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Carter Center Expresses Concern about the State of Egypt's Political Transition

The Carter Center is concerned about the restrictive political and legal context surrounding Egypt's electoral process, the lack of a genuinely competitive campaign environment, and the deep political polarization that threatens the country's transition as May 26-27 presidential elections quickly approach.

Although a significant part of the Egyptian population appears to support the military-backed transition, the period following the July 2013 ouster of

The Carter Center deployed a small expert mission to assess the political and legal context surrounding the May 2014 presidential electoral process. Based on the mission's analysis, and in a spirit of respect and support, The Carter Center recommends the following steps to open political space before the presidential elections and to advance political accommodation in the post-election period ahead of parliamentary elections:

End the government crackdown on peaceful dissenting forces, including the Muslim Brotherhood and its supporters as well as opposition activists and movements such as the April 6th movement and others.
Immediately rescind the Protest Law, which severely restricts public gatherings and

Carter Center Statement on the Legal and Political Context of Egypt's Presidential Elections

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Background: The Transition Roadmap

In July 2013, in the wake of large scale protests against President Mohammed Morsi and his government, Egypt's armed forces suspended the 2012 constitution, deposed Morsi, transferred executive and legislative authority to the head of the Supreme Constitutional Court, and announced a transition roadmap. The roadmap called for constitutional reforms, media reforms, the integration of youth into decision-making, and the formation of a committee for national reconciliation.

On July 8, 2013, Interim President Adly Mansour issued a Constitutional Declaration that institutionalized parts of the roadmap. It set a timeline for the political transition, including the process to amend the 2012 constitution and hold parliamentary and presidential elections. However, it remained vague or silent with regard to other key issues, including the envisioned scope of constitutional reform, media reforms, the political participation of youth, and the critical issue of national reconciliation. Moreover, the short timeframe prescribed for the transition, limited the prospects for reconciliation and building a broad consensus on a shared vision for a democratic future.

The repression of the Muslim Brotherhood that followed the military intervention - including the killing of hundreds of Muslim Brotherhood supporters, the detention of thousands more, and the ongoing trials of Muslim Brotherhood leadership -

politics. To this end, the legal framework for the upcoming legislative elections due later this year should be developed with broad political inclusion and should ensure protections for the core political rights that are enshrined in the constitution. In addition, over the longer-term political dialogue is needed to build consensus on constitutional reforms that reflect a shared vision for Egypt.

The Carter Center expert mission included staff and electoral and legal experts. The mission's report examines the legal framework governing Egypt's presidential elections, including the new constitution and the presidential election law, as well as key aspects of election administration. In addition, the report assesses the conditions facing Egyptian do

constitution.⁴ No direct consultation with political stakeholders took place before the law was issued. There was only a short window of time for political parties and leaders to send written suggestions to the presidency before the draft law went to the State Council Legislative Department for review and redrafting, and then back to the presidency to be issued.

The 2014 PEL is structurally very similar to the PEL that governed the 2012 presidential elections. It includes articles on candidate eligibility requirements, the composition and

by the 352 District General Committees (DGCs), composed of the judges, members of judicial bodies and seconded public employees, which are set up in Egypt's governorates only shortly before the elections.

The temporary nature of the PEC as an electoral body and its appointment⁸ only shortly in advance to the presidential election does not leave much opportunity to build on institutional knowledge in preparing for the elections. The abbreviated electoral calendar leading up to the presidential election provided a substantial challenge to electoral preparations, including the training of polling station staff and the accreditation of observers. New procedures regarding the out-of-governorate voters and out-of-country voting (OCV) provided an opportunity for greater political participation, but new challenges for election administration.

The PEC has taken positive actions to issue new regulations to address recommenda

addition, Articles 70 and 71 place limits on newspapers, television and radio broadcast stations, online newspapers, and other media outlets. According to Article 70, newspapers can be issued only once authorities are notified. Whether the application of restrictions contradicts Egypt's international commitments will depend on the interpretation of terms like 'incitement of violence', 'discrimination between citizens', and 'violations of personal honor,' which are specified as reasons for prosecuting public forms of expression.¹² Importantly, the Supreme Council for the Regulation of the Media, which is tasked with guaranteeing freedom of the press, is given authority not only to ensure compliance with professional and ethical standards, but to monitor media outlets' sources of funding. The Supreme Council may also regulate media compliance with unspecified "national security needs".¹³ These wide powers undermine the broad rights guaranteed in Article 65 and could result in the arbitrary limitation of freedom of expression.

In light of the state's historical control over the media, The Carter Center strongly recommends that media outlets be regulated by private law to the greatest extent possible, and that any limitations be subject to a strict proportionality analysis that takes into account the paramount importance of free expression in a democratic society. The Center also advises Egypt's future lawmakers to rescind the requirement that newspapers notify authorities before publication and limit extraordinary measures to the strict conditions of a state of emergency. Furthermore, The Carter Center urges Egyptian authorities to put in place a media code of ethics that ensures professional conduct, credibility, and objectivity with the aim of advancing the national interest as promised in the July 3 roadmap.

Separate from the constitutional provisions, the PEL contains a number of provisions that are

The potential inability of election officials to fully monitor some electoral activities and completely enforce some electoral provisions can affect the perceived fairness and legitimacy of the process.¹⁵ Campaign finance limitations, that were allegedly exceeded in 2012 and which were increased under the new PEL, appear difficult or impossible to enforce. This includes the recording and fair valuation of “in-kind” (non-monetary) contributions and campaign expenditures by supporters who are formally unaffiliated but colluding with presidential campaigns. The improper use of state or CSO property or resources for campaign purposes, improper campaigning in houses of worship and educational institutions, and potential bias in state media, are examples of campaign-related violations that, if not addressed in a comprehensive and balanced manner, could challenge the perceived fairness of the electoral process and result.¹⁶

With regard to electoral campaigning, The Carter Center has the following observations: (1) Election authorities need to strengthen and enforce campaign finance monitoring, especially with the limit on campaign expenditures and reporting mechanisms.¹⁷ More detailed regulations on donations, spending and reporting are needed, and should include specific and proportionate measures on failure to report and severe breaking of the campaign rules;¹⁸ (2) Additionally, parties and candidates should be required to fully, accurately, and periodically disclose contributions received and expenditures made on behalf of their campaigns.¹⁹ These reports should be made public. Egypt’s lawmakers should empower election officials, or other law enforcement officials, with clear authority to investigate and prosecute allegations of campaign finance violations, and address potential loopholes²⁰ in campaign finance regulations, in order to prevent parties and candidates from skirting campaign-finance restrictions by improperly relying upon independent spending by individuals, charities, or other domestic or foreign sources; (3) Measures against campaign regulation violations need to be tightened and not limited to fines. The Center recommends that penalties for such violations be proportionate so that smaller campaign finance infractions result in fines, while violations that unfairly affect the results of the

there will be a threat to peace and security,” without any requirement to provide specific justification. Article 7 allows the banning of public meetings, processions, or protests if citizens’ interests are affected or road traffic is obstructed. Since any large assembly, however peaceful, has can be cited as likely to obstruct people and traffic, the law in effect provides a legal carte blanche to ban protests.

While organizers can, in theory, appeal a ban before the competent court, the law sets no time frame for the appeal process, meaning that the court could hear the appeal after the scheduled date of the event. Organizers are also required to notify the police of participants’ demands and messages.²⁶ While the law allows for a list of “specified safe areas” for each governorate in Egypt where assemblies are prohibited, it is not clear whether these will be in locations visible to the public.²⁷ Importantly, the level of force and tactics used in crowd dispersal is left mainly to the discretion of security forces on the ground, which will not always have direct contact with their commanding officers.

Since the adoption of this law, a number of high profile activists and opponents have been jailed and the police and other security forces have met peaceful public protests with violent responses.²⁸ Persons campaigning for a "No" vote during the January constitutional referendum were persecuted based possibly on provisions of the Penal Code or/and the Protest Law.²⁹

The passage of the Protest Law comes in the context of a violent crackdown focused initially on the Muslim Brotherhood but which has expanded to include journalists, academics, demonstrators, and groups such as the April 6 movement. A wide variety of people from this range of backgrounds have been referred to the criminal court and in some cases arrested and jailed for peacefully expressing their views. Following the violent dispersal of pro-Muslim Brotherhood demonstrators in August 2013, which left more than 1,000 dead, the Muslim Brotherhood was designated a terrorist group.³⁰ More recently, a criminal court in Minya sentenced to death sentence the spiritual leader of the Muslim Brotherhood along with over 1,000 others in the last two months. This continued crackdown on dissent by the government has seriously limited Egyptian citizens’

accessible process for voters. These measures include the PEC's introduction of election-day registration for OCV voters and allowing Egyptians residing outside their electoral domicile to register in the nearest polling center for a specified period of time prior to election day. Despite these efforts, only a small fraction of these voters actually registered.³³ The Carter Center urges the PEC to take necessary measures to ensure a more effective out-of-governorate registration process and to prevent multiple voting both for OCV and out-of-governorate voting.

In addition, The Carter Center urges Egyptian election authorities to extend their efforts for a more inclusive registration process that includes all eligible voters in the database, especially including women in rural areas, citizens not registered in the civil registry, and Egyptians residing out of the country.

Voter Education. Voter education and information efforts are necessary to create an informed

The Carter Center notes that the current rules regulating observation create a very short timeline for accrediting national observers, which severely limits their ability to recruit and mobilize to full capacity, thus preventing them from conducting comprehensive missions. In addition, the regulations do not provide observers with access to the processes of aggregating and compiling election results. Further, the regulations include restrictions on the right of

Rescind the Protest Law. The Protest Law, which severely restricts public gatherings and rallies, including for electoral campaigning, should be rescinded immediately and persons imprisoned under the law should be released. All others accused, should be ensured key rights, including the right to a fair trial.

Pursue national dialogue and reconciliation. National dialogue and reconciliation efforts should be pursued, including independent judicial investigation into wrongful deaths and allegations of torture.

Constitutional and Legislative Reform

Consider new constitutional amendments. New constitutional amendments should be

