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Carter Center Preliminary Statement on Egypt's Shura Council Election

As Egypt's new parliament works to select a 100-member Constitutional Drafting Committee, the Carter Center's mission to witness the country's Shura elections urges Egypt's elected representatives to address the overwhelming lack of representation of women in the parliament by ensuring at least 30 percent of the committee is female.

"Of the 678 members elected to parliament, just 14 are women," said Carter Center Egypt Field Office Director Sanne van den Bergh. "These results raise great concerns that one of the most important voices of Egypt, and its revolution, will be lost in the constitutional process."

The Carter Center's witnessing mission detailed other recommendations and findings in its preliminary report on the Shura Council election, released today.

The Center found the election characterized by a lack of interest, in contrast to the preceding People's Assembly election that captivated national and international attention. Uncertainty about the value and role of the Shura Council in conjunction with the pace and direction of the transition as a whole, contributed to the low level of engagement by voters, candidates, political parties, media, and civil society organizations. In this environment, many of the same technical and operational shortcomings witnessed by the Carter Center mission during the People's Assembly election were again observed in the Shura Council election. While the Supreme Judicial Commission for Election (SJCE) introduced some welcome technical improvements to the electoral process, the atmosphere in which they were implemented and the associated low voter turnout made it difficult to assess their value. As such, while the election results appear to have reflected the will of the voters that participated, the low level of voter turnout underscores the political uncertainties that surround Egypt's ongoing transition.

The Center deployed 30 witnesses representing 19 nationalities to 21 of Egypt's 27 governorates. The Carter Center mission to witness Egypt's Shura election was accredited by the SJCE. Across both phases of voting, these witnesses assessed and observed the administrative preparations, campaigning, voting, and counting, including the complaints and appeals processes. Carter Center witnesses met with government officials, political parties, candidates, and religious leaders, as well as representatives of civil society, academia, and the media.

The Center's principal findings and recommendations include:

- Carter Center witnesses in Egypt observed low levels of participation among voters, political parties, candidates, media, and civil society organizations in the Shura Council election.

- There was a general absence of official public information campaigns about the Shura Council election. Reiterating the Carter Center’s previous recommendations during the People’s Assembly election, the electoral authorities should take significant steps to improve voter education and information campaigns.
- Carter Center witnesses reported an inconsistency in, and at times failure to comply with, the application of electoral procedures by presiding judges at polling stations. This included, but was not limited to, failure to ink the fingers of voters, late opening, and early closing of polls.
- The last-minute decision by the SJCE to remove from the ballot the numbers assigned to candidates in the individual candidate races had a negative impact on their campaign efforts and created difficulties for polling staff while conducting the vote count.
- Egypt’s election authority introduced several technical modifications for the Shura Council election including improved ballot boxes and related security materials. Carter Center witnesses reported that this new equipment improved accountability, transparency, and the secure storage of votes, especially overnight.
- Carter Center witnesses observed that illicit campaigning during the pre-polling campaign-silence period, which had been a source of numerous complaints during the People’s Assembly election, diminished in the course of the Shura Council election. There was an overall reduction in political campaigning. Nevertheless, illicit campaigning violations were still observed by Carter Center witnesses in several areas.
- The procedure to count votes in polling rooms allowed for a more orderly and efficient counting process than occurred in the more centralized count centers used in the People’s Assembly election. However, Carter Center witnesses noted that this decentralization made it impossible for several parties and candidates with limited numbers of agents and representatives to monitor counting at all polling stations.
- The Shura Council election demonstrated that further progress is required to ensure the timely release of detailed election results. The Carter Center noted that the SJCE failed to identify the gender of winning candidates, and in the case of the individual seats, the political affiliation of the winners. As a consequence, uncertainty and speculation arose over the results of the election.
- The Carter Center remains deeply concerned about the serious under-representation of women in senior election administration positions as candidates and representatives, as well as the lack of an effective quota to achieve female representation. The Carter Center urges stakeholders, including the Constitutional Drafting Committee, to take definitive steps to improve women’s participation and representation. This could include introducing a minimum 30 percent quota to ensure effective representation of women in both houses of the legislature
- The election complaints process continued to be a significant concern. Carter Center witnesses noted a continued absence of a transparent, timely, and accountable process for stakeholders to submit their complaints.
- Due to an increased sensitivity toward international NGOs, Carter Center witnesses in some cases experienced hostility and aggressiveness from party agents and representatives as well as more intensive questioning by election officials and security forces regarding their status and institutional affiliation.

The Carter Center also respectfully offers the following key recommendations for future elections:

Clearly define the role of the election management body (EMBs) in the complaints process and provide related training to electoral officials. The election commission should take the lead in ensuring that a record of all electoral complaints is maintained, preserved, and publicized so that complainants and others may learn of the result of their complaints, and so electoral authorities can identify issues and geographic areas that may require improvement in future electoral processes. Also, the process for electoral complaints should be clarified and a reasonable deadline for the resolution of disputes imposed.

Increase transparency and accountability measures. Election authorities must be proactive in building trust with their electoral stakeholders and the public to ensure transparency and accountability of the process. Specific measures should be considered, including amending the law regarding the secrecy of the SJCE's deliberations and publicly posting the official results outside polling stations at the end of the counting process.

The completion of the parliamentary elections is an important but insufficient 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 and should only be used in situations that threaten the security of the nation. The Emergency Law partially in effect in Egypt should be fully lifted.

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 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 therefore important that Egypt's new constitution protects the rights and freedoms of all Egyptians, provides for the clear separation of powers, and be endorsed 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 future elections a fully independent, permanent, and professional election management body be established, supported by a clear, consistent, and restructured legal framework.

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 Egypt's parliament.

Remove the farmer/worker quota. The use of occupational categories as the basis for candidate eligibility arbitrarily undermines the right to be elected. The Carter Center therefore recommends that this provision be removed for future elections.

The Carter Center's full statement on Egypt's Shura Council Election is attached and is also available at www.cartercenter.org, in Arabic and English. A more detailed final report of the Carter Center's

assessment and recommendations on the elections of both houses of Egypt's parliament will be published at the conclusion of the mission. The Center has assessed Egypt's elections based on the relevant parts of the national legal framework, and in accordance with the country's regional and international obligations for democratic elections. The Center conducts its election observation missions in accordance with the 2005 Declaration of Principles for International Election Observation.

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This statement summarizes the observations of the Carter Center's mission to witness the 2012 election of the Shura Council, concluding the elections for Egypt's two-chamber Parliament. The Carter Center witnessed and issued a statement for the first phase¹ of the Shura Council on Feb. 4, 2012. This statement follows the second phase² of polling and runoffs, which were held Feb. 14-15, 2012 and Feb. 22, 2012. The Shura Council is scheduled to convene for its first session on Feb. 28, 2012.³

Supervised by the Supreme Judicial Commission for Elections (SJCE), the election of the Shura Council elicited a muted level of engagement from Egypt's voters, candidates, political parties, media, and civil society organizations. While the results appear to have reflected the will of the voters that participated, the overall low level of voter turnout drew into question the value of the Shura Council elections in Egypt's transition. Amid ongoing technical deficiencies in the process, the transitional environment strongly influenced the minimal level of engagement. In particular, the uncertainty and lack of consensus over the pace and direction of Egypt's transition undermined public interest in this election.

The Election Environment

Since the Supreme Council of the Armed Forces (SCAF) assumed interim executive and legislative power on Feb. 11, 2011, tensions have emerged and grown between the SCAF and many Egyptians, at times escalating into violence. The continuation of key parts of the Emergency Law, use of military trials for civilians, use of excessive force by security forces, and the crackdown on civil society organizations has shaped an atmosphere of suspicion and distrust.

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 SCAF's Constitutional Declaration of March 30, 2011,⁴ mandates the joint elected membership⁵ of the houses to select a 100-member Constitutional Drafting Committee to write a new constitution that will be put to a referendum, followed by presidential elections. The first joint meeting of the houses of Parliament is scheduled to occur on March 4, 2012.

Uncertainty remains, however, on the exact method for selecting the committee, and whether or not the new constitution will be drafted and approved before presidential elections are held or if the process will be concluded under civilian rule. The Carter Center reiterates its recommendations that Parliament should have exclusive authority to select the committee, that the committee should reflect Egyptian society,

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

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

³ SCAF decree 315, issued on 31 December 2011

⁴ A referendum on March 19, 2011, amended several articles of the 1971 Constitution. It was supplemented by the SCAF's Constitutional Declaration of March 30, 2011, which included the referendum articles, slightly modified in some cases, and many additional articles that were not part of the original referendum.

⁵ Despite the widely held perception that the consultative chamber's authority is marginal, it does have two potentially influential functions in Egypt's present transition. Under the transition plan outlined by the interim ruling regime, the Supreme Council of the Armed Forces (SCAF), the 180 elected members of the Shura Council joins with the elected membership of the parliament's lower house, the People's Assembly, to select the 100 members of a constitution drafting committee.

including a minimum of 30 percent women, and should ensure that the constitutional drafting process takes into account the views of the full political spectrum of Egyptian society and that all stakeholders should work to guarantee that democratic principles, fundamental rights, and freedoms are protected in the new constitution.

The success of the the Freedom and Justice and al Nour parties in the People's Assembly (46 and 25 percent of seats respectively), appeared to impact the political calculus of other competitors in the Shura Council in that the momentum of these victories was viewed as a precursor to a foregone conclusion. As well, with the upper chamber only possessing a consultative mandate, the ability of this chamber to directly affect Parliamentary decision-making is minor. These contextual aspects of the environment appeared to heavily contribute to a lack of intensity and political competition for the Shura Council.

The Shura Council election was ultimately defined by low levels of interest and participation among voters, political parties, and non-governmental organizations. Among other commonly held explanations for the low voter turnout was a general uncertainty about the purpose of Egypt's upper house of parliament due in part to insufficient voter and civic education, and voter fatigue.⁶ While the voter turnout for the People's Assembly exceeded 55% the Shura Council elections saw a significant decrease to an average of slightly less than 14% in the first rounds, and less than 7% in the runoff rounds.⁷

The second phase of elections commenced on Feb. 14, 2012, in the aftermath of the tragic deaths of more than 70 people at a football match in Port Said on Feb. 1, 2012. A series of subsequent demonstrations were met with lethal force by the security forces, leading to further deaths, which contributed to diminished attention to the Shura elections. Likewise, the media's heavy focus on the ongoing controversy over the investigation into domestic and international non-governmental organizations and the intense speculation over presidential election preparations and possible nominees for the office of the presidency further distracted attention from these elections.

Background on the Shura Council Elections

The Shura Council was established under Egypt's 1971 Constitution as a consultative upper chamber of the Parliament and was first elected in 1980. Each of Egypt's 27 governorates constituted a single district, with the exception of Cairo, Giza, and Dakahliya that were each subdivided into two districts, for a total of 30 districts. These boundaries were determined by SCAF decree 122/2011,⁸ which also assigned the seat allocations for each district. With a membership of 270 seats, 180 seats are elected and 90 are appointed by the President. Similar to the People's Assembly, the Council is subject to a quota of at least 50 percent workers and farmers.⁹ Of the 180 elected seats, 60 are drawn from individual candidate races, where candidates may be independent or party affiliated, and winners are determined by an absolute majority electoral system in 30 two-seat electoral districts. Four seats are also elected from each of the 30

⁶ The PA elections began on Nov. 28 and finally ended on Jan. 22. Not only were there six official election days (two days for each of the three phases) there were also 2 day runoffs for each phase, and several additional days for court-mandated re-run elections.

⁷ The turnout data for the both phases was distorted by the postponement of the list races in Menoufiya and Qena to the runoffs in the first phase, and similarly, the postponement of the list race in Luxor in the second phase to the runoff round.

⁸ Issued Sept. 26, 2011.

⁹ The terms "farmer" and "worker" are defined in Article 2 of the Law6 Concerning the People's Assembly. (It is worth noting that these definitions are not explicitly included in the primarily electoral law governing the Shura Council elections, Law Number 120 of 1980 Concerning the Shura Council Elections.) 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.

electoral districts through closed list proportional representation races, conducted among four candidate party lists that are formed by parties or coalitions.

Each party list must contain at least one female candidate to be eligible to compete in a proportional representation race. The list composition rules do not however specify a minimum position for women 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 was principally in the bottom half, with more than 80 percent in third and fourth positions. For female candidates competing in the individual candidate races, the size of the electoral districts (i.e. governorate) presents a challenge for amassing sufficient campaign resources to compete effectively. As a result, and similar to the outcomes of the People's Assembly elections, women are severely underrepresented in the Shura Council, having won only 5 of the elected 180 seats (or, less than 3 percent). 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,¹⁰ The Carter Center urges stakeholders, including the Constitutional Drafting Committee, to take definite steps on improving women's participation and representation.

The Shura Council election was conducted in two phases covering 13 governorates in the first phase and 14 governorates in the second. The same voters list was used for both the People's Assembly and the Shura Council elections and was closed on July 20, 2011.¹¹ The list required voters to be assigned to and vote at specific polling stations. Slightly less than a total of 50 million voters were registered for the Shura Council election, of which, just over 356,000 were registered as out-of-country voters. The candidate and list nomination process for the Shura Council elections were held at the same time as the nomination process for the People's Assembly in October 2011.¹² For the 60 individual seats 2,036 candidates were registered to compete, while 272 lists were registered to compete for the 120 proportional representation seats.

Election Administration and Framework

Egypt's transitional electoral authority is led by a fully-judicial supervisory commission, the SJCE.¹³ The SJCE oversees a mixed judicial and governmental General Secretariat¹⁴ that is responsible for coordinating and implementing electoral operations. 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 electoral committees have supervised tallying centers in the Shura Council elections.

The absence of senior female election officials is an ongoing concern in the current composition of the SJCE and the electoral committees.¹⁵ Under the relevant legislation, these posts are filled by the

¹⁰ 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.

¹¹ Law on the Exercise of Political Rights, Art. 5-bis.

¹² SJCE resolution 11-2011, Art 1

¹³ The SJCE was originally titled as the High Elections Commission (HEC) under Law 73 of 1956 as amended, but its name was changed by the commission.

¹⁴ Law on the Exercise of Political Rights, Article 3 bis (I), Law 73 of 1956. 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.

¹⁵ 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.

incumbents of judicial positions. However, women's participation in elections includes their presence within the election administration, in particular, as part of policy formulation and executive decision making processes. To guarantee that electoral policies take into account these concerns, The Carter Center recommends that the future composition of any election administration makes specific provision for female representation at senior levels. As an interim measure, The Carter Center strongly urges Egypt's electoral authorities to consider implementing a senior advisory committee for women's issues to advise the commission at an executive level.

The independence of the SJCE is not explicitly provided for in the SCAF's Constitutional Declaration. The SCAF, as the interim executive and legislative branch during the transition, has the ability to define and bind the actions of the SJCE through legal amendments, which undermines the independence of the election authority both in law and in practice. Major revisions to the electoral laws were made from May 19, 2011,¹⁶ onward, and have been subject to ongoing piecemeal amendments. The SJCE was appointed on July 19, 2011, and the People's Assembly and Shura Council elections announced on Sept. 27, 2011.

The SJCE had a critically short period of time in which to become established, define inter-institutional relationships, develop electoral procedures, and train staff. The staff of the electoral authority has, however, gained critical experience in the course of the three rounds of the People's Assembly election and the two rounds of the Shura Council. The SJCE has progressively issued manuals for presiding judges, but as was the case for the People's Assembly election, these manuals were only available a few days before the first round of polling and lacked detail in several areas. The lack of a fully developed regulatory framework to provide a standard and consistent interpretation of various legal provisions has created ambiguity, leaving presiding judges to use their own judgment to apply certain procedures.¹⁷ As a result, Carter Center witnesses have reported the inconsistent application of procedures by presiding judges. The Carter Center therefore urges Egypt's electoral authorities to develop a complete regulatory framework for future elections and a training curriculum for election officials that ensures a consistent procedural approach.¹⁸

The U.N. Human Rights Committee has stated that an independent electoral authority should supervise elections.¹⁹ In line with this, the Center recommends that the future constitution explicitly acknowledge 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. The Carter Center therefore recommends establishing a professional and permanent election administration, with a presence in each of Egypt's governorates.

The cost of an election is not trivial. As reported in the media, the SJCE advised that the Shura Council election cost in the order of one billion Egyptian Pounds. As such, identifying opportunities to reduce the cost of elections that do not compromise their quality or periodicity is an important consideration. For the Shura Council election, and similar to the Carter Center's observations of the People's Assembly election, the electoral system may provide several opportunities to reduce the costs of Egypt's elections. Replacing the absolute majority system for individual candidate races by the simple majority system would, for example, remove the requirement for runoff races. The removal of the farmer and worker quota would also greatly simplify the election administrative processes. The Carter Center therefore suggests that steps be considered to simplify the electoral system, with a view to making future elections more cost effective.

¹⁶ See SCAF Decree No. 46 of 2011, issued on May 19, 2011, et seq.

¹⁷ Inking procedures, assisting illiterate voters (which is not stipulated in the law), Establishing the validity of marked ballots, and the handling of complaints, are all areas where Carter Center witnesses observed inconsistencies in practices between various polling station judges and poll workers.

¹⁸ UN Human Rights Committee, General Comment 25, Para. 19. "[e]lections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights."

¹⁹ Paragraph 11, General Comment 25 on the International Covenant on Civil and Political Rights, UNHRC.

The low level of participation in the Shura Council election was broadly anticipated among the electoral stakeholders, including the election administration. Reflecting this, several procedural amendments, which are described in the polling, counting, and tabulation sections below, were introduced for the Shura Council election. Because of the low turnout, these amendments were not subject to the level of operational stress caused by the intense competition and high voter turnout of the People's Assembly. Therefore, the implementation of these revised procedures remains untested under the stress of an intensely competitive election.

Carter Center witnesses also noted that the reduced pressure on election officials led to a more casual approach toward procedures. For example, the punctuality of judges arriving and completing the preparations for opening polling stations, which had progressively improved over the course of the People's Assembly, worsened during the course of the Shura Council election; the application of indelible ink as a safety measure against multiple voting became more lax and during the second phase was observed to not have been implemented at all in a few cases; following poor days of voter turnout, Carter Center witnesses observed several instances of polling stations closing shortly before the official closing time of 7 p.m.; and in two cases during Phase 2, Carter Center witnesses observed counting commencing before closing. Finally, security forces were seen inside polling centers more often, and access to polling centers by witnesses was unusually prolonged or obstructed by extensive questioning by security personnel. Consequently, as the Shura Council election progressed across the two phases, these procedural violations were observed to become more frequent.

Witnessing Environment

The Carter Center's witnesses noted a very low level of participation in the Shura Council elections by national and international civil society organizations, as well as candidate and party agents. Among political parties and candidates, the low level of agent and representative participation was cited as a result of several factors, including the exhaustion of campaign resources from the People's Assembly, disillusionment with the transition, and a lack of interest in the Shura Council election. Discussions with civil society representatives indicated that several organizations did not witness the process due to the perceived lack of interest and importance of the Shura Council, as well as a decision to preserve their resources for the anticipated constitutional referendum and presidential election. Further, the tension over the ongoing investigation into national and international civil society organizations was cited on a few occasions as the reason to disengage from monitoring the process.

Carter Center witnesses experienced two cases of aggressive behavior, bordering on hostility, from party representatives. In addition, witnesses noted more intensive questioning from election officials and security forces regarding their status and institutional affiliation. It is worth noting that in other cases, inquiries were based on curiosity regarding the current environment facing NGOs. Looking ahead: given the important national elections that remain to take place in Egypt, including the presidential elections and constitutional referendum to take place later in the first half of 2012, The Carter Center urges electoral officials to provide accreditation to domestic and international witness organizations at the earliest opportunity. Doing so will enhance the transparency of the process by ensuring that impartial witnesses have the opportunity to observe and report on all aspects of the electoral process.

Polling

The experience of the SJCE in the People's Assembly election led to several amendments to the electoral process. The ballot design that was used for the People's Assembly election was also used for the Shura Council. However, an amendment was made to the individual candidate race ballot, where the numbers assigned to each candidate were removed. The SJCE indicated that this modification was made to avoid voter confusion in cases where candidate withdrawal resulted in ballot numbers being out of order. The lack of these numbers, however, created two principal difficulties that were noted by the Center's

witnesses. First, several candidates told witnesses that the ballot numbers were the basis of their campaign to illiterate voters. The removal of the number had therefore undermined their efforts. Second, the Carter Center's witnesses noted that the lack of numbers made the process of counting votes more difficult for poll workers. Poll workers had to use the names of candidates to count the votes, which took longer, and in some cases, caused difficulties due to the similarity of some candidates' names. To avoid these difficulties in the future, The Carter Center recommends that candidate numbers be retained on the ballot to assist the process of political campaigning and ease the participation of illiterate voters. Further, to avoid complications due to candidate numbering, the deadline for the withdrawal of candidates, which is currently established in the law as 15 days before an election, might be extended to 30 days and should be strictly implemented.

Improvements since the People's Assembly elections included the replacement of older wooden and plexi-glass constructed ballot boxes that were sealed with padlocks, cloth, and wax, with plastic-molded and lidded ballot boxes with securable ballot slots that could be secured with uniquely numbered and auditable seals.²⁰ Carter Center witnesses observed that these boxes appeared more secure and allowed for auditing by checking seal numbers by party and candidate agents when stored overnight and reopened on the second day of polling. Carter Center witnesses also noted that in contrast to the first phase, where some judges had difficulties with applying the new seals, in almost all cases during the second phase, election officials appeared confident in the use of the new equipment. As noted above however, the application of inking procedures was far less consistent and stringent than in the People's Assembly election. Similarly, in most cases illiterate voters were assisted by presiding judges through a wide variety of inconsistent approaches.²¹

Illicit campaigning during the pre-polling campaign-silence period, which had been a source of numerous complaints during the People's Assembly election, was observed to have diminished in the Shura Council election along with an overall reduction in political campaigning. Nevertheless, illicit campaigning violations were still observed by Carter Center witnesses in several areas.

Counting

In phase two, the SJCE also maintained the procedure of counting votes at polling stations, which had been introduced in the first phase of the Shura Council election. It was broadly noted that this decentralization allowed election officials to conduct the count in a more controlled environment than had been the case in the count centers used in the People's Assembly, where counting was conducted at large centralized locations for all polling stations within a list-level district. Notably however, Carter Center witnesses were advised by several parties and candidates that the decentralization made it impossible for their limited number of agents to observe counting at all polling stations. This was especially the case for individual candidates.

A critical procedure in any electoral process is the criteria by which ballots are determined to be valid or invalid,²² that is, whether the ballot has been marked in a manner that allows for its inclusion into the vote count. It was noted in the People's Assembly election that increasing levels of invalid ballots were

²⁰ "The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes. Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees." UNHRC, General Comment 25, para. 20.

²¹ Some judges marked the ballots for voters publically, sometimes in the voting booth, in other cases the judge refused to mark the ballot for the voters but instructed the voter how to mark the ballot. Sometimes the judge seemed to note the act of assisting in his or her minutes; others did not appear to do so.

²² UN, ICCPR, Art. 25 (b), right to vote; UNHRC, General Comment 25, para 19.: "[E]lections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights.

recorded as the election proceeded across the three phases. As the Shura Council employed the same ballot design as the People's Assembly, it was expected that the invalid ballot rate may have declined in the second election. However, the invalid ballot rate reported by the SJCE increased over the course of the Shura Council election. The Carter Center strongly recommends that electoral officials take steps to 1) standardize the criteria for determining whether ballots are valid or invalid, 2) ensure that judges, poll workers, candidates, parties, and other electoral stakeholders are aware of these standards, and 3) guarantee that party and candidate representatives, observers, and others are given the opportunity to observe the process of determining ballot validity.

In several cases, Carter Center witnesses and party and candidate agents were prohibited from entering the counting rooms by judges and security officials, who would only allow non-election officials to observe from the doorway. The Center's witnesses noted that this arose in several cases due to space limitations in the counting rooms. As such, while decentralizing counting to polling stations was seen as an improvement for several aspects of the counting process, it had an overall effect of reducing transparency for candidate and party agents and witnesses.²³ To reinforce transparency in future elections, The Carter Center recommends that the electoral authorities select polling and counting facilities that allow party candidate agents and witnesses sufficient access.

The Carter Center was advised by the SJCE that judges were not officially required to announce or post a copy of the count results at the polling station. However, Carter Center witnesses noted that on many occasions the presiding judges announced the results to any party or candidate agents that were present. This is a positive step, and the Center recommends that all judges make an official announcement of the count within polling stations upon the conclusion of the count.

Judges then took custody of the used and unused ballots, minutes of the polling station, reconciliation sheets, and count forms to transport them to district level tally center. Notably the judges placed the count sheets into envelopes for transportation. Often, tamper evident bags are used for this purpose in other countries, and protect election officials from allegations of tampering with the forms during transportation.²⁴ To strengthen transparency, accountability, and auditability, The Carter Center therefore urges the election authorities to require presiding judges to ensure that reconciliation and count sheets are transported inside tamper evident bags to tally centers.

Tabulation

The tabulation of the vote counts was conducted at tally centers located in each of the 30 electoral districts. Presiding judges with a few members of their polling staff would travel from the polling center to the tally center with the ballots, official record of polling, reconciliation, and count sheets. At the tally centers, the judges and their staff would then deposit the ballots, and submit their reconciliation and count sheets to sub-committees. Carter Center witnesses observed that separating counting from tallying allowed for the tally centers to be managed in a more orderly manner than the count centers in the People's Assembly election.

However, Carter Center witnesses experienced ongoing access difficulties. On a few occasions, Carter Center witnesses were unnecessarily obstructed by security force personnel from entering the site, although they were accredited and carrying authorized badges provided by the SJCE. In two cases, the

²³ United Nations Human Rights Committee (UNHRC), General Comment 25 on "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service", para. 20: "The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents.";

²⁴ Id.; See also good practice outlined in the the Council of Europe Handbook for Observers of Elections, para. 2.5.4, which emphasizes the importance of "[s]ecurity arrangements and safeguards against fraud: ensuring that proper arrangements have been made for the security of the polling stations and the ballot boxes/papers during and after the poll and during and after the count."

head of the tally center refused to allow Carter Center witnesses to access the center without an additional stamped letter from the SJCE. In all cases these problems were resolved, however it highlighted the continuing concern that security forces managing access to these sites should be demonstrably under the supervision of the electoral authorities and be better trained on the different forms of accreditation and entitlements that are afforded to different stakeholders in the election process. The role of national and international observers is a critically important means of reinforcing the transparency and credibility of the electoral process, it is important to ensure that accredited witnesses have access to polling stations and counting facilities without obstruction. The Carter Center reiterates the recommendation that a judicial official oversee and coordinate access to electoral sites with security forces, and that security forces be better trained on their roles and duties in the electoral process.

Carter Center witnesses observed that the reconciliation forms submitted by presiding judges were checked by sub-committees assigned to sub-geographical areas of the electoral district, under the overall supervision of the electoral committees. Once successfully verified, the forms were then handed to administrative staff operating computers to input the information into spreadsheets. Carter Center witnesses noted that the management of these processes was orderly and party and candidate agents were usually able to observe the process. In some tally centers however, witnesses and agents were unable to access the area where results were being input into the computers.²⁵ In a more competitive elections, these issues can become more sensitive and the subject of complaints. Therefore, the Center recommends that tally centers be arranged to ensure agents and witnesses are able to directly observe the process of data entry.

For the second phase of the Shura Council elections, the SJCE conducted a limited trial of a new technology system for the tabulation of votes in Giza governorate's Districts One and Two. This system used an online application that was accessed by trained staff at the tally centers to directly input the count and reconciliation data into a central server and database. The system used a variety of security measures to access the central server via a cellular network. The Carter Center witnesses in Giza District One observed that the system appeared to operate smoothly and allowed for the information to be entered more rapidly than the spreadsheet systems. However, in Giza District Two, it was reported that the maximum bandwidth limits for the cellular network was reached and operators were unable to access the application as a result. The Giza District Two tally center therefore reverted to the spreadsheet system for the tabulation process. The Carter Center recognizes that the introduction of new technologies into an electoral process is a challenge in any environment. However, these challenges stress that new technologies should be rigorously evaluated, designed, and tested prior to their implementation, and that elections themselves should be protected from trial and error processes. The Carter Center therefore urges the SJCE to strengthen its internal research, development, and testing processes to avoid any unnecessary risks in future elections.

Similar to the out-of-country voting (OCV) conducted during the People's Assembly election, eligible Egyptian voters abroad were permitted to participate in the Shura Council elections. Registered before the People's Assembly election, these same voters were able to participate in the Shura Council election through a combination of Internet based technologies and Egypt's embassies. The Carter Center did not have the opportunity to observe these activities, but noted that the inclusion of the vote count from the OCV exercise was opaque. The Carter Center recommends that the SJCE make greater efforts to inform Egypt's electoral stakeholders about the OCV process, the OCV count results, and how these votes are included into the tabulation of the election results.

²⁵ U.N. Human Rights Committee (UNHRC), General Comment 25, para. 20; As EISA has noted, "[p]rocedures for counting should be known to those election officials, party agents, observers and any other authorized persons who are permitted to be present during the count." EISA and Electoral Commission Forum of SADC Countries, Principles for Election Management, Monitoring, and Observation in the SADC Region, p. 26.

Announcement of Results

The process of announcing the results of an election is one of the most sensitive tasks undertaken by an election authority. Authoritative, timely, and accurate election results significantly contribute to the perceived credibility of an election and reduce uncertainty in the post-election period. The timely and authoritative release of results after the first round of polling and before runoff races is of particular importance for runoff candidates' campaigns. As was noted in the Carter Center's statement for the People's Assembly election, the process of announcing results requires further development and improvement. The SJCE appeared to partially address this issue with more timely publication of results via its website, <http://www.elections2011.eg>. However, the Shura Council election demonstrated that further progress is required to ensure the timely release of detailed information. The counting of votes at polling stations suggests that the SJCE should also consider publishing the vote count at the polling station level. With limited coverage achievable by most party agents, this should be a complementary mechanism to increase transparency of the process. As well, The Carter Center noted that the SJCE has failed to identify the gender of winning candidates, and in the case of the individual seats, the political affiliation of the winners. As a consequence, uncertainty and speculation has arisen over the results of the elections. To avoid these difficulties, The Carter Center strongly urges the SJCE to improve the timeliness of the announcement of the election results, and to provide greater detail about the winning candidates and to publish the vote count results at the polling station level.

Complaints

The process for the submission and resolution of electoral complaints that was identified as a problem in the People's Assembly election continued to pose problems in the Shura Council election. The ability for electoral stakeholders to submit complaints and have their concerns addressed through a transparent, accountable, and timely process is a key principle of credible and genuine elections.²⁶ For the election administration, it is equally important that decisions are rendered by the competent courts in a manner that allows for the authorities to respond to the remedies applied by the courts, without jeopardizing the timelines of the electoral process or creating uncertainty.²⁷ The process for the submission of complaints through a variety of legal avenues and uncertainty by electoral stakeholders (parties, candidates, and voters) regarding how to submit complaints is an ongoing concern. Carter Center witnesses noted in their conversations with stakeholders that many were unaware of the process to submit complaints. As well, the Free Egyptian party highlighted that their boycott of the Shura Council elections was based on its dissatisfaction with the complaints process, and their perception that complaints they had lodged were not appropriately addressed.

While the election law establishes several clear deadlines for the submission and resolution of complaints,²⁸ several courts have failed to adhere to these deadlines. In the People's Assembly election,

²⁶ ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (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; [and] (c) To ensure that the competent authorities shall enforce such remedies when granted.

²⁷ International IDEA states it well, "[T]he law must require that the appropriate [electoral management body] or court render a prompt decision to avoid the aggrieved party losing his/her electoral rights. The decision of the court of last resort must be issued promptly. The legal framework should provided for timely deadlines for the consideration and determination of a complaint and the communication of the decision to the complainant." International IDEA International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections, p. 93.

²⁸ See, for example, Articles 9, 9-bis, and 9-bis(b) of the Law Concerning the People's Assembly. These articles, which also govern the Shura Council nomination process, establish a 7-day time limit following the close of nominations for the adjudication of candidate challenges by an SJCE committee, including for errors such as worker/farmer mis-designations and name

late decisions by appeal courts – in some cases being notified to the election authority only the day before scheduled polling – resulted in more than 18 electoral races being subject to reruns. While respectful of the judicial authority and due process, these decisions and the remedies assigned to them created a high level of uncertainty among election officials, political contestants, and voters. In particular, political parties and candidates that had expended campaign resources ahead of scheduled elections were required to campaign again at a later time. While the Shura Council elections did not suffer to the same degree as the People’s Assembly from similar episodes, two list race reruns were required in the first phase in Qena and Menoufiya governorates, and in Luxor²⁹ governorate in the second phase. To avoid similar concerns in future elections, The Carter Center strongly urges that the legal framework and related complaints processes be subject to a comprehensive review to ensure that election related complaints are addressed in a transparent, timely and accountable manner that better supports the demands of the electoral process.

As during the People’s Assembly election, there does not seem to be available information about the number of complaints regarding allegations of electoral misconduct made by citizens to the SCJE. The SCJE has referred many of these complaints to the General Prosecutor’s office for further investigation, but it is unclear whether consolidated information regarding the ultimate disposition of these complaints will be made public in a format that is accessible to Egyptian electoral stakeholders. Steps to rectify this lack of transparency should be taken.

Official Information Campaigns and Media

Official voter education and civil information campaigns continued to be a significant weakness of the Egypt’s election process. Voter education efforts are necessary to ensure an informed electorate is able to effectively exercise their right to vote.³⁰ As noted in past Carter Center statements on the People’s Assembly, a clear mandate and commensurate resources to inform and educate voters, political contestants, and other stakeholders about the elections is a concern.³¹ In the case of the Shura Council election, the absence of competitive political campaigning and civil society participation, the Carter Center’s witnesses noted a scarcity of public information about the process. On several occasions, political contestants also told Center witnesses that there was a lack of official information on key issues about the election process, and in particular, the complaints process. The Carter Center recommends that greater efforts need to be made in the area of voter and civic education, and in particular that clear, authoritative, and timely information is available to political contestants.

The attention given to the Shura Council election by Egypt’s media outlets was largely overshadowed by other events. In part, the minimal coverage contributed to a lack of awareness and interest among voters about the process. While circumstances may pose a challenge for generating media coverage, it was also notable that the election authorities offered only limited opportunities for the media to receive information and briefings about the election. The Shura Council process emphasizes that publicizing elections requires concrete efforts by the electoral authorities to engage with the media. The Carter Center therefore recommends that the election authorities further develop their media liaison capabilities to enable a proactive engagement with the media, as a means of enhancing participation and awareness.

The Carter Center mission to witness Egypt’s Parliamentary elections has been accredited by the SJCE. In the first phase of the Shura Council elections, The Carter Center deployed 30 witnesses to 11 of the 13

misspellings. There is an additional 7-day time limit for adjudication by the Administrative Court of appeals of decisions by this committee.

²⁹ Carter Center witnesses were not present in Luxor for this portion of the electoral process.

³⁰ UNHRC, General Comment 25, para. 20

³¹ The Carter Center, Preliminary Report on All Three Phases of the People’s Assembly Elections, pp. 12-13.

participating governorates, and 30 witnesses were deployed across 10 of the 14 participating governorates in the second phase. The Center's witnesses were deployed several days before polling and remained in the governorates through the runoff and shortly afterward. Carter Center witnesses represent 19 nationalities including: Australia, France, Germany, Iraq, Ireland, Italy, Kenya, Lebanon, Malaysia, Morocco, the Netherlands, Norway, Palestine, Philippines, Spain, Sudan, Tunisia, United Kingdom, and the United States. While deployed, these witnesses will observe the election administration, campaigning, voting and counting operations, and other activities related to the electoral process in Egypt.

The Carter Center's election mission is conducted in accordance with the Regulations and Code of Conduct for Elections Followers issued by the SJCE, as well as the Declaration of Principles for International Election Observation and Code of Conduct that was adopted at the United Nations in 2005 and has been endorsed by more than 37 election observation groups. The Center assesses the electoral process based on Egypt's national legal framework and its obligations for democratic elections contained in regional and international agreements