



Carter Center Congratulates Libyans for Holding Historic Elections

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Executive Summary

The July 7 elections provided Libyans an historic opportunity to vote in meaningful national polls for the first time in almost six decades. The Carter Center was honored to be invited to observe the elections, and congratulates the Libyan people, the High National Elections Commission (HNEC), and the National Transitional Council (NTC) for their dedication and efforts to support Libya's democratic transition.

The holding of the elections represents a remarkable achievement of which Libyans are rightly proud. Despite the country's inexperience with elections, and the creation of the HNEC only in January 2012, the election commission effectively conducted the polls in a politically sensitive and potentially volatile environment. Libyan voters and polling staff on election day demonstrated dedication and enthusiasm to a successful democratic transition.

"On behalf of The Carter Center," said former U.S. President Jimmy Carter, "I thank the Libyan people and the transitional authorities for the warm welcome and cooperation extended to our observers during Saturday's national elections. We are deeply moved and inspired by the demonstration of national determination to build a new Libya, free of tyranny and able to join at last the family of democratic nations in the quest for freedom, dignity, and justice for all people."

The tabulation process is complex and will take time to complete. While tabulation continues, The Carter Center encourages Libyans to be patient for the HNEC to release preliminary results.

Following an invitation from the HNEC, The Carter Center conducted a limited election observation mission, accrediting 45 observers from 21 countries and deploying 16 teams of observers on election day. A core team arrived in May, and was followed by medium- and short-term observers in June and July to assess electoral preparations and polling and counting.

Security considerations prevented the deployment of observers in some areas of the country and restricted their movements in others. The Center's assessment is therefore limited in nature and does not offer a comprehensive assessment of the credibility of Libya's electoral process as a whole. The Center shares its findings and analysis with the HNEC and the public in a spirit of cooperation to enhance the quality of future elections and in support of a successful democratic transition. The Center will release a comprehensive report on its electoral observations and assessments later this year, and looks forward to a constructive and open dialogue with the Libyan people and the authorities.

On election day, Carter Center observers visited more than 160 polling stations in 11 of 13 electoral districts, including teams in Ajdabiya, Al Bayda, Az Zuwiya, Guriyan, Khoms, Benghazi, Sebha, Subrata, Tobruk, Tripoli, and Zuwara.

The NTC established an ambitious schedule for the elections, which the HNEC strived to meet. Training and the promulgation of regulations were affected by the compressed time frame; some training of polling staff was incomplete and important aspects of the legal framework were only finalized in the days before the elections.

Despite these challenges, materials were delivered in a timely manner to nearly all locations. In areas visited by Carter Center observers, voting was orderly and polling stations were well managed and efficient. Polling staff appeared well trained and enthusiastically conducted the elections in a neutral and professional manner.

The commission made extraordinary efforts to conduct polling in all locations despite security incidents in the immediate election period and on election day. Attacks on HNEC district headquarters in Benghazi, Tobruk, Ajdabiya, and on a military helicopter used by HNEC to deliver election materials, resulted in one death. These incidents, coupled with attacks against polling stations in Benghazi, Ghemenis, and Ajdabiya on election day, marred the process in these areas. Nevertheless, the commission was able to replace damaged materials, and more than 94 percent of polling centers opened the morning of the elections. Additional centers were opened later and on the following day.

Voters appeared determined to defy these efforts to derail the elections and to participate by casting their ballots. At polling centers elsewhere in the country that were visited by Carter Center observers the atmosphere was calm, with voters patiently queuing and in many cases celebrating their right to cast ballots.

The rapid growth of domestic observer organizations was encouraging. Libyan observers monitored the process in 75 percent of the polling sites visited by Carter Center observers. More than 10,000 political entity and individual candidate representatives registered to observe the elections. As the democratic system and political parties mature, the Center encourages party agents and domestic observers to play a more effective role in observing elections in order to provide an important check on polling operations and increase the transparency and credibility of the vote.

The Center offers the following recommendations to be considered for future elections:

- Consolidate the electoral law to include polling, counting, and tabulation procedures, as well as all other important aspects of the legal framework.

- Encourage consensus building of Libya's diverse population to ensure an inclusive electoral system and fair representation for all its citizens.
- Enhance the work of the HNEC and Ministries of Interior and Defense to coordinate formal election security and develop robust security plans.
- Develop electoral dispute resolution procedures and judicial bodies to provide for a timely and effective remedy to challenges and appeals by voters and candidates.
- In drafting a new constitution and in future elections, allow adequate time for preparations, deliberation, and public consultation.
- Apply important lessons learned during the General National Congress elections to future electoral activities and in support of Libya's continued democratic development.

These recommendations are elaborated in the Carter Center's full preliminary statement, available at www.cartercenter.org.

The Carter Center assessment of the electoral process is made against the interim constitutional declaration, Libya's election laws and regulations, and the country's international commitments regarding democratic elections and political participation. The Carter Center received formal accreditation from the HNEC in May 2012 and has been welcomed by representatives of the NTC, political entities, and civil society. The Center is nonpartisan and conducts its activities in accordance with the Declaration of Principles for International Election Observation, adopted at the United Nations in 2005.

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A not-for-profit, nongovernmental organization, The Carter 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 in developing nations to increase crop production. The Center has observed more than 90 elections in 36 countries. 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.



Statement of Preliminary Findings and Conclusions

POLITICAL BACKGROUND

The elections of July 7, 2012, provided Libyans the ability to vote in meaningful national elections for the first time in almost six decades. Under Colonel Mu'ammarr al-Qadhafi, the political system relied in principle on popular consultation but, in reality, never allowed for elections or political choice.

The popular revolution against the Qadhafi regime that started on Feb. 17, 2011, came after 42 years of highly authoritarian rule. The revolution started as a spontaneous demonstration against the arrest of one of the country's human rights lawyers in Benghazi, but very quickly spread throughout the country. Demonstrations led to armed conflict and NATO military action that only ended with the death of Qadhafi on Oct. 20, 2011.

Aware of the political and economic challenges the country would face in the aftermath of the conflict, the Libyan opposition arranged temporary institutions that would provide guidance and some political continuity. The most important was the National Transitional Council (NTC), initially based in Benghazi but which later moved to Tripoli. During the conflict, the NTC produced a roadmap for the country's political future that envisioned national elections to create a constituent assembly and, eventually, a new constitution. The rapid termination of the conflict, the enormous challenges of creating a new state out of the unpromising ruins of the Qadhafi regime, and inexperience in organizing elections meant that Libya early on solicited international advice and expertise to help organize national elections.

As a self-appointed body, the NTC enjoyed only limited legitimacy. Its coercive power has been overshadowed by a number of competing militias that formed during the armed conflict and continue to exercise considerable authority throughout the country. Political fault lines within the country have been further exacerbated by a traditional antagonism and suspicions between the three provinces, Tripolitania, Cyrenaica, and Fezzan.

Libya nevertheless implemented the first part of the NTC's original roadmap and, in a very rapid fashion, announced elections within 240 days of the liberation date for a national legislative body that would also select a 60-member constitution drafting body. A plethora of political parties and groupings emerged to encompass interest groups throughout the country, including a large representation of civil society groups.

In the lead up to the elections, Libya experienced instability in certain areas of the country. Longstanding historical cleavages between Tripolitania and Cyrenaica, the marginalization of Tubu and Tuareg minorities, as well as the persistence of the power of local militias led to a number of armed incidents in Kufra, the Nafusa mountains, and occasionally throughout the

country's major cities. These incidents once more highlighted the lingering incapacity of the government's to effectively control the fighting between different groups within the country.

Of these conflicts, the persistence of attempts to diminish the power of the central government in Libya is historically the most important. The creation of the Kingdom of Libya in 1951 created a federal system that left considerable power to the different provinces. While this federal formula was abandoned in favor of a unitary form of government in 1963, some groups within Cyrenaica revived the idea of federalism at the end of the country's conflict in October 2011. While being sensitive to greater demands for some form of autonomy for Cyrenaica, the NTC has insisted that federalism is not appropriate for Libya as it moves forward as a political community.

The election of the General National Congress (GNC) provides a first but critical step in Libya's emergence from a bloody armed conflict to democratic government. The country still faces enormous political challenges as it seeks to draft a new constitution and to shape itself into an inclusive and democratic political community where its citizens have a credible voice in the country's decision-making process.

LEGAL FRAMEWORK

A comprehensive legal framework is essential to protect genuine democratic elections and provide for their effective administration. This framework ensures that the state takes all necessary steps to safeguard voters' rights to equality, freedom of expression, and access to an effective remedy. A sound legal framework also reduces corruption by encouraging transparency and providing mechanisms for handling complaints.

The NTC established an ambitious schedule for the elections. Given the time constraints under which the elections were conducted, the legal framework was appropriate and adequately allowed for elections to take place. As a signatory to a number of international treaties, Libya has committed itself to upholding several important civil and political rights.¹ Additionally, following the Feb. 17, 2011, revolution and the formation of the NTC, legislation comprising the legal framework was introduced.

The constitutional declaration set a period of 240 days (later changed to 270 days) to carry out the GNC elections.² The GNC elections law was issued on Jan. 28, 2012.³ Due to its delayed formation in January 2012, the HNEC was challenged to implement the elections in an extremely condensed period.⁴ This extremely tight timeframe affected almost all phases of the electoral process, including the introduction of the election law, regulatory measures and operational aspects of the elections.

¹ Libya is signatory to the following international conventions or treaties, among others: the International Covenant on Civil and Political Rights (ICCPR)(ratified 5/15/70); the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)(ratified 7/3/68); the Convention on the Elimination of Discrimination against Women (CEDAW)(ratified 5/16/89); the Convention on the Rights of Persons with Disabilities (CPRD)(signed 5/1/08); International Covenant on Economic, Social and Cultural Rights (ICESCR)(5/15/70); Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT)(5/16/89) and the Universal Declaration of Human Rights.

² Constitutional declaration, article 30

³ Law 4 for 2012

⁴ The body was formed on Jan. 18, 2012,⁴ and functional in February 2012.

The Interim Constitution

In August 2011, the NTC issued a constitutional declaration outlining the guidelines for the interim period.⁵ Article 30 of the declaration provides for the promulgation of a law to elect a General National Congress (GNC), appoint the High National Elections Commission (HNEC), and to issue an invitation for the election of the GNC.⁶ Several points of Art. 30 were later modified, including measures that members of the GNC shall select (outside of its members) a body composed of 60 persons to draft the constitution.⁷ A second amendment to the interim constitution stipulated that the Statutory Body for Constitutional Drafting shall be composed of 20 members from each of Libya's three provinces.

On July 5, 2012, just two days before election day, the NTC issued a third amendment to the interim constitution, this time stating that the election of the constitution drafting body would be carried out through free and direct suffrage, "taking into consideration Libya's cultural and linguistic diversity." This change is inconsistent with best practice, which calls for no changes to the legal framework within three months of an election.⁸ In this case, the decision may have impaired voters' ability to understand what they were voting for and thus to make an informed choice.

The elections law does not include all the provisions governing the electoral process. Many important provisions were left to the executive regulations issued by HNEC over a period of four months and up to seven days before election day.⁹ A comprehensive elections law, which takes into consideration these regulations, would help to clarify and improve consistency among the laws governing elections.

The Electoral System

While elections in general aim to determine the will of the people and to promote their right to select their own government, the specific type of electoral system that is chosen promotes different types of representation and political behavior. For example, a closed list proportional representation (PR) 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 representatives. In contrast, a majoritarian system promotes a strong connection between the voter and his or her representative, but does not encourage coalition building.

Largely due to political considerations, the NTC chose to implement a mixed parallel system to elect the 200 members of the GNC. One hundred twenty members were elected through two majoritarian systems: First Past the Post (FPTP) and Single Non Transferable Vote (SNTV).¹⁰ The remaining 80 members were elected from political entities elected through a closed list PR system.

Using three electoral systems for the GNC elections made it more difficult for political

⁵ Article 17 of the Constitutional Declaration states that: "The Interim National Transitional Council is the supreme power in the State of Libya and shall undertake the works of the supreme sovereignty including legislation and laying down the general policy of the State".

⁶ Article 30.

⁷ The constitutional amendment was issued on March 13.

⁸ Merloe, *Promoting Legal Frameworks*, p. 38.

⁹ A clear demonstration of that is Article 26 of Law 4 that states: "The Commission shall develop procedures for the voting, sorting and counting process in the polling stations and centers."

¹⁰ Law 4 for 2012 on PNC elections; articles 2, 5, 6, and 7. Law 14 for 2012 on Electoral Constituencies amended by law 34 for 2012.

entities, candidates, and voters to understand the process. It also had implications for counting and tabulation, since different procedures are used for each system. While recognizing the competing political considerations that underlay the choice of electoral system, The Carter Center recommends the use of no more than two electoral systems in future elections.

Quota for Women

A quota for female candidates was applied to the 80 seats to be elected through PR. Male and female candidates alternated on the parties' lists both vertically and horizontally.¹¹ The horizontal alternation was introduced to ensure balance between male and female candidates on the top of the political entities' lists, if those entities were running in more than one constituency. This system was intended to provide a maximum of 50 percent representation for women within the 80 PR seats, i.e. 20 percent of the total GNC seats. However, the design of the electoral system and the quota structure does not guarantee gender equity in the congress. The Carter Center strongly urges that measures be implemented to ensure the effective representation of women in any elected assembly in the future.¹²

ELECTION ADMINISTRATION

An independent and impartial electoral authority is critical to ensuring the rights of voters are protected and genuine elections are held in a transparent and professional manner.¹³ The HNEC was established as an independent election body under Law 3 of 2012 and was responsible for conducting the GNC election. The commission is governed by an 11-member board of commissioners who were appointed by the NTC Feb. 7.¹⁴ The commission supervises a Tripoli-based secretariat that oversees the work of thirteen sub-administration offices (district offices). Each is composed of five members that were appointed by the board and responsible for implementing the decisions of the HNEC at the polling station level. On election day approximately 38,000 polling staff implemented the elections in 6,629 polling stations.

The commission has extensive powers, duties, and responsibilities for all aspects of the electoral processes; it is the only body that undertakes preparation, implementation, supervision, monitoring, and announcement of the results of the GNC election.¹⁵ The chairperson and the members performed a necessary oath before the NTC prior to the assumption of their duties on Feb. 12, 2012, leaving them with 128 days to recruit staff, set up the offices, draft and adopt all internal regulations, train staff, and prepare for voter registration, candidate registration, and election day.¹⁶ Despite having little or no previous

¹¹ Law 4 for 2012 on PNC elections; article 15.

¹² 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."

¹³ UN Human Rights Committee, General Comment 25, para. 20

¹⁴ According to Electoral Law 3/2012, the HNEC was originally to be comprised of 17 members. Only 15 of 17 members were appointed on Feb. 7, 2012, and then on April 25, 2012, the board of commissioners was restructured by the NTC and the total number of commissioners reduced to 11. In May 2012, one commissioner resigned. Mr. Wesam Al-Saghir was appointed as commissioner on June 16, 2012.

¹⁵ Law Number (3) of 2012 on the Establishment of the High National Election Commission, article 3.

¹⁶ Constitutional declaration, Article 30, Paragraph 3, originally stated that the elections should take place within 240 days after the Announcement of the Liberation Day on Oct. 23, 2011.

electoral experience, HNEC staff should be commended for carrying out their responsibilities with a high level of dedication and professionalism. The election administration nevertheless was negatively impacted by the compressed timeframe, with decisions in some cases being issued after the affected activities had already started.¹⁷

Boundary Delimitation

In determining boundary delimitation, constituencies should be drawn so that voters are represented in the legislature on an equal basis.¹⁸ Boundary delimitations were established in May 2012, approximately three months after the electoral law.¹⁹ The electoral law determined the electoral system and the number of seats that were subsequently allocated to electoral districts. It is unusual to decide on the electoral system and the number of seats, and then to try to allocate districts to the system; both the electoral system and the boundary delimitation should go hand in hand, as the delimitation is considered the most important variable in any electoral system.

When the HNEC divided the country into districts, they considered population size, geographical area, and social and historical conditions. The resulting boundary delimitations formed 13 administrative districts housing 73 constituencies. Voters in 69 constituencies cast ballots for one or more individual candidates to represent them in the GNC. For the election of political entities, the 73 constituencies are grouped into 20 electoral districts, which will elect a total of 80 members. While noting concerns to provide adequate representation for all regions, this method of districting does not respect the international obligation of equal suffrage.²⁰

VOTER EDUCATION

Voter education efforts are necessary to ensure an informed electorate is able to effectively exercise their right to vote.²¹ As the first election in almost 50 years, efforts to educate voters on the importance of the elections, the type of elections taking place, and the impact of their vote is even more crucial. These types of voter and civic education programs came under the mandate of the HNEC, but many of their planned activities were severely restricted or cancelled due to the tight timeframe.

Civil society organizations, such as “Sharek” (Participate), began to emerge with a focus on encouraging Libyans to vote. Libyan scouts, who were trained how to vote and supplied with civic education materials, provided grassroots training, particularly targeting the youth. Special educational campaigns were also developed to target women, and the “Sawti laha” (My vote for her) campaign encouraged all voters to support female candidates.

Future electoral management bodies should devote increased resources and efforts to conduct voter information and education campaigns to deepen the voters’ understanding of the process and encourage increased participation in the political process.

¹⁷ The decision no. 93, regarding filling a complaint during the campaign period came out on June 27, after 9 days after the official start of the campaign.

¹⁸ UNHRC, General Comment 25, para. 21.

¹⁹ Law no. 14.

²⁰ UN ICCPR, art. 25.

²¹ ICCPR, art. 25

VOTER REGISTRATION

Voter registration is an important means of ensuring that the right to vote in a genuine election is protected. An effective voter registration enforces universal and equal suffrage while increasing transparency in the electoral process.²² Registration should be made available to the largest pool of citizens possible but may be subject to reasonable restrictions.²³ Although The Carter Center did not observe voter registration in Libya, observers and members of the core team have discussed the registration process with HNEC officials, domestic observers, and voters both in Tripoli and at the district level.

Eligibility

According to the electoral law, citizens are eligible to register if they are a Libyan national, have completed 18 years of age on election day, have not been convicted of a felony or misdemeanor (unless they are being rehabilitated), and they are not members of the military.²⁴ In the future, the HNEC should set a clear calendar date by which a citizen must reach majority, so as not to tie eligibility to the date of an electoral event that may change. Several young voters were potentially excluded from the process due to an early cutoff of the registration deadline.²⁵

Exhibition and Appeals

During the exhibition and challenges period from May 23-27, registered voters were permitted to inspect the voter list where they registered and were allowed to contest in the district court the inclusion of any individual whom they did not believe was eligible to vote. In addition, they had the right to correct their details or to add their name if it was erroneously left out of the exhibited voters list. However, the brief exhibition period did not adequately allow voters to review the registry and make the necessary corrections. In the future, the exhibition period should be extended to allow all concerned citizens to investigate the voter registry and courts should be given more time to consider challenges and appeals based on sound evidence.

Registration figures

Voter registration was conducted from May 1-21, 2012. Despite the short timeframe, a total of 2,865,937 voters registered, representing approximately 82 percent of the estimated 3.5 million eligible voters, based on the 2006 census. Registration was conducted in 1,540 centers nationwide, which were later used as polling centers. Approximately 46 percent of all registered voters were women.

CANDIDATES, PARTIES, AND THE CAMPAIGN ENVIRONMENT

While the right to be elected is a widely recognized principle in both regional and international treaties, it is not an absolute right and may be limited on the basis of objective and reasonable criteria established by law.²⁶ Unreasonable restrictions to the right to be

²² United National Human Rights Committee (UNHCR), General Comment 25 on “The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service”, para 11; UN, ICCPR, art. 25(b).

²³ UN, ICCPR, art. 25; UNHRC, General Comment 25, para. 11.

²⁴ Article 9 of Law 4 of 2012 and Article 5 of the decision no. 19 of 2012.

²⁵ During the voter registration period, elections were anticipated June 19, 2012 and registration was limited to those citizens who would be eligible to vote on that date. After the closure of the voter registration period, the elections were scheduled for July 7. Therefore, citizens born between the June 19 and July 7, 1994, were excluded from participation.

²⁶ ICCPR, art. 25; AU, AfCHPR, art. 13; Arab Charter on Human Rights, art. 24

elected include those based on political affiliation, be it past or present.²⁷ In addition, good practice sources suggest that the loss of this right should only be imposed after adjudication by a court of law.²⁸

The right to stand for public office was granted to every Libyan at least 21 years of age who is literate and not a member of the NTC, Interim Government, or the HNEC. Furthermore, a candidate should not be a former member of the executive office or chairpersons of local councils during the previous regime. Candidate registration took place over the period May 1-15, during which time 3,767 candidates registered, running either as individuals or as part of the 377 lists representing 130 political entities.

Although women played a notable role during the uprising, only 585 women registered as candidates. The vast majority of female candidates registered on the PR list. Only 85 women registered as individual candidates.

High Commission for Implementing Integrity and Patriotism (HCIIP)

The HCIIP is in charge of examining the files of candidates applying for any public post or currently working for the Libyan government as well as candidates for the GNC. HCIIP members were nominated by the NTC.²⁹ Five members (including the head of the HCIIP) are judges; others include lawyers, university professors, civil society activists, and political prisoners during the Qadhafi era. Members represent different geographic areas and ethnographic components of Libyan society.

The HCIIP approved or disqualified candidates for GNC elections according to several candidacy requirements spelled out by law.³⁰ Rejected candidates have the right to appeal decisions of HCIIP in the court of first instance within 48 hours from the HNEC's publication of candidates' names.³¹ The court has to issue a verdict within three days from receiving the appeal.

The HCIIP received almost 4,000 files for GNC candidates, with the legal period to examine the files and issue either a decision within 12 days. The HCIIP informed The Carter Center that they examined all files in only six days. Since its formation in February 2012, the HCIIP assembled a database containing information on members and collaborators of the Qadhafi regime. According to commission members, this information was gathered primarily from the intelligence and secret services headquarters that fell into the hands of the revolutionists.

After examining GNC candidates' files, the HCIIP refused 306 candidates. Some of these appealed against the HCIIP decision and the court restored 79 candidates. The HCIIP has the right to re-examine the files of the 200 members of the GNC after their election in order to double check their eligibility.³² HCIIP is also required to examine the files of the prime minister and other officials appointed by the GNC, as well as the 60 members of the statutory body that will draft the constitution and new members of the HNEC after its reformation. HCIIP will be dissolved in the first session of the parliament that will be elected after approval of the constitution.

²⁷ ICCPR, art. 2

²⁸ OSCE/ODIHR, Existing Commitments, p. 59.

²⁹ Decree number 16 for 2012

³⁰ Law 26 for 2012 on the formation of HCIIP, articles 8 and 9.

³¹ Law 26 for 2012 on the formation of HCIIP, article 13.

³² Law 26 for 2012

The fact that only a small percentage of the files presented to HCIIP were refused demonstrates relative restraint. The right to appeal against HCIIP's decisions in front of the court meets Libya's international obligations concerning effective remedy.³³

Campaign Period

The HNEC announced the final lists of candidates on June 18, 2012, less than three weeks before election day, leaving a very narrow window for the candidates to campaign. The campaign period ran from June 18- July 5. Carter Center medium-term observers met with political entities and individual candidates, attended campaign events, and followed the coverage of campaigns in local media. Campaigns were carried out through posters and billboards, online media such as Facebook, and low visibility activities such as distributing leaflets and private meetings. Observers reported that the last of these was employed by many female candidates. Local civil society groups also organized events at which candidates presented their platforms and answered questions from audiences.

Many people who spoke with Carter Center observers expressed excitement at their new ability to speak freely and to discuss politics without fear of intimidation. A Voluntary Code of Conduct for political entities was signed by a number of parties in late June. There were no reports of clashes between political entities or individual candidates, but there were isolated incidents of posters being defaced or torn down in Benghazi during the last week of June. As the election drew closer, observers noted that posters had been damaged in several other cities, including Zuwarah, Al Bayda, and Derna. Especially affected were the posters of female candidates, though the posters of male candidates were also defaced. Observers reported that the campaign silence on July 6 was largely respected.

In general, observers noted a preference for individual candidates over parties or political entities; potential voters expressed significant distrust of political parties.

In future elections the campaign period should be extended, so that voters can better make an informed choice, and efforts should continue to educate political entities and individual candidates on their rights and responsibilities. Particularly important will be additional training on the role of candidate and party agents in ensuring the integrity and credibility of the electoral process.

Campaign Finance

Balanced and transparent systems for political parties and individual candidates are important in the context of preventing corruption.³⁴ The electoral law delegates this responsibility to the HNEC and allows this body to set the expenditure ceiling for the campaign activities per each candidate or political entity, provided that they identify the funding sources for their electoral campaign.³⁵ The HNEC also has the right to terminate the candidacy or election results of an individual candidate or political entity if it becomes evident that they violated the provisions of the law.³⁶

³³ ICCPR, Article 2(3); United Nations, "Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections," para. 114, "Anyone alleging a denial of their (...) political rights must have access to independent review and redress."

³⁴ UNCAC, art. 7

³⁵ Law 4 for 2012 on GNC elections, article 22

³⁶ *id.*, article 23

On June 16, 2012, only two days before the start date of the electoral campaigns, HNEC issued regulations concerning the ceiling of electoral campaigns expenditure.³⁷ The ceiling of campaign expenditure for the proportional representation constituencies ranged from 90,000 LYD in Morzag to 400,000 LYD in Benghazi. For the majority constituencies, the ceiling ranged from 25,000 LYD in Tazerbou to 150,000 in Benghazi. According to the HNEC, the expenditure ceiling amounts were based on the number of registered voters and the geographic area of each constituency.

According to the electoral law, winning candidates are required to present a detailed report of their campaign income and expenditures to the HNEC within 15 days of the announcement of the final results.³⁸ On June 30, the HNEC issued a decree concerning the establishment of subsidiary units to audit candidates' financial records. Units will be established in each of the 13 sub-districts to verify candidates' financial reports and present a final report to the HNEC.³⁹ The election commission did not monitor probable violations of campaign finance regulations during the campaign period; instead, its actions depend only on post-election assessments completed by the audit units. This measure does not fulfill the HNEC's obligation to verify the compliance with the provisions of the electoral law regarding electoral campaign finance and expenditures.⁴⁰

Carter Center observers reported that a significant number of candidates and political entities with whom they spoke were confused about campaign finance reporting requirements.

PARTICIPATION OF MINORITIES

Freedom from discrimination on the basis of race, color, sex, language, religion, political, or other opinion is widely recognized as a fundamental human right.⁴¹

Internally Displaced Persons (IDP)

The conflict in 2011 displaced many Libyans from their homes or habitual residences. The HNEC identified five locations—Misrata, Tawerga, Khallesh, Msheshia, Bani Walid, and Al-Rumiya—as the main sources of IDPs. Fourteen special centers were established in Tripoli, Benghazi, Khoms, Sebha, Guriyan, and Sirte to facilitate IDP registration and voting. Carter Center observers visited IDP camps in Benghazi and Sebha.

Kufra

A group of local NGOs in the south of Libya challenged the registration of more than one thousand voters in Al Manara and Hettein centers in the Kufra constituency within Ajdabiya district. The district court in Kufra decided to remove 1085 voters from the voters' list under the determination that the removed voters were: inhabitants of the Aouzou area, and thus not Libyan citizens according to decree number 13 issued by the Libyan authorities in 1998; registered without identity documents; registered at more than one registration center;

³⁷ Decree 85 for 2012

³⁸ Law 4, article 25

³⁹ 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."

⁴⁰ Law 4 for 2012 on GNC elections, articles 20, 21, 22, and 23

⁴¹ ICCPR, Article 25.

affiliated with one of the military institutions; or convicted of a felony without being rehabilitated.

The legal period for the removed voters to appeal against their removal was five days from the date of the court ruling. On June 16, 2012, the district court of Kufra informed the HNEC that none of the removed voters had appealed against their removal from the voters' list. On June 26, the HNEC issued its decree number 92 for 2012 ordering the removal of 1085 voters in Kufra from the voters' list. On the same date, the HNEC addressed the Ministry of Education asking for the replacement of the committees in charge of the electoral process in Al Manara and Hettien Centers in Kufra.

The Carter Center notes that the original complaints were filed after the legal time frame. By law this should have been 48 hours following the publication of voters' lists, which took place between May 23- 27.⁴² Most of the complaints were filed starting on June 2. In addition, the delay in the HNEC's decision effectively deprived those removed from the list from exercising their right of appeal. The HNEC should take more timely decisions to ensure effective dispute resolution and to uphold the rights of citizens to appeal. In future, the election management body should give careful consideration to the protection of minority rights in the voter registration process.

CIVIL SOCIETY AND DOMESTIC OBSERVATION

The right to participate in public affairs is a widely recognized obligation in public international law.⁴³ Impartial domestic election monitoring is a means for citizens to participate and promote the integrity of democratic processes.

Several civil society groups were created during the armed conflict to support humanitarian projects. These groups later altered their priorities to reflect political interests, including the GNC elections. As a result, many civil society groups formed networks that included a mandate to observe the elections. According to the HNEC, 11,344 domestic observers were accredited, along with 14,304 political entities and candidates' delegates, many in the extended period of registration. The two largest and most active networks are Shahed, covering all 13 administrative districts, and the Libyan Association for Elections Observation (LAEO), covering 10 out of the 13 districts. In addition, many organizations deployed observers at the local level.

The accreditation of both international and domestic observers went smoothly. The commission should be commended for its efforts to facilitate the full participation of domestic observers in the civic and political rights of the country. The HNEC extended the accreditation deadline from July 1-7. The accreditation process for domestic observers was decentralized to allow for easier accreditation at the local level.

ELECTORAL DISPUTE RESOLUTION

Effective, clear, and fair procedures for electoral dispute resolution are an essential part of a well-functioning electoral process.⁴⁴ Voters and other electoral stakeholders must be given,

⁴² HNEC decree number 72 for 2012 issued on May 21, 2012

⁴³ UN, ICCPR, art. 25

⁴⁴ ICCPR, Art. 2(3), "Each State Party to the present covenant undertakes: (a) to ensure that any person whose

and must perceive that they possess, a voice in the quality of the electoral process if the process is to retain credibility.⁴⁵ Election dispute resolution is one of the main responsibilities of an election commission. HNEC officials avoided assuming a strong role in the consideration and adjudication of electoral complaints for several months, preferring that aggrieved parties seek remedy through the judicial system.

The electoral complaints mechanism set forth in the electoral law gives concerned parties the right to appeal any stage of the election process to the courts.⁴⁶ While the courts could adjudicate complaints, the appeals process could take up to 12 days to pass its final verdict. The process could deny aggrieved parties a timely remedy, particularly given compressed electoral periods and strict electoral deadlines.⁴⁷

With reluctance, the HNEC issued a decree on June 27, 2012, to establish 13 sub-district committees to address electoral complaints.⁴⁸ Each committee has a range of options from taking immediate action to respond to the complaint; referring it to a specialized criminal court; or referring it to the HNEC for further consideration. The HNEC has the authority to disqualify candidates, political entities, or voters from participation or cancelling the results of any polling station in case of fraud or other violation.⁴⁹

Many Libyans 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. Concerned parties who wished to file complaints during polling and counting could receive a complaints form from the polling stations for delivery to the district level. In many cases, this could be laborious since polling centers could be located hundreds of kilometers away. While the procedures instruct polling staff to note any complaints in the polling station journal, and address complaints of an administrative nature, they are not required by law to do so.

The election law states that the HNEC shall verify compliance with the provisions regarding the electoral campaigning.⁵⁰ The HNEC did not establish any mechanism to ensure a proactive verification of the electoral campaigns; instead it depends mainly on the complaints

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 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."

⁴⁵ 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."

⁴⁶ Article 31 of law 4 for 2012 on GNC elections: "Anyone with interest shall have the right to appeal any of the procedures in any stage of the electoral process within 48 hours of the date on which the appealed incident took place; the appellant shall be exempt from court fees."

⁴⁷ Law 28 for 2012, amended article 32 of Law no 4. District court judges with electoral district jurisdiction have 48 hours to pass a verdict in the complaints. Appeals against the court ruling must be filed within five days with the Court of First Instance, which has five days to pass its verdict.

⁴⁸ HNEC decree number 93 for 2012 concerning regulations for elections dispute resolutions. The elections complaint decree was issued 10 days after the start of the campaign period, so there is no mechanism in place to handle the violations committed from the start of the electoral campaign period until its introduction.

⁴⁹ Law no. 4 of 2012, articles 23 and 30.

⁵⁰ Law no. 4 of 2012, article 23

from concerned parties.⁵¹ Future electoral management bodies should assume a greater and more effective role in adjudicating electoral disputes.

POLLING

The Carter Center conducted a limited election observation mission, accrediting 45 observers from 21 countries and deploying 16 teams of observers. On election day, observers visited more than 160 polling stations in 11 of 13 electoral districts, including teams in Ajdabiya, Al Bayda, Zuwiya, Gharyan, Khoms, Benghazi, Sebha, Sabrata, Tobruk, Tripoli, and Zuwara.

Despite logistical challenges, materials were delivered in a timely manner to nearly all locations. In areas visited by Carter Center observers, voting was orderly and polling stations were well managed and efficient. Polling staff appeared well trained and enthusiastically conducted the elections in a neutral and professional manner.

The commission made extraordinary efforts to conduct polling in all locations despite security incidents in the immediate election period and on election day. Attacks on HNEC district headquarters in Benghazi, Tobruk, Ajdabiya, and on a military helicopter used by HNEC to deliver election materials, resulted in one death. These incidents, coupled with attacks against polling stations in Benghazi, Ghemenis, and Ajdabiya on election day, marred the process in these areas. Nevertheless, the commission was able to replace damaged materials, and more than 94 percent of polling centers opened the morning of the elections. Additional centers were opened later and on the following day.

Voters in Benghazi and Ajdabiya appeared determined to defy these efforts to derail the elections and to participate by casting their ballots. At polling centers visited by Carter Center observers elsewhere in the country, the atmosphere was calm with voters patiently queuing and in many cases celebrating their right to cast ballots freely.

The overall performance of the polling station staff was good, with observers reporting that 98 percent were either “good” or “very good.” Voting procedures were correctly implemented in 95 percent of the polling stations visited. In the remaining cases, irregularities were limited to failing to check for ink. Queue controllers were present in all centers visited and facilitated the smooth and orderly distribution of voters to polling stations.

Libyan observers from the newly created domestic observer networks monitored the process in 76 percent of the polling sites visited by Carter Center observers. Political entity or individual candidate agents were present in 60 percent. As the democratic system and political parties mature, the Center encourages party agents and domestic observers to play a more effective role in observing elections in order to provide an important check on polling operations and increase the transparency and credibility of the vote.

With the exception of teams in Benghazi and Ajdabiya, Carter Center observers did not report any incidents of intimidation or interference in the electoral process. Observers did not report any evidence of fraud at the polling stations they visited on election day.

⁵¹ Decree 93 for 2012

However, Carter Center observers did report that secrecy of the ballot was not adequately ensured in 8 percent of polling stations observed, mostly due to inappropriate voter assistance or to inadequate polling station layout.

While many Libyans appeared to understand how to vote, seven different teams of Carter Center observers reported that voters' understanding of procedures was "poor" or "very poor." These reports accounted for 17 percent of all polling stations visited.

Overall, polling at the polling places visited by observers was conducted in accordance with international standards.

OUT OF COUNTRY VOTING (OCV)

In accordance with Libyan law, Libyans living abroad were afforded an opportunity to register and vote in the GNC elections. Libyan citizens across the world could register and vote on the same day in any one of six countries selected by the HNEC for expatriate voting: Canada, Germany, Jordan, United Arab Emirates, United Kingdom, and the United States. The Center regrets that only 8,043 overseas voters cast a ballot in these historic elections. Greater public outreach efforts should be made in future elections to encourage Libyan citizens to participate and exercise their full rights of citizenship.

While geographic considerations were taken into account, there are questions about the choice not to extend OCV to certain countries where large numbers of Libyan nationals reside, such as in Egypt and Tunisia. Efforts should be made to review the procedures for future OCV processes to ensure as inclusive participation as possible.

COUNTING AND TABULATION

The accurate and fair counting of votes after polling plays an indispensable role in ensuring the electoral process is democratic and reflects the will of the voters. Carter Center observers were present for the full count at only eight polling stations. This sample is too small to offer a reliable assessment of the counting process.

Tabulation began the day after the election at the HNEC headquarters in Tripoli. The Carter Center will issue a separate statement that addresses the tabulation process and the resolution of any electoral disputes.

SECURITY

Together with the HNEC and the Ministry of Defense, the Ministry of the Interior developed a security plan for election day that combined various available components, including personnel from local military councils, police, and the Supreme Security Committee (SSC). The plan assigned responsibility for the security of urban polling centers to police and the SSC, while military councils and their militias were responsible for the security of rural polling centers and the establishment of checkpoints.

Localized armed clashes in Kufra, the Nafusa mountains, Ghadamis, and Sebha, as well as opposition to the electoral process, mostly in the east of the country, were the greatest challenges faced by the Election Security Committee in providing a safe and secure environment for voters to cast their vote. Opposition to the election process by several groups

and their actions in the east was the main reason for delayed openings or permanently closed polling centers in certain areas. Related incidents such as the destruction of election material on site or en route to polling centers, an attack on a military helicopter used by the HNEC, and incursions to polling centers on election day marred the process in these areas, and may have intimidated voters and reduced overall turnout.

BACKGROUND ON THE CARTER CENTER'S ELECTION OBSERVATION MISSION

The Carter Center conducted an assessment mission to Libya in late March 2012. The Center commenced its limited election observation mission in May 2012 with the arrival of a core team, followed by the deployment of 10 medium-term observers. Prior to election day, The Carter Center welcomed the arrival of several short-term observers who increased the presence of The Carter Center in Libya and supported observation of the election day, although still limited by security concerns in geographical and population coverage.

The objectives of the Carter Center's election observation activities in Libya are: a) share findings and analysis to enhance the quality of future elections, b) to promote a process that is credible, transparent, and free from violence, and c) to demonstrate international interest in and support for the elections.