup> due to the size of the classrooms being used. In this round of the Shura Council elections, Carter Center witnesses noted a widespread absence of national witnesses from the polling and counting processes. Also, and as noted earlier in this statement, the governorate-size districts reduced the number of representatives and agents being deployed by candidates

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<sup>22</sup> Such delays may undermine the right to vote. See for example, EU, Handbook for European Union Election Observation, Second Edition, p. 75

<sup>23</sup> Such measures are in line with international good practice, intended to ensure equality of suffrage. See for example, EISA and Electoral Commission Forum of SADC Countries, Principles for Election Management, Monitoring, and Observation in the SADC Region, p. 25; "Appropriate methods should be put in place to prevent multiple voting."; IPU, Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections, art. 4.2; "In addition, States should take the necessary policy and institutional steps to ensure the progressive achievement and consolidation of democratic goals, including through the establishment of a neutral, impartial or balanced mechanism for the management of elections. In so doing, they should, among other matters:...Ensure the integrity of the ballot through appropriate measures to prevent multiple voting or voting by those not entitled thereto."

<sup>24</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, not withstanding 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 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>25</sup> UNHRC General Comment 25, paragraph 11 on the ICCPR. "... Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community."; UNHRC General Comment 25, para. 25. "In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential..."

and parties with fewer resources. As a result, with fewer witnesses and agents seeking to monitor the counting process, there was little negative impact on transparency in this instance. Nevertheless, The Carter Center urges Egypt's election administrators to consider this barrier to transparency in their future election planning, and recommends that procedures<sup>26</sup> be in place to ensure access and transparency to monitor the counting process.

Witnesses noted that while presiding judges were provided with forms for each stage of the counting process, deficiencies in these forms often led to informal counts being conducted. The information was then transferred to the official forms increasing the possibility of human error. In all cases observed, witnesses nevertheless positively noted that polling committees used ink pens at all stages, an important means of preventing tampering or manipulation of the aggregation of results. Unfortunately, it was noted by the Carter Center's witnesses that presiding judges were not required to post a copy of the count results or to announce these results to witnesses and agents. This is generally recognized as a good practice to ensure adherence to the principle of transparency.<sup>27</sup> It was nevertheless noted, that on several occasions, presiding judges at their own discretion allowed agents to copy the results or announced them. In all cases observed by Carter Center witnesses, the presiding judges departed the polling stations with the count forms and ballots secured in envelopes for transportation to their district tally center. The Carter Center notes that these circumstances could create a situation where a judge may be accused of manipulating the results during transportation. Therefore, for the protection of judges and to improve the overall transparency of the process, the Center strongly urges the SJCE to implement procedures that require judges to publicly announce or post their count results before they travel to the tally center.

### **Tallying**

A single tally center was established in each Shura Council electoral district, where presiding judges travelled to deliver the results from their polling stations. Upon arrival at the tally centers, Carter Center witnesses noted that similar problems that had plagued the counting centers during the People's Assembly remained a concern. In particular, security forces at access points appeared uninformed about the identification and access entitlements of party and candidate agents, as well as national and international witnesses. Previous statements issued by The Carter Center have noted the difficulty of access presented by these arrangements, when there is not a visible coordinating judicial official present.<sup>28</sup> Further, vehicular and pedestrian access points were not separated, creating both a confused and dangerous access environment.

A notable improvement observed by Carter Center witnesses was the introduction of a systematic process to record the arrival of polling station results. These procedures entailed the presiding judges handing the count result forms to staff of the general secretariat that would then enter the information into a computer system. However, it was noted that the ballots, which were also transported to the tally centers, were

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<sup>26</sup> For example, ensuring that presiding Judges must rotate the observers and agents of different candidates and parties is vital if there is insufficient space for all to observe at the same time.

<sup>27</sup> UNHRC General Comment 34, para. 19. "To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information..."

<sup>28</sup> Carter Center Preliminary Statement on the Second Round of Voting in Egypt's People's Assembly Elections, Dec. 18, 2011.

haphazardly collected, and concerns over their orderly collection and storage appears problematic. The efficiency of the tally centers was observed to have been hampered by a lack of staff and computers, creating a bottleneck for judges seeking to register their count forms. As well, with only one tally center in each district, judges were required to travel extensive distances in some cases. In combination, these factors negatively impacted the efficiency of the centers. The Carter Center would therefore urge the SJCE to consider increasing the number of tally centers and the number of staff and computers being used at each site.

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