



The Egyptian Organization for Human Rights

Assessment of the Electoral Framework

Final Report

The Arab Republic of Egypt

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Executive Summary

The electoral framework contains a number of serious flaws, which contradict Egypt's international legal obligations. Moreover, the political environment is not conducive to genuinely democratic elections. President Mubarak and the National Democratic Party (NDP) have been ruling the country under a state of emergency since 1981. Of the main state institutions, only the judiciary enjoys a degree of independence. Electoral competition takes place in highly unequal conditions between the NDP, various weak legal opposition parties, and the Muslim Brotherhood, which is not registered as a party, but has the largest group of opposition members of Parliament. Possibly as a consequence, voter turnout is systematically very low.

In some respects the 2007 Constitutional amendments strengthened democratic institutions, e.g. by increasing the powers of the People's Assembly (lower house of Parliament). However, overall, the constitutional changes have strengthened President Mubarak.

Following the constitutional amendments, secondary legislation has to be changed. This report includes recommendations on how this process could be used to bring secondary legislation more in line with international standards.

1. International Obligations

In 1982 Egypt ratified the International Covenant for Civil and Political Rights, a legally-binding instrument, which guarantees citizens inter alia the "right to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors" (Article 25). There shall be no unreasonable restrictions to this right. The body officially charged with monitoring the implementation of the ICCPR, the UN Human Rights Committee, has issued an authoritative interpretation art.25 (General Comment of art. 25 of 1996). This report shows that numerous aspects of the electoral framework of Egypt are not in line with Article 25 and General Comment 25. In addition to analysing the legal framework, this report also explores the political environment in which elections in Egypt take place, to ensure that the analysis of the electoral framework is properly contextualised.

2. An Unfavourable Legal and Political Context

Egypt's legal framework and political context are not favourable to the holding of genuinely democratic elections. The current legislation regulating the state of emergency, which has been in force since 1981, gives wide powers to the executive branch and undermines rights guaranteed by the Constitution. The existence of the state of emergency is not conducive to holding democratic elections; indeed in many countries the two are considered as incompatible. President Mubarak has announced his intention to revoke the state of emergency, but many analysts fear that the "anti-terror" legislation, provided for by the 2007 constitutional amendments, may lead to a perpetuation of the state of emergency in all but name.

The enjoyment of political rights (freedom of assembly, association, expression) is subject to significant restrictions, although a degree of dissent is tolerated and some political pluralism is permitted. In recent years, independent media has grown and has broken some political taboos, including criticising the President. However, press freedom remains vulnerable and depends on whether restrictive legislation is applied or not.

In early 2005 there was optimism that promised reforms would lead to a more pluralistic political milieu. The fact that alternative presidential candidates could present themselves and criticise the incumbent, marked some progress. However, when during the Parliamentary elections, the NDP's exclusive grip on power seemed challenged by significant gains of the 'Muslim Brotherhood' in the first round of voting, the further two voting rounds were marred by a state-orchestrated security crackdown which involved physically preventing citizens from voting.

3. 2005: Gains for the Muslim Brotherhood, but Voter Apathy the Real Winner

The 'legal opposition' parties, suffering from decades of repression, appear weak and in the 2005 elections gained only 14 of the 444 seats in the People's Assembly. As such it is unable to hold the ruling party to account. The Muslim Brotherhood (MB) has emerged as the most important political opposition force. Its candidates, running as 'independent candidates', won 88 seats in the 150 constituencies it contested. The MB has never applied to register as a party. Significant flaws in the party registration system make it easier for the MB to justify not attempting to form a party.

While the gains of the MB received much attention, it was less noticed that most voters did not turn up at all; official turn-out was a mere 25%. The official turnout for the 2007 referendum was 27.1 %. It appears that most Egyptians have lost interest in electoral politics where the results seem a foregone conclusion and where Parliament is largely irrelevant. A survey carried out by the UN showed that there is little trust in the representational mechanisms of the political system.¹

4. A Dominant President, a Weak Parliament and a Quasi-Independent Judiciary

Even though the Constitution establishes a mixed presidential-parliamentary-cabinet system, the President is the dominant political authority. The Parliament (the People's Assembly and the consultative Shura Council), in which the ruling NDP has held a two-thirds majority since the inception of multi-party politics, is a weak institution which rarely acts on its own initiative and is widely perceived as a rubber-stamp body. According to some, the arrival in 2005 of the MB as an opposition force in Parliament enhanced the level of political debate.

Some branches of the judiciary are able to exert a degree of independence from the executive power. These are among the most trusted State institutions and enjoy the confidence of a wide range of political actors. The Supreme Constitutional Court has in the past made a number of significant rulings on electoral matters, including declaring as unconstitutional two election systems. However, at times the judiciary has had an abrasive relationship with the other State powers and the Judges' Club, a semi-official professional association, has come into conflict with the Ministry of Justice and the Supreme Judicial Council, on questions concerning the independence of the judiciary. In 2006, numerous demonstrations were held in support of the independence of the judiciary, some of which were violently suppressed by police, who were present in force.

5. Political Competition Controlled by the NDP

Egyptian legislation has been used to curtail the free political association, which according to the International Covenant on Civil and Political Rights (ICCPR), should be restricted only on specific and narrow grounds.²

The Law on Political Party Systems (LPPS) prohibits the founding of parties on a "religious basis", and requires that parties must contribute to "democratic socialism", and be an "addition to political life". While the 2007 constitutional amendments may result in some of these provisions being removed from the law, the ban of parties based on a religious or "religious-referential" basis was inserted into the Constitution, where previously it existed only in secondary legislation. The text of the legislation currently in force fails to define clearly what types of instances of religious reference are permissible and which not (e.g. hate speech, discrimination on the basis of religion, etc.). A blanket ban on 'religious parties' (how so ever defined) appears to violate the freedom of association and expression. The NDP makes wide-ranging references to Islam without sanction.³

On the basis of the LPPS, the emergence of new political parties has been severely restricted by the Political Parties Committee (PPC), a body dominated by the ruling party. It has taken a subjective approach in routinely rejecting applications to form parties and from time to time has even suspended some of those that did manage to get registered.

In its concluding observations on the last periodic report submitted by Egypt, the UN Human Rights Committee noted "the de jure and de facto impediments to the establishment and functioning of political parties, primarily created by the committee set up under the Political Parties Act No. 40 of 1977, without full guarantees of independence (articles 22 and 25 of the Covenant). The State party should permit the democratic expression of political pluralism and thus abide by its obligations under the Covenant, taking into account the Committee's General Comment No. 25."⁴

6. A Flawed Electoral System

Following the 2005 amendment of the Constitution, the requirements for non-party candidates to contest the Presidential election are so onerous as to de facto prevent them from standing.⁵ Thus, while

1 UN Economic Commission for Africa (UNECA) Governance Profile of Egypt (2004)

2 According to article 22 of the International Covenant on Civil and Political Rights there should be no restrictions "other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

3 See e.g. its website: <http://www.ndp.org.eg/en/AboutUs/1.aspx>

4 U.N. Human Rights Committee, concluding observations: Egypt. 28/11/2002. CCPR/CO/76/EGY

5 Independent candidates are required to receive the support of not less than 250 elected deputies from the People's Assembly (not less than 65 deputies), the Shura Council (not less than 25 deputies) and local councils (not less than ten members from each municipality in

the Presidential election system creates the impression of 'pluralistic competition', in reality there is only a limited potential for genuinely competitive presidential elections as possibly significant political groups e.g. the MB and non-registered parties are, in effect, excluded from fielding an independent candidate.

According to the 2007 Constitutional amendments, parties can nominate a candidate if they have secured 3% of the seats in both the People's Assembly and the Shura Council. However, as a transitional measure, for a ten year period from 1 May 2007, any party with an elected representative in either the People's Assembly or the Shura Council may nominate a candidate in a presidential election held before 1 May 2017⁶. While this change may enhance the prospect of a presidential election contested by more party candidates, the restrictive requirements for non-party candidates (independents) were left largely unchanged. The provision also effectively prevents independent candidates from running on a party ticket. The legal provisions are problematic as they create highly unequal eligibility criteria for candidates nominated by a parliamentary party compared to non-party candidates. This becomes even more troubling when one considers that a number of political groups have been denied registration by the PPC and thus cannot elect deputies to parliament.

The People's Assembly is composed of 454 deputies, of which 444 have been elected in 222 two-member constituencies, while ten were appointed by the President, though the election system for future parliamentary elections could well be changed to a 'mixed system' as a result of the recent constitutional changes. According to the Constitution, at least half of the elected members of both houses of parliament must be either 'workers' or 'farmers'. This 'engineering' of parliament's composition has caused the election system to become overly complicated. Significantly, legislation provides that where the first placed candidate (in a two-mandate constituency) is not a worker or farmer (i.e. is considered as being in the category of 'other') and where the second placed candidate is also from the 'other' category he/she will not be awarded the mandate. Instead a run-off election will be held between the two highest-scoring 'worker' or 'farmer' candidates. This does not respect the electoral choices made by voters. The provision remains unaltered by the 2007 reform.

Other problematic provisions include:

- To run for parliament, candidates have to have attained, or in some cases not have attained, certain educational levels. This conflicts with international standards.⁷
- The number of electors registered in constituencies for parliamentary elections, which all elect two seats, varies greatly. This has created significant inequalities in the weight of electors' votes.
- There is often no meaningful remedy against electoral violations. The Constitution proscribes appealing a decision of the Presidential Election Committee – even its decision on election results. While it is possible to file appeals against the validity of a parliamentary election contest, many appeals are actually decided after the election has taken place. Appeals against the election results are investigated by the Court of Cassation but are, in the final instance, decided by Parliament, a body which clearly has an interest in the matter on which it is deciding. Indeed Parliament has not – at the time this report was issued – responded to the Court of Cassation's request to take action concerning its investigations on the validity of results in 90 constituencies (40% of all constituencies).
- As many as one third of adult citizens are, in effect, disenfranchised because they are not registered to vote. The National Council for Human Rights (NCHR) noted a range of other serious problems with the voter list, such as voter registration at police stations by unqualified staff.⁸

7. The Election Administration: Only Judges are Trusted

Prior to the 2007 constitutional amendments, elections to the People's Assembly (PA) were "conducted under the supervision of members of a judiciary organ" (Article 88). In 2000, in a landmark ruling, the Supreme Constitutional Court (SCC) interpreted this provision to mean that members of a judicial organ must be present at every polling station to supervise polling and counting. This is not the case in Presidential elections as the Constitution only foresees judicial supervision for the 'General Committees', of which there were only 329 at the last election).⁹

at least 14 governorates)

6 NB candidates for presidential elections can only be nominated by political parties which have been registered at least five years before the nomination date and that candidates must be members of the party's higher board.

7 The Law on the People's Assembly (Article 2) provides that to be eligible to be considered as a worker for the purposes of candidature, the person may not hold 'a high academic qualification'. Article 5 provides that candidates must be holders of at least an elementary education certificate or its equivalent and for those born before 1970, reading and writing shall be sufficient. The UN HRC General Comment 25 stipulates that: "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education".

8 National Council for Human Rights, Annual Report 2005/2006.

9 General Committees oversee subordinate voting centres and aggregate results from polling stations

Although judicial supervision of the process increased public confidence and helped to lessen election fraud, to accommodate their involvement it was considered necessary to hold the elections in three phases (six election days) as there are not enough judicial persons available to conduct the election on a single day. The opposition had a strong wish to retain judicial supervision of the PA elections to maintain the perceived reduction in election fraud since 2000, when the judiciary first directly supervised polling and counting.

In 2007, Article 88 was amended such that judges supervise the election as members of 'General Committees' (i.e. the committees between the High Election Commission and the Polling Station Committees) rather than in each polling station. While it is left to secondary legislation to provide detail on what this supervision entails, it seems that the legal ground for curtailing the judiciary's role in supervising the elections has been prepared.

To date, the Ministry of Interior has played a key role in organising elections. It enjoys little trust among the political opposition. While in some established democracies Ministries of the Interior organise elections, they are generally considered as a politically neutral organ of the State. The involvement of the Ministry of Interior in an election does not work well if there is a lack of confidence in its political neutrality. In Egypt, the reputation of the Ministry has been seriously damaged by reports that security forces prevented citizens from casting votes during the 2005 elections.

In 2005, two separate election commissions were created one for the presidential elections (PEC) the other for the parliamentary elections (High Election Commission, HEC). Ostensibly the commissions' role was to add a level of independent oversight to the process. Given that part of the membership of the election commissions were directly or indirectly appointed by the NDP, the government and the parliament (one half and two thirds respectively), there was little trust by the opposition in their independence. The law provides that their decisions cannot be challenged before the court, which seriously limits access to an effective legal remedy. Because the commissions were established only shortly before the 2005 elections, a priori, their ability to control all aspects of the elections was limited, and because they are not 'permanent bodies' with a full-time professional staff, they may have insufficient capacity to direct future processes effectively.

The 2007 constitutional amendments included the establishment of a new High Commission (HC) for parliamentary elections, like the PEC, as a 'constitutional body'. According to the revised article 88 of the Constitution, the HC is an independent and impartial body. Its members shall include current and former members of judiciary bodies. The PEC and HC establish 'General Committees' as subordinate bodies at regional/district level. General Committees must be composed exclusively of members of the judicial bodies and their role is to supervise the work of polling station committees. Given that the details of the commissions, such as formation, composition and mandate, are to be set out in new legislation, it remains to be seen whether these commissions will be able to function as impartial administrators and create public confidence in electoral processes.

8. Priorities for Reform

As outlined above, there are a number of areas where the current legal provisions are at odds with international standards. Some of these are constitutional provisions (e.g. those contained in Articles 5, 76, 87 and 93) and hence there appears to be little scope to change them in the near future. In other areas, improvements to the electoral framework can be made through amending secondary legislation, when implementing the 2007 amendments of the Constitution:

- **Political Party Registration:** The legislation should remove unreasonable restrictions to the establishment and activities of political parties. Any restrictions placed on the registration of parties should be reasonable and specific and not conflict with the right to free political association. The process should be administered by a truly impartial and independent body, rather than one dominated by the NDP.
- **Equality to stand for elections:** There should be no educational requirements for persons to stand for elections and independent candidates should have the same rights as party candidates to stand for election under similar nomination conditions.
- **Right to Vote:** Legislation should establish a voter registration framework which ensures that a higher proportion of eligible citizens are registered to vote.
- **Equality of the vote:** First, the provision that half the assembly should be workers and farmers should be abolished; as it greatly complicates the system and discriminates against persons not belonging to these categories. Second, currently electoral constituencies, each returning two MPs, differ greatly in

the size of their voting populations. If the system of election constituencies is retained, the number of electors in each constituency should be 'equalised' to the largest extent possible to ensure that the vote of each voter is broadly 'equal'.

- **Effective Remedy:** There should be an effective remedy, whereby stakeholders can challenge alleged violations at all stages of the electoral process, including the actual election results.

A key problem of Egypt's electoral framework is the absence of confidence among stakeholders that elections will be administered impartially. The involvement of the judiciary as election supervisors in the 2000 and 2005 elections, lessened election fraud and, due to the general public trust in the judiciary, enhanced public confidence. Hitherto any attempt to lessen their involvement in election processes has been strongly resisted by opposition parties. If the judiciary's role in parliamentary elections is curtailed following the amendment of article 88, it becomes especially important to increase the level of transparency and legal certainty in the administration of future elections. Indeed, the overarching objective of the PEC and the new HC should be to seek gaining the confidence of parties and voters in its independence, impartiality and professionalism. To help achieve this, it may be useful to consider the following:

- To improve the preparation and regulation of future elections, the commissions should operate on a permanent basis and have the authority to direct the electoral activity of the Ministry of the Interior.
- To enhance transparency, the opinions of key stakeholders – especially political parties and representatives of the presidential candidates – should be taken into consideration in the commissions' decision-making process. It may be beneficial to grant stakeholders consultative status at the commissions' working sessions and ensure that parties' and candidates' authorised representatives have access to all relevant documentation of the commission.
- As the HC will be composed of serving or retired senior judges, among others, it may be prudent to relieve them of their judicial caseload for the duration of the tenure as commissioners, while providing them with the necessary legal guarantees regarding their current and future status. In this way they would become election administrators rather than 'on loan' judges.
- To increase confidence in the accuracy of election results and to deter their manipulation, there should be greater transparency during the vote count, the aggregation of polling results and the announcement and publication of election results. Representatives of parties and candidates should be given official copies of all result forms which are produced in the process from the polling station upwards. Detailed results from all polling stations and subsequent aggregation of results at constituency and national level should be published on the internet as soon as they are available and certainly before the expiry of the appeals period.
- To enhance transparency and public confidence in election processes, non-partisan election observation, which has become a wide-spread practice around the world, should be clearly regulated in law.

A more comprehensive set of recommendations is presented at the end of this report.

9. The 2007 Amendments to the Constitution

At the initiative of President Mubarak¹⁰, wide-ranging constitutional amendments were approved by parliament on 19 March and by voters on 26 March 2007 in a referendum.¹¹ Only one week was set aside for the public to consider the text of the amendment after it was approved in a final reading, not allowing for any serious campaigns. According to official results 27% of voters turned out and 76% voted in favour of the proposed amendments.

Beyond the constitutional amendments discussed above, the main changes include:

- Providing that legislation may introduce a mixed election system combining majoritarian and proportional representation elements in a ratio to be defined in law for both the People's Assembly and the Shura Council. Currently MPs are elected in 222 two-mandate constituencies. As the MB and a number of other political groups are not registered as political parties, the choice of election system could have a significant bearing on their electoral fortunes.

¹⁰ See the letter sent by President Mubarak to the Parliament dated 26 December 2006:: <http://constitution.sis.gov.eg/en/11d.htm>

¹¹ For the full text see <http://constitution.sis.gov.eg/en/ecard03.pdf>

- Allowing the legislator to introduce “a minimum limit” (quota) for women’s participation in both parliamentary chambers.
- Stipulating that parliamentary elections take place on a single day. In 2005, the elections were held in three phases with six election days. The holding of the election on a single election day may lessen problems associated with phased elections, but probably resulting in a reduced role for the judiciary in supervising elections, as there are not enough judges to supervise the current number of polling stations.
- Possibly removing the right of citizens to nominate candidates. The amended text provides that “the law shall regulate the right of candidacy to the People’s Assembly and the Shura Council according to the electoral system it specifies”. Depending on the objectives of the legislator, the removal of the nomination right from the constitution could leave only parties with the right to nominate parliamentary candidates in future parliamentary elections.
- The People’s Assembly is granted enhanced authority in approving the State Budget and holding government to account through passing a motion of no-confidence.
- The role of the Shura Council has been strengthened by requiring that it ‘approve’ a number of legislations complimentary to the Constitution. Previously it was required only that the Shura Council be consulted on these laws. This is significant not least because the laws in question include all election legislation and other issues of fundamental importance. The President appoints 1/3 of the members of the Shura Council. An enhanced role for the Shura Council thus weakens democratic accountability by directly elected representatives and indirectly enhances the President’s influence in the passage of legislation.
- The People’s Assembly is further weakened by dispensing with the need for a referendum approving a presidential decision to dissolve parliament.

The constitution was amended to provide a constitutional basis for anti-terror legislation. Many human rights group fear that this will perpetuate the 26-years old state of emergency in all but name.

The Next Elections

Mid-term Shura Council elections are due in Spring 2007 and then in 2010 (depending if the amendment to the Constitution affects the holding of Shura Council elections). In 2006, local elections were postponed. They are now due to be held in 2008, potentially with a new election system. The next People’s Assembly elections are due in 2010, before the next scheduled Presidential elections (2011).

Introduction and Acknowledgements

This report was prepared by Paul O'Grady (United Kingdom) and Dr. Nils Meyer-Ohlendorf, Michael Meyer-Resende (Germany) of Democracy Reporting International (DRI) and Diaa Rashwan for the Egyptian Organisation for Human Rights (EOHR), following a mission to Egypt from 18 November to 8 December 2006. On the basis of a desk study, the report analyses the most relevant aspects of the constitutional amendments of March 2007.

The report takes into account the results of a workshop on electoral reform that was organised by EOHR and DRI in Cairo on 4 December 2006. Both organisations express their gratitude to all interlocutors who they have met on the mission and the participants of the workshop.

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Note on Translations: When reference is made in this report to legislation, in general, the laws were read in English translation. However, in some cases the translations appeared imprecise. DRI has taken every effort to make sure that it consulted the most up to date version of the law and the best available translation. However, it cannot guarantee that interpretive errors did not arise as a result of translation errors.

Constitutional and Political Context

1. The Constitution

1.1. Constitutional Framework

The Constitution dates from 11 September 1971, when the Arab Republic of Egypt was a one-party State. It has been amended four times (1977, 1980 2005 and 2007). Amendments adopted in 1977 and 1980 instituted a multi-party system but at its core the Constitution retains a sense of 'one-partyism'. Other amendments introduced new orientations, namely that Egypt is a Socialist Democratic State and the principles of Islamic Sharia'h are the major source of legislation. Over 30 articles of the Constitution were amended in March 2007.

1.2. The Executive's Powers

Although the Constitution establishes a mixed presidential-parliamentary-cabinet system, the Presidency is the dominant political institution. It is widely assumed that the President's de facto power is even greater than that accorded to him by the Constitution.

His extensive authority is currently further enhanced by extraordinary powers established by the legislation regulating the state of emergency which has been in force since 1967, except for an 18 months period between 1980 and 1981. The emergency law is sometimes described as the "quasi-constitution of the country."¹² The 2007 constitutional amendments intend to replace this legislation by an anti-terrorism law. At the time of writing, this law has not been adopted.

Following an amendment to the Constitution in 1980, the President may be elected for an unlimited number of six-year terms.¹³ In 2005, President Mubarak was re-elected for a fifth term. According to official results he received some 83% of the vote in an election in which some 23% of registered voters participated.

The President's powers include: proposing draft laws, promulgating laws or objecting to them; appointing and dismissing Vice Presidents and setting their jurisdiction; appointing and dismissing Ministers; convening and presiding cabinet meetings; dissolving the Shura Council (the upper house); issuing decrees, regulations and 'control regulations'; calling referenda, and presiding the Police authority. As a result of the 2007 constitutional changes, the President's powers were further increased by allowing him to dissolve parliament 'where necessary' without the need for the holding of a referendum approving his decision. This appears at odds with his stated objective of strengthening the Parliament.

According to the Constitution, the Government is the supreme executive and administrative organ of State. The Cabinet's functions include: laying down the general policy of State (in collaboration with the President); drawing up draft laws and decrees, and drawing up the State budget.

1.3. The Parliament's Powers

Egypt has a bicameral parliament comprising the People's Assembly and the Shura Council. According to the Constitution, at least half the members of both assemblies must be workers or farmers (article 87). The Assembly has a five-year term and is composed of 444 elected members and ten members appointed by the President. While it has legislative authority it is not considered a strong body as most laws are proposed by the President with the Parliament simply discussing the draft texts. In theory, the Assembly can force through legislation in cases where the President has blocked a law. However, it is unlikely that this will occur in the current parliament, as the NDP has a two-thirds majority.

The Constitution charges the Assembly with exercising control over the work of the executive authority.¹⁴ However its powers to exercise this responsibility are quite limited.¹⁵ Nevertheless, as a result of the

12 Constitutional Reform: Between acceleration and deferment, EOHR, <http://www.eohr.org/report/2005/re0313.htm>

13 Until its amendment in 1980, the Constitution provided that President's could be elected for only two-terms.

14 The Assembly has the authority to approve presidential decisions on the state of emergency, and a state of war, authorize the issues of Presidential decrees issued in specific circumstances, adopting legislation approving legislation that the President has objected to so long as two-thirds of MPs support its adoption, and impeach the President in specific circumstances.

15 MPs control the work of the government through: addressing questions and interpellations to Ministers; asking for a discussion of government policy on a specific matter, expressing opinions on public policy matters to the Prime Minister of a Minister, establishing committees of inquiry, approving the general plan for economic and social development; approving the State's financial arrangements

2007 constitutional changes, the People's Assembly now has the right to modify the budget and force the resignation of the government, without the need for a referendum (as was previously the case).¹⁶ These changes strengthen the role of parliament and enhance its ability to hold the Government to account.

Following the 2005 elections, the Assembly has its largest ever number of opposition MPs (108). According to some interlocutors the increase in the number of non-NDP opposition MPs has made parliamentary debate more lively and caused NDP members to attend more sessions and work harder on co-ordinating their positions.

To date the Shura Council had mainly consultative functions. The 2007 reform have changed this and gave the Council legislative competences. Certain laws and treaties will require the Council's approval. The Shura Council has a six year term and is composed of 264 members of which 176 are directly elected and 88 are appointed by the President.

1.4. Citizens' Participation in Elections

A striking factor in recent elections and referenda is the very low levels of voter turnout. In the 2000 Assembly elections official turnout was just 20%¹⁷ and only 25% in 2005. According to official results only 27 % of voters participated in the 2007 referendum on constitutional reform. The results of a household survey conducted by the UN Economic Commission for Africa (UNECA) show that the public has little trust in the representational mechanisms of the political system.¹⁸ The report notes that "the mainstream political culture in Egypt still considers public affairs to be governmental affairs, under the sole authority of central administrators who decide without being accountable to public demands. Moreover, representative institutions are unable to mobilize public awareness and gain public trust. Hence, 97% of survey respondents did not attend political party meetings or rallies, whilst 94% of them do not discuss community problems with their local representatives."

Illiteracy remains a particular problem and is an obstacle to the democratic development of Egypt, although considerable progress has been made in this field since the 1950s. While estimates of the literacy / illiteracy rate vary, a World Bank report estimates that in 2002 general adult illiteracy was approximately 43%, while for women the figure was 54%.¹⁹ Poverty may also play an important role in levels of participation in elections, although in many poor countries voter participation levels are genuinely much higher.

1.5. The Judiciary

The judicial system is based on Islamic law and civil codes based on the Napoleonic tradition. The Constitution establishes Egypt's highest court, the Supreme Constitutional Court (SCC)²⁰, a 'State Council' - an independent judicial organization concerned with deciding on administrative disputes and disciplinary cases, and until recently a Supreme Judicial Council (SJC), which 'supervises' the affairs of the judicial organizations. The SJC was abolished as part of the 2007 constitutional reform process and replaced by a council charged with the "common affairs" of the judicial bodies.

The SCC has the sole authority to exercise judicial control regarding the constitutionality of laws and is also responsible for resolving jurisdictional conflicts, settling disputes in cases where different lower courts have made conflicting judgments and to interpret the laws issued by the Legislative Authority and the decrees issued by the Head of the State in case of any divergence as regards their implementation.²¹ The Court consists of seven judges who are appointed by the President following consultation with the SJC. Individuals have no standing before the Court. The Court has been active in exercising its powers - up to 2002 the Court ruled that 53 of the Constitution's 211 articles had been contravened by various laws.²²

16 Before, the Constitution stipulated that, if the Assembly 'holds the Prime Minister to account' and the President objects, the President may subject the issue to a referendum. If the results of the referendum back the Government, the Assembly has to be dissolved.

17 IRIN News, 02/09/05

18 See UNECA, op cit. The nation-wide sample surveys of households were carried out in close co-operation with the National Statistical Office in each project country.

19 Source: <http://www.worldbank.org/data/countrydata/countrydata.html>.

20 The SCC came into being in 1979, when it succeeded the Supreme Court (founded in 1969), which many consider to have been under undue influence of the executive.

21 Its competences are set out in Law (No. 48/1979). Source: Egypt, State Information Service. <http://www.sis.gov.eg/En/Politics/Judiciary/CCourt/041002000000000001.htm>

22 Egypt: Attacks on Justice, eleventh edition, <http://www.icj.org/IMG/pdf/egypt.pdf>

Significant decisions in the field of elections taken by the Court include:

- The 1986 ruling that the election system used in the 1984 elections was unconstitutional, necessitating the dissolution of Parliament and the holding of new elections under a new election system.²³
- The 2000 ruling that the 1990 and 1995 elections were unconstitutional as article 24 of Law 73/1956 Regulating the Exercise of Political Rights (LEPR) did not provide for judicial supervision of elections. Instead polling was carried out only by public sector employees.²⁴

The court system is based on courts of general jurisdiction, administrative courts, and exceptional courts. Administrative courts have jurisdiction over cases involving the government and may investigate administrative crimes committed by officials or civil servants. Courts with relevance in electoral processes include administrative Courts at district level and the Court of Cassation. Exceptional courts include State Security Courts where cases involving national security may be tried. In these courts the accused do not receive all protections provided by the Constitution. According to the International Commission of Jurists "the elaborate exceptional court system continues to undermine the jurisdiction of ordinary courts, particularly in sensitive cases."²⁵

The Constitution provides for the independence of judges and no authority may intervene in judiciary cases or in the affairs of justice (Art 166). Parts of the judiciary indeed enjoy a significant level of independence in Egypt and have frequently held other branches of power to account. The relationship between the judiciary and the executive is tense as far as politically sensitive matters are concerned. A report by IFES notes "Even though the Egyptian Constitution guarantees the independence and immunity of the judiciary, these guarantees have been violated over many years in a number of ways."²⁶

In general, the ordinary judiciary enjoys a high level of public and political confidence. At times it has had an abrasive relationship with the other State powers. The Judges' Club, a semi-official professional association for members of the judiciary has come into conflict with the Ministry of Justice and the SJC, on questions concerning the independence of the judiciary, the judiciary's role in electoral processes, and the Law on Judicial Authority.²⁷ During April and May 2006, numerous demonstrations were held in support of the independence of the judiciary, some of which were violently suppressed by police, who were present in force.

On 29 June 2006, the Assembly adopted a new Judicial Authority Law [Law 142/2006] despite considerable resistance from the opposition and pro-reform judges. While the Minister of Justice commented that the passage of the law was "a major accomplishment for judicial independence" the Secretary-General of the Cairo Judges Club stated that "The new law has both good and bad points (...). Nevertheless, the justice ministry will retain considerable control over the judiciary." Nominally, the legislation frees the Attorney General, who heads the public prosecution, from control of the ministry, and guarantees the judiciary's right to budgetary independence. However, the Minister of Finance still has the right to veto the judicial budget and the Minister of Justice controls judges' promotions and demotions.²⁸

1.6. Territorial Administration and Local Government Bodies

Egypt is divided into administrative units comprising Governorates, cities and villages. There are 26 Governorates, which are headed by a Governor and an Executive Council, appointed by the President. Governors have significant powers. At the next level, there are 126 districts. There are Councils at both the governorate and district levels. At the local level there are 199 city municipalities and 4,496 village municipalities with local councils. Councils have limited authority and are subject to oversight by appointed Executive Councils. Local councils are directly elected. Half of councils' members must be farmers and workers. While, the reformed Constitution guarantees decentralisation, Egypt remains at present a highly centralized state.

23 In 1990, fearing that the 1986 Election Law (188/86) would also be declared unconstitutional, the parliament voted to return to the two-candidate majoritarian system and terminate early the mandate of parliament.

24 The case was raised in 1990 by two candidates in the elections of that year.

25 International Commission of Jurists, Attacks on Justice, Egypt 2002, http://www.icj.org/news.php3?id_article=2658&lang=en

26 IFES, State of the Judiciary Report: Egypt, 2003.

27 Some of the most vocal critics of electoral fraud were senior judges at the Court of Cassation. In February 2006, the SJC stripped four judges of their judicial immunity, to allow State Security prosecutors to question them. In April, the Minister of Justice ordered two of the judges to appear before a disciplinary tribunal on charges of damaging the reputation of the judiciary after criticizing electoral irregularities. A disciplinary tribunal in May exonerated one of the judges and issued a written reprimand to the other.

28 See: Inter Press Service News Agency Egypt: Parliament Comes Down on Judiciary (29 June 2006)

Local elections were last held in April 2002. The ruling National Democratic Party won 97% of seats, taking 52% of all constituencies unopposed.²⁹ In February 2006, President Mubarak postponed the local elections, due in April, for two years. The President's spokesperson commented that the postponement was necessary because of the ongoing programme to decentralise authority. Among the opposition the move was seen as an effort to preserve the NDP monopoly on power and to avoid the election of independent candidates from the Muslim Brotherhood at local level and thus limit the possibility of their fielding an independent candidate in presidential elections.

2 Constitutional Reform 2007

2.1. The President's Reform Proposals and the Referendum of 26 March 2007

In November 2006, President Mubarak called for the adoption of a package of Constitutional reforms,³⁰ in which he commented specifically on article 76 – which covers the presidential election system, eligibility to contest the election and the formation of a Presidential Election Commission – be amended to (I) activate political life, (II) strengthen political pluralism and help create strong parties (III) recognise the importance of parties in political life (IV) enhance parties' participation in presidential elections.

A report of the Carnegie Endowment for International Peace notes: "Changes in law are important, as Egypt's political system and culture are legalistic in nature. Even authoritarian rulers in Egypt have tended to revise laws or find legalistic ways to circumvent them (...) rather than to ignore or jettison them altogether. (...). The ruling party has shown itself to be quite capable of authoring and passing new laws that look reasonably democratic on the surface but that actually stack the deck heavily in the NDP's favor."³¹ The opposition were deeply disappointed by the content of the 2005 political reform package and the authorities' approach to the 2005 Assembly elections. Many opposition figures expressed their scepticism that the authorities have the political will to institute meaningful reforms.

In December 2006, President Mubarak wrote to Parliament with a 15-point proposal for amending the Constitution.³² On 19 March, Parliament approved amendments to 34 articles of the Constitution. On 26 March, only one week later, a referendum was held seeking the public's approval for the changes. According to the official results, turnout was 27.1% and 75.9 % voted in favour of the changes. The amendments entered into force on 27 March 2007, the day when the results were announced (article 189 of the Constitution).

2.2. Altering the Balance of Powers: the Executive and Parliament

The 2007 constitutional amendments have altered the balance of powers between the branches of government and the Parliament as follows:

- Granting the People's Assembly the right to modify the draft budget (article 115).
- Strengthening the authority of the People's Assembly in holding the Government to account (articles 127 and 133).
- Strengthening the role of the Government by requiring its approval for certain Presidential actions and its consultation on other matters (article 138).
- Increasing to a certain extent the role of the Prime Minister towards the President in appointing and relieving members of cabinet.³³ (Article 141).
- Strengthening the Shura Council by requiring that it 'approve' a number of legislations complementary to the Constitution (article 194/195). Previously it was required only that the Shura Council be consulted on these laws. The increase in power implies a commensurate loss of power to the People's Assembly.

29 Source: UNDP Project on Governance in the Arab Region (POGAR)

30 Speech to both houses of Parliament, November 2006, letter by President Mubarak to the Parliament requesting amendments to the constitution, December 2006.

31 Carnegie Endowment for International Peace, Middle East Series No 66, op cit.

32 Letter by President Mubarak to the Parliament, 26 December 2006, see: <http://constitution.sis.gov.eg/en/11d.htm>

33 For more details on the balance of power, refer to 1.2 and 1.3.

- The People's Assembly is further weakened by dispensing with the need for a referendum approving a presidential decision to dissolve parliament. (article 136)

While the amendments increase the powers of the People's Assembly vis-à-vis the Government, the ability of the President to dissolve the Assembly without the need for a referendum and the increase in the powers of the Shura Council are potentially of great significance. The laws that will require the Council's approval include the election laws, the emergency law, the anti-terrorism law, the law on the judiciary and, the law on political parties. It is noteworthy that the President appoints 1/3 of the members of the Shura Council. Thus, arguably it is the President who gained the most from the constitutional changes.

2.3. Other Amendments

Many of the amendments deal with electoral matters and are discussed in the appropriate chapters, later in this report.

Other amendments include: dispense with socialism as the sole economic-political model, limit the circumstances in which a state of emergency can be declared, provide for an anti-terrorism law, strengthen local government executive bodies, provide that the Prime Minister may assume presidential duties in specific cases, clarify when the term of a newly elected President begins, dissolve the office of the Socialist Prosecutor, and emphasise the independence of every judicial agency in the administration of its own affairs.

3. Political Parties and Movements

From 1957 to 1976, Egypt was a one party state. Beginning in the mid-1970's President Sadat began cautiously opening the door to multi-party politics when the ruling party, the Arab Socialist Union formed three wings, representing the centre (the Egyptian Arab Socialist wing), the right (the Socialist-Liberal), and the left (the National-Progressive wing). After the 1976 elections the ASU was disbanded and the wings became political parties: the centrist Arab Socialist Egypt (Misr) Party (ASEP); the Progressive National Unionist Party (Tagammu) and the Socialist Liberal Party (Ahrar). However, even after the introduction of 'multipartyism', parties have to operate within narrowly defined parameters. Under the 1977 Law on Political Party Systems (LPSS), all parties must contribute to progress "on the basis of (...) democratic socialism and maintenance of the workers' and farmers' gains (...)" In view of the recent changes to the Constitution, it is possible that when the legislator amends the LPSS, it will dispense with this requirement.

In 1978, the New Wafd Party³⁴ (Wafd), the Socialist Labour Party (SLP), and the National Democratic Party (NDP) were registered. Immediately after the creation of the NDP, 250 of the 280 MPs, originally voted in on the centrist ticket, joined the party. The NDP has retained a dominant position in Egyptian political life ever since. Only two of the sixteen parties founded and registered since President Mubarak came to power in 1981 have been even modestly successful in attracting votes: the Arab Democratic Nasserist Party³⁵ (1992) and al Ghad (Tomorrow)³⁶ Party (2004), the latter after three applications for registration had been rejected by the Political Parties Committee (PPC).

3.1. The Major Political Parties and Movements

The National Democratic Party (NDP)

Since its founding, the NDP has dominated the Egyptian political party scene to the extent that many regard the NDP and State structures as indistinguishable. The party has always enjoyed a two-thirds parliamentary majority, meaning that it has always been able to pass laws as the party and the executive so choose. However, some analysts have stated that while dominant, the NDP is not necessarily a 'strong' party. The party does not have a solid policy platform or strong local base. Analysts believe that as the party of power, people are drawn to the NDP for 'the wrong reasons' e.g. patronage, while public employees are more or less obliged to support it if called upon to do so, notably during elections.

³⁴ The original Wafd party had been the dominant political party from independence to the 1952 revolution. The party was registered in 1978, but shortly afterwards was suspended by Presidential decree and did not fully re-emerge until 1983, following a favourable court judgement

³⁵ The ADNP won one seat in the 1995 Assembly elections and three seats in the 2000 Assembly elections.

³⁶ Al Ghad won one seat in 2005 Assembly elections and its Presidential candidate Ayman Nour won 7.3% of the vote in the 2005 presidential election.

Significantly, the party has faced one of its biggest challenges from among its own ranks. In both the 2000 and 2005 elections a large number of candidates who were NDP members – but failed to get selected on the party ticket – stood as ‘independent’ candidates. In both elections, these independent candidates performed extremely well, and a large number of the NDP’s official candidates were defeated by ‘NDP independents’. However, once elected the large majority of NDP ‘independent’ candidates returned to the party fold.

The NDP is composed of ‘old guard’ and ‘reformer’ wings. In September 2004, the NDP held a conference to launch a new platform.³⁷ In January 2006, the party endorsed changes to its general secretariat which favoured younger reformist elements including the head of the policies secretariat, Gamal Mubarak, the President’s second son. Some commentators believe that the old guard is in retreat while others perceive the ‘reform agenda’ as a way of facilitating the presidential succession of Gamal Mubarak, by making it more palatable within a republican political system.

The “Legal” Opposition

Other than the NDP, some 20 opposition parties are registered (hereafter: ‘legal’ parties), although the activities of some have been suspended. Since 1978, only six parties have had candidates elected to the Assembly: the ADNP, the SLP, Ahrar, Wafd Tagammu, and al Ghad. At the time of their founding, the SLP, Ahrar and Tagammu were all offshoots of the ASU, the sole party in Nasser’s one-party State, although they have since developed distinctive platforms. The Arab Democratic Nasserist Party (ADNP) is supportive of Nasserist political ideas, the Wafd traces its history to Egypt’s first period of multi-party politics (1923-1952). Al Ghad is an offshoot of the Wafd.

The UN Economic Commission for Africa (UNECA) notes “Almost all political parties tend to be elitist, male-dominated and ageing entities, which are dominated by ‘historic’ leaders causing internal splits between ‘younger’ and older generations. None of the parties explicitly exclude social groupings. However, most are characterized by social classes, (e.g. the NDP being ‘the government’ party, the Wafd representing the upper strata of professionals and liberal entrepreneurs, [Tagammu] the radical leftists, and the SLP representing the Social Islamists).”³⁸

In the 2005 Assembly elections, most of the major opposition parties formed an electoral alliance. Even with this approach, the opposition managed to win only 14 seats (including those won by non-registered parties as independent candidates) – some 3% of the total. Without the electoral alliance it is highly questionable whether any of the parties would be able field any close to a full slate of 444 candidates. In this sense, only the NDP and the unregistered Muslim Brotherhood can be considered as operating country-wide. The opposition has insignificant numbers of local councillors.

The weakness of opposition parties can be attributed to a variety of factors including:

- Restrictions on existing parties and obstacles to forming new parties imposed by the Law on Political Party Systems (LPPS) and difficulties faced by the application of the Emergencies Law;
- Trying to win seats in the Assembly in a context where parliament is seen as largely irrelevant by much of the electorate;
- The perception that elections are manipulated and that opposition parties are not given a real chance may have increased voter apathy, further lessens their electoral chances;
- Limitations on party financing which make it difficult to organize at all levels and campaign effectively;
- An election system where candidates rely on distributing patronage favours to get elected. Those parties not in power have less patronage to dispense;
- Internal party divisions leading to splits; and,
- A lack of genuine political debate in the State media which compounds problems with receiving political information caused by high levels of illiteracy.

37 Centre for European Policy Studies (CEPS) “Egypt’s Moment of Reform – Reality or Illusion” Policy brief No 78, July 2005.

38 UN Economic Commission for Africa (UNECA) Governance Profile of Egypt (2004)

The failure of the 2005 reforms to deliver the legal opposition any tangible return and their poor showing in the elections has left some of the parties pessimistic and thoroughly lacking any confidence that future reforms can enhance their position vis-à-vis the ruling party. According to some analysts the long-standing repression of political opposition resulted in religious institutions, such as Mosques and religious charities, to become the main locus for the expression of political dissent.

The Muslim Brotherhood

The Muslim Brotherhood (MB) was founded as a religious movement in 1928. It became a political organization in Egypt in 1939. On numerous occasions the MB has been 'banned' and then permitted to function - de jure or de facto. In 1984, it was permitted to re-emerge as a religious organisation.

The LPPS and (since 2007) the Constitution ban parties from forming along religious lines. Since the introduction of multi-party politics, the Brotherhood has not applied to become a party. MPs in the Muslim Brothers' current parliamentary bloc informed DRI that they did not wish to seek registration as a party because of their objections to the provisions of the LPPS. It should be noted that while being registered confers certain rights on a party, it also involves certain obligations, such as limits on donations and financial transparency, thereby possibly giving candidates of unregistered groups more financial latitude in election campaigns.

Muslim Brotherhood MPs have generally stood as independent candidates, although in the 1980's when the election system was based on a party lists system, its MPs were elected under the banner of a registered party e.g. the Wafd and the SLP/Ahrar.

In 1995, the MB fielded 150 candidates. There followed a security clampdown and a large number of its leading members were arrested and received prison terms. In 2005, the Brotherhood once again fielded 150 candidates for the Assembly elections, i.e. in only 1/3 of the constituencies. Despite being registered as 'independent' candidates, their affiliation was well known and candidates expressed views openly.³⁹ These candidates won 88 seats.

The MB has emerged as the main opposition party in Parliament. However, under the current legislation, it is almost impossible for the MB to field an 'independent candidate' to contest presidential elections.

Other Non-Registered Parties

Two other non-registered parties are particularly noteworthy: Al Wasat and Karama. Al Wasat broke away from the Muslim Brotherhood in 1996 due to disagreements on co-operation with other political trends, efforts to gain legality for the organization, and issues of religious interpretation. Its repeated requests to become a political party have been turned down.

Karama split from the ADNP in 1996. The party applied to the PPC for registration in 1998 and 2004. These were rejected by the PPC and its appeals to court were also turned down. In 2005, the party fielded 10 candidates and won two seats. These were elected as independent candidates.

39 Civil Society and Democratisation in the Arab World, Moheb Zaki, Ibn Khaldun Centre for Development Studies (2005).

3.2. Previous Elections

Most previous Assembly elections in Egypt were held under a majoritarian election system. However, in 1984 and 1987, elections were held under a party-list election system or mixed system.

Summary Table of Seat Allocation after Assembly Elections: 1976-2005 ⁴⁰

Party	1976 ⁴¹	1979	1984	1987	1990 ⁴²	1995	2000	2005
NDP	280	330	390	348	348	317	172	152
NDP (Independent) ⁴³	-	-	Ineligible	-	Aprox 60	Aprox 94	218	172
Independent	51	10	Ineligible	4	-	20	21	8
Muslim Brothers ⁴⁴	Not known	Not known	8 ⁴⁵	37 ⁴⁶	Boycott	1 ⁴⁷	17	88
Ahrar	17	3	-	7	Boycott - 1	1	Frozen - 1	-
Tagammu	2	-	-	-	6	5	6	2
SLP	-	29	-	16	Boycott - 8	-	Frozen	Frozen
WAFD	-	Frozen	50	36	Boycott - 14	6	7	6
ADNP	-	-	-	-	Boycott	1	2	-
Al Ghad	-	-	-	-	-	-	-	2
(Karama)	-	-	-	-	-	-	-	2
Appointed	10	10	10	10	10	10	10	10
Vacant	-	-	-	-	(7)	-	-	12
Total Seats	360	382	458	458	447	454	454	454

NB. Due to the phenomenon of candidates running as independent candidates because their affiliated party is not registered as a political party or did not select them as their official candidate, it is difficult to be certain of some the figures cited above. For this reason, different sources frequently attribute different numbers of seats to particular parties/blocs/movements. Hence the figures quoted here are only indicative of general levels of parties' support.

In 2005, multi-candidate presidential elections were held for the first time. Presidential referenda were held in 1999, 1993, 1987 and 1981. According to official results Mubarak generally received around 95% support in these referenda, e.g. in 1999 he received 93% of the vote with 79% turnout.⁴⁸ The turnout figures of these two years stand in marked contrast to the official turnout in the 2005 Presidential elections which was a modest 23%.

A constitutional referendum on amending Article 76 to allow for direct presidential elections was held in May 2005. A number of opposition parties boycotted the process in protest at the limited nature of the reforms. Official turn-out figures quoted 54%. However, the Judges' Club issued a report based on its fact-finding mission on conduct of the referendum which estimated that turnout ranged from 3–5 %.⁴⁹

4. The 2005 Assembly Elections ⁵⁰

While the strong showing of the MB was widely reported, most voters did not turn out at all. According to official results only 25% of voters participated in the elections. Some observers estimated that voter turnout was even lower. According to the Independent Committee for Election Monitoring (ICEM), a domestic non-partisan observer group, the turnout of the six election days are as follows: 34%, 25%, 17%, 18%, 18% and 8%.⁵¹ The decreasing turnout has partly been attributed to the environment in which elections were held.

⁴⁰ The information in this table is taken from: "Electoral Institutions in Non-Democratic Regimes: The Impact of the 1990 Electoral Reform on Patterns of Party Development in Mubarak's Egypt" (2005) Unpublished PhD thesis submitted by Hedrick Jan Krätzschmar at the London School of Economics; and the International Republican Institute's 2005 Parliamentary Assessment Report (December 2005).

⁴¹ At the time of the 1976 elections, the three parties listed here were technically still part of the ASU

⁴² In 1990, Ahrar, Wafd and the SLP all formally boycotted the process, but some candidates associated with the parties contested the elections as independent candidates and later re-joined the parties.

⁴³ A number of independent candidates that supported the NDP did not win the party's nomination. They contested the elections as independent candidates and won and the large majority then joined the NDP parliamentary bloc.

⁴⁴ The Muslim Brothers have not contested an election as the MB. Instead they have either run as independents or their candidates have contested the election under the title of another party.

⁴⁵ In 1984 Wafd and the Muslim Brothers had an electoral pact in which some MB candidates ran with the NWD.

⁴⁶ In 1987 Ahrar, the SLP and the Muslim Brothers had an electoral pact in which candidates ran under the Labour Islamic Alliance, winning a total of 60 seats.

⁴⁷ In 1995, the MB fielded 150 candidates and was met with a security clampdown in which 88 leading members were arrested and 54 received 3-5 prison terms (Al-Ahram article "We take nobody's permission" Dec 2005)

⁴⁸ Arabic News, 09/27/99

⁴⁹ See Mona El-Ghobashy, "Egypt's Paradoxical Elections" Middle East Report No 238

⁵⁰ Most of the following findings are taken from their reports, including those of EOHR.

⁵¹ "A Testimony for History" Monitoring the Egyptian 2005 Parliamentary Elections, ICEM 2005

In Egypt elections are notoriously violent events and reports indicate that voters are often intimidated and coerced. The three-round nature of the process makes election periods particularly tense and volatile. EOHR found that violence in 2005 was much higher than during the 2000 election. In 2005, 12 people were killed and 500 were injured in election related violence compared to 8 killed and 64 injured in 2000.⁵² In 2005, as it became clear that the Muslim Brotherhood was winning the majority of constituencies in which it fielded candidates, the election process deteriorated, particularly during the third round when in a number of constituencies large numbers of voters were prevented from casting their ballots by operations of the security forces.⁵³ ICEM reported that “as the election moved into the second and third rounds, the Government moved from an initial policy of non-interference to one in which it targeted opposition voters and lashed out at civilians in general.”⁵⁴ Much of the violence involved the security forces who used force against persons gathered to vote and others protesting against the obstruction to their suffrage rights.

Other serious violations of voters’, observers’ and candidates’ rights listed by observer groups included: systematic arrest of opposition poll watchers in the run up to the election days; election day campaigning; intimidation and coercion of voters by private militias paid by the NDP, independent candidates and the Muslim Brothers⁵⁵; widespread vote buying; exclusion of candidate poll workers from polling centres – especially those from the Muslim Brotherhood; assaults on judicial election supervisors; mass transportation of government workers to the polls; and, altering election results.

5. Future Elections

Mid-term Shura Council elections are due in the spring 2007 and 2010. Local elections are now due to be held in 2008, potentially with a new election system. The next Assembly elections are due in 2010, while the next presidential elections are scheduled for 2011.

52 EOHR, op cit

53 EOHR estimates that 496 polling stations were cordoned off by security forces. EOHR, op cit

54 ICEM, A Testimony for History (2005)

55 See EOHR report, op cit.

Part Two:

Legal-Administrative Context and Framework for Holding Elections

1. International Obligations

Egypt has signed or ratified various international instruments which are of relevance for the country's electoral framework. Most importantly, Egypt is party to the International Covenant on Civil and Political Rights (ICCPR), which was ratified on 14 January 1982. Article 25 of this treaty determines that "every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country".

As a legally binding provision, Article 25 requires parties to ensure that citizens enjoy the rights under this provision. In 1996, the UN Human Rights Committee adopted General Comment 25, which is the authoritative interpretation of article 25 ICCPR.

Other UN standards that are relevant to the holding and conduct of an election include the Convention on the Elimination of all forms of Discrimination against Women (CEDAW, 1979) and General Recommendation 23 on Political and Public Life (CEDAW) and the Convention on the Political Rights of Women (CPRW, 1952).

Relevant regional treaty-standards include the African Charter on Human and Peoples' Rights (ACHPR, 1984). Article 13 of this treaty stipulates that "1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. 2. Every citizen shall have the right of equal access to the public service of his country." Non-treaty regional commitments include the AU Declaration on the Principles Governing Democratic Elections in Africa (2002).⁵⁶

2. Overview of the Applicable Egyptian Legislation

The core pieces of legislation for the conduct of elections are: The Constitution, the Law on the Exercise of Political Rights (LEPR), the Law on the Organisation of Presidential Elections (LOPE)⁵⁷, the Law on the Formation of the Shura Council (LFSC)⁵⁸, the Law on Local Government Systems (LLGS), the Constituencies Law and the Law on People's Assembly (LOPA)⁵⁹. As part of the reforms of 2005, including the amendment of the Constitution, most of these laws were amended. The 2007 reform of the Constitution will require further substantial changes to these laws.

Other laws that have relevance for elections include: the Law on Political Party Systems (LPPS), The Emergency Law, the Law on Mass Media (LMM), the NGO Law (NGO Law), the Law on the Supreme Constitutional Court (SCC Law), and the Law on Judicial Authority (LJA), the Penal Code and two Public Assembly Laws. In addition to these legislative acts, the Ministry of Interior (MoI) and the election commissions have adopted secondary legislation, which regulates the election process.

3. Respect for Political Rights

Part 3 of the Constitution stipulates Public Freedoms, Rights and Duties relevant to election campaigning, including: freedom of movement; freedom of opinion, expression, the press and mass media; the right to constructively criticise; peaceful and unarmed assembly - without the need for prior notice - within the limits of the law; the right to form societies [associations] as defined by law. However, these constitutional guarantees are limited by the state of emergency.

⁵⁶ http://www.ohchr.org/english/law/compilation_democracy/ahg.htm

⁵⁷ Law 174/2005

⁵⁸ Law 120/1980

⁵⁹ Law 38/1972 as amended by law 175/2005

3.1. The Emergency Law

With the exception of an 18-month period (1980-81) Egypt has been under a state of emergency since 1967. It is regulated by the Constitution and Decree-Law of No. 162 of 1958 (hereafter the Emergency Law). The application of the Emergency Law considerably enhances the powers of the President, which he may exercise "by virtue of a verbal or written writ"⁶⁰ and limits rights protected by the Constitution and the ICCPR. Under the law the President is authorised to:

- Set restrictions on individuals' freedom of meeting, travelling, residence and circulation;
- Order detentions and inspections without being restricted by provision of criminal law;
- Control printed material and all means of expression and advertisement; and,
- Order the closure of public places.

The Law also enables the President, by decree, to expand the list of rights to be restricted. Whoever violates the writs issued by the President shall be liable to penalties including imprisonment, hard labour and a fine of 400,000 EP (Art 5). Persons arrested under the provisions may be tried in State Security Courts, on which, in the first instance, can sit a judge and two military Sergeants. Crimes normally penalised under common law can also be referred to a Security Court. Security Court judgements may not be appealed outside the Security Court system. The President may delegate his powers associated with the Law.

It is noteworthy that the state of emergency has not been lifted during election periods even though its provisions create a political environment which is not conducive to a democratic election. In its concluding observations on the third and fourth periodic reports submitted by Egypt, the U.N. Human Rights Committee (HRC) commented: "the Committee is disturbed by the fact that the state of emergency proclaimed by Egypt in 1981 is still in effect, meaning that the State party has been in a semi-permanent state of emergency ever since. The State party should consider reviewing the need to maintain the state of emergency."⁶¹

The 2007 constitutional changes included a provision for the adoption of anti-terror legislation. It is anticipated that once the legislation is adopted, the current state of emergency will be lifted. However, many analysts fear that the "anti-terror" legislation may lead to a perpetuation of the state of emergency in all but name.

A number of constitutional guarantees for political freedoms associated with elections, such as freedom of assembly and expression, are restricted due to rules under the state of emergency, which has been in force since 1981. The existence of a state of emergency has compromised from the outset the possibility of holding a democratic election. While the anticipated lifting of the state of emergency would be a welcome development, future anti-terrorism legislation should not perpetuate the unreasonable restrictions imposed on political rights under the emergency legislation.

3.2. Freedom of Association: Registration of Political Parties and NGOs

3.2.1. Registration of Political Parties

The Constitution grants Egyptians the right to establish political parties according to the law. However, since its promulgation, the Law 40/1977 on Political Party Systems (LPSS) has obstructed the registration and development of parties. It includes restrictions that are extensive and subjective, specifically:

- Parties are required to have programmes representing an *addition to political life*⁶² according to defined purposes and methods. This provision has been used to block the registration of parties on subjective grounds. Voters should be left to decide what they consider as useful additions to political life.
- All parties are required to contribute to 'democratic socialism'. If applied rigidly, this provision fundamentally limits political competition among groups with different political outlooks.

⁶⁰ Article 3 of the emergency law (translation: the Middle East Library for Economic Services)

⁶¹ U.N. Human Rights Committee, concluding observations: Egypt. 28/11/2002. CCPR/CO/76/EGY, Point 6

⁶² Prior to the 2005 amendment, the Law required that parties be 'distinct' from existing parties. The change places a more stringent requirement on a new party. See Crisis Group Report "Reforming Egypt: In search of a strategy" (2005)

- The law prohibits the formation of parties on a “religious, class, sectarian, categorical or geographical basis or on the on the exploitation of religious feelings.” In 2007, the Constitution was amended to prohibit the founding of parties on a religious or ‘religious referential’ basis.

As a general principle, political parties should not be restricted in their orientation – as with the requirement to contribute to ‘democratic socialism’, or their religious orientation, providing that their platform respects the Constitutional arrangements of the State and are in line with international human rights obligations.

The legal provision banning parties from forming on a religious or “religious referential” is insufficiently precise. This provides scope for the selective application of the law. Article 2 of the Constitution stipulates that “Islam is the Religion of the State. Arabic is its official language, and the principal source of legislation is Islamic Jurisprudence (Shari’ a).” In this context the law should be more specific on what kind of religious expression is permissible for parties and where the limits are. It is noteworthy that the ruling party NDP itself refers to religion: “The NDP knows for certain that heavenly religions can play a positive role in pushing for progress. It pins its faith on Islam and Islamic jurisprudence, which is the main source for legislation. It also believes in the importance of renewing religious discourse in a way that emblazons the importance of work, solidarity, tolerance, justice and comprehensive development.”⁶³

Art. 22 ICCPR allows restrictions of the freedom of association only if “necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” While it is clear that some forms of religious extremism could fall under these categories (incitement to violence, hate-speech, advocating policies that discriminate on the basis of religion, etc.), there are many forms of religious reference which do not fall in these narrow categories of permissible restrictions. International instruments stress that religion should not be made a reason for political discrimination.⁶⁴ Any reform of the LPPS should introduce better defined criteria which are objectively and equally applied to all political parties.

If a party does not meet the legal requirements it may not be registered or, if it is already registered it could face suspension. According to Article 22 “whoever establishes, founds, manages, or finances in any form contrary to the provisions of the law, an illegal party organization even if under any religious veil, or in the form of an association, body, organization, or group (whatever the name or description given to it) shall be liable to a penalty of imprisonment”. Article 23 provides “whoever joins an illegal party organization (...) shall be confined to jail.” These provisions are draconian particularly in view of the fact that since 1978 many political associations have been denied registration in many cases on dubious grounds.

Beyond serious concerns about the prohibitions of parties, the process for registering parties are also highly problematic: “Parties are registered by the Political Parties Committee (PPC), which is essentially a political organ, not a judicial or technical one, as it represents the stance of the government and the ruling party”⁶⁵ The PPC has nine members, and is chaired by the President of the Shura Council. Currently this is Mohamed Safwat El Sherif, who is also the Secretary General of the ruling NDP. Two Ministers sit on the Committee - the Minister of the Interior and the Minister of Parliamentary Affairs. The other six members are three former presidents of judicial bodies (or their deputies) and three ‘public figures not associated with any political party’. The President decreed that the public figures be elected by the Assembly.⁶⁶ Thus, a majority of the PPC’s members are either members of the government or supported by the Assembly - where the ruling party has a two-thirds majority. In effect this allows one party, the ruling NDP, to decide on whether other parties should be registered – a matter in which they have a significant conflict of interest.

The PPC has routinely rejected applications to register parties. Figures published in November 2004 show that since 1977 the PPC had turned down 63 requests to register a new party.⁶⁷ Before the registration of Al Ghad, only two other parties had been registered by the PPC since 1978. While other parties have come into existence, they owed this to court judgements following appeal against PPC decisions. In the period 1978-2000, ten parties were registered as a result of judgments made by the

63 <http://www.ndp.org.eg/en/AboutUs/1.aspx>

64 Article 4 of the UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), which states: “All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life” (emphasis added).

65 UN Economic Commission for Africa (UNECA) Governance Profile of Egypt (2004), Page 7

66 ICG op cit.

67 Mona El-Nahhas, ‘Tomorrow’s Party Today, Al Ahram Weekly, 4-10 November 2004

Political Parties' Court.⁶⁸

The PPC is also entitled to request the Court to dissolve a party where it has been found not to be fulfilling the legal conditions for its registration e.g. by 'exploiting religious feelings' (Article 17 LPPS). The PPC also has the right "according to the exigencies of public interest", to order the temporary suspension of a party, after an investigation has been carried out by the Prosecutor e.g. if one of its members has dissented from one of the party's founding principles. On various occasions the PPC has suspended parties including some major parties: the SLP was suspended shortly before the 2000 elections ostensibly due to internal divisions between the leftist and Islamic party wings and the Wafd was suspended from 1978 to 1983. Currently, two parties, Al Ghad led by 2005 presidential candidate Ayman Nour⁶⁹ and the SLP, are suspended.

The powers of the PPC to request the dissolution of a party or to suspend its activities has acted as a sword of Damocles above the opposition parties and also ensured that the NDP remains a more or less united party. Some of the amendments to the LPPS adopted in 2005 actually made it harder for a party to register.⁷⁰ However, notwithstanding the significant shortcomings of the law, a few modest improvements to the LPPS were adopted in 2005 e.g. providing that the PPC must rule on a party's application to register within 90 days.

While some State funding of parties is provided, the amounts are modest (100,000 Egyptian Pounds – approximately EUR 14,000 per annum, for ten years).⁷¹ In addition, a party receives 5,000 Egyptian Pounds for each seat won by the party's candidates in both houses of parliament, up to a maximum of 500,000 Egyptian Pounds per party. Some political parties are highly critical of the current party funding arrangements, particularly on limits to individual donations which they consider starve parties of adequate funds. Legal restrictions on political party activity are not confined to the LPPS. Other restrictions derive from the Emergency Law (162/58), the Law on Public Assembly (1914) and the law on Public Demonstrations and Meetings (1923), the Law on the People's Assembly (LOPA), the Law on Public Advertisement, the Penal Code and Laws on the Internal Front and Social Peace.⁷²

Overall, the LPPS and its implementation have prevented citizens from enjoying rights protected by the ICCPR. The growth of political pluralism has not been respected and consequently political life takes place within narrow limits, which has restricted voters' choices at elections, and contributed to citizens' disengagement with politics. The U.N. Human Rights Committee noted "the de jure and de facto impediments to the establishment and functioning of political parties, primarily created by the PPC ... without full guarantees of independence (articles 22 and 25 of the Covenant)." It went on to state that: "[Egypt] should permit the democratic expression of political pluralism and thus abide by its obligations under the Covenant, taking into account the Committee's General Comment 25."⁷³

The grounds for rejecting the registration of political parties are too strict. The LPPS requires thorough revision to bring it into line with standards concerning the freedom of association (art.22 ICCPR).

It is regrettable that the 2007 Constitution uses vague language on the ban of parties with a religious or 'religious referential' basis. This may lead to a subjective application of the law. Legislation should introduce objective, narrow and clear criteria to restrict only those parties whose political platforms are in conflict with international human rights norms. Such criteria need to be enforced equally and designed to facilitate the right of Egyptians to establish political parties as guaranteed by the changed Constitution.

The PPC, which is almost fully controlled by the ruling NDP, has the authority to block the formation of rival parties. The dominant position of the NDP on the PPC creates a serious conflict of interest. The PPC should be reformed to ensure that it does not simply serve the political interests of the ruling party.

3.2.2. Registration of NGOs

In 2003, a new NGO Law came into force (84/2002). It is generally regarded as a modest improvement over its predecessor. While the law prohibits NGOs engaging in political issues, its Executive Regulations

68 Unpublished PhD thesis: "Electoral Institutions in Non-Democratic Regimes: The Impact of the 1990 Electoral Reform on Patterns of Party Development in Mubarak's Egypt" (2005) Submitted by Hendrick Jan Krätzschmar at the LSE.

69 Ayman Nour was arrested in January 2005 on charges of falsifying some of the signatures submitted supporting the creation of Al Ghad. In December 2005 he was sentenced to five years in prison with hard labour. (Source: Voice of America, 28 December 2005)

70 For example, the notification submitted by a party to the PPC must be now be signed by at least 1,000 notarised signatures of founder members from at least 10 of the 26 governorates. Previously a party required only 50 signatures. ICG, op cit

71 After this period, a party must have a member elected to Parliament in order to qualify for the funds.

72 Information taken from Hendrik Jan Krätzschmar, op cit.,

73 UN HRC, Concluding Observations on Egypt's Third and Fourth Periodic Reports to the HRC, 28/11/2002

contain a definition of „political activity“, which limits the scope of meaning to advancing political party interests and participation in party's election campaigns using NGO personnel or funds.⁷⁴ However, since the adoption of the Law, some human rights organizations have suffered delays in receiving a registration or been denied registration.⁷⁵ Human Rights Watch concluded that “the most serious barrier to meaningful freedom of association in Egypt is the extra-legal role of the security services (...) where the security services rejected NGO registrations, decide who could serve on NGO boards (...), harassed NGO activists, and interfered with donations reaching the groups.”⁷⁶

The Minister of Social Affairs has the right to dissolve associations and non-governmental organizations by an administrative decree. In November 2002, the UN HRC expressed its concern at the restrictions placed by Egyptian legislation and practice on the foundation of NGOs and the activities of such organizations such as efforts to secure foreign funding, which require prior approval from the authorities on pain of criminal penalties. The HRC stated that Egypt “should review its legislation and practice in order to enable non-governmental organizations to discharge their functions without impediments which are inconsistent with the provisions of article 22 of the Covenant, such as prior authorization, funding controls and administrative dissolution”.⁷⁷

3.3. Freedom of the Media

In order to ensure the full enjoyment of rights associated with Article 25 of the ICCPR it is necessary to respect associated rights including: free communication of information and ideas about public and political issues, freedom to debate public affairs, freedom to oppose, to publish political material, to campaign for election and to advertise political ideas, while the media is obliged to inform public opinion (General Comment 25).

According to Reporters without Borders, in 2005 the freedom of the media in Egypt ranked 143 out of 167 countries.⁷⁸ Journalists have long complained about provisions under which editors and reporters have been fined heavily and imprisoned for up to two years on loosely defined libel charges.⁷⁹ While journalists are under a professional duty to publish accurate information, libel should not result in custodial sentences as it is considered disproportionate to the offence and can impinge significantly on the freedom of the media to publish opinions, inform the public and causes self-censorship - which is not in the public interest. In July 2006, the Assembly adopted a new media law which retains provisions on imprisoning journalists for a range of offences including publishing material critical of the President, parliament, government ministries and even foreign heads of state. Some consider the law a backward step.⁸⁰

The electronic media comprises State and privately owned Television and Radio. However, the State media largely dominate the sector.⁸¹ The printed media includes State, party and independent daily and weekly titles. The printed media has relatively limited circulation and television is considered to be the most important source of political information for most citizens. In the past two years, the independent media sector has grown and become emboldened and overcome many taboos, including criticizing the President and subjecting the finances of senior officials to scrutiny. However, journalists often walk a fine line as press freedom remains vulnerable and depends on whether the authorities decide whether to apply restrictive provisions or not.⁸²

The Presidential election law provides that the Presidential Election Commission is given the authority to ensure equal access for presidential candidates to the state owned electronic media in their campaigns and deciding sanctions for violations. The election-related legislation does not regulate the campaign in the media for Assembly elections. However, the High Election Commission (HEC), which is established by the LEPR, was tasked with developing guidelines for the media during the elections (Article 3, bis-c). In 2005, the Egyptian Radio and Television Union (ERTU) adopted “*Guidelines and Principles for State Media Coverage of Parliamentary Elections*.”⁸³ During the 2005 Presidential and Assembly elections, independent media monitoring was conducted by the Cairo Institute for Human Rights Studies (CIHRS).

74 See Al Ahram “regulating or restraining”, Mariz Tadros, Al Ahram weekly 7-13 November 2002.

75 For example the “New Woman Centre for Research” which eventually won the right to register by virtue of a court ruling.

76 Human Rights Watch Report “Margins of Repression: State Limits on Nongovernmental Organization Activism” (July 2005)

77 UN HRC, Concluding Observations on Egypt's Third and Fourth Periodic Reports to the HRC, 28/11/2002

78 Reporters without Borders: 2005 Worldwide Press Freedom Index.

79 See: EGYPT: Journalists Challenge New Press Law: Adam Morrow, Inter Press Service (13 July) and Reporters Without Borders, Egypt Annual Report 2006.

80 „The passage of this law actually represents a slight deterioration (of press freedom),“ Hisham Kassem, vice-chairman of the leading independent daily Al-Masry Al-Youm (Source IPS, op cit).

81 Cairo Institute for Human Rights Study Report on media monitoring findings during the Assembly elections.

82 Egypt's media plan day of action over draft law, Heba Saleh, Financial Times, 7 July 2006.

83 Inter alia, these provide: promoting an active role for state media in enhancing public political and electoral awareness; providing neutral and equal coverage access for parties at the national level and candidates at the local level; allocating equal time for candidates to present their ideas and programmes; differentiating between paid political advertising and assuring transparency and equality in candidates paid political adverts; establishing a committee to ensure respect for the Guidelines.

The 1999 Report by the U.N. Special Rapporteur on the Freedom of Opinion and Expression⁸⁴, point 17, provides a comprehensive set of guidelines for the media in covering pre-election campaigns.⁸⁵ CIHRS' monitoring assessed the Egyptian media's coverage of candidates' campaigns against the principles set out in the UN Special Rapporteur's Report. Inter alia the CIHRS found that:

- The presidential election did not provide *"a real test"* for the State media and its coverage was *"characterized by bland neutrality due to an aversion to discuss any controversial issue"*;
- The performance of the media, particularly State owned media, in covering the parliamentary elections, *"favoured the NDP"* and was *"prejudiced against the Muslim Brotherhood"*;
- Local state-owned TV channels *"enjoyed a great deal of balance in their elections reporting"*;
- While the media did cover negative aspects of the election *"such as voter bribery, unlike the private media, the State-owned media did not focus on which groups were responsible"*;
- While private TV and print media played an important role it *"lost interest"* in the elections;
- The media showed limited adherence to the Guidelines adopted by the ERTU.

Regarding the last point, it is important to note that while the guidelines provide a reasonable basis to ensure fair treatment of the candidates in the public electronic media, there does not appear to be a legal mechanism to ensure the media's compliance with the guidelines. CIHRS considered that the bias in the state-owned media was connected with the conflict of interest arising out of the membership of some media personal in NDP organs.

3.4. Representation and Participation of Women

Women were given the right to vote in 1956. Currently, very few women are members of elected bodies. According to the Egyptian Centre for Women's Rights (ECWR)⁸⁶, with the exception of the period 1979-1987, women's representation in the Assembly has ranged from 0.5% to 2.4%. From 1979 to 1984 the law required the election of at least one woman to be elected in 30 selected constituencies.⁸⁷ The PR-list system introduced in 1983 retained a 30-seat quota. However, the SCC declared the PR-list system unconstitutional. From 1987 to 1990, 18 women were elected on the PR lists (4%).⁸⁸ When, in 1990, the election system reverted to the two-candidate majoritarian system, women's representation declined markedly.⁸⁹

In 2005, despite pledges from political parties to nominate significant numbers of women candidates, the NDP nominated only six women candidates (from 444 candidates), the legal opposition nominated only seven women (from 222 candidates), Al Ghad and Al Karama nominated only three women candidates, the Muslim Brotherhood nominated only one woman candidate, while 111 women ran as independent candidates.⁹⁰ Only four women won seats.

The ECWR cites a series of violations targeting women in the election period including: abusing tribal values to undermine women candidates and their supporters, the killing of one woman candidate (Soa'd Telab in El Sharkaya), violence to prevent certain people from voting, the use of death threats, and various forms of harassment.⁹¹ As voters, women were active, although ECWR points out instances in which their votes were manipulated and cases where violence served as a bar to their participation.

84 Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Mr. Abid Hussain E/CN.4/1999/64, 29 January 1999

85 These include: giving the media the widest possible latitude to fully inform the electorate about parties, candidates, campaign issues; government media are balanced and impartial and do not discriminate in granting access to air time and ensure that news and other information programmes are not biased; that censorship is not allowed and the media is not punished for programmes critical of the government or the ruling party; there is a clear distinction between news related to functions of office - particularly if the members concerned is seeking office; time allocated to parties or candidates is sufficient for them to communicate their messages and for the voters to inform themselves about the issues, party positions, qualifications and character of the candidates; programmes provide an effective opportunity for journalists, current affairs experts and/or the general public to put questions to party leaders and other candidates, and for the candidates to debate with each other; and that media, and especially government media, engage in voter education.

86 "Rising on Women's Bodies" a Report on Women in the 2005 Parliamentary Election, ECWR

87 Source: Introducing Quotas in Africa: Discourse in Egypt, Gihan Abou-Zeid.

88 In 1979 35 women were elected and in 1984 36 women were elected.

89 See EWCR op cit and International IDEA: <http://archive.idea.int/women/parl/studies1>

90 ECWR, op cit.

91 Ibid.

In 1981, Egypt became a signatory to the Convention on the Elimination of Discrimination against Women (CEDAW). Its Article 4 states that: "Adoption (...) of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved." This means that, at least for a limited period, quotas can be established for women, including for elections.⁹² The U.N. Committee on the Elimination of Discrimination against Women has urged Egypt to implement temporary special measures, such as numerical goals and quotas, in order to increase the representation of women at decision-making levels in all areas.⁹³ In line with this, the 2007 constitutional amendments stipulate that the law may include a minimum limit for the participation of women in Parliament.

Following the change to article 62 of the Constitution, the legislator may introduce a quota establishing a minimum representation for women in the Assembly and Shura Council. Currently, it is not known what level of guaranteed representation women will be granted.

Out of 444 elected members of Parliament, there are only four women. Following the 2007 constitutional changes, the legislator has been given the right to introduce a quota for women MPs. It is hoped that any measures introduced avoid 'tokenism' and ensure the direct election of women to parliament and that parties recognise the importance of women in public life and take steps to ensure their adequate representation. This, in the longer term, will make the application of a quota unnecessary.

3.5. Copts

The Copts are an indigenous Egyptian Christian minority. There is no agreement on their number and the issue is controversial. Some estimates suggest Copts number approximately 7 million (9-10% of the population). On occasions sectarian violence has occurred. In 2005 only one Copt was elected to the Assembly - fewer than ever before. The NDP fielded only two candidates who are Copts.⁹⁴ The President appointed another 5 Copts as MPs from his allocation of 10 seats.⁹⁵

4. Legal-Administrative Provisions on Elections

4.1. Election System

4.1.1. Presidential Elections

The Presidential election takes place on a single election day in a single national constituency. To win, a candidate requires an absolute majority of valid votes (more than 50%). If no candidate receives this number of votes, a run off election takes place between the two highest scoring candidates at least seven days later. The election can take place with a sole candidate e.g. due to candidate withdrawal(s). In this case the candidate securing a majority of valid votes is declared the winner – a situation similar to the pre-2005-amendment provision on holding a presidential referendum. If no candidate is elected for what ever reason, the outgoing President continues his term in office.

The Presidential election law makes provision for presidential candidate 'vacancy' (e.g. through the death of a candidate), but neither the Constitution nor the law is clear about what procedure is applied in the event that a candidate in a run-off election (i) withdraws or (ii) dies before the run off election is held.

⁹² See U.N. Committee on the Elimination of Discrimination against Women, Thirtieth session, 12-30 January 2004. General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures.

⁹³ Report of the Committee on the Elimination of Discrimination against Women, Twenty-fourth session (15 January-2 February 2001), Twenty-fifth session (2-20 July 2001), General Assembly Official Records Fifty-sixth Session Supplement No. 38 (A/56/38), page 37, No. 341

⁹⁴ Ibid.

⁹⁵ Konrad-Adenauer-Stiftung article: 'Women and Copts named MPs' 12 December 2005

4.1.2. Parliamentary Elections

The Law on the People's Assembly (LOPA) has been amended regularly.⁹⁶ At the time of writing, the LOPA provides that the Assembly is composed of 454 members of which 444 are elected directly. Article 3 provides that the Republic is divided into constituencies to be determined by Law.⁹⁷ The election takes place in 222 constituencies. Two MPs are elected from each constituency. The law provides that at least one elected MP in each constituency must be a 'worker' or 'farmer'. Due to the SCC's decision of 2000 regarding the need for judicial supervision, and because of the limited number of judges, Assembly elections are phased events – enabling judges can be present in all polling stations. In 2005, three election phases took place. As the law provides for a two-round election system, six days of voting were required. Following the amendment of the Constitution, polling will in future take place on a single day.

The 2007 amendments to Article 62 of the Constitution provide that: "the law may adopt a system, combining the individual system and the party lists by means of any ratio between them" Beyond the usual calculation made by political parties on which election system gives the most advantage, in Egypt the choice of election system is particularly important as the largest opposition group, the Muslim Brotherhood, is not a registered political party and unlikely to apply for registration or to be registered under the current legal arrangements. In the event that the legislator establishes a component of proportional representation, any system based exclusively on party lists would automatically exclude from this component independent candidates of the MB. However, the MB could seek an arrangement with a party to run candidates on their party lists - as was done in 1984 and 1987.

To be elected, candidates require under the current law an absolute majority of valid votes cast - although there are exceptions to this general principle, because of the constitutional provision that at least half of the elected members of both houses of parliament must be either 'workers' or 'farmers'. If both of the two candidates obtaining an absolute majority of votes are not from these categories, then the one with more votes will be declared elected while the second highest-scoring candidate will not be. Instead, a run off will be held between the two top-scoring candidates that have the status of a worker or farmer. The one with the highest number of votes in this election is declared the winner. In the event that two candidates with the status of worker or farmer receive a majority, both are elected.

Where the first round is not conclusive i.e. that two candidates are not elected, then a run off election is held with four candidates in which at least two candidates must be the highest scoring candidates with the status of worker or farmer. The top two scoring candidates will be elected so long as at least one of them is a worker or farmer. If this is not the case, the top scoring 'other' is elected along with the top scoring worker or farmer.

To remain an MP elected as a worker or farmer, one must retain the status of a worker or farmer during tenure in the Assembly. If an MP loses this status, s/he risks losing their seat, although this requires the vote of two-thirds of deputies. If an elected seat falls vacant during the term of the Assembly, a by-election is held, according to criteria that ensure that at least one member in each two-member constituency must have the status of a worker or farmer. By-elections should take place within 60 days of the vacancy occurring. However, it appears that this constitutional provision is routinely ignored. The establishment of a permanent independent election commission might help in organising by-elections as required by the Constitution.

The provisions that at least 50% of deputies elected to the National Assembly, the Shura Council and Local Councils must be farmers or workers reflect an emphasis placed on the participation and representation of these socio-economic categories since the 1952 Revolution. Apart from the fact that the definitions⁹⁸ of 'workers' and 'farmers' are open to abuse and selective application, they discriminate against those that do not meet them and violate the equal right to stand and to win elections.⁹⁹ This is most clearly seen in the articles which provide that a second placed candidate from the 'other' category would not be elected, even where s/he has secured a majority of votes – if the first placed candidate was also an 'other'. Moreover, in attempting to engineer the composition of parliament in this manner, the

⁹⁶ In : 1974, 1976, 1977, 1979, 1983, 1986, 1990, 2000, 2002, and in 2005

⁹⁷ Law 206/1990.

⁹⁸ Article 2 of Law 38/1972 defines 'worker' as follows: "A person who depends mainly on his income from his manual or mental work in agriculture, industry or services. He shall not be a member of a trade union, or recorded in the commercial register, or a holder of a high academic qualification. " Farmers are defined as follows: "a person whose sole work and main source of living is cultivation, and is residing in the countryside, providing he, his wife and minor children shall not own or lease more than ten faddans."

⁹⁹ Art. 25 ICCPR stipulates that its rights should be enjoyed without any distinctions mentioned in article 2 ICCPR, which says: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals (...) the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Emphasis added. "

election system has become overly complicated. Introducing a mixed election system where half the candidates must be workers and farmers is likely to complicate the election system further.

4.1.3. Shura Council

Two thirds of Shura Council members are directly elected – half every three years. The election of the Shura Council is regulated by Law 120/1980 concerning the Formation of the Shura Council (LFSC). MPs may not sit in the Shura Council and the Assembly. For Shura Council elections 88 constituencies are formed, as set out in law¹⁰⁰. Each constituency elects two members, of which at least one shall be a worker or farmer. MPs require an absolute majority of votes to be elected. If they do not achieve this number, a run-off election is arranged. In most respects the election of members of the Shura Council is similar to Assembly deputies and many of the constitutional amendments related to the People's Assembly (e.g. the election system) are also applicable to elections for the Shura Council.

4.1.4. Local Council Elections

The Law on Local Government System (1979, as amended 1987, 1988, 1989, 1996 and 2003) (LLSG) regulates local government elections.¹⁰¹ Councils have between 10 and 24 members depending on the size and level of the local government unit. According to the LLSG all levels of local councils shall be elected through direct elections according to the same election system (Article 75 Bis). Candidates deposit nomination papers with the Governorate or local government Unit within a period to be determined by the Governor and must pay a relatively modest financial deposit. The elections are administered by the Security Directorate of the MoI according to rules set out in LEPR and LOPA. The LLSG does not provide for election observation or judicial supervision.

Each candidate is given an election symbol. Voters select as many candidates as there are seats to be elected (Article 75 Bis). For a ballot to be considered valid, voters must vote for at least half the number of candidates as vacant seats (Article 75 Bis). As in other legislative elections at least half of all councillors must be farmers or workers. Candidates with the highest scores are awarded seats. The results are announced by the Governor. Their term of office is four-years.

Educational requirements, for candidates and the obligation that half of the deputies must be “farmers or workers” violate the equal right to stand for elections as guaranteed by art. 25 ICCPR.

4.2. Election Administration

The 2005 elections were administrated by the Ministry of Interior (MoI) and – for the first time in Egypt's history – by two election commissions: the Presidential Election Commission (PEC) and High Election Commission (HEC). Both were established in July 2005, only two months before the presidential election and three months before the start of the Assembly elections. This gave them little time to assert their control over processes that had hitherto been conducted by the MoI.

In addition to the election commissions and the MoI, Egypt's Assembly elections were to be conducted under the direct supervision of “members of a judiciary organ” (previous art.88; now changed). According to an interpretation of the Constitution by the SCC in 2000, this meant that judges had to be present in every voting centre during polling and counting.

The 2007 constitutional changes leave provisions on the PEC unaltered but establishes a new higher commission for parliamentary elections, makes provision for its composition and that of the subordinate ‘General Committees’. Explicitly mandated to supervise elections, these commissions shall – according to the revised article 88 of the Constitution – be independent and impartial bodies. The HC will have judges among its members; the general commissions should be composed exclusively of members of the judicial bodies. A new law will regulate the details of the commissions, such as formation, composition and mandate.

¹⁰⁰ DRI was unable to secure a copy of this law.

¹⁰¹ Law on Local Government System (LLGS), Law 84/1996 amending Law 43/1979

4.2.1. Presidential Election Commission (PEC)

Since 2005 the Constitution provides for the establishment of the PEC and subordinate commissions. It also provides that the constitutionality of the Law on Presidential Elections (LOPE) must be established by the SCC before the Presidential election. For the 2005 elections, the PEC was formed in July 2005. The PEC was established as an independent body with its own line in the State budget. It is composed of 10 members. Ex officio the President of the SCC is its Chair. Four other senior judges are members.¹⁰² They are joined by “five public figures, recognized for their impartiality”, three of which are elected by the Assembly and two by the Shura Council. No provision is made to allow any party representatives a seat on the commission. While allowing parties to directly nominate a member can lead to a politicisation of administrative decisions, it does improve the transparency of the appointment process and of the election administration process. Obviously for such measures to be meaningful, more than one party would need to full-fill the conditions to nominate a candidate.

The appointment of the five most senior serving judges to the PEC could raise confidence in the administration of the elections but conversely their inclusion could weaken confidence in judicial authority if it is perceived that their decision making is politicised. As noted previously, the NDP enjoys a two-thirds majority in both chambers. Hence, the method of electing the five non-judicial members creates a perception that they will serve the interest of the majority party, rather than act as independent members. In its report on the presidential election EOHR reported: “Since the start of its activities the PEC has faced several criticisms with regard to its composition, competencies, its decisions and statements made by PEC officials with regard to judicial supervision of the elections.”

The PEC is entitled to adopt executive regulations and decisions which are “final, self-enforcing and incontestable by any means or before any authority whatsoever and may not be interpreted by other courts”. The Commission is appointed a five-year term. However, it does not appear to function as a ‘permanent’ body. It appears that it effectively ceased to function shortly after the 2005 election. Indeed, it is far from clear how the PEC’s senior judicial members could combine their regular functions with the considerable requirements of serving on a central election commission, which is a full time task. It is noteworthy that Article 88 provides only that Assembly elections be conducted under judicial supervision. There is less direct supervision of the presidential poll by the judiciary than in the case of Assembly elections - Article 76 of the Constitution only provides that the higher level ‘General Committees’ be composed of the judiciary rather than the sub-committees (Polling Boards). The PEC establishes General Committees and committees to conduct the voting and counting. General Committees supervise the lower level commissions. The PEC determines the principles and procedures for this supervision (art.30 LOPE).

According to the LOPE, *if necessary*, the PEC *may* appoint members of the judiciary in the governorates to supervise election and to chair voting committees. The wording implies that this is not an obligation. While the PEC is under no obligation to appoint judges to polling centres, the PEC decided not to appoint a large number of judges that wished to serve on polling committees. Decisions such as these lessened confidence in the PEC.¹⁰³

4.2.2. High Election Commission (HEC)

The High Election Commission, which has jurisdiction to administer parliamentary elections and referenda, was established by law in 2005. While the HEC has a Secretariat, as for the PEC it does not appear to function as a permanent body. The 2007 constitutional reform establishes a High Commission (HC) for elections as a constitutional body. Until secondary legislation is adopted, it is not known how the HC will differ in composition and function to the HEC (see below).

Under the legislation currently in force, it is the HEC that has responsibility for conducting parliamentary elections. The LOPA provides that the HEC is required to act independently and has its own independent budget. It has 11 members: the Minister of Justice (Chair), three deputy heads of the Court of Cassation, six public figures not affiliated with any political party and one representative of the MoI. The People’s Assembly and the Shura Council elect the six public figures. Members of the HEC serve a 6-year

¹⁰² The President of the Cairo Court of Cassation, the most senior Vice President of the SCC, the most senior Vice President of the Court of Cassation, the most senior Vice President of the Supreme Administrative Court are PEC members.

¹⁰³ One report put thus: “Two highly controversial actions by the [PEC chair] galvanized public mistrust of what came to be called the “imperial” PEC. First he inexplicably decided to exclude some 1,700 judges from supervising presidential elections. Then, he made a public statement disregarding [an] administrative court ruling allowing civil society groups to monitor the vote. A day later, [he] reversed his decision. That one of Egypt’s three most high-ranking judges would cavalierly dismiss a widely hailed court ruling and then abruptly backtrack reinforced suspicions that the PEC was a legal front to dilute full judicial supervision rather than an impartial management body designed to bolster election integrity.” Egypt’s Paradoxical Elections, Mona El-Ghobashy, op cit

term. This composition, giving the government/NDP effective control, did not inspire confidence in the independence and political impartiality of the HEC.

The HEC adopts “regulations and decisions as necessary for regulating its work”. However, its competencies are relatively weak: it only suggests rules of determining election districts and develops general rules for regulating election campaigns (emphasis added). While the HEC adopts rules for maintaining the voter register, it is the Mol which conducts voter registration. It announces the general result of parliamentary elections, although individual results are finalised at constituency level. While the HEC is tasked to monitor compliance with a Code of Ethics, it is not responsible for adjudicating any election complaints. Unlike the PEC, decisions of the HEC are – from the wording of the law - not final and are apparently subject to legal review.

4.2.3. Ministry of Interior (Mol)

Even though two commissions are responsible for the election processes, much of the administrative work is carried out by the Mol, which is represented on candidate registration committees, determines the number and location of ‘general polling stations’ as well as the number of sub-polling stations (for Assembly elections and referenda) and, in co-operation with the HEC appoints non-judicial members of polling boards. As the PEC and HEC were established only a few months before the 2005 elections, it is not surprising that the Mol retained a central role in administering the processes. The oppositions’ confidence in the impartiality of the Mol is lower even than its confidence in the HEC.

4.2.4. General and Sub-Committees

For the 2005 Presidential elections, 329 General Committees and some 54,000 Polling Boards administered the process. For the 2005 parliamentary elections, 222 General Committees and some 32,000 polling sub-committees (hereafter: Polling Boards) were established. Some 10,000 judges¹⁰⁴ (including persons working in judicial bodies) supervised the process in three election phases. While General Committees function as a coordinating body responsible for, among other things, the aggregation of results, the Polling Boards work at Polling Stations located in Voting Centres. Each polling station has one ballot box.

Polling Boards consist of a Chair and at least two additional members. For the 2005 elections, public prosecutors, employees of the State Council, and government officials with a legal background were all determined as being from a ‘judicial body’ and appointed Chairs by the Ministry of Justice (MoJ). Interlocutors estimated that only one-third of the supervising ‘judges’ were actual bench judges. Significantly, less confidence was expressed in those persons that were not, in a strict sense, judges.

4.2.5. The Role of the Judiciary in Election Supervision

It appears that the judiciary is the most trusted state institution in Egypt. Although the judiciary has not been able to supervise all aspects of the election process fully as it would have wished, it is generally agreed that its involvement lessened – though not eradicated – election fraud and certainly improved public and political confidence in the election process. However, the serious violations of voting and other rights by the security forces in the latter stages of the 2005 Assembly elections, as documented by Egyptian election observers, has shown that there are limits to what judicial supervision can achieve. Judges are not able to ensure that voters cast ballots ‘freely’ and reports indicate that the manipulation of election results has not been fully eradicated.

The provision that balloting must be “conducted under the supervision of the members of a judicial organ”, previously contained in article 88 has been dispensed with through the 2007 constitutional amendments. While the judicial persons will retain a role on the Higher Commission (HC) and judges will be appointed to the subordinate ‘General Committees’, the amendment does not provide for judicial supervision of the elections per se. It appears that the HC will have greater latitude in who will be appointed to polling station committees while the law will set out procedures for General Committees to supervise polling and counting. Given that elections will be on one day, it appears that there are not enough judges to cover each polling station. However, the HC may seek ways to ensure a maximum involvement of judges in the process regardless.

¹⁰⁴ The SCC did not provide for a clear definition of the term ‘judicial organ’ in its 2000 ruling on the role of the judiciary in Assembly elections. Following a request from the President, in 2004 the Court ruled that government attorneys and administrative prosecutors are part of judicial bodies and as such can be entrusted with supervising elections.

4.2.6 The High Commission for Elections

The 2007 constitutional changes establish an election commission for parliamentary elections which is to be, by law, independent and impartial. The High Commission's (HC) members "shall include current and former members of judiciary bodies" and the next level committees, the 'General Committees' will be composed solely of members of judicial bodies. However, until the LOPA is amended, the precise composition of the HC will remain unclear. Key outstanding issues concerning its composition include: who will chair the commission, how many members will it have, and whether members of judicial bodies will form a majority of HC members. Other outstanding issues include: A definition of the powers of the HC; a decision whether it is a permanent body with its own full time staff, or whether the Ministry of Interior retains a role in the administration of elections; and, the degree of supervision the judiciary will retain at polling station level?

Given the scepticism of the political opposition in the independence and impartiality of the previous election commissions, and the deep public distrust in the State's role in previous elections, these legal issues are likely to assume great importance in future political debate.

The Constitution provides the legal basis for two election commissions. It may have been preferable to establish a single high commission, in order to ensure that administrative arrangements for all elections are similar. In implementing the 2007 constitutional change in secondary legislation, the establishment of a genuinely independent and impartial election commission is of paramount importance for future parliamentary elections. To enhance the perception of its independence, it should be given strong powers, its members should have legal guarantees, its Chair should not be a government minister – as was the case with the HEC, and it should have the authority to direct government ministries in electoral matters. Both commissions should operate transparently to build public and political confidence and should have permanent and full-time staff.

4.3. Right to Stand for Elections

4.3.1. Presidential Elections

To be elected President, candidates must be at least 40 years old and have completed compulsory military service or been officially exempted. Changes to Article 76 of the Constitution adopted in a referendum in 2005, allow for multi-candidate presidential elections to take place and Egypt held its first multi-candidate presidential election later that year.

According to the Constitution, there are different requirements for 'independent' candidates (and after the 2005 elections and 2007 constitutional change for parties with no or few seats in parliament) on the one hand, and (larger) parliamentary parties, on the other:

- To be nominated, as an 'independent candidate' a presidential candidate requires the 'support' of at least 250 elected deputies in the Assembly, the Shura Council and the municipalities of the governorates of which at least 65 must be members of the People's Assembly, 25 members of the Shura Council and ten members from 14 Governorates. Deputies may support only one nominee.
- To be nominated by a party, until its amendment in 2005, article 76 provided that "Political parties, which have been founded at least five years before the starting date of candidature and have been operating uninterruptedly for this period, and whose members have obtained at least 5% of the elected members of both the People's Assembly and the Shura Council, may nominate for presidency a member of their respective higher board, according to their own by-laws, provided he has been a member of such board for at least one consecutive year." Nevertheless, exceptionally for the 2005 presidential election, any political party established before May 10, 2005 was able to nominate a member of its higher board as a candidate. For subsequent elections, if parties did not have the required number of seats they require the support of 250 deputies.

Following the 2005 elections, no party except the NDP had enough deputies to nominate a presidential candidate in subsequent elections. Thus, if Egypt wished to hold competitive presidential elections in future, it was necessary to amend the Constitution once again.

In the 2007 constitutional amendments, article 76 was altered so that parties require 3% of the deputies in each house of parliament (or an equivalent percentage of such total), in order to nominate a presidential candidate. However, as an exception to this provision, parties that have at least one deputy (elected

in the latest elections) can nominate a candidate from among their higher board in any presidential elections held before 1 May 2017. The provision for nominating independent presidential candidates (and those from non-parliamentary parties) is unaltered by the 2007 constitutional changes.

The next parliamentary elections are due to be held in 2010 and the next presidential elections are due to be held in 2011. As it is likely that the election system for parliamentary elections will be changed to a mixed majoritarian-PR system, it is not possible to know how parties will fare in future.

While the 2007 constitutional changes make it more likely that more than one candidate can contest the next presidential election, they do not significantly liberalise the requirements for presidential candidate nomination. If for any reason a presidential election is held before the next parliamentary elections, then, following the 2007 constitutional changes, the only parties that are able to field presidential candidates are: the NDP, Tagammu and Wafd and depending on its status, possibly Al Ghad. In the 2005 election, all registered parties were legally entitled to nominate a presidential candidate.

Exercising the right and the opportunity to stand for presidential office remains extremely difficult for independent candidates. Most political commentators believe that article 76 was formulated specifically to prevent the MB from fielding a presidential candidate. Because the MB is not a political party (and after the 2007 constitutional change banning parties of 'religious reference' is even more unlikely to become one), should it wish to nominate a presidential candidate, he/she would have to run as an 'independent'. This would require the support of 250 deputies from elected bodies. While in the 2005 PA elections the MB 'independent candidates' won 88 seats i.e. in excess of the 65 required, currently it does not have sufficient deputies in the Shura Council or local councils. Changes to the parliamentary (People's Assembly and Shura Council) election systems and those for local councils, could make it harder for the MB to secure enough seats to nominate a presidential candidate.

Parties are also restricted in nominating candidates. The requirement that they must have been in continual existence for five years means that any non-registered party (including Karama or Al Wasat) or newly established party will not be able to nominate a candidate. This provision could also be used to block any party that has been suspended by the PPC from nominating a candidate. In addition, they are restricted on who they can nominate as a candidate. According to Article 76 qualifying parties can only nominate a candidate from its higher body, whereas they might prefer to nominate another party member or support the candidate of another party or an independent candidate, as should be their right. In restricting the right to seek elective office in this manner, voters' choice is also restricted. Arguably this conflicts with international standards.¹⁰⁵

Candidate Registration

Under current legislation, candidate applications are submitted to the PEC which decides whether the candidacy meets the legal requirements to stand. In case the PEC rejects an application, the rejected applicant may lodge a complaint to the PEC within 48 hours. After having heard the applicant, the PEC decides the complaint. The decision of the PEC is final and not subject to further appeal. The legislation's failure to provide for judicial review is at odds with international standards requiring an effective remedy to enforce rights under the ICCPR (Article 2 of the ICCPR and UN HRC General Comment 25 point 20). In 2005, ten candidates were accepted to contest the election. Some prospective candidates were rejected by the PEC.

Despite changes to the Constitution in 2007, the requirements for nominating independent and party-nominated presidential candidates are highly unequal and are at odds with obligations under art.25 ICCPR. The constitutional amendments left unchanged provisions on nominating an 'independent' presidential candidate.

4.3.2. Parliamentary Elections

Under current legislation, candidates must be at least 35 years of age and born of an Egyptian father. The latter provision appears to be gender discrimination. Candidates must have served their obligatory military service or have been legally exempted.¹⁰⁶ The Constitutional Court has ruled that persons evading military service are infinitely barred from running for elections, regardless whether this person

¹⁰⁵ "The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria" Point 15 of the General Comment concerning Article 25 of the ICCPR (1996), issued by the UN Human Rights Committee.

¹⁰⁶ The same requirement exists for MP's in the Shura Council

has been sentenced or not. Candidates require at least an elementary education certificate and for those born before 1970, reading and writing ability must be satisfactory. This provision is not in line with Point 15 of General Comment 25 which states that persons who are generally eligible to stand for election should not be excluded on the grounds of education. Subject to rules on their resignation from office, members of the armed forces, police, intelligence services, administrative control agencies, governors and members of judicial bodies may not stand for election to the Assembly.

Prior to the 2007 amendment of Constitution, citizens had the right to nominate candidates. The amended text appears to abrogate this right from the Constitution and provides that “the law shall regulate the right of candidacy to the People’s Assembly and the Shura Council according to the electoral system it specifies”. This is significant because ‘independent’ candidates no longer have a constitutional guarantee of participation in parliamentary elections.

Candidate Registration

According to the LOPA, the Ministry of Interior (MoI) issues an Executive Regulation on requirements for submission of supporting documents. However, domestic election observers reported that the HEC did not provide all candidates with the required information to complete applications.¹⁰⁷ When submitting the required documentation, applicants must pay EGP 1,000 (approximately EUR 140), a sum which equals the monthly salary of an MP. After announcing the result, the deposit is refunded, deducting the expenses for removing campaign advertising.

Candidates register at the Security Directorate of the MoI in the Governorate of their residence. A three-member candidate registration committee is formed. It consists of two judges appointed by the Ministry of Justice and one representative of the MoI. In the 2005 elections, 5,310 candidates were registered. It is unclear how many applications were rejected, but it appears that some rejected candidates sought reinstatement through the courts, which is an available remedy in parliamentary elections.

Upon registration, each candidate is allocated a symbol, in order to help illiterate voters. However, the allocation of symbols has been controversial. One Egyptian NGO noted: “NDP candidates kept the camel and crescent symbols in all constituencies, in spite of the fact that the [rules] assign symbols according to the order of receiving candidacy papers to [the] security department in different governorates; it is not possible that 444 NDP [candidates] were first to submit their candidacy papers in all constituencies.”¹⁰⁸ In future, it might make more sense if parties (or blocs) were able to design their own symbols and submit these to the election commission to be used on ballots. This would facilitate campaigning.

4.4. Right to Vote

4.4.1. Eligibility

Voting is compulsory on penalty of a fine. Thus it can be seen as an obligation rather than a right.¹⁰⁹ The provision seems theoretical however in a context of a turn-out of 25% in the 2005 elections. The Constitution provides that citizens shall have the right to a secret vote. Egyptian citizens above 18 years are entitled to vote. Egyptians abroad retain the right to vote. However, the National Commission for Human Rights (NCHR) has highlighted that currently no procedures are in place to permit this right to be exercised effectively.¹¹⁰ Members of the armed forces and police may not vote during service. In certain situations, citizens lose the active voting right e.g. conviction for a criminal offence or dismissal from civil service or the public sector ‘for disgraceful reasons’. The Public Prosecutor shall inform the MoI of final judgements that result in depriving or suspending the exercise of political rights.

Excluding the armed forces from the right to vote has been a practice in many countries, but is no longer considered reasonable.¹¹¹ While the legislation suspends the voting right for convicted felons, the legislature did not establish voting procedures for those detained but not convicted. This conflicts with UN HRC General Comment 25 which determines that persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote. The NCHR has rightly criticised the provision that persons declared bankrupt within five years of an election lose the right to vote, as this is a civil matter with no direct link to exercising political rights.

¹⁰⁷ ICEM, op cit

¹⁰⁸ “Eye Witness” Monitoring the Egyptian Parliamentary Elections 2005, the United Group, Essam el Dein Mohammed Hassan and Dr Gamal Abd al Gawad.

¹⁰⁹ Participation in public life is a duty according to the Constitution (Art 62)

¹¹⁰ National Council for Human Rights, Annual Report 2005.

¹¹¹ See M. Nowak, ICCPR Commentary, Kehl 2005, art.25 point.26

4.4.2. Voter Registration

The LEPR provides that all persons, male and female, having the right to exercise political rights shall be recorded in voter lists. In 2005, some 32 million voters were registered to vote. The most obvious flaw in the registration of voters is that some 10 million citizens (approximately 25% of eligible citizens) are not registered to vote and thus cannot exercise their electoral rights.¹¹² This fact seriously challenges the 'universality' of the vote as provided for by ICCPR and Article 4 of LEPR.

The MoI is responsible for registering voters and issues executive regulations in this regard.¹¹³ In its 2005 annual report, NCHR noted that the MoI executive regulation on voter registration requests women to register in writing, while men are registered automatically through their national military service. This makes it less likely that women will be registered as voters compared to men.

Voters born after 1982 are registered automatically in their home district when they turn 18 years old. However, it is the responsibility of the citizen to check their registration. Voter registration takes place at police stations for a three months period every year (1 November to 31 January). The NCHR considered the registration period to be too short and a contributory factor in the low levels of voter registration. ICEM recommended allowing voters to register throughout the year. Some commentators have argued that requiring voters to register at a police station is a disincentive for many persons to register to vote, particularly for women who fear harassment.

According to the LEPR citizens usually register to vote in the area of their residence. However, they have the right to register at three other locations: "(I) the domicile of their main work, or (II) where they have a serious interest or (III) at the domicile of their family even if they do not live there". This could cause multiple registration entries. To avoid this, it may be necessary to put in place additional safeguards, such as running checks for duplicates.

By law voter lists should be publicly displayed from 1-28 February each year. In case of incorrect entries, voters may request amendments up to 15 March. These requests are decided by a committee consisting of the head of the Governorate Court of First Instance, the Security Director, and the Chief Prosecutor. Voters may lodge an appeal against the decision of the registration committee to an administrative court. If the appeal is rejected, the court may order the appellant to pay a fine of between 100 and 1000 Egyptian pounds (approximately EUR 15 to EUR 150). This seems unduly harsh for cases involving citizens' requests to exercise a fundamental right and could serve as a disincentive to seeking a legal remedy.

Upon registration, electors receive voter cards. By law, candidates are entitled to receive a copy of the voter register in the constituency in which they are standing for election. The NCHR which monitored the 2005 polls noted that: "The electoral lists (...) included repeated mistakes in names of voters in addition to the absence of names of voters (...) other problems were also found (...) candidates were not handed over copies of lists prior to the election in a timely manner, there was discrimination with regard to candidates regarding these deadlines, there were repeated mistakes on the CDs [of voter registers] handed over to candidates, and paper copies of voter lists were not displayed at some voting premises."¹¹⁴ It was also reported that public enterprises collected employees' voter cards and redistributed them on Election Day to ensure that they voted. The NCHR expressed its concern over "*mobile block voting*" (also known as 'bussing' voters) and has called for strict rules which base voter registration on actual residence. ICEM has called for a comprehensive revision of voter registers under the supervision of the judiciary, as well as local and international organisations.¹¹⁵

While some of the voter registers are computerised, it appears that no national voter registration database exists. However, national civil registers do exist, e.g. the national register of identity cards. Some Egyptian NGOs have suggested using this database to improve the accuracy of voter registers. This could improve inclusiveness and make it easier to detect errors and potential duplicates. The ID card contains the name, age, and address of the holder, i.e. all information relevant of the voter registration. According to some reports the ID card database should be fully computerized by the beginning of 2007. However, the provision that voters' have the choice of where to register (residence, work, paternal homestead, etc.) could cause problems in implementing this initiative as the ID card law may stipulate that the address on the card must be a main residence. Nevertheless, it may be feasible to extract data from the ID card database to compile more accurate voter lists. It would be preferable if voters were entitled to register to vote at only one locale.

112 EOHR Report of 14 December 2005: „Future Parliament“?–Not Yet! EOHR Report on Parliamentary Elections 2005 Results <http://www.eohr.org/report/2005/re1214.shtml>

113 DRI was not able to obtain a copy of executive regulations issued by the MoI under Article 5 of LEPR.

114 NCHR, op cit

115 ICEM Final Report: A Testimony for History – Monitoring the Egyptian 2005 Parliamentary Elections

A much greater effort is required to ensure that all eligible voters are registered. This may require adopting a new approach to voter registration, e.g. extracting voter registers from a civil register. However, this should only occur after a feasibility study has taken place.

4.4.3. Election Districting

For Assembly elections, Egypt is divided into election districts (constituencies). Administrative boundaries are often taken into account when determining districts. Occasionally districts are non-contiguous. The average number of voters per constituency is some 143,000. However, the average size of districts within governorates varies greatly e.g. in Aswan Governorate, an average of some 198,000 voters per district are registered while in South Sinai Governorate an average of some 19,000 voters per district are registered¹¹⁶ – a variation exceeding a factor of ten. Some commentators have claimed that decisions on constituency boundaries are based on political considerations.

Article 25 ICCPR provides for equal suffrage (the vote of one elector should be equal to the vote of another); the UN HRC specified that boundaries of election districts and the method of allocating votes should not distort the distribution of voters.¹¹⁷ While a certain degree of variation in the number of voters per district is inevitable, the current constituency delimitation creates unequal suffrage. The NCHR appears to be one of the few institutions calling for the revision of election districts to reflect the resident population.¹¹⁸

Currently the sizes of electoral districts are highly unequal, with some containing ten times as many voters as others. In order to ensure the equality of the vote, electoral districts should be drawn in a way to ensure that each seat represents a similar number of voters.

4. 5. Campaign Rules

4. 5.1 The Presidential Election

The law provides that the campaign begins three weeks before the date for voting and ends two days before this date. This period (19 days) seems unduly short, given the size of the electorate and considering that candidates may wish to tour the country to meet voters. Any electoral campaign outside this period is prohibited. However, a narrow definition of campaigning is used which suggests that so long as a prospective candidate or his/her supporters do not actually exhort citizens to vote in a certain way, they may still meet with citizens without undue restriction. The law should not be applied to restrict normal political discourse in the period immediately before an election. This would run counter to international standards which grant citizens the right to free communication of political information and ideas, freedom to debate and advertise political ideas and are not time limited.

The law prohibits (art.21 LOPE): using 'religious thought' in the campaign; promising gifts, money, etc. directly or indirectly; using State owned buildings, establishments and transport (or those in the public or public-economic sector) for the electoral campaign – the same applies to 'public establishments,' places of worship, schools, universities and other places of education; and using public money, or money from the public economic sector. Violations of these provisions can result in a one year term of imprisonment and a fine. The prohibition on using 'religious thought' appears very broad. While the ban on using public buildings and establishments (or those in the public economic sector) can avoid the misuse of state resources in an election campaign, it could restrict candidates' ability to gain access to venues (e.g. theatres, or exhibition halls) to meet voters. This could lead to the holding of more outdoor meetings, which are possibly subject to tighter controls, especially under the emergency legislation.

The upper limit for campaign expenditure is EGP 10,000,000 (Approximately EUR 1.4 million) plus EGP 2,000,000 (EUR 280,000) for the run-off election. Every candidate is entitled to a State subsidy of 5% of maximum campaign expenditure. The law suggests that candidates can only accept campaign contributions in money or kind from *the party which nominated them*¹¹⁹ (emphasis added). This would be

¹¹⁶ The source data is taken from the 2005 election handbook of the Ministry of Information.

¹¹⁷ General Comment on art. 25, point 21

¹¹⁸ Annual Report of the NCHR, 2005/2006

¹¹⁹ Art. 26 LOPE. Parties finance is regulated by the Law on Political Party Systems. Article 11 provides that parties' resources shall be derived from subscriptions, financial support from the State, and donations of Egyptian nationals and proceeds from non-commercial ventures.

unduly restrictive and leaves open the question of how an independent candidate could receive financial support (assuming they can find 250 elected deputies to support their nomination). Furthermore, this provision does not seem to foresee the possibility that parties might make a financial contribution to an independent candidate (or indeed the candidate of another party), e.g. where parties agree to support one single candidate, or where parties may decide in the run-off to give their support to one of the two remaining contenders. This provision appears to create unequal opportunity and thus runs counter to the ICCPR.

The Presidential election law contains a variety of other restrictions on campaign financing, including limiting contributions from any one source to 2% of the maximum campaign expenditure. Candidates are required to inform the PEC of all deposits and expenditures and are obliged to open a special bank account to which all contributions, public campaign funds, personal contribution to the campaign fund etc. must be deposited and all campaign expenditure made. Anyone who effects election campaign expenditure from other than the special bank account, or spends money from the account on non-campaign items or who exceeds the expenditure limit is liable to not less than one year in prison. Political parties are obliged to inform the PPC of all donations exceeding EGP 1,000 (EUR 140) received by them in the three months preceding the date of an election, within five days of the contribution being made.

4.5.2. Parliamentary Elections

LOPA and general rules adopted by the Higher Election Commission (HEC)¹²⁰ regulate the election campaigns of candidates for the Assembly. The LPPS is also relevant. The Minister of Interior decrees the dates of the elections at least 30 days before the day of the election. This does not give candidates much time to campaign as they first have to register as a candidate.

Campaigning prohibitions for MP candidates are very similar to the prohibitions for presidential candidates. The proscription on using public buildings may be particularly relevant in the context of parliamentary elections as competition for venues to meet voters may be more intense raising the likelihood that outdoor spaces are used and public assembly legislation may then apply, including Law 10/1914 which provides that any gathering - defined as five or more persons - is to disperse if so ordered by the authorities on the ground that the gathering poses a threat to public order.¹²¹ However, parties do not require prior permission for public assemblies and citizens can lodge a complaint against a ban with the Minister of Interior, or may challenge it in an administrative court. A provision that Governors may order the removal of all campaign material that contravenes any campaign-related provision, may run the risk of 'subjectivity.'

The HEC regulations set a campaign expenditure limit of EGP 70,000 (EUR 10,000) per candidate.¹²² Nevertheless, EOHR found that scores of candidates spent millions of pounds on their campaigns. The illegal use of large sums of money during the campaign created unequal campaign conditions.¹²³ EOHR found that despite regulatory provisions requiring it, the HEC did not disclose information on the sources of candidates' campaign funds and expenditures.¹²⁴

Candidates should be given more time to campaign. It should be considered to allow electoral contestants to rent public premises on equal conditions for campaigning. Campaign rules should be equally enforced and there should be publication of campaign expenditures, in line with legal provisions.

¹²⁰ A possibility provided for by art.3 LEPR

¹²¹ See Human Rights Watch: "Egypt: Security Force Abuse of Anti-War Demonstrations" (November 2003). HRW notes that: "The Illegal Assembly Law of 1914 (Law 10/1914), promulgated under British rule, states in its preamble that it was decreed "out of the necessity to create harsher punishments for crimes committed through assembly, punishments that will be more effective than those currently in place." Law 10/14 refers to assemblies of more than five persons "that threaten the public peace," and establishes penalties of a jail sentence not to exceed six months or a fine not to exceed L.E. 20 (currently \$3.26) for failing to disperse upon the order of relevant authorities. It contains no provision for requesting permission to hold a public gathering."

¹²² EOHR "Future Parliament: Not Yet" – Report on the 2005 Parliamentary elections.

¹²³ "Eye Witness" Op cit

¹²⁴ EOHR, op cit

4. 6. Voting

Voting in presidential elections is conducted on a single day whereas the 2005 Assembly elections were held over three two-round phases (six election days). Following the amendment to article 62 of the Constitution in 2007, voting in future parliamentary elections will take place on a single day. In an attempt to improve the integrity of the vote, transparent ballot boxes were used in 2005 and voters have their fingers marked with phosphorous ink to prevent double voting.

According to the LEPR after marking their ballot, voters must hand his/her folded ballot to a polling board member to deposit in the box. This procedure could diminish the secrecy of the vote. Article 31 provides that voters shall prove their identity through presenting their voter card after he/she has marked their ballot. This is unusual. Usually a voter's identity is checked prior to issuing ballot papers as there is no point in giving a ballot paper to a person that is not eligible or cannot prove their eligibility. Voters are entitled to establish their identity by any method. The provision that voters without voter cards may cast ballots makes the issuance of voter cards less useful as a deterrent against fraud. The law does not specifically stipulate that only one voter can enter a voting booth at a time (unless assistance is required).

According to the General Comment 25, assistance provided to the disabled, blind or illiterate should be independent. According to the LEPR, blind and disabled voters who cannot mark ballots on their own can nominate a person to assist them or may express themselves verbally to the committee. This provision conflicts with the General Comment, infringes on the secrecy of the vote, particularly as the polling board member signs the reverse of the ballot after the voter has informed the committee member of his/her decision.

The law should be amended to ensure that the secrecy of the vote is protected for all voters. Voters' identity should be checked before a ballot is handed over.

4. 7. Vote Counting, Aggregation and Publication of Results

Under current legislation, the vote count is conducted by a Counting Committee. The Committee is in charge of one Voting Centre in which there may be one or more polling stations staffed by Polling Boards each in charge of one ballot box. The Committee consists of the Chair of the Voting Centre (a person from a judicial body) and Chairs of two Polling Boards, selected by the Chair of the Voting Centre. Chairs of the Polling Boards may be present at the count as well as representatives of candidates.

The Committee decides on "matters related to the voting process", including the validity of a vote, by absolute majority. The committee meets in camera when deciding these matters and its deliberations are confidential. This lessens the transparency of the counting process. However, the decision and reasoning are contained in a minute, which is signed by the committee. The votes of each polling station are counted in the presence of its chair.

ICEM reported that in 2005 prior to the third round the Ministry of Justice issued an instruction that the counting results from each ballot box should be announced separately in order to improve the transparency of the count and aggregation process. However, the instruction was routinely ignored, possibly because it was made so late in the process.¹²⁵ It would be highly beneficial if this provision was incorporated in primary legislation, together with the right for candidate representatives to be given official vote tally sheets from each ballot box as a record.

The General Committees compile the results of the elections in a protocol which is produced in three copies. The Commission Chair and Secretary sign all three copies. The LEPR provides that the first copy of the protocol and all ballots are sent to the MoI, the second copy is directly sent to the HEC, the third copy is retained at the Security Directory Office. The Law does not provide that candidates are entitled to receive copies. The Chair of the General Committee announces the results for the respective constituency as well as the number of votes of each candidate. The HEC Chair certifies each elected candidate within one month.

For presidential elections, the polling board announces the results per candidate and polling board (article 38 LOPE). The State Information Service published aggregate level results per district on its website. For presidential elections, the PEC notifies the winning candidate.

Given the lack of trust in the electoral process and frequent allegations of manipulation, there should be greater efforts made to ensure fully transparent aggregation of results.

¹²⁵ However, the Eye Witness Report notes that the authorities refused requests by some candidates to declare the results of each box separately.

Political party representatives and civil society observers should be permitted to be present throughout the aggregation of results and given official copies of all forms and protocols prepared. Detailed results from all polling stations and subsequent aggregation of results at constituency and national level should be published on the internet as soon as they are available and certainly before the expiry of the appeals period.

4. 8. System of Complaints and Appeals

The legislation provides that some complaints can be filed with election commissions. Administrative courts adjudicate hundreds of routine election-related appeals in each election. On occasions they also adopt decisions with far reaching consequences e.g. in 2005 an administrative court ruled that civil society organizations have the right to observe voting and counting. Furthermore, courts have ruled against the practice of bussing in electors to vote using public transportation and the practice of collective and double registration.¹²⁶

4.8.1. Presidential Elections

It is not possible to challenge the results of a presidential election in court. According to the Constitution the resolutions of the PEC are “final, self-enforcing and incontestable by any means or before any authority whatsoever and may not be interpreted or subject to a stay”. Notwithstanding that half the members of the PEC are very senior judges, the absence of an appeal mechanism to court is highly problematic. The right to appeal is of fundamental importance. It is generally accepted that a body which took a decision in the first instance should not also be the appeal body.

4.8.2. Parliamentary Elections

Courts can annul an election due to serious irregularities in the conduct of the poll, but only in respect of violations that occurred before the start of the vote count. In 2005, there were six constituencies where courts ordered repeated elections to take place; affecting the election of 12 MPs.¹²⁷ As of December 2006, no by-elections had been held. It is highly problematic that citizens are left without an elected representative.

Under constitutional provisions (which were left unaltered by the 2007 changes) the People’s Assembly is the only authority competent to decide upon the validity of the election of its members. The legislation (Constitution and LOPA) provides that a petition to invalidate an election result is made to the Speaker of the Assembly within fifteen days of the announcement of the election result. The Speaker forwards this petition to the Court of Cassation for investigation. The Court reports the result of its investigation to the Assembly, within 90 days confirming the declared result or recommending annulment of results. However, the Court has no power to invalidate an election result and its report to the Assembly is non-binding. The Assembly is legally obliged to pass a decision on the Court’s findings within 60 days. Any decision to invalidate an election of an MP must be supported by two-thirds of the Assembly members.

The procedure whereby a political body takes a decision on an electoral matter in which its members have a direct political interest is highly problematic and is at odds with international standards (art.2 ICCPR). The provisions restrict not only the rights of the ‘losing’ candidate but also voters. As the NDP has a two-thirds majority in the Assembly, Article 93 of the Constitution becomes even more problematic as it could use its dominant position to strip only opposition MPs of their mandates. The previous Parliament stripped three members of their mandates, two of them independent MPs of the Muslim Brotherhood. There were reports that “many NDP parliamentarians retained their seat despite court findings against them.”¹²⁸ The legal provisions leave those MPs which are the subject of the Court’s report open to undue influence as they could be stripped their mandate at any time by the parliamentary majority. Given previous experiences, this uncertainty could persist through the entire term of the mandate.

The NCHR noted in its 2005 report that in the past neither the Court of Cassation nor the People’s Assembly abided by legal deadlines concerning appeals to invalidate an election result. After the 2005

126 Mona El-Ghobashy: Egypt’s Paradoxical Elections, Middle East Report No.238

127 EOHR Report of 14 December 2005: „Future Parliament”?-Not Yet! EOHR Report on Parliamentary Elections 2005 Results <http://www.eohr.org/report/2005/re1214.shtml>

128 Gamal Essam El-Din, op cit

elections, the Court of Cassation was asked by parliament to investigate 1,050 complaints on the election of deputies, received by the Assembly. Of these, it referred the election of MPs in 90 constituencies back to parliament to take action.¹²⁹ At the time of writing the report, the People's Assembly has not taken any action concerning these cases. Most interlocutors were of the opinion that the Assembly would not take any action to strip the members of the seats, except possibly on a case by case basis for a few MPs. Indeed, in view of the number of seats in question (90 two-seat constituencies) it would be impossible to achieve a two-thirds majority unless, at least some of the MPs concerned (180) agreed to hold re-elections for their own seats.

The ICCPR provides that "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" (Article 2.3.a). The UN Human Rights Committee stressed: "There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes." (General Comment on art.25, point 20).

It is not possible to challenge any resolution of the Presidential Election Commission or the election result. Only the People's Assembly can invalidate an MP's election. These constitutional provisions conflict with international norms, as those whose rights may have been violated are denied an effective remedy. The 2007 constitutional changes did not address these legal shortcomings.

4.9. Transparency: Candidate Representatives and Election Observers

4.9.1. Candidate Representatives

Each candidate has the right to delegate a member from among the electors registered in the area covered by a General Committee to represent him on the Committee. Similarly, a candidate can delegate a representative to polling stations so long as the representative is registered to vote at that polling station (the sub-committee area). It appears that the latter provision can become an obstacle to effective scrutiny as it is not always possible to find a representative in all areas, especially in rural areas where one or a few extended families may constitute the majority of registered electors in a sub-committee area.

If the names of at least two candidates' representatives are not submitted within the legal timeframe, the polling board selects ordinary voters to fulfil the task. This is peculiar as a candidate may prefer no one to represent his/her interests, rather than have someone appointed on his/her behalf, who could be hostile to his/her political viewpoint. If more than a total of six candidate representatives are nominated for any one polling station, lots are drawn from among them. Similar provisions have been abused in other countries to exclude the representatives of 'serious' candidates and thereby lessen transparency. The provision that the Counting Committee can determine valid and invalid ballots in camera (Article 35 LEPR) suggests that the candidate representative may not be present. If this is so, this would be a significant limitation on the transparency of the ballot adjudication process. The law does not provide that candidate representative receive a copy of protocols of results.

As a matter of transparency all candidates and parties should be allowed to send representatives to polling stations and General Committees without limitations. They should have full access to the counting of votes and tabulation of results at all levels. Candidate and party representatives should be given copies of all relevant protocols, so that they can verify the accuracy of the vote aggregation.

4.9.2. Election Observers

Domestic election observation of the Assembly elections began in 1995. Only candidate representatives are specifically entitled to scrutinize voting and, to an extent, counting - the law does not provide independent observation of the process. In 2005, domestic observers took part in election observation on the basis of an administrative court ruling issued on the eve of the presidential election which found that observation was not prohibited by law. Due to the timing of the decision, many polling boards were not aware of the ruling and prevented the observation of the polls. The NCHR reports that "there were considerable restrictions for observers in the 2005 presidential elections while the case was more

129 Al Ahram Weekly, 19-25 October 2005, Gamal Essam El-Din: "Rulings confirm electoral fraud".

flexible in the parliamentary elections”.¹³⁰

Election observation was conducted by the NCHR and a variety of domestic NGOs including EOHR and the Independent Committee for Election Monitoring (ICEM), an association of eleven domestic NGOs. These organizations have provided an important element of transparency in the election process. No foreign observers were invited to monitor the poll.

In general, the benefits of independent election observation have been recognised by many states, and takes place even in long-standing democracies.¹³¹ Election observation is an essential element in ensuring transparency and thus enhancing the integrity of an electoral process and the confidence of voters. In Egypt, interlocutors indicated that NGO observers had helped to avoid the release of false data on voter turnout – a problem in a number of previous parliamentary and presidential elections.

The UN HRC stressed that “there should be independent scrutiny of the voting and counting process.”¹³² The UN has sponsored a “Declaration of Principles of International Election Observation”, pointing out the benefits of international observation. The document sets out the rights and duties of observers.¹³³ The declaration was endorsed inter alia by the African Union. Although the government of Egypt is opposed to the idea of international election observation, it has itself sent observer delegations to elections abroad (e.g. to Palestinian elections).

Independent election observation has become an accepted practice in most countries. It takes place in established as well as emerging democracies. In order to increase the transparency of the election process, the possibility and conditions for independent election observation should be set out in law.

130 NCHR, Annual Report 2005-6, op cit, page 30

131 E.g. the Organisation for Security and Co-operation in Europe has assessed elections in the United Kingdom, the United States, France, Spain, Italy, Canada and the Netherlands See: <http://www.osce.org/odihr-elections/14207.html>

132 UN HRC General Comment 25, point 20.

133 http://www.accessdemocracy.org/library/1923_declaration_102705.pdf

Part three:

Conclusion and Recommendations

1. Conclusions

Egypt's electoral framework does not fully comply with international standards for democratic elections – principally those set out Article 25 of the International Covenant on Civil and Political Rights (ICCPR) and interpretations of this article (General Comments) made by the United Nations Human Rights Committee. However well administered Election Day proceedings may be, if the rights associated with the ICCPR are not respected in the legislation, e.g., the right to compete in an election on equal terms, it will be impossible to assess an election as being fully in line with international standards.

Without a genuine commitment to political pluralism and tolerance of divergent political opinion, a simple reform of the electoral framework is unlikely to bring long-term benefit. Significant reform of the Law on Political Party Systems and the holding of genuine democratic elections would enhance legitimacy which in turn should contribute to political stability. Attempting to marginalise certain political opinions is unlikely to achieve either objective.

The 2005 package of reforms did not demonstrate a political conviction to embrace political pluralism and bring about a real democratic change. The manner in which the reforms were enacted and the limited substance of the reforms left the opposition disillusioned.

The 2007 constitutional changes may enhance Egypt's democratic development in some respects, e.g. strengthening the powers of the Assembly vis-à-vis the government and opening the possibility for the increased representation of women in parliament, but hinder it in others e.g. by conferring on the President the right to dissolve the Assembly, increasing the powers of the less representative Shura Council and introducing a constitutional ban on parties with a religious or 'religious referential' basis. It is too early to know the effect of other changes, but it is conceivable that the re-balancing of the State powers could at some future point lead to political deadlock, requiring the President's intervention.

Overall, the content of the amendments and the manner in which they were adopted do not point in the direction of democratisation. The constitutional referendum was held only one week after Parliament's approval of amendments, giving a mere five days of campaigning on a complex set of constitutional changes. This prevented any meaningful public debate of the issues.

2. Election Legislation and International Standards

This report has identified a number of areas in which Egypt's electoral framework does not fully comply with international standards for democratic elections – principally those set out Article 25 of the ICCPR and interpretations of this article (General Comments) made by the United Nations Human Rights Committee (HRC). The HRC expressed its concern regarding the "the lack of clarity surrounding the question of the legal standing of the ICCPR in relation to domestic law and the attendant consequences." It recommended that Egypt takes steps to "ensure that its legislation gives full effect to the rights recognized in the Covenant and that effective remedies are available for the exercise of those rights."¹³⁴

The 2007 constitutional review process missed the opportunity to bring some election-related provisions into line with international standards e.g. the significantly unequal eligibility requirements to contest the presidential election (article 76), and preventing access to an effective legal remedy against possible violation of electoral rights (articles 76 and 93). It is recommended that these issues be addressed in future.

At this stage it is not possible to know whether other changes will have a positive effect on electoral processes as the detail of secondary legislation (necessary to implement the constitutional amendments) has yet to be finalised e.g. provisions regarding instituting a new elections system, establishing a new High Commission for elections and dispensing with citizens' right to nominate candidates.

The following recommendations may be helpful in informing debate during the enactment of secondary legislation, and in the application of legislation:

- **The rights to peaceful assembly, association and expression should** be fully guaranteed, in particular during election campaigns. Currently all elections are taking place under provisions of the

¹³⁴ U.N. Human Rights Committee, concluding observations: Egypt. 28/11/2002. CCPR/CO/76/EGY

Emergency Act, which can limit the possibility for normal electoral activity e.g. holding campaign events or voting. As a general principle, elections should not be held in a state of emergency. If national security is directly threatened, the elections should be postponed for a reasonable period. If there is no immediate direct threat, the state of emergency should be lifted. Lifting the state of emergency could mark significant progress if the state of emergency is not perpetuated de facto by new anti-terrorism legislation. It should be ensured that a new anti-terrorism law respects the rights to peaceful assembly, association and expression.

- **Political parties should be able to form and associate freely; restrictions must be limited, clear and uniformly applied:** The Law on Political Party Systems (LPPS) and its application by the Political Party Committee (PPC) has stifled the development of multi-party politics, restricted candidates' opportunities and reduced voters' choices at the polls and is in urgent need to serious reform. Provisions such as the need for parties to operate on a coherent political platform and to have a political platform which is an addition to political life also appear to conflict with the freedom of association as guaranteed by article 22 of ICCPR. The current composition of the PCC gives the dominant party an effective veto on the registration of rival parties. The establishment of a non-partisan registration body would lessen the inherent conflict of interest and raise confidence in this process. The amendment to article 5 of the Constitution reinforces the existing prohibition on parties with a religious or 'religious referential' basis contained in the LPPS. Given that Islam is the state religion and the principles of Shari' a are the principal source of legislation and that the NDP frequently refers to Islam, legislation should give clearer guidance on what type of religious reference is permissible / impermissible. The law should clearly define the meaning of a party being "established on the basis of religion".

- **The right to seek elected office on equal terms:** Specifically, future legislation should respect the right of citizens' right to freely engage in political activity individually or through political parties and that the right of persons to stand for Assembly elections is not limited unreasonably by effectively requiring candidates to be members of parties. Thus, independent candidates should be able to compete in an election on an equal basis.

- **Non-Discrimination of Candidates:** Provisions that (in certain circumstances) a candidate who secures a majority of votes will not be elected if s/he is not a 'worker' or 'farmer' should be removed as it ignores the choices made by voters. Educational requirements for candidates should be removed so that all citizens can stand for office and be elected on an equal basis without discrimination.

- **There must be equality of the vote:** The drawing of electoral boundaries should not distort the representative nature of the elected body. Under the current system, the average number of voters registered in a constituency varies by a factor of ten. Election district boundaries should be redrawn to ensure that each seat in Parliament represents a broadly similar number of voters, to comply with the principle of equal suffrage set out in article 25 of the ICCPR.

- **Voter Registration should respect the 'universality' of the vote:** A much greater effort is required to ensure that all eligible voters are registered. This may require adopting a completely new approach to voter registration, e.g. extracting voter registers from a civil register. However, this should only occur after a feasibility study has taken place.

- **Media legislation should allow free communication of information and ideas** about public and political issues between citizens, candidates and elected representatives. Under the Media legislation, journalists can and have been imprisoned for libel and for articles critical of the State authorities. These provisions should be removed from the statute so that the media is not restrained in meeting its obligation to inform public opinion, particularly during election periods. The obligations of the State media during an election campaign should be set out in law, legal mechanisms to ensure compliance should be introduced.

- **Independent scrutiny/observation:** Currently, the law provides for judicial supervision, but it does not provide for independent scrutiny of the process, as only candidate representatives are specifically entitled to scrutinize voting and, to an extent, counting. The law should provide for the possibility of independent scrutiny of the voting and counting process as stressed in the UN Human Rights Committee's general comments on art.25 (point 20). This could be conducted by Egyptian NGOs and possibly by international organizations which have a recognized competency in this area.

- **Postponement of elections should be regulated:** Article 25 stresses the importance of periodic elections in order to ensure that the authority of the elected body continues to be based on the free expression of the will of electors. Elections should not be postponed for partisan reasons. In the light of the postponement of local elections it is indispensable that the law determines objective requirements in which elections may be postponed.

3. Election System

There are no international standards requiring the use of a particular election system. However, election systems designed to exclude significant political opposition are not conducive to the active involvement of citizens in elections and the development of democracy.

The 2007 amendments to the Constitution provide that the legislator may in future introduce a mixed constituency based – proportional representation (PR) election system. The details of the election system will be specified by law and the ratio of seats between the two components of the election system is not yet known. However, it is likely that for the PR component, some form of election (party-) list will be required. For the PR election, it is strongly recommended that citizens groups as well as registered parties are allowed to submit election lists to ensure that, in accordance with point 17 of the UN HRC's General Comment on art. 25, the right of persons to stand for election is not limited unreasonably by requiring candidates to be members of parties.

4. Election Administration

The UN Human Rights Committee recommends that an independent electoral authority be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.¹³⁵

It might have been beneficial to merge the two election commissions. However, the constitutional changes did not provide for this, instead, a High Commission (HC) for (parliamentary) elections was established along with the pre-existing Presidential Election Commission (PEC). Given the doubts of the political opposition about the independence and impartiality of the previous election commissions, and the deep public distrust in the Ministry of Interior's role in previous elections, debates on the composition and powers of the election commissions are likely to assume great importance in future political debate. The following recommendations are offered in this regard:

- The HC should be established as a 'permanent body', with full-time commissioners and secretariat staff. To minimise conflicts of interest, its members and staff should be relieved of all other duties. It may be difficult to establish the PEC as a 'permanent body', but it too should have a full time complement of secretariat staff. Secretariat staff from both commissions should undergo thorough training in election administration and election standards.
- A majority of the HC's members should be judges. The majority and minority political opinions should be considered in the appointment of other HC members and, to the largest degree possible, consensus achieved. If this is not possible, consideration should be given to allowing parties and political groups the right to nominate independent persons in whom they have confidence e.g. the top three scoring parties/groups to nominate one member each to the election commission. Members of the HC should be provided with the necessary legal guarantees to enable them to conduct their tasks independently.
- Great care is needed in selecting the HC Chair to ensure that he/she has a reputation for political impartiality. The Chair should not be a government minister – as was the case with the HEC.
- Both commissions should be given the power to direct the work of the Ministry of Interior effectively - if it retains any role in the electoral matters.
- The rules of procedure of the commissions should adopt measures to ensure transparency in their operation and decision making. The commissions should consider holding public sessions and establish sub-committees to ensure: information is available to political parties, voters are well-informed, the media reports in a politically impartial manner, election boundaries ensure equality of the vote, voter registers are more inclusive, civil society is involved in the election process etc.
- To create a high level of confidence in the work of election commissions, it should be considered to introduce specific majority requirements for decision-making, e.g. particularly significant decision could require a 2/3 majority of members.
- The election commissions should grant General Committees latitude to appoint to polling stations and sub-stations as many judicial supervisors as it deems necessary. Judicial persons should have the statutory right to enter polling stations and observe voting and counting.

¹³⁵ General Comment on article 25, Point 20

5. Women's Participation

Following the change to article 62, the legislator may introduce a quota establishing a minimum representation for women in the Assembly and Shura Council. It is hoped that any measures introduced avoid 'tokenism' and ensure the direct election of women to parliament.

Greater efforts at civic and voter education aimed at women could also increase their participation in political affairs. In this regard, the authorities should seek to implement the recommendation of the UN Committee on the Elimination of Discrimination against Women to implement programs to raise awareness, including programs aimed at men, to change stereotypical attitudes which undermine equality between women and men.

Political parties should make greater efforts to promote women into leadership positions and to develop internal democratic procedures that would ensure issues of special concern to women are taken into account as they develop their party programs.

6. Integrity of the Voting and Counting Process

The authorities should take steps to eradicate serious electoral violations such as vote buying, intimidation and coercion of electors and physically obstructing electors from casting their ballots. Changes to the law are required to ensure the secrecy of the vote, as required by ICCPR, is not compromised. During the counting phase, it would increase transparency if candidate representatives and accredited observers were given the right to receive official copies of the results sheets. Similarly, detailed results from all polling stations and subsequent aggregation of results at constituency and national level should be published on the internet as soon as they are available and certainly before the expiry of the appeals period. This would enable interested parties e.g. candidates to verify that the results have been aggregated correctly.

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