

EGYPT: ASSESSMENT OF THE LEGAL FRAMEWORK FOR PRESIDENTIAL ELECTIONS

EXECUTIVE SUMMARY

THE CONSTITUTION AND THE PRESIDENTIAL ELECTION

This paper analyses the recently adopted presidential election law, drawing on internationally agreed election standards as set out in the International Covenant on Civil and Political Rights (ICCPR) to which Egypt is a party. However, because the election law cannot be understood in isolation from the context in which the process will take place, it also examines the importance of the election as part of Egypt's ongoing political transition, in particular the inter-relationship between the election and the constitutional revision process which is due to begin in the coming days.

The presidential election is crucial in Egypt's transition because the Supreme Council of the Armed Forces (SCAF) will only stand down after the installation of a new president. When the SCAF assumed power on 11 February 2011 it indicated that elections would take place within six months. However, given the operational and political challenges, this timing was never realistic. Since then, the timing of the election has been constantly shifting. By May 2011, it was expected that the election would take place in late 2012 or early 2013. While this would delay the SCAF's political exit, crucially it would allow time to adopt a new constitution, seen by many as the 'main prize' of the revolution because it would incorporate the checks and balances necessary to avoid the re-emergence of authoritarianism. In the midst of mass demonstrations against its rule, on 22 November 2011, the SCAF announced that the next president would be installed no later than 30 June 2012. While hastening the SCAF's exit, this timeframe gave much less time for the adoption of the new constitution before the presidential election.

Nevertheless, until relatively recently it was thought that the constitution would still be adopted before the presidential election preparations started. This approach would have enabled the Constituent Assembly (CA) and citizens to decide on the role of the president within Egypt's political system without knowing for certain who the presidential candidates are. However, with the 19 February announcement by the Presidential Election Commission (PEC) that candidate nominations will be open from 10 March until 8 April this scenario can now, with near certainty, be dismissed.¹ The exact election date remains unclear, although indications are that it will be scheduled for late May or early June. Given the previous uncertainty, it is hard to predict whether this date will hold.

It now appears there are three scenarios regarding the timing for adopting the constitution: (i) that it is adopted after election preparations have begun but before the actual election (ii) that the election and referendum are held simultaneously and, (iii) that it is adopted after the election.

While it is very unlikely that the constitution could be adopted before the end of candidate nominations (8 April), depending on which election date is finally set, there may still be time to adopt it before election campaign starts.² This would however mean rushing the drafting process in the Constituent Assembly (CA) and leave little time for voters to understand the implications of the proposed text before they are asked to decide the matter in a referendum. It is theoretically possible to hold the referendum during the presidential election campaign but this would also mean a rushed process and risks blurring the distinction between the two campaigns.

Moreover, if the new constitution is adopted before the presidential election, serious legal complications could arise if there were any alterations to the current constitutional provisions regarding presidential elections at a time when the election process was already underway. At a minimum this would require changes to the presidential election law but could conceivably raise more fundamental legal questions about the validity of the on-going election process.

Given that the presidential campaign period is so short (three weeks), if the referendum is not held before the start of the election campaign, it is more likely that the authorities would hold the referendum and the election simultaneously. This approach might mean that any constitutional changes to the presidential election arrangements would apply only to

subsequent elections. However, the downside of this approach is that the election / referendum administration would be very complicated because the two processes are regulated by different laws which contain very different procedures not least that they would be organised by separate commissions.³ As in the first scenario, holding the two events simultaneously entails a risk that the electorate's decision on whether to approve the new constitution – which ought to be based on long-term considerations – will be confused by the shorter-term choice of who should be the next president.

A condensed timeframe for adopting the constitution means less time is available to consider the shape of a new political system. There is no guarantee that the CA will reach agreement on this crucial issue quickly – or indeed any of the other important constitutional issues. If agreement is not reached, there would appear to be only two main options – either postpone the presidential election or adopt the constitution only after the president is elected. In the latter scenario, the president will assume the SCAF's strong executive powers – something reformists may fear due to their experience under previous presidents.

THE PRESIDENTIAL ELECTION LAW

Law 174 (2005), hereafter the Presidential Election Law (PEL), is the main act governing the process. The Constitutional Declaration, adopted in March 2011, is however highly relevant. A draft law amending the PEL was publicised in December 2011 and in January 2012, was deposited with the Supreme Constitutional Court (SCC). The court found that five articles required modification in order to fully comply with the Constitutional Declaration. The final text of the law was published in the Official Gazette on 30 January with an adoption date of 19 January.

The People's Assembly began sitting on 23 January and some MPs strongly criticised the SCAF's decision to push through the law rather than wait for the Assembly to assume its legislative function i.e. for the parliament to decide the legal arrangements for electing the president. However, now that the Assembly is formed, it is possible that the parliament could amend the PEL – although the SCAF has the right to object to any changes and the SCC would again be required to give its opinion on the constitutionality of the amendments.

The most significant amendments to the PEL reflect changes introduced by the March 2011 constitutional referendum, i.e. introducing less onerous candidate nomination procedures and providing that the Presidential Election Commission (PEC) be composed solely of senior judges. While these arrangements are an improvement over the 1971 constitution, the amendment process missed the opportunity to address a number of the PEL's pre-existing shortcomings. It would also

¹ The CA will only be formed in early March and a referendum must be held before the new constitution is adopted. This is impossible before 10 March. While a referendum could theoretically be held before 8 April i.e. before the candidate field is known, this is highly unlikely because it would give only about five weeks to agree the text of the new constitution and for a referendum to be held.

² According to article 20 of the Presidential election Law, the official campaign period starts three weeks before the election day. If the CA is formed in early March and the presidential election is scheduled for 2 June, then there would be about two months to decide the text of the constitution and hold a referendum before the start of the election campaign.

³ The High Election Commission (HEC) has the competence for parliamentary elections and referenda whereas the Presidential Election Commission (PEC) supervises presidential elections.

be beneficial for the PEL to fully address the lessons learned from the recent parliamentary elections.

Law no. 73 (1956), on the Exercise of Political Rights (LEPR), is the only law which deals with voter eligibility and voter registration procedures. However, it appears that this law is not applicable to presidential elections⁴, raising the important question as to how these two issues will be legislated for. If the register is to be updated and if the election is to be held no later than early June, the legal arrangements for voter registration will require adoption in the near future.

The constitutional amendments of 19 March 2011 retained provisions that parliamentary and presidential elections are administered by separate commissions. Prior to 2011, half of the PEC's members were senior judges thereby giving the elections the appearance of legality. However the other half were appointed by parliament, in practice giving the ruling National Democratic Party (NDP) considerable influence over the election process. It is positive that the PEC is now composed only of senior judges, insofar as there is now less scope for direct political interference in its functioning and thus higher levels of public confidence in the election administration. However it is disappointing that as in the past, the legal framework specifically precludes filing an appeal against PEC decisions or legally challenging election results – meaning that no legal redress is possible.

The PEC supervises the election from the announcement of the opening of candidate nominations until the announcement of the election result, but neither the timeframe for nomination of presidential candidates nor the overall calendar for the election is firmly established in the law. The PEC formally began its legal functions on 19 February – the date it announced that candidate nominations would commence on 10 March.

Unlike the parliamentary elections which were held over several phases, voting for the presidential election takes place in a single national constituency on a single election day (or if necessary, two consecutive days). To win, a candidate requires more than 50% of the valid votes. If no candidate achieves this, a second round contest will be held between the two highest scoring candidates after at least seven days.

The PEC has broad authority over the process. It is responsible for: candidate nomination and registration; setting the overall electoral calendar, verifying respect for campaign provisions, deciding on all complaints and challenges and announcing the results. However, unlike the High Election Commission (HEC), its counterpart in parliamentary elections, it not required to oversee the preparation of the voter register, adopt rules on candidates' access to mass media, or decide on the modalities for electoral observation. The PEL requires the PEC to adopt

numerous regulations to fill the many legislative gaps. These are, arguably, as important as the text of the PEL.

In past presidential elections judges supervised the election process from the level of the General Committees (GCs) which were established between the PEC and the Polling Committees. According to the Constitutional Declaration, replicating the arrangements for parliamentary elections, polling must now take place under the direct supervision of members of judicial bodies at polling station level. This is a major change. However, the comparatively small number of members of judicial bodies was the main reason that the recent parliamentary elections were phased. It is not yet clear how the PEC will organise a process that must take place on one single day (or two consecutive days) under direct judicial supervision.

The 19 March referendum and the Constitutional Declaration retained candidate eligibility criteria found in the 1971 constitution but added two requirements: that the parents of whoever is elected president should never have held the citizenship of any other country and, that he / she should not be married to a non-Egyptian. It is possible that these requirements could, under the International Covenant on Civil and Political Rights (ICCPR) to which Egypt is a party, be considered as 'unreasonable' restrictions on the right to stand for election.

The 19 March 2011 referendum introduced presidential candidate nomination procedures⁵ that are much more reasonable than previous requirements. Nevertheless, it remains much harder for independent candidates (and candidates supported by non-parliamentary parties) to secure nomination than for candidates of parliamentary parties. The specific rules on how supporting signatures are to be collected – which have yet to be adopted – will be crucial in determining whether the requirements de facto constitute a 'barrier to candidacy'. The existing requirement that supporting signatures be given in person at specific offices could make the signature collection process excessively burdensome.

The timeframe for the official campaign period as set out in the PEL is short – just 19 days. Campaigning through the media outside the official campaign period is not permitted. Potentially this is at odds with candidates' right to free expression, although in practice the restriction will be hard to enforce. The PEL contains other proscriptions, with strong penalties for violations, and does not counterbalance this with provisions to firmly establish a level campaign playing field. The PEC will have a key judicial role in verifying and adjudicating on adherence to the campaign rules. To be

⁴ Article 1 provides that "The election of the President of the Republic shall be conducted according to the law regulating the presidential elections."

⁵ Any political party whose members obtained at least one seat by voting in the People's Assembly or Shura Council may nominate one of its members for presidency. Candidates of non-parliamentary candidates can be supported by at least 30 elected members of the People's Assembly or Shura Council, or at least 30,000 eligible voters in at least 15 governorates with not less than 1,000 supporters in any of these governorates.

effective, it may have to devote a considerable portion of its work time to the issue.

The PEL is very vague regarding candidates' right to access media. The sole provision simply requires state-owned media to treat all candidates "equally" when the media is used for campaigning purposes, but it is unclear whether equality applies qualitatively and/or quantitatively. The law is silent regarding the need for public media to present candidates in an equal and neutral manner in "non-campaign" content. While the PEC is required to verify respect for the provision, it is not clear which body, if any, will adopt more detailed rules on media access.

Each candidate is entitled to spend up to EGP 10 million (EUR 1.3 million) on his or her campaign. It is prohibited to receive financial or "in kind" contributions from any foreign source. Candidates must open a special bank account for campaign donations and expenditure. Failure to respect these provisions can lead to imprisonment. After the election, candidates have to file campaign finance reports with the PEC. These are audited, but there is no requirement to make them public.

Unlike some other countries in the region, Egypt's laws contain no general requirement for elections to be conducted transparently. Although the PEC is required to publish all its decisions in the Official Gazette, the PEL does not specify a time frame for this and does not clearly provide for the right of citizens to access other electoral information. Unlike the LEPR, which regulates parliamentary elections, the PEL makes no mention of election monitoring, and consequently it is not yet known whether it will be permitted. This is a major shortcoming which – unless properly addressed in a PEC regulation – could seriously lessen transparency and compromise confidence in the process. Other shortcomings include the absence of a requirement that polling station results be publicly displayed and for the tabulated results from all polling stations to be publicly available.

The PEL offers scant information on polling procedures but, unlike the LEPR it does specifically require the PEC to establish rules and procedures for voting and counting and to regulate the work of election committees. Nevertheless, because the right to vote is a fundamental human right, the polling arrangements should be set out in law in detail, rather than left to administrative decision-making. In a notable change, the amended PEL provides for out-of-country voting (OCV) for Egyptian citizens abroad. OCV procedures are not yet known because the PEL tasks the PEC with regulating the process and the PEC has only just started its work. The PEL does however foresee the possibility of early voting or voting by mail for OCV.

The PEL provides for a secret vote but contains no details on how it will be guaranteed in practice. Other shortcomings include: no provisions requiring voters' identity to be checked prior to receiving a ballot; no description of the arrangements for electors requiring assistance to vote, and how those in pre-trial detention (or otherwise unable to attend a polling station) will be able to vote. Positively, the amended PEL dispensed with a provision that previously allowed voters to

vote away from the place of their registration without commensurate safeguards to prevent multiple voting.

Other than the stipulation that votes are counted at polling station level, the PEL contains no details on the vote counting arrangements. While the PEC will regulate the issue, to ensure transparency, public confidence and consistent application, as for voting, the procedures for the vote count should be detailed in the election law. The GCs aggregate the results of individual polling stations. There is no legal deadline for these bodies to complete this task, nor is there any requirement to publicise individual polling station results.

The PEC decides on all electoral complaints and challenges, thus ruling out the involvement of the courts (with the probable exception of criminal violations). The Constitutional Declaration provides that the PEC's decisions are "final, binding and not subject to objections from any party or authority." Notwithstanding that the PEC is headed by Egypt's most senior judge, the absence of a mechanism to appeal against PEC decisions arguably denies citizens access to an effective legal remedy, as required by the ICCPR. At a minimum, it would have been beneficial had the PEL permitted candidates the right to request the PEC to review its own decisions. The complaints and challenges provisions are also limited in being open only to candidates, thereby compromising voters' access to redress.

The PEC is required to announce the overall election result within three days of receiving the GC reports. This gives almost no time for candidates to file a complaint or challenge regarding the polling processes or for the PEC to review any evidence presented. If the announcement of results is considered as a PEC 'decision', which appears to be the case, there is no legal possibility to challenge the validity of the election process after the results have been announced. This has serious negative consequences for 'electoral justice' and could even damage the electoral legitimacy of the president.

The PEL contains a fairly extensive list of election offenses and penalties, many of which are identical to the LEPR. However, there are numerous discrepancies in the penalties for the same offence between the two laws and some serious offenses are only mentioned in one or other law, or on occasion not at all. Some penalties listed are not proportionate to the offence.

It is possible that the People's Assembly decides to revise the PEL before the presidential election. Numerous suggestions are included at the end of this report which could potentially enhance the People's Assembly does revise the PEL, legal certainty would be achieved because the SCC would be required to ensure that the text proposed by the People's Assembly complies with the Constitutional Declaration.

1. CONTEXT FOR THE PRESIDENTIAL ELECTIONS

The presidential elections are crucial for Egypt, because the SCAF – Egypt’s current de facto presidential authority – will only stand down after the installation of a new president. However, the timing of the election has been continually shifting since the SCAF assumed power on 11 February 2011, and has become linked with the timing for passing Egypt’s new constitution – the adoption of which is seen by many as the main prize of the revolution.

In February 2011, a six month timeframe was foreseen for holding ‘elections’ – although the sequencing of parliamentary and presidential elections was unclear.⁶ In May 2011, the SCAF announced that presidential elections would in fact only be held after the constitution was adopted, a process which – according to the timeframe set out in constitutional amendments adopted in March – might not be completed until late 2012 or early 2013. The SCAF’s decision was broadly accepted at the time because one of the revolution’s main aims has been to ensure that Egypt adopts a new political system according to which the president is restrained by constitutional checks and balances thus avoiding the risk of autocratic presidential rule in future. The obvious downside of delaying the presidential election was that the unelected and largely unaccountable SCAF would continue to hold executive power for much longer than was initially foreseen.

However, by autumn, discontent with the SCAF-dominated political system was increasing and suspicion was growing as to its future intentions.⁷ On 22 November, in the wake of mass demonstrations the SCAF announced that the president would be installed no later than 30 June 2012. At the time of writing, it seems the election will be held in late May or early June.

The Constitutional Declaration – the country’s interim constitution – was adopted by the SCAF on 30 March 2011. It foresees that after their election, the parliament (comprising the People’s Assembly and Shura Council) will have six months to form a Constituent Assembly (CA) and that the CA will have six months to prepare a draft of the new constitution. This will then be adopted (or rejected) in a referendum. If however the constitution is to be adopted before or simultaneously with the presidential election with an expected election date of late May or early June, the calendar for adopting a new constitution will have to be significantly condensed and that there will be limited time for meaningful popular consultation during the drafting phase.

If on the other hand a new president is elected before the adoption of a new constitution, he/she will assume the powers that the SCAF currently enjoys – something with

which the reformists are unlikely to feel comfortable.⁸ Essentially, the dilemma is whether the risk of electing a president who potentially could inherit the SCAF’s powers is a risk worth taking to ensure the earliest political exit for the SCAF.

Currently, it appears that the intention is to revise the constitution with a much-condensed timeframe and hold the referendum on the proposed changes either during the presidential election campaign period or simultaneously with presidential election. However, the political environment is volatile, and it cannot be ruled out that the timeframe for adopting the constitution and/or the anticipated date for the presidential election can again change. Assuming a 2 June election date is announced, the timeframe for the major CA and election events could be as follows:

Date	Constitution	Presidential Election
28 February	Shura Council holds its first meeting	
1-10 March	Joint session of People’s Assembly and Shura Council to decide CA composition	
2-10 March	the CA adopts rules of procedure, forms committees etc and begins its work	
10 March		Candidate nominations open
8 April		Candidate nominations close
12 May		Official election campaign period begins ⁹
2 June		Election Day

The constitutional text adopted in the 19 March 2011 referendum requires that the text of the new constitution is put to a referendum within 15 days of the completion of the text by the CA. The Presidential Election Law (PEL) establishes a minimum timeframe of 40 days between the start of candidate nomination and the election day. On 19 February, the Presidential Election Commission (PEC) announced nominations would start on 10 March and end on 8 April.¹⁰

Given the political imperative, it is possible that the parliamentary parties could agree the composition of the CA

⁶ By March, it was anticipated that parliamentary elections would start in September and presidential elections would be held two months later.

⁷ On 1 November a document outlining supra-constitutional principles was released in which the military appeared to be writing itself a “constitutional guarantor role” even after the election of the President.

⁸ Article 61 of the SCAF’s 30 March Constitutional Declaration provides that “the Supreme Council of the Armed Forces will continue directly with its limited responsibilities following this Declaration, until a time at which the People’s Assembly and the Shura Council assume their responsibilities and the President of the Republic is elected and assumes his/her position.”

⁹ PEL, article 20.

¹⁰ Unlike for parliamentary elections, there is no minimum or maximum legal timeframe between the last date for announcing the presidential election date and the actual day of the elections.

quickly. However, there are currently no rules for the selection of CA members and any political disagreement in this regard could delay the CA starting its work. Other untested assumptions include that: the CA rules of procedure are adopted quickly, the CA's members agree to curtailment of their six-month mandate; the CA's members can reach agreement on the draft text; and that the referendum is approved.

It is hard to know with any degree of certainty when the constitutional referendum will be held, but three main possibilities exist (i) that it will be scheduled before the end of candidate nominations (8 April), (ii) that it will be scheduled before the start of the official campaign period (iii) that it will be scheduled on the same day as the presidential election.

The first possibility is unlikely because this would require the CA to agree on a text within two to three weeks of its formation. This may be enough for a 'quick fix' but would probably require a subsequent, more thorough, revision of the constitution.

The second possibility would be to hold the referendum before the start of the presidential election campaign, which with a 2 June election date would fall on 12 May, meaning that the CA would have about two months to agree the text. However, any change to current constitutional provisions relating to the presidential election could also affect the timing of the presidential election because it could necessitate further amendments to the PEL or the Supreme Constitutional Court's approval that the PEL currently in force is compatible with the new constitutional arrangements.¹¹

Holding the referendum during the election campaign period is unlikely but cannot be ruled out, or more likely could be scheduled for the same day as the first round of the presidential election. Holding the referendum on a new constitution in the middle of a presidential election campaign or simultaneously with the election risks further politicising the issue of the future political system and creating a situation in which the candidates would be campaigning without knowing for certain which powers they would enjoy if elected.

From an administrative point of view, holding the election and the referendum simultaneously creates administrative difficulties because the two processes are regulated by different laws, administered by two different electoral commissions and subject to different procedures. Hence, this would require close co-ordination between the PEC and the High Election Commission (HEC) (which administers referenda), and probably also the harmonization of the different electoral laws.

In all events, the right to set the date of the presidential elections rests not with the SCAF or the parliament but with

the PEC, a body which is likely to take decisions based on law rather than political expediency. It is not entirely clear who has the authority to set the date for the constitutional referendum. Although this probably rests with the SCAF, the CA will have a decisive role in deciding when the text is released.

2. THE FRAMEWORK FOR PRESIDENTIAL ELECTIONS

Law 174 of 2005 'Regulating the Election of the President' ('the Presidential Election Law' – PEL) is the main legal act governing the presidential elections. The Constitutional Declaration and other laws such as the Criminal Code, and possibly parts of the Law on the Exercise of Political Rights (LEPR) are also relevant. The PEL requires the PEC to adopt numerous regulations on specific aspects of the process by granting it considerable latitude to decide on whether additional regulations are necessary. In effect, PEC regulations have the power of law, and cannot be legally challenged.

2.1. AMENDING THE PRESIDENTIAL ELECTION LAW (PEL)

Attention began to focus on the presidential election rules after the SCAF's announcement in November that the next president would assume office by the end of June. Because the 19 March 2011 referendum and the Constitutional Declaration alter the election arrangements, it was necessary to amend the PEL to ensure its compliance with the constitutional documents.

On 15 December 2011, the SCAF published a draft law amending the PEL, the text of which was modified and re-published in early January 2012. As required by the Constitutional Declaration¹², the text was submitted to the Supreme Constitutional Court (SCC) prior to adoption – although it is not entirely clear whether the SCC assessed the constitutionality of the amendments or the entire text of the PEL.¹³ On 18 January, the media reported that the SCC had found that four articles of the draft law did not comply with the Constitutional Declaration and that one revoked article ought to be re-instated.¹⁴ The SCC's opinion was addressed and on 30 January the law was published (with an adoption date of 19 January). Some newly elected MPs criticised the SCAF's decision¹⁵ to push through the amendments rather

¹² Article 28 requires that "Draft legislation for presidential elections will be shown to the Supreme Constitutional Court before being issued to determine the extent of compliance with the constitution. The Supreme Constitutional Court will issue its decision on this matter within 15 days of receiving the draft legislation. If it decides that the text is unconstitutional, more work must be done before the law can be issued."

¹³ As the Constitutional Declaration was issued after the PEL, logically the entire text of the law should be assessed for compliance.

¹⁴ According to media reports, the SCC ruled that articles 5, 11, 13 and 33 should be revised and that article 18 should be reinstated.

¹⁵ See "Lawmakers blast Military Rulers over New Law", 31 January 2012, <http://www.thedailynewsegypt.com/other-top-stories/lawmakers-blast-military-rulers-over-new-law.html>.

¹¹ There could however be a clause that certain provisions of the new constitution will only apply to future presidential elections.

than wait for the People's Assembly to assume its legislative functions on 23 January.¹⁶

Now that the People's Assembly has been formed, it possesses the right to amend the PEL should it see fit – although the SCAF retains the right to object to and promulgate laws.¹⁷ The constitutional requirement that the SCC gives its opinion on the law prior to its adoption is a potentially significant factor complicating the adoption of any subsequent amendments to the PEL, not least because the Head of the SCC will soon become ex officio the Chair of the PEC and preparations for the election are likely to begin in the near future.¹⁸ The possible adoption of a new constitution before the presidential election could also necessitate the SCC to once again give its opinion on the compatibility of the PEL with the provisions of the new constitution.¹⁹

2.2. THE 1971 CONSTITUTION AND THE CONSTITUTIONAL DECLARATION

The 1971 constitution represented a significant obstacle to holding genuine presidential elections; while creating a facade of pluralism, its overarching effect was to enable those holding power to retain their positions without having to face genuine competition.²⁰ The requirements to stand as an independent candidate were so onerous that, in practical terms, it was impossible unless supported by a sizable number of MPs from the National Democratic Party (NDP). Candidates nominated by parties were required to have been a member of the party's directorate for at least one year, thereby significantly limiting the field of potential candidates – including contenders from the NDP.

The most significant positive changes to the presidential election framework stem not from the PEL but from amendments to the 1971 constitution approved on 19 March 2011. These create much more reasonable candidate nomination criteria, require that the PEC be composed only of senior judges (see below) and introduce of a two-term limit for the president.

The Constitutional Declaration reflects the text of the articles amended by the 19 March referendum. The SCC's opinion on the PEL was significant because in choosing to review the law against the Constitutional Declaration, the Court gave a clear indication that it considers this document to be the applicable constitutional text rather than the 1971 Constitution.

¹⁶ From 23 January, article 33 of the Constitutional Declaration applies which grants the People's Assembly "the authority to legislate and determine the public policy of the state, [and] oversee the work of the executive branch", although the SCAF retains the right to promulgate laws and/or object to them.

¹⁷ A question arises regarding at what point a draft law amending the PEL prepared by the People's Assembly is referred to the SCAF to see if it has any objections i.e. before or after it is deposited with the SCC.

¹⁸ The Law on the Exercise of Political Rights (LEPR), which applies to parliamentary elections and referenda, was however amended three times after the High Election Commission had been formed.

¹⁹ Although the new constitution could dispense with the requirement that the SCC gives its opinion on the draft law.

²⁰ See DRI's report: "Paving the Way for Presidential Succession" (7 November 2010).

2.3. APPLICABILITY OF THE LAW ON THE EXERCISE OF POLITICAL RIGHTS (LEPR)

Law no. 73 (1956), the Law on the Exercise of Political Rights (LEPR), was one of the three key laws regulating the parliamentary elections. Article 1 provides that "The election

of the President of the Republic shall be conducted according to the law regulating the presidential elections." However, unlike the LEPR, the PEL does not mention voter eligibility or voter registration. It is thus possible that these specific LEPR provisions are directly applicable.²¹

During 2011, the LEPR was amended on five occasions to take account of issues raised by political parties and civil society groups, and procedural issues identified by the HEC.²² It would be advisable for amendments to the PEL – which in large part deal with the same issues as the LEPR – to take full account of the changes to the LEPR, as well as addressing the lessons that were learned from conducting the recent parliamentary elections.

3. PRESIDENTIAL ELECTION SYSTEM

Article 10 of the PEL stipulates that "The dates for the start of presidential elections, the election day and re-election shall be all determined by a decision by the PEC, in compliance with the dates stipulated in the Constitution". Voting for the presidential election takes place on one election day although the January amendments allow voting on a second, consecutive day "if necessary".²³

Voting takes place in a single national constituency. To win, a candidate requires more than 50% of the valid votes. If no candidate achieves this result, a run-off election will be held between the two highest scoring candidates. Article 40 of the PEL states that a run-off election shall "be held after at least seven days", raising the question: after the first round or, more likely, after the announcement of the results? In the run-off, the candidate who receives the most votes is declared the winner.

The presidential election can take place with a sole candidate e.g. due to candidate withdrawal(s) or the registration of only one candidate (article 37). In this case, the candidate securing an "absolute majority of valid votes" is declared the winner. This implies that a sole candidate could fail to secure a majority of valid votes but it is not clear how such a situation could arise²⁴ unless voters are given an opportunity to vote

²¹ Articles 1-3 appear directly relevant and voter registration (article 4-20) may need to be adapted to the needs of a presidential election or incorporated in a revised form into the PEL.

²² The LEPR was amended in May, July, October, November and December.

²³ It is understood that the decision on whether a second day is necessary rests with the PEC.

²⁴ If a voter spoils his/her ballot or leaves it blank, the vote would normally be counted as an invalid vote. In such a situation a single valid vote in favour of the candidate would be sufficient for him/her to be elected. However, a sole candidate election could be organised in a fashion similar

against the candidate – an arrangement which is not set out in the law. In the event that the candidate fails to secure an absolute majority of votes, the PEC shall re-open candidate nominations for a new presidential election.

4. ELECTION ADMINISTRATION

The constitutional amendments adopted on 19 March 2011, retained a provision establishing a separate commission for presidential elections.²⁵ According to article 28 of the Constitutional Declaration, “A supreme judicial commission, called the Presidential Elections Commission (PEC), will supervise the election of the President of the Republic from the announcement of the opening of candidate nomination and ending with the announcement of the election result” (emphasis added). The establishment of separate commissions for presidential and parliamentary elections appears to be a legacy of the former regime. The rationale for retaining two election commissions when one would appear to suffice is not clear.

The HEC gained considerable experience in election management from organising the recent parliamentary elections, whereas the PEC will start its work from scratch. The PEC may however benefit from HEC’s experience as three of its members are also HEC members including Abdel-Moaz Ibrahim, the HEC chairman.²⁶ This said, the HEC may be fully occupied with organising a referendum on the new constitution during the period when the PEC is preparing the presidential election.²⁷

4.1. COMPETENCIES

The PEC’s competences cover: all aspects of the candidate nomination and registration processes; verifying if the provisions on campaigning are adhered to; generally supervising the voting and vote counting processes; deciding on matters referred to the PEC by General Committees (GCs), determining and announcing election results and deciding on all complaints and challenges related to the elections. Unlike the HEC, the PEC is not required to: oversee the preparation of the voter register, adopt a system of candidate symbols,²⁸ to “verify the authenticity of electoral complaints”, to adopt rules on candidates’ access to mass media, set rules for the implementation of legal provisions on campaigning or to regulate for electoral observation.²⁹ Confusingly, PEL article 8 provides that the PEC sets the start and end dates for the

election campaign although article 20 stipulates that the campaign runs for three weeks prior to the election date up to two days before this date.

The PEL requires the PEC to adopt numerous regulations (or procedures) on specific issues including: candidacy procedures, the campaign, campaign finance, voting and vote counting.³⁰ It also gives the PEC the right to issue “regulations and decisions as may be necessary to regulate its work and the method of exercising its competencies”. Thus, in the event that any issue is not sufficiently well detailed in the PEL, the PEC can adopt procedures. The PEC also decides on the overall electoral calendar and sets the polling date(s).

Article 8 of the PEL stipulates that the PEC “may contribute to raising citizen’s awareness of the importance of the presidential elections and calling for participation in the elections” (emphasis added) whereas paragraph 11 of General Comment 25 on article 25 of the ICCPR states: “Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community” (emphasis added).

The PEC will establish a General Secretariat and may call on assistance from all state agencies, who are obliged to support its work. In practice it is likely that as for the parliamentary elections, de facto the Ministry of Interior will be involved in many organisational aspects of the election. However, the PEL does not elaborate any specific role for the Ministry.

4.2. GENERAL COMMITTEES

General Committees (GCs) are established between the PEC and the Polling Committees (PCs). Unlike the LEPR, the PEL does not foresee the establishment of committees at the Governorate level. GCs are composed of judges and members of judicial bodies. They supervise PCs’ work according to rules established by the PEC, refer issues to the PEC compile the polling results, issue reports to the PEC, investigate all matters related to polling and decide on the validity or invalidity of the polling process in their area. The law does not set out any other GC functions, but the PEC can further regulate this issue. Although GCs have decision making powers (article 36), the law does not provide any rules of procedure in this regard e.g. require: a quorum of members, the presence of parties to a complaint when deciding the issue or a requirement to publicise their decisions.

4.3. SUB-COMMITTEES (POLLING COMMITTEES)

Article 28 of the Constitutional Declaration provides that “the Commission will form committees to supervise voting and counting according to the stipulations in Article 39”. Article 39 states that “Voting and the counting of votes will take place under the supervision of members of judicial bodies

to a referendum on the candidate, as was the case in presidential elections prior to 2005.

²⁵ The LEPR provides that a separate commission, the HEC, administers parliamentary elections and referenda.

²⁶ Article 3 bis A of the LEPR which provides that “membership of the High Election Commission shall not be concurrent with the membership of any other committee which supervises elections or public referenda” was revoked in July 2011, indicating that the legal drafters may have already identified the overlap of personnel as a particular problem in situations where elections and or referenda are held close together.

²⁷ Other obligations may include updating the voters register for the presidential elections, which as the laws stand is a responsibility for the HEC.

²⁸ The use of candidate symbols can assist illiterate voters in selecting the candidate of their choice on the ballot without the need for assistance. The use of candidate symbols is recommended by the UN Human Rights Committee (UNHRC).

²⁹ See LEPR article 3 bis F.

³⁰ In addition, the PEC is required to establish the rules for: filing challenges to candidacy and retaining nomination documents; filing challenges against GC decisions related to complaints on polling; and on storing election documents; the supervision of sub-committees; and the organisation of voting for citizens outside Egypt.

nominated by their higher councils, and the decision in the process of choosing them will be undertaken by the supreme commission [HEC].³¹ An amendment of article 30 of the PEL stipulates that Sub-Committees (hereafter ‘Polling Committees’ - PCs) are headed by a member of the judiciary. This constitutes a major change from the previous presidential elections – where judges supervised the process at the level of the GCs rather than directly in polling stations.

One major potential problem stemming from direct judicial supervision of polling is that the total number of voting centres is likely to be higher than the total number of members of judicial bodies i.e. there are not enough judges to deploy one per PC. The solution applied for the 2005 and 2011-12 parliamentary elections was to phase the election process allowing judges to complete polling in one area and move to the next. The revised law stipulates that the PC member from a judicial body can head more than one PC provided that there is no physical obstruction which prevents him/her from having actual supervision of all PCs. However, this provision also exists in the LEPR and polling for the recent People’s Assembly elections still took place in three phases.

It is not advisable to hold presidential elections in phases because – unlike the parliamentary elections – the presidential election is a single contest which should take place everywhere at the same time under more or less identical conditions.³² Indeed, article 30 of the PEL appears to preclude the possibility of phased elections.³³ It is as yet unclear how the PEC will deal with the relative scarcity of members of judicial bodies.³⁴

PCs are composed of a head, a secretary and an “alternate” member. In cases where the head is required to supervise more than one PC, it appears that the voting process will be administered by just the secretary and possibly the alternate member. This may be insufficient to organise the voting process efficiently.³⁵ It may be beneficial if at least one PC member is female so that she may verify the identity of veiled women voters. The law provides that the PEC decides on the number and location of GCs and PCs in coordination with other state bodies, without naming which bodies.³⁶

³¹ While article 39 provides that it is the HEC which selects the committee members from nominations made by the higher councils of the judicial bodies, it is more likely that this will be done by the PEC under the provisions of article 28 – although this is not certain.

³² Holding phased elections creates dilemmas regarding when the votes of the first phase should be counted and when the results should be announced. Announcing results from one phase runs the risk of influencing voter choices in subsequent phases. Not announcing the results lessens transparency and runs the risk of raising political tensions.

³³ Article 30 provides that “Balloting shall be conducted on one day [...], if necessary, it may be on two consecutive days.”

³⁴ Reducing the number of polling stations by raising the number of voters registered at each polling station would probably necessitate appointing additional PC staff and probably cause severe overcrowding. Appointing other persons as “temporary members” of judicial bodies might provide a solution, but runs counter to the rationale for including the requirement in the law and may not be accepted by voter.

³⁵ Amendments to the LEPR doubled the number of PC members from two to four (excluding the head).

³⁶ For parliamentary elections, the LEPR is specific – it requires the HEC to co-ordinate with the Ministry of Interior.

5. ELIGIBILITY TO VOTE

Neither the Constitutional Declaration nor the PEL establish the criteria for citizens to exercise the right to vote. It is possible that the provisions set out in articles 1-3 on the LEPR apply for presidential elections; though this is far from clear.

Under the PEL a modest fine can be imposed for non-participation by a registered elector. Military personnel and police officers are relieved of the duty to vote.³⁷ However, it is not clear if they can, should they so choose, vote in elections.³⁸ Prohibiting their right to vote would conflict with the ICCPR.³⁹ Certain restrictions placed on the right to vote by convicted criminals, discharged civil servants and persons declared bankrupt (articles 2 and 3 of the LEPR), may be disproportionate and thus conflict with the United Nation’s Human Rights Committee’s interpretation of the ICCPR.⁴⁰ According to article 4 of the LEPR, naturalised citizens can only register to vote after a period of five years has elapsed from the time citizenship was acquired. Distinctions between citizens by birth and naturalisation may raise questions of compatibility with the ICCPR.⁴¹

6. CANDIDATE ELIGIBILITY

The 19 March referendum and the Constitutional Declaration retained the requirements that whoever is elected President must never have held any other citizenship, be born of two Egyptian parents, be aged at least 40 years of age, and enjoy his/her civil and political rights but added two new requirements not found in the 1971 constitution, namely that (i) the parents of whoever is elected president should never have held the citizenship of any other country” and (ii) that he/she “should not be married to a non-Egyptian”.⁴² Under the ICCPR these could be considered as “unreasonable restrictions” on the right to seek election.⁴³

The PEL contains candidate eligibility requirements that are not contained in the Constitutional Declaration (i) that candidates have completed their military conscription (or were exempted according to law), and (ii) that candidates

³⁷ LEPR, article 1.

³⁸ According to the Law on the People’s Assembly, military and police officers can stand as candidates if they resign from their official position.

³⁹ Article 25 of the ICCPR protects the right to vote for every citizen.

⁴⁰ Paragraph 14 of General Comment 25 states “If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.”

⁴¹ Paragraph 3 of General Comment 25 on article 25 of the ICCPR states “[...] Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25”

⁴² The amendments are reflected in article 26 of the Constitutional Declaration and article 13 of the PEL.

⁴³ See paragraphs 3 and 15 of General Comment 25 on article 25 of the ICCPR.

provide a financial disclosure statement.⁴⁴ As the SCC did not comment on these provisions, it is assumed that it did not find them in conflict with the Constitutional Declaration.

7. CANDIDATE NOMINATION AND REGISTRATION

The 19 March 2011 referendum amended the nomination procedures such that presidential candidates “must be supported by at least 30 elected members of the People’s Assembly or Shura Council, or at least 30,000 eligible voters in at least 15 governorates with not less than 1,000 supporters in any of these governorates. In all cases, support should not be for more than one candidate. Any political party whose members obtained at least one seat by voting in the People’s Assembly or Shura Council may nominate one of its members for presidency.” These provisions are reflected in the Constitutional Declaration and the amendments to the PEL (articles 2 and 3).⁴⁵

While the constitutional changes make it easier for a candidate that is not a member of a parliamentary party to contest the election, due to a large disparity in the support level required for a candidate nominated by a parliamentary party (one MP) and a candidate of a non-parliamentary party (30 MPs) the easiest route to becoming a candidate is clearly through being or becoming a member of a party represented in parliament. There are representatives of 22 registered parties in the People’s Assembly following the 2011-12 elections. However, MPs of some parties were elected in an election list registered in the name of another party and a doubt could arise as to the eligibility of these parties to present a present a presidential candidate.

The number of signatures (30,000) required of non-party candidates is, compared to other countries, not unreasonable. However the rules adopted on how the signatures are to be collected will be crucial in determining whether the requirement de facto constitutes a “barrier to candidacy”.⁴⁶ Although the PEC has set aside 30 days for candidate nominations, the PEL appears to provide for the possibility of the PEC setting aside just seven days for this process. A seven-day timeframe is unlikely to be sufficient to gather 30,000 signatures from across the country, particularly as the law appears to require that the signatures must be given in person at specific offices; a requirement which is burdensome

and not specified in the Constitutional Declaration.⁴⁷ The PEC is mandated to adopt the regulations on signature collection as well as deciding on the procedures for submitting and retaining candidate nomination documents and the filing of objections against candidate registration. The Constitutional Declaration stipulates that citizens may only support one candidate and that “the law will stipulate the procedures for this matter”. However, the PEL provides no details on how this will be verified.

The preliminary list of registered candidates is published on the day after candidate nominations close. Thereafter, any of the listed candidates has two days to file an objection against any of the other candidates and the PEC has two days to review the objections. Only candidates appear to be authorised to file objections.

In the event that the PEC rejects a candidate nomination, the Commission must inform the applicant of the reasons. The applicant may file an appeal against the decision with 48 hours of being notified of the PEC’s decision, and the PEC will decide on the appeal within 24 hours of the expiry of the 48 hours appeals period. According to the PEL, the PEC must publish the final list of registered candidates no later than 25 days before the election day, although for the upcoming election the candidate list is likely to be announced much earlier than this deadline.

7.1. CANDIDATE WITHDRAWALS AND ‘CANDIDATE VACANCY’

Candidates may withdraw from the contest up to 15 days before election day and an announcement to this effect is published in two mass circulation newspapers. Article 18⁴⁸ sets out the procedures for replacing a candidate in the event that a vacancy arises other than due to a candidate’s withdrawal e.g. death.⁴⁹

The amendments address an oversight in the original 2005 law regarding the procedures to deal with a candidate vacancy in the period before a run-off election is held. The new text implies that the run-off would go ahead with the party which nominated the original candidate proposing a replacement. This is an unusual approach as any ‘replacement candidate’ would not have received any electoral support in the first round.

⁴⁴ The December 2011 draft required publication of the candidates’ financial statements; information which could be of interest to voters, but this was not included in the adopted decree law amending the PEL.

⁴⁵ Under the previous constitutional provisions (Article 76 of the 1971 Constitution) a presidential candidate not nominated by a party represented in parliament needed the backing of at least 250 elected deputies from the People’s Assembly, the Shura Council and the municipal councils of the Governorates (of which at least 65 must be members of the Assembly and 25 members of the Shura Council).

⁴⁶ Paragraph 17 of General Comment 25 states “If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy.”

⁴⁷ According to the Law on Political Party Systems, a party requires 5,000 notarised signatures to be founded. Many parties found that the requirement to have supporting signatures notarised was burdensome, and it took them many weeks to gather the required number of signatures. Many other countries allow supporting signatures to be gathered in public places, and the signatories details are then verified by the election management body.

⁴⁸ The draft law amending the PEL repealed article 18 and did not replace it with any other provisions leaving it unclear how the PEC would deal with such a situation. Consequently, the SCC ordered for article 18 to be reinstated.

⁴⁹ Article 18 provides that the PEC shall extend the candidate nomination period for five days if the vacancy occurs before the announcement of the final candidate list. If the vacancy arises after this event, then the law appears to permit the postponing of the poll for no more than 25 days to allow for a new nomination.

8. VOTER REGISTRATION

The PEL contains five references to the voter register and it is thus assumed that a formal voter register will be used for the presidential elections, although this is not entirely clear due to the absence of any provisions in the PEL on how the register will be compiled. While provisions on the registration of electors are set out in the LEPR, as already noted, it is far from clear which parts of the LEPR (if any) apply to the presidential election.

The voter register should take account of all changes since the register was closed on 20 July 2011 e.g. those that have turned 18 years of age, deaths and changes in residency.⁵⁰ However, the legal arrangements would need to be re-worked to fit the provisions of the PEL, e.g. clarifying whether it remains the competence of the HEC to supervise the work of the Ministry of Interior (the body which compiles and updates the voter registration data which is based on citizens' identity card information) or whether competency for the voter register for the presidential election would pass to the PEC. In the latter scenario, the PEC appears to have the authority to adopt specific regulations in this regard (PEL, article 7)⁵¹ although the legal arrangements and timeframe for revising the voter registers will need to be adopted in the near future.

The LEPR allows parliamentary candidates the right to receive a copy of the voter register. The PEL does not mention whether presidential candidates have the same right.

9. ELECTION CAMPAIGNING

According to article 20 of the PEL, the official election campaign will start three weeks before the election day and will end two days before election day (19 days).⁵² This is a relatively short period for such an important election.

The law defines campaigning as including: "activities by the candidates and his supporters, targeting the persuasion of voters in his favour through public meetings, dialogues, publication and distribution of campaign material, signs and posters as well as using audio-visual, printed and electronic media, and through such activities as are allowed by the law or PEC decisions". The restriction on campaigning before the start of the official campaign period is potentially at odds with candidates' free expression rights.⁵³ Moreover, the collection

of the 30,000 supporting signatures by candidates necessarily entails active campaigning before the official campaign period.⁵⁴ The restriction on "supporters" of a candidate engaging in campaigning before the official election period could be particularly difficult to enforce, not least because the term 'supporter' is not defined.

Campaigning in the media outside the official campaign period is not permitted, although no specific penalty for non-compliance is provided in law. The candidates, due to their public profile, are likely to appear in the media before the start of the official campaign period, which could generate complaints requiring the PEC to decide in each case whether the legal provisions have been violated.

PEL article 21 sets out a various other restrictions on election campaigning, including prohibiting: the violation of other candidates' private life, using "religious slogans"; directly or indirectly offering material or financial benefits to voters; using state-owned resources; campaigning in publicly owned premises, places of worship and educational institutions. The PEL contains strong penalties for non-compliance with these requirements but unlike parliamentary elections,⁵⁵ it appears that a candidate cannot be de-registered for committing a violation of these campaign provisions.

Other than the right to equal treatment in the publicly-owned media, the PEL does not protect candidates' right to a level playing field to campaign for election, e.g. there are no provisions:

- Requiring public authorities to treat candidates without discrimination and setting penalties for non-compliance;
- Requiring commercial vendors who supply a service to a candidate to provide the same service to other candidates or lists on equal terms, or
- Establishing reasonable rules to ensure equal access to display campaign material and have equal access to public spaces for holding campaign events.

In addition to the provisions of the PEL, the PEC has the authority to issue regulations on campaigning. The PEC has sole jurisdiction to verify that the rules for campaigning are being adhered to and for deciding on electoral complaints.⁵⁶ The PEC may have to devote a considerable portion of its work time to these issues. However, campaign provisions are notoriously difficult to monitor and enforce effectively, particularly by an election commission which may well have limited capacity to effectively monitor all campaign activity and is likely to be busy with preparations for the poll.

9.1. MEDIA AND THE ELECTION CAMPAIGN

The PEL is very vague regarding candidates right to access media to campaign. The sole provision, article 22, simply requires that the state owned media "treats all candidates

⁵⁰ Article 5 of the LEPR provides that the registers are updated throughout the year although they were closed on 20 July to prepare the final voter register, which was completed by the end of September 2011.

⁵¹ Notwithstanding that under article 57 of the LEPR, the Ministry of Interior (and subsequently the HEC) have the authority to adopt executive regulations on voter registration.

⁵² The official campaign for a run-off election starts on the day following the announcement of results and ends at 12.00 hrs on the day before the election day.

⁵³ The Constitutional Declaration (article 12), provides that: "Freedom of opinion is also guaranteed, and every person has the right to express his

opinion and publish it in spoken, written, photographed, or other form within the confines of the law" (emphasis added).

⁵⁴ Although it is possible to argue that a person does not formally become a candidate, and hence bound by the restriction on campaigning outside the official campaign period, until their candidacy is approved by the PEC.

⁵⁵ Law on the People's Assembly, article 11

⁵⁶ See articles 8.7 and 8.10 of the PEL.

equally when the media is used for campaigning purposes". It is unclear whether 'equal treatment' is defined quantitatively or qualitatively (or both). However, the PEC is required to verify that the media respect this requirement and has the jurisdiction to "take such measures as it deems necessary in case of violations". This implies that the PEC will need to proactively monitor the media to assess compliance.

The law is silent regarding the need for public media to present candidates in an equal and neutral manner in "non-campaign" content e.g. news broadcasts or programmes dealing with political affairs. Other shortcomings in the PEL concerning campaigning in the media include:

- Not specifying clearly which body has the jurisdiction to adopt the rules regulating candidates' access to publicly owned media;⁵⁷
- Not specifying how much airtime / space must be made available for campaign slots on public media and at what time it will be broadcast;
- Not specifying whether campaign time /space will be provided free of charge;
- Not providing for candidates' access to publicly owned printed media, and;
- Not providing for televised debates between the candidates.

It is assumed that candidates can pay for placing advertisements in the electronic media, although the law is silent on this point. As there is no mention on this issue, there is no legal requirement for private media outlets to charge equal rates to the candidates.

9.2. CAMPAIGN FINANCING

Each candidate is entitled to spend up to EGP 10 million (EUR 1.3 million) on his or her campaign and EGP 2 million (EUR 260,000) during a run-off election (article 24).⁵⁸ Candidates can receive campaign donations from Egyptian citizens providing that their donation does not exceed 2% of the total permitted to be spent on campaigning – EGP 200,000 (EUR 26,000). Candidates can also receive financial support from their nominating party. This places party-nominated candidates at an advantage over independent candidates.

It is prohibited for candidates to receive financial or "in kind" contributions from any foreign source (article 27). All candidates must open a bank account in Egyptian pounds (EGP) in one of the banks specified by the PEC into which all campaign donations and personal funds used for campaigning must be deposited. Candidates must not spend any sums on their campaign from outside this account, must notify the PEC of all sums deposited into the account, their source and expenditures in accordance with procedures and dates which will be established by the PEC in a regulation. Receiving funds

from a foreign entity, exceeding the spending limit, and spending from outside the specific bank account can all be punished with a term of imprisonment.

Political parties are required to notify the PEC of all donations they receive over EGP 1,000 (EUR 120) during the three months prior to the election day within five days of receiving the donation. It is unclear whether this requirement applies solely to parties nominating a candidate (or contributing to a candidate's campaign fund) or all parties. The PEC may be required to clarify how the provision will be applied given that the election day may not be known 3 months in advance of the date set.

Within 15 days of the announcement of the election results, candidates must submit a statement of their total campaign revenue, its sources and expenditure on their election campaign. These accounts are audited by the Central Audit Agency which submits its reports to the PEC within 15 days of receiving statements. The law does not impose any penalty for non-submission of accounts. There is no requirement for the statements by the candidates or the audit authority's reports to be made public.

10. ELECTORAL TRANSPARENCY⁵⁹

General Comment 34 on the ICCPR (GC34) issued in July 2011, states that "the principles of transparency and accountability are [...] essential for the promotion and protection of human rights".⁶⁰ GC34 has interpreted art 19 of the ICCPR to mean that citizens have a right to access public information.⁶¹ Factors that enhance electoral transparency include: consultation with stakeholders (voters, candidates, parties and civil society organisations); the clarity of the electoral rules; the visibly equal application and enforcement of laws and regulations; open decision making; effective communication; and ensuring the public's access to information and processes.

Unlike some other countries in the region, Egypt's laws contain no general requirement for elections to be conducted transparently.⁶² While the LEPR requires that for parliamentary elections the deliberations of the HEC "are

⁵⁷ The PEL only requires of the PEC that it verifies "the observance equality between candidates in using state-owned audio-visual media" not that it regulates candidates' entitlements or how "equality" is to be achieved.

⁵⁸ The amendments revoke a provision which previously granted candidates financial assistance from state funds equalling 5% of the campaign ceiling (article 25).

⁵⁹ DRI conducted a transparency review of the arrangements for parliamentary elections, which is also relevant to presidential elections. See: "Egypt Elections: Greater Transparency to Strengthen Confidence", 18 November 2011, http://www.democracy-reporting.org/files/briefing_paper_18_transparency_november_2011.pdf.

⁶⁰ Article 25 of ICCPR establishes that the right to participate in a genuine election is a human right for all citizens of a country.

⁶¹ Paragraph 18 of GC34 states: "Article 19, paragraph 2 [of the ICCPR] embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production". Paragraph 19 states "To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information".

⁶² For example, as in Palestine and in the draft election law of Libya. Article 113 of the Palestinian election law requires that "All phases of the electoral process [...] shall be public and transparent in a manner that enables observers to monitor the different stages of [the] processes [...]".

secret”, the PEL does not mention this issue but leaves it to the PEC to decide on its working methods. Thus, the PEC could if it decides, hold open sessions.⁶³ Although there is a general requirement for the PEC to publish all its decisions in the Official Gazette, there is no time specification for this and specific provisions of the PEL do not allow for sufficient access for stakeholders and citizens to information.

10.1. CANDIDATE REPRESENTATIVES

Each candidate may nominate a representative “from among the voters”⁶⁴ to all committees formed by the PEC. They must notify the head of the PC of the names of his/her representatives no later than the day before election day. However, the PEL provides no details on the rights and duties of candidate representatives. In contrast to parliamentary elections, polling will commence without delay in the event that candidate representatives are not present at the start of the poll.

10.2. ELECTION OBSERVATION

GC 25 on the ICCPR provides that: “There should be independent scrutiny of the voting and counting process [...] so that electors have confidence in the security of the ballot and the counting of the votes.” Unlike the LEPR, which regulates parliamentary elections, the PEL makes no mention of election observation, and consequently it is not yet known whether it will be permitted.⁶⁵ This is a major shortcoming, which if not addressed could severely diminish electoral transparency and therefore confidence in the process and outcome.

11. POLLING

The PEL offers scant details on polling procedures for presidential elections. However, unlike the LEPR it specifically requires the PEC to establish all rules and procedures governing the voting and counting processes as well as the work of the election committees (article 35).

11.1. OUT OF COUNTRY VOTING⁶⁶

The amended PEL introduces out of country voting (OCV) in presidential elections for Egyptian citizens abroad (article 30

bis).⁶⁷ The PEC is tasked with issuing the OCV regulations, and the law allows polling to take place before in-country voting and possibly “by mail”. Among other things, the possibility of early polling abroad might require the PEC to finalise the format of the ballot paper at an earlier point in its election operations. PCs for OCV can be headed by members of diplomatic/consular missions, rather than members of judicial bodies.

11.2. VOTING PROCEDURES

The Constitutional Declaration (article 27) and the PEL (article 1) provide for a secret vote. However, the PEL contains no details about how the polling must be organised to guarantee it is achieved.⁶⁸

Basic voting procedures are set out in articles 32. This provides among other things that “voting in elections shall be made by marking (voter's choice) on the ballot paper”. However, the law offers no guidance as to which mark/marks constitutes a valid voting method e.g. an ‘X’, and does not provide that the ballot shall not be marked with a pencil.

According to article 32, the PC head hands each voter an open ballot paper bearing on the reverse the stamp of the PEC and the election date. However, it may not be possible for the ballot to be handed to a voter by the head of the Polling Committee if he/she is required to supervise more than one committee simultaneously. As is the case for the LEPR, the PEL provides no indication on when the ballots should be stamped.⁶⁹

There is no procedure to record the issuance of a ballot to a voter at the time it is given e.g. a signature of a PC member.⁷⁰ The law does not require that a voters' identity is checked or that voters' fingers are checked for traces of indelible ink before he / she receives a ballot. After receiving a ballot, voters are required to take their ballot paper to “the assigned place”, and after making his/her electoral choice, inserts the ballot into the ballot box.

After handing over the ballot, voters are required to sign (or place a thumbprint) next to his / her name on the voter register to indicate that he / she has voted. The voter then dips his / her finger in ink which according to the law, is indelible for at least 24 hours after balloting. If however the election is held over two polling days, ink which is designed to

⁶³ This practice occurs in many countries and enhances transparency and contributes to public confidence. Where sessions are not public, there may be immediate publication of decisions from closed sessions and it is common to find consultative fora established between the Election Management Body (EMB) and stakeholders.

⁶⁴ It is thought that this means that each representative must be registered as a voter at the polling station to which he/she is assigned.

⁶⁵ Article 3 bis F of the LEPR allows the HEC to “lay down the rules regulating the engagement of Egyptian as well as international civil society organizations in monitoring (following) all electoral processes.” In October 2011, the HEC issued a regulation which permitted Egyptian and international civil society organisations to “follow” all aspects of the election (although it was released after candidate registration had taken place).

⁶⁶ For further information on OCV issues in general, see DRI Pakistan's briefing paper: <http://www.democracy-reporting.org/publications/country-reports/pakistan.html>.

⁶⁷ Out of country voting was organised for the People's Assembly elections based on a decision of the Administrative Court. This necessitated an amendment to the Constitutional Declaration (article 39 bis) which provides that the requirements for polling set out in article 39 are not followed for polling abroad, with the arrangements regulated by a special law.

⁶⁸ Voters are required to mark their ballot paper in the “the assigned place”, but the law fails to specify that this shall provide for the voter to mark their ballot in privacy.

⁶⁹ The stamping of ballots is a fairly common balloting procedure. It is usually done to “validate” the ballots at the polling centre. This reduces the risk that ballots of unknown provenance are illegally placed in the ballot box. However, the procedure is more effective if ballots are individually stamped by the PC immediately before being handed to a voter.

⁷⁰ In the event that a voter leaves the polling station with a blank ballot, there would be no record that he / she had received a ballot.

remain visible for 24 hours may not be sufficient. The law does not specify which of the voters' fingers is to be marked, a procedure which would facilitate verifying that a voter has not already voted previously.

Unlike the LEPR, the PEL contains no provision on procedures for voters requiring assistance. The PEC regulations on polling should avoid a simple replication of the LEPR requirement whereby a voter verbally notifies a PC member of his/her choice and the PC member marks the ballot on their behalf, because this lessens secrecy is in conflict with the ICCPR.⁷¹

11.3. ABSENTEE VOTING

The previous version of the law (in article 33) permitted a voter who is absent from the city, town or village where he / she is registered to cast a vote at any polling station provided that he / she provides proof of identity. The PEC was required to adopt specific procedures to regulate the process. The draft law amended this provision such that a voter had to be outside the governorate in which he / she is registered in order to cast an absentee vote and required that the names and identification card number of these voters is recorded on a list. The arrangements carried an evident risk of multiple voting and in its review of the draft law, the SCC found article 33 unconstitutional on the grounds that it does not stipulate the mechanism to ensure that the voter does not vote more than once.

The law does not contain any provisions for voting outside polling stations for those who may be unable to attend polling on election day (e.g. hospitalised or infirm persons) or those in places of detention that have not yet been sentenced.⁷²

11.4. VOTE COUNTING

The PEL contains no details on the vote counting arrangements. While article 35 tasks the PEC with adopting a regulation for all election stages including the vote count, it is generally considered necessary to set out in detail in the law the procedures for this crucial election phase as this enhances transparency and the public's confidence and better ensures consistent application.

11.5. AGGREGATION AND ANNOUNCEMENT OF RESULTS

Article 38 provides that GCs aggregate the results of individual polling stations. The GC heads are required to document the number of votes gained by each candidate at each committee and to complete a signed record in triplicate and report the information to the PEC. However, the PEL does not provide a deadline for the GCs to complete these tasks or indication of which bodies (other than the PEC) are entitled to receive a copy of the report.⁷³ It also contains no requirement for GCs to display the overall or composite polling station results for the area.

The PEC announces the overall election result within three days of receiving the GCs' reports and the result are published in the Official Gazette. There is no requirement for the PEC to publish the results of individual polling stations. This enhances transparency during the result aggregation phase.

12. COMPLAINTS AND APPEALS

The PEL stipulates that the PEC decides all complaints and challenges related to elections.⁷⁴ This appears to rule out the possibility of any challenges on any issue being filed to a court. This could lead to a situation where the PEC is required to consider a large number of complaints on all aspects of the process. While the law does not specifically require the PEC to adopt specific procedures for the filing of complaints and challenges,⁷⁵ the commission appears to have the authority to do so (under article 7) should it decide such a regulation is "necessary" to fulfilling its competences.

According to the Constitutional Declaration (art 28) "The Commission's decisions are final, binding and will not be subject to objections from any party or authority."⁷⁶ Notwithstanding that the PEC is headed by Egypt's most senior judge, the absence of a mechanism to appeal against its decisions possibly denies citizens access to effective legal remedy.⁷⁷ At a minimum, it would be beneficial if candidates

⁷¹ Paragraph 20 of GC25 on article 25 of the ICCPR provides that assistance to voters requiring assistance should be independent.

⁷² Paragraph 14 of GC 25 of the ICCPR states: "Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote."

⁷³ The LEPR provides that for parliamentary elections, the Ministry of Interior receives one of the three copies. Under the PEL, the PEC is required regulate the rules for the retention of the copies of the GC's reports and other election papers.

⁷⁴ Any serious violations of the law would however probably be subject to criminal procedures i.e. outside of the framework complaints and challenges heard by the PEC.

⁷⁵ Except regarding appeals against decisions of the General Committees concerning the polling process.

⁷⁶ According to the draft law, PEC decisions are taken by a majority of not less than 3 PEC members.

⁷⁷ Article 2.3 of the ICCPR provides that: 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; (c) To ensure that the competent authorities shall enforce such remedies when granted. Paragraph 20 of GC25 on ICCPR article 25 stipulates that "There should be [...] access to judicial review or other equivalent process so that electors have confidence

had the right to request the PEC to review its own decisions. However, as the provision was approved in the 19 March Referendum, it would appear that the only way to address the issue would be to amend the corresponding provision in the new constitution.

Article 36 of the PEL provides that GCs examine all aspects related to the polling process and determines its validity. While the law does not specifically allow complaints on the polling process to be filed with GCs, this possibility appears to follow the logic of article 36. Candidates can appeal GCs' decisions exclusively with the PEC no later than the day following the issuance of the GCs' decision. The PEC decides on the appeal on the following day, after hearing the candidate's statement. The PEC is required to establish rules and procedures for hearing and deciding these appeals.

The PEL appears to provide only for candidates to make complaints and appeals, thereby compromising voters' access to effective remedy. As the PEC is required to announce the overall election result within 3 days of the receipt of GC's reports, there is almost no time for candidates to file a complaint or challenge regarding the voting and counting process or for the PEC to review any evidence presented before it is obliged to announce the results. If the announcement of results is considered as a "decision" of the PEC, article 28 of the Constitutional Declaration would appear to rule out any challenge to the election after the results have been announced by the PEC.

13. ELECTION OFFENSES

The PEL contains a fairly extensive list of election offenses and penalties,⁷⁸ many of which are identical to those for parliamentary elections.⁷⁹ However, in September 2011, the LEPR was amended to stiffen punishments for certain violations. Corresponding changes have not been incorporated in the amendments to the PEL. Hence there are now numerous discrepancies in the applicable penalties for the same offence between the PEL and the LEPR⁸⁰ e.g. regarding: not voting,⁸¹ using force to prevent a voter from voting, or voting in a certain way and vote buying,⁸² and using religious slogans while campaigning.⁸³

in the security of the ballot and the counting of the votes." GC 31 elaborates on the right to effective remedy.

⁷⁸ Articles 42 bis to article 56.

⁷⁹ For example article 44 of the PEL, which concerns threats or violence against the PEC, is almost identical to article 41 of the LEPR. Article 47 of the PEL, on use of terror or intimidation, corresponds to article 44 of the LEPR.

⁸⁰ The Law on the People's Assembly (LOPA), Law 38 (1972) also contains a provision on penalties for electoral offenses during campaigning (article 11). The penalties listed for electoral offenses (which are very similar to those set out in article 21 of the PEL) are less severe than in the PEL.

⁸¹ Not voting in parliamentary elections carries a fine of EGP 500, whereas for presidential elections the fine is EGP 100.

⁸² For parliamentary elections these offenses are punishable imprisonment of not less than one year and a fine of between EGP 10,000 to 100,000, whereas in presidential elections the penalty is not less than 6 months imprisonment and a fine of EGP 1,000 – 5,000.

⁸³ In parliamentary elections the offense is punishable by imprisonment of not less than 3 months and a fine of EGP 5,000 to 10,000 whereas for presidential elections it is punishable by not less than one year imprisonment and a fine of between EGP 10,000 and 100,000.

Some offenses are specific to presidential elections, including: supporting more than one candidate during his / her nomination;⁸⁴ campaign finance violations,⁸⁵ impeding the execution of PEC decisions, and a severe penalty for civil servants who fail to perform their assigned electoral tasks. The December draft law contained a strong penalty for voting more than once, but this did not feature in the text which was adopted. Conversely, the LEPR contains provisions on some election offenses, which are not contained in the PEL, e.g. printing or handing out ballot papers without permission; a voter assuming the identity of another voter to cast a ballot; removing a ballot box or tampering with material in a ballot box.⁸⁶ These are serious offenses, which ought to be included in the PEL.

The election offenses set out in both laws are not exhaustive e.g. there is no specific offense or penalty for not counting or not reporting election results accurately or other "crimes against the electorate". Some penalties set out in the PEL are not proportionate to the offence e.g. verbally insulting a PEC member can be penalised by two years imprisonment, while vote buying or intimidating electors can be penalised by just six months imprisonment.⁸⁷

While the LEPR provides that the public prosecutor is responsible for investigating crimes and that the courts of first instance and appeal have jurisdiction to hear the cases (article 50 bis A), the PEL is silent on these issues. Potentially, this could cause a problem in deciding jurisdiction for prosecuting offenses in the presidential election.

14. SUGGESTIONS

The following suggestions are offered for consideration:

1. The PEL could take full account of changes made to the LEPR during 2011 in regards to issues related to the presidential elections and address the comments and recommendations set out in the reports of the organisations which observed the parliamentary elections.

2. The question of the applicability of Law no. 73 (1956) on the Exercise of Political Rights (LEPR) to presidential elections regarding voter eligibility and voter registration could be clarified. If the LEPR is not applicable, the PEL could be amended to clarify these two issues adequately.

⁸⁴ This carries a penalty of not less than 6 months imprisonment and a fine of EGP 1,000 to 10,000.

⁸⁵ Spending from a bank account other than the one designated for campaigning or exceeding the spending limit can result in not less than one year in prison and a fine of between EGP 5,000 to 20,000. Receiving funds from abroad for campaigning can result in a two to five year jail term and the confiscation of funds.

⁸⁶ As set out in articles 48.5, 49.1 and 50 of the LEPR.

⁸⁷ See PEL, articles 46 and 51.

3. The PEL could clarify the procedures for compiling the voter register to be used for the presidential election and the PEC's competencies in this regard.

4. The PEC could be given the following specific competencies which are enjoyed by the HEC:

- To adopt a system of candidate symbols;
- To verify the authenticity of electoral complaints;
- To adopt rules on candidates' access to mass media;
- To set rules for the implementation of legal provisions on campaigning, and;
- To regulate for electoral observation.

5. The PEC should act on its mandate to conduct a civic awareness campaign covering not only information on the importance of the presidential elections and citizen's participation but also to provide information on voter and candidate registration and polling procedures as this is necessary to ensure the effective exercise of suffrage rights by an informed community.

6. The PEL or executive regulations could clearly set out in detail the functions (if any) of the Ministry of Interior in organising the election and its specific responsibilities.

7. The law could set out the responsibility of the police authority to deal with illegal campaigning on election day outside the perimeter of polling stations.

8. The PEL could elaborate the role of the GCs established by the PEC, in particular in regards to their jurisdiction to make decisions. The PEC could adopt a regulation stipulating quorum requirements for GC decisions, and requiring the presence of parties to a complaint when GCs decide on polling complaints and require the immediate public display of GCs' decisions.

9. As a general principle, presidential elections should be conducted everywhere, at the same time, and under more or less identical conditions. The PEL could be reviewed to ensure that PCs are composed of a sufficient number of personnel to enable voting to proceed smoothly. It would be beneficial if at least one PC member is female so that she may verify the identity of veiled women voters.

10. Military personnel and police officers should be entitled to vote if they wish. The specific restrictions placed on the right to vote by convicted criminals, discharged civil servants, persons declared bankrupt and naturalised citizens (which are contained in the LEPR) should be assessed for compatibility with citizens' rights under the ICCPR.

11. The constitutional requirements that whoever is elected president must not be married to a non-Egyptian and that his / her parents must never have held the citizenship of any other country should be assessed for compatibility with citizens' rights under the ICCPR.

12. While it appears that the PEC has set aside considerably more than the legal minimum of seven days for candidate nomination, to ensure that in future elections independent

candidates have sufficient time to gather the 30,000 signatures from across the country and that the requirement does not de facto become a barrier to candidacy, the law could be amended to provide a much longer timeframe for candidate nomination.

13. The requirement that supporting signatures for a candidate's nomination must be given at specific offices could be reconsidered as in practical terms it might make it much harder for prospective candidates to gather the required number of signatures.

14. In the event that a sole candidate is nominated or registered to contest the poll, it would be beneficial if the PEL clarified how a candidate might fail to secure a majority of valid votes.

15. It would be beneficial if candidates have longer than the 19 days foreseen in law to conduct their official campaigns e.g. by starting the official campaign directly after the publication of the final candidate list.

16. The restriction on campaigning before the start of the official campaign period should be reviewed to ensure that it does not conflict with candidates' right to free expression.

17. The PEL should protect candidates' right to a level playing field. Measures could for example include:

- Requiring public authorities to treat candidates without discrimination and setting penalties for non-compliance;
- Requiring commercial vendors who supply a service to a candidate to provide the same service to other candidates or lists on equal terms;
- Establishing reasonable rules to ensure equal access to display campaign material and have equal access to public spaces for holding campaign events.

18. The PEC could establish a specific committee or sub-committee from among its membership with the mandate of verifying if the rules for campaigning are respected. The committee could provide relevant information for the PEC to take decisions in this regard.

19. The PEL could elaborate specific provisions guaranteeing candidates' access to the media to campaign or specify which body has the competence to adopt rules in this regard. The law / regulations could clearly establish the minimum time entitlement for candidates, the scheduling of campaign slots in primetime and require that airtime is provided free-of-charge. Organising televised debates among the contestants could enhance voters' awareness of their political platforms.

20. The PEC may need to put in place a media monitoring operation to verify that the public media treat candidates 'equally'. It would be beneficial if this is based on international good practice norms. The PEL could set out the punitive measures available to the PEC for non-compliance by the media.

21. The law could entitle candidates to place adverts in the private media and the private media could be required to

publish their advert rates and grant equal terms to all candidates.

22. The PEL could impose a penalty for any candidate not submitting campaign finance accounts within the specific timeframe. Consideration could be given to making public the candidates' campaign expenditure statements and the corresponding reports of the audit authority.

23. Consideration should be given to including in the PEL a general requirement that elections shall be conducted transparently. The PEC could consider other measures to enhance the transparency of the process and access to information, including:

- Allowing candidate representatives to attend its sessions;
- Publishing all its decisions on its website as well as in the Official Gazette;
- Requiring that a summary of the results from each polling station is publicly displayed at the polling station immediately after the vote count has been completed;
- Permitting candidate representatives to receive a certified copy of individual polling station results;
- Publishing the election results of each polling station in tabulated form and from all electoral units administered by the General Committees.

24. The PEL should contain a clear provision establishing the right of citizens to scrutinise all aspects of the election process, as well as setting out their duties. Similarly the rights and responsibilities of candidate representatives should be elaborated in law.

25. The PEL should include the requirements that polling stations must be equipped with voting screens, that the position of the screens within the polling station should guarantee that voters can vote in secret and that voters are obliged to mark their ballot behind a screen.

26. The law could set out which marks on the ballot paper are considered as 'invalid', and that pencils or erasable ink pens must not be used by voters to mark a ballot paper.

27. The PEL or the regulations could clarify when the ballots should be stamped with the PEC's seal, that it is mandatory to check voters' identity, and stipulate which form of identity document is acceptable.

28. The PEL could include a provision that voters' fingers should be checked for traces of ink before they receive a ballot paper. The law could stipulate which finger is to be marked with ink. The secretary could sign the register at the point the ballot is handed over to record that a ballot has been issued.

29. The polling regulation should provide that the assistance given to voters requiring help to make their electoral choice is 'independent' i.e. it is not a member of the PC.

30. If polling is to take place on more than one day, the PEC could consider what additional security measures are required, e.g. ballot boxes with a slot that can be closed and locked.

31. The law should require that persons held in pre-trial detention are afforded the opportunity to vote.

32. The law should, at a minimum, establish the basic steps for vote counting e.g. reconciling the numbers of used and unused ballots, procedures to sort ballots into piles and count votes per candidate separately, determining invalid ballots according to standard criteria, allowing independent scrutiny during the counting of votes, recording of votes per candidate and other relevant data, posting of results in a public place, sealing of material, as well as transfer and handover of material.

33. The PEL could provide a deadline by which the GCs are required to submit their report of the election results to the PEC and specify which bodies have the right to receive the three copies of their reports.

34. The law could set out whether the Public Prosecutor has the authority to investigate electoral offenses which constitute criminal acts as well as the courts with jurisdiction to hear these cases.

35. The PEC could consider adopting a regulation setting out the procedures to file complaints and challenges. Candidates, their representatives, voters and Egyptian election observers should be permitted to file complaints regarding polling with the GCs.

36. In the interest of ensuring that the election reflects the will of the people, and to ensure effective remedy is available, the PEC should have longer than 24 hours to consider challenges filed by candidates and appeals against the conduct of the election. Serious consideration could be given to allowing the PEC to delay the announcement of final election results beyond three days of the date of receiving the reports of the GCs in cases where it needs to conduct an investigation to determine the validity of the polling process.

37. Provisions contained in the PEL and LEPR dealing with electoral offenses could be harmonised. Both laws should contain a penalty for not counting or not reporting election results honestly and other such 'crimes against the electorate'. In general, the laws should ensure that all penalties are proportionate to the offense committed.

In the longer term:

38. After the presidential election has been completed, consideration could be given to merging the competencies of the HEC and PEC into the mandate of a single electoral commission, which is formed as a standing (permanent) body.

39. It would be beneficial if the legal framework is amended to entitle candidates to file legal appeals against PEC decisions. The legislation should provide for the possibility to challenge the validity of the electoral process and the final results or, at a minimum, by entitling candidates to request the PEC to review its own decisions. Currently this requires a constitutional amendment.

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<http://www.democracy-reporting.org>

Or contact:

info@democracy-reporting.org