



FOR IMMEDIATE RELEASE

May 26, 2012

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Carter Center Preliminary Statement on Egypt's Presidential Election

The Carter Center election witnessing mission was accredited in Egypt by the Presidential Election Commission (PEC) on May 3, 2012. Accreditation badges, necessary for witnesses to observe the process, were only provided on May 16, less than seven days before the election. The Carter Center mission, which is led by former U.S. President Jimmy Carter, includes a total of 102 witnesses from 35 countries who visited 909 polling stations in 25 governorates to follow voting, counting, and tabulation. The Center's witnesses continue to assess the conclusion of the vote tabulation, and will remain in Egypt to follow the runoff election and the post-election environment. This statement is preliminary; a final report will be published four months after the end of the electoral process.¹ The Carter Center mission to Egypt is limited in scope due to the late stage of accreditation, the limitation that witnessing missions could not issue statements prior to polling, and a 30-minute time limit restriction on witnesses' presence inside polling stations.

Executive Summary

Egypt's first presidential election in the post-Mubarak era marks the first time in Egypt's history that the head of state will be directly elected by the people in a competitive election.

Due to restrictions imposed on election witnesses by Egypt's electoral authorities that prevented assessment of critical pre-election phases including voter registration and campaigning, The Carter Center was only able to conduct a limited mission focusing on voting, counting, and vote tabulation. As a result, the Center is unable to reach a conclusion about the process as a whole. The Center's limited mission found that the polling process was peaceful and orderly and marked by a sense of hope in Egypt's struggle for democracy. The Center noted an important new measure to promote transparency - counting at the polling station in the presence of candidate agents and witnesses. At the same time, the Center also found that election authorities prohibited access to the final aggregation of national results, undermining the overall transparency of the process. Final results have not been announced yet and the electoral process is ongoing.

The broader context in which these elections were held is a cause for concern. To date, several fundamental questions remain unanswered and continue to cast uncertainty over the continued transition

¹ The Carter Center assesses elections against international obligations for elections, and in accordance with the Declaration of Principles for International Election Observation.

process, including the degree to which the powers of the new president will be balanced by other institutions. While the Center's assessment of the voting and counting process is generally positive thus far, it falls within this larger context of concerns about key aspects of the legal and electoral framework. In summary, the Center finds that:

- Article 28 of the Constitutional Declaration makes the decisions of the PEC final, not permitting objections by any party against its decisions, nor allowing them to be suspended or cancelled. The lack of ability to appeal the PEC's decisions is a limitation on the right to an effective remedy and administrative appeal.² Given the unparalleled powers of the PEC, public confidence in the impartiality of the body is even more essential to the credibility of the entire electoral process.
- The ongoing application of loosely defined provisions of the Emergency Law continues to stifle democratic debate, thereby hindering the full enjoyment of electoral rights.
- The late amendment of laws and procedures pose severe challenges for the stability and credibility of an election process.³ They also create significant difficulties in ensuring that election officials are trained and voters properly informed, increasing the risk of administrative irregularities in the election process.
- Egyptian law recognizes the importance of impartial scrutiny of the election process by having a specific provision for witnessing by domestic and international Civil Society Organizations (CSOs). This provision, however, is severely undermined by a series of restrictions introduced by the PEC, hindering the ability of witnesses to observe essential aspects of the election process. CSOs are important election stakeholders and if allowed to operate freely can perform key functions such as witnessing that enhance transparency and lend credibility to the process as warranted. Carter Center witnesses reported low numbers of domestic observers in polling stations visited.
- The election days were largely peaceful and orderly. Polling stations visited by Carter Center witnesses were generally accessible and free of interference throughout the two days. Polling stations generally opened late, and a significant percentage closed earlier than the official 9 p.m. closing time.
- Procedural irregularities were at times witnessed by various Carter Center teams across Egypt. These included failure to check for ink, inking of fingers, and the inconsistent implementation of closing procedures before starting counting.
- In approximately one-third of polling stations visited, Carter Center witnesses reported instances in which the secrecy of the ballot was undermined. This was usually due to the layout of the polling station, disclosure of preferences by voters themselves, inappropriate assistance by judges, and overcrowding. In general, Carter Center witnesses judged that the integrity of voting was not fundamentally undermined in these instances.
- During the counting process, in most cases, the presiding judge publicly announced the results of the count to those present in the polling station. In almost all cases, candidate agents were provided copies of the results by the presiding judge. This was an important transparency measure, and enhances the overall credibility of the results in the eyes of most Egyptians.
- Overall, Carter Center witnesses assessed that the quality of the polling process in a large majority of polling stations visited were good.
- The Carter Center made a request to be able to have witnesses present at the PEC's Cairo headquarters during the aggregation of national results. The PEC informed the Center that only their election officials can be present during this process. The absence of candidate agents, media representatives, and domestic and international witnesses at this crucial juncture of the election process undermines the overall transparency of the election results.

² UN, International Covenant on Civil and Political Rights, Art. 2(3); AU, African Commission on Peoples' and Human Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, C (a).

³ For example, significant amendments to articles 38 and 54 of the presidential election law were made on May 20, three days prior to polling.

Background

The parliamentary elections, ending in early 2012, created a new political landscape in Egyptian politics. The lack of a clear transition timetable and the absence of meaningful institutional and sectoral reform have fostered an atmosphere of speculation, suspicion, and skepticism. The Supreme Council of the Armed Forces's (SCAF) opaque administration and lack of public accountability has further fueled popular discontent and uncertainty, leading to several violent clashes where security forces used excessive force against civilians. No adequate investigations have been conducted.

In this context, the transition has followed an uncertain course, producing a fragile political environment as a backdrop to the presidential election. For the moment, the energy and intensity of the presidential election overshadows other crises, including the stalled constitutional-drafting process to define the form and structure of the new government and the powers of the presidency, as well as the outcome of a legal challenge to the constitutionality of the parliamentary elections. At the same time, several pressing concerns await the new president, including the worsening economic situation, rule of law, the role and privileges of the armed forces, and the reform of the government's institutions. The election of the president is therefore just one step in an ongoing transition, the ultimate success of which will depend on the formation of an inclusive constituent assembly and a constitution drafting process that all Egyptians can view as fair and legitimate.

Witnessing Constraints and Limitations

The witnessing rules imposed by the Presidential Election Commission (PEC) and the late stage at which accreditation was issued to both international and domestic witnessing groups severely limited the Carter Center's ability to follow the election process and draw conclusions about the overall process. While the PEC started election preparations on March 8, 2012, The Carter Center as an organization was only accredited on May 3. Accreditation badges, necessary for witnesses to observe the process, were only provided on May 16, less than seven days before the election.

In addition, PEC regulations prohibit witnesses from issuing public statements prior to the vote count, directly impeding the freedom to assess the process without interference. The PEC also restricted election witnesses and media representatives to a time limit of 30 minutes inside polling stations, thereby denying unimpeded analyses. The Carter Center has not encountered such restrictions in the 90 elections previously observed. While the Center decided that the importance of the Egyptian elections warranted continued involvement of our witnessing mission, the PEC's restrictions are contrary to core principles of credible and effective election observation and The Carter Center will not witness future elections in such circumstances.

The Carter Center is a signatory to the 2005 *Declaration of Principles for International Election Observation* that elaborates the principles for credible and professional international election observation missions and outlines reciprocal obligations with host governments. Mindful of the constraints imposed in Egypt which prevented The Carter Center from deploying a mission in time to assess voter registration, key election preparations, candidate nomination and the campaign process, the Center has only been able to deploy a limited mission to directly witness polling, counting, and tabulation. The scope of the Center's statement is therefore limited to a brief analysis of the legal and electoral framework, and the voting and counting that it has been able to assess.

Electoral and Legal Framework

Egypt is defined as a single-national constituency for the presidential election. The presidential electoral system uses an absolute majority electoral system in the first round, where a candidate must receive more

than 50 percent of the vote to win. If no candidate wins in the first round, the two candidates with the highest number of votes proceed to a runoff round to determine the winner.⁴

Egypt's presidential elections are conducted under the exclusive authority of an impermanent PEC that was reinstated when the SCAF issued the amended presidential election law on Jan. 19, 2012. The PEC is composed of five judicial members appointed *ex officio*, and is chaired by the Head of the Supreme Constitutional Court (SCC). The PEC's decisions are implemented by a general secretariat that coordinates and directs Egypt's state agencies to implement the PEC's decisions. In accordance with Egyptian law, all polling and counting activities inside Egypt must be supervised by judges.⁵

The legal sources that define Egypt's presidential election are the Constitutional Declaration of March 30, 2011 (as the interim constitution), Law No. 174 of 2005 as amended (Regulating the Presidential Elections) and Law No. 73 of 1956 as amended (the Law on the Exercise of Political Rights), as well as Egypt's commitments stemming from international instruments.⁶ It is against these laws and obligations that The Carter Center assesses the electoral process.

The Carter Center highlights the following areas as potential concerns regarding the legal and electoral framework:

- Article 28 of the Constitutional Declaration makes the decisions of the PEC final, not permitting objections by any party against its decisions, nor allowing them to be suspended or cancelled. The lack of ability to appeal the PEC's decisions is a limitation on the right to an effective remedy and administrative appeal.⁷ Given the unparalleled powers of the PEC, public confidence in the impartiality of the body is even more essential to the credibility of the entire electoral process.
- The ongoing application of the Emergency Law, which should only be employed in exceptional circumstances, continues to undermine confidence that Egyptians' rights to fair trial, free speech, and freedom of assembly and association, are fully respected.
- There exist restrictions on the right to vote and to be elected that are unreasonable, particularly when considered in light of Egypt's international obligations.⁸ Denial of eligibility based on bankruptcy status, and in the case of candidates, political affiliation, a parent's non-Egyptian nationality, or lack of rehabilitation following conviction of crimes (including politically motivated convictions) exceeds international norms as grounds for political exclusion. In addition, persons that turn 18 years of age between the announcement of the election and the date of polling are not included in the voter registry. Including newly-turned 18-year olds is an easily correctable shortcoming in Egypt's protection of the right to vote and universal suffrage.⁹
- While the PEC has issued 19 decrees to regulate various parts of the election process, the procedural framework remains underdeveloped, for example, in the lack of instructions on mechanisms to lodge complaints by citizens, or in detailed regulatory provisions establishing voting and counting procedures. In addition, the law includes terms that are not clearly defined, for example on electoral

⁴ In the case of a tie among candidates for the top two positions, the runoff race is a simple majority among these candidates.

⁵ Out-of-Country voting in diplomatic missions can be overseen by Egypt's Ministry of Foreign affairs.

⁶ For example, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

⁷ UN, International Covenant on Civil and Political Rights, Art. 2(3); AU, African Commission on Peoples' and Human Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, C (a).

⁸ UN, International Covenant on Civil and Political Rights, Art. 25(b);

⁹ UN, International Covenant on Civil and Political Rights, Art. 25(b); UN, United Nations Human Rights Committee, General Comment 25 on "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service", para. 11.

propaganda, which undermines the commitment to ensure that laws and procedures are not arbitrarily applied.¹⁰

- The late amendment of laws and procedures pose severe challenges for the stability and credibility of an election process.¹¹ They also impose significant difficulties in ensuring that election officials are trained and voters properly informed, escalating the risk of irregularities in the election process.

Witnessing the Presidential Election

Voting is a fundamental exercise of a citizen's political rights. The accuracy of the procedures and process by which these votes are aggregated is not only essential to the full expression of popular will, but is also critical to ensure the rights of citizens to both elect and be elected.¹²

On March 7, 2012, the PEC formally invited eligible Egyptian citizens to vote for president on May 23 – 24, and to participate in runoff elections, if required.¹³ On the same day, the PEC also issued a decree to establish out-of-country-voting (OCV) to permit Egyptians abroad to participate in polling.¹⁴ An update of the voters' list, extracted from the National Identity Database (NID), was started on March 8 and as reported in the media reportedly resulted in 50,524,993 registered voters in Egypt and 586,801 voters abroad.¹⁵

A candidate nomination process was conducted from March 10 to April 8, allowing candidates to be nominated either by a party with a seat in parliament, through the collection of 30,000 signatures, or by the endorsement of 30 members of parliament. Of 23 nominees, 10 were excluded by the PEC and a final list of 13 candidates was announced on April 26.¹⁶ Official campaigning was scheduled from April 30, to midnight of May 20, imposing two days of campaign silence before polling.

A judge presided over each of Egypt's 13,099 polling stations, which were each allocated up to 6,000 voters. Voting occurred between 8 a.m. and 9 p.m. over two consecutive days of polling. Counting was conducted at the end of polling on the second day at the polling-station level, and the results then aggregated at the district level,¹⁷ before being transmitted to the PEC's Cairo headquarters. Presiding judges were required to announce the results at the conclusion of counting, and to provide each candidate agent present with a copy of the results. District General Committees (DGC) are also required to provide a copy of the aggregated results to candidate agents at the district level, before transmitting the results to the PEC's Cairo headquarters.

Poll Opening

Carter Center witnesses were able to observe the opening of 80 polling stations in 24 governorates (43 on the first day of polling, and 37 on the second.) The main observations of witnesses at the opening of these polling stations included that:

- Polling centers were generally considered accessible and free of interference, with good queue management outside the center.

¹⁰ UN, United Nations Human Rights Committee, General Comment 25 on "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service", para. 4.

¹¹ For example, significant amendments to articles 38 and 54 of the presidential election law were made on May 20, three days prior to polling.

¹² UN, International Covenant on Civil and Political Rights, Art. 25 (b)

¹³ PEC Decree 5 of 2012

¹⁴ PEC Decree 4 of 2012

¹⁵ <http://www.egyptindependent.com/news/elections-commission-may-redistribute-voters-over-election-districts-says-source>, May 16, 2012

¹⁶ Of these final candidates, Ahmed Shafiq's eligibility remains uncertain awaiting the outcome of his constitutional challenge to the political isolation law that would otherwise exclude him.

¹⁷ For operational purposes, election districts are correlated with 351 police districts nationwide.

- Less than one-third of polling stations opened on schedule at 8 a.m., while just under two-thirds opened by 9 a.m. Delays were mainly caused by the time taken to prepare the materials and configure the polling station, while in several cases the opening was held up by late poll workers, judges, or candidate agents.
- Witnesses reported that presiding judges received a supplementary voters' list at the opening of the polls. The PEC advised The Carter Center that these supplementary lists included the names of security forces staff that were received after the voters' lists had been prepared, and were sent to all polling stations. As security forces employees, these persons were ineligible to vote, but had not been removed from the voters' list. Presiding judges were therefore instructed to exclude those on the supplementary lists from their respective voters' lists. The late dissemination of such supplementary lists could cause suspicion. In the future, these lists and their content should be made clear to voters, judges, and poll workers and the list produced well in advance of election day.
- Opening procedures were correctly followed in most cases and were predominantly free from interference. Difficulties arose in several cases with the incorrect recording of ballot books and ballot box seals on the first day, while witness and candidate agents were not able to confirm the ballot box seal numbers in a few cases on the second day.
- Candidate agents were present in almost all polling stations during opening. However, domestic witnesses were only present in about ten percent of polling stations visited. This likely reflects the impact of the late accreditation of domestic witnesses by the PEC, which severely hindered their ability to deploy across the country.

Polling

Carter Center witnesses attended 829 polling stations across 25 governorates (442 on the first day of polling, and 387 on the second) noting the following observations at these polling stations:

- The majority of polling centers visited were accessible and free of interference, although approximately 10 percent suffered from active campaigning. Most polling stations were free of disruptions and interference, although this is only based on reports filed during the 30 minutes that Carter Center witnesses were permitted to be in polling stations. Where interference was reported, it was noted that the presiding judge failed to take action in most cases.
- In 10 percent of cases, Carter Center witnesses observed voters who were not allowed to cast a vote. This was usually because they were not included on the voters' list in the polling station or they did not have their identity card.
- In the large majority of polling stations observed candidate agents were present; however, domestic witnesses were observed to be absent in 90 percent of stations visited. In general, candidate agents and witnesses were allowed to conduct their work unhindered, although the Center's witnesses were denied access in a few cases by security officials.
- Voter information materials were displayed in the majority of polling stations visited by Center witnesses.
- In almost half of the polling stations visited by witnesses, procedural errors were observed. Most prominent among these were the failure to check for previous ink and to correctly ink the voter's finger.
- Where the ballot box became full and required replacement, the procedures of sealing the full ballot box and introducing a new empty box was observed to be correctly followed in most cases.
- Violations of the secrecy of the ballot were witnessed in one-third of polling stations visited by Carter Center witnesses. Where the secrecy of the vote was observed to be compromised, most breaches arose due to the layout of the polling station, disclosure by the voter themselves of how they voted, inappropriate assistance from judges, and overcrowding.
- Only a few complaints were observed to have been officially lodged in the stations witnessed during the course of polling.

Closing

As the presidential election is conducted over two days of polling, the close of polls at the end of the first day required that ballot boxes be sealed and secured overnight. At the end of polling on the second day, polling stations are closed and counting then conducted. The PEC extended polling on both days for an extra hour, from 8 p.m. to 9 p.m. The PEC's procedures state that voters still in the queue at the time the polling station closes must be allowed to vote. Carter Center witnesses observed closing at 64 polling stations across 24 governorates (38 on the first day, and 26 polling stations across 15 governorates on the second day.) The major findings from these polling stations were:

- Approximately one-third of polling stations closed earlier than the appointed time of 9 p.m. In almost one-fifth of cases, voters that were still in the queue at the time of closing were turned away without the chance to vote, contrary to PEC procedures and to commonly recognized international good practice to ensure the right to vote.
- In almost all polling stations visited, used ballot boxes were properly sealed for overnight storage on the first day, and secured inside the polling station with other polling materials.
- The poll closing was free from interference in almost all cases, with a few occasions where security officials created confusion.
- Candidate agents were present in almost all polling stations during closing. In contrast, domestic witnesses were present in only a fifth of stations. Candidate agents, witnesses and media representatives were generally able to conduct their work unhindered.
- Overall, Carter Center witnesses characterized the closing of poll stations as good in a large majority of cases.

Counting

The counting of ballots was conducted at polling stations, following the closing of polling on the second day. The Carter Center's witnesses were able to observe counting in 37 polling stations across 23 governorates. The major findings from these polling stations during counting were:

- During the count process, accredited media representatives were observed in about one-third of polling stations, while candidate agents were present in all stations and domestic witnesses were present in less than half. These groups were permitted to conduct their work unhindered.
- In most cases polling activities were fully completed prior to the start of counting.
- In three-quarters of the stations, counting was conducted in accordance with procedures. The poor implementation of procedures for ballot reconciliation and the counting process, and inconsistencies in the determination of invalid and valid votes were among the more common errors witnessed. Inappropriate involvement in the counting process by candidate agents and security officials who directly assisting poll workers occurred in a few cases.
- In most cases the presiding judge publicly announced the results of the count to those present in the polling station. In all but one case, candidate agents were provided with a copy of the results by the presiding judge. The provision of copies of results forms to candidate agents is probably the single most important step supporting the transparency of the counting process.
- In a large majority of cases, sensitive materials were secured for transportation and proceeded without logistical difficulties.

Aggregation

The process of aggregating vote results is one of the most sensitive in an election and demands the highest levels of transparency to ensure confidence in the integrity of the process. Aggregation of the count results was to be conducted by DGC's in each of 351 operational electoral districts throughout Egypt, where polling station results were delivered by the relevant presiding judges. After being aggregated at the district level, results are then to be transmitted to the PEC's Cairo headquarters. The national aggregation of results is conducted at the PEC headquarters, which is the only official and authorized

source of final results. The Carter Center's witnesses were able to attend 33 District General Committees in 21 governorates. The main findings include that:

- The Carter Center made a request to be able to have witnesses present at the PEC's Cairo headquarters during the aggregation of national results. The PEC informed the Center that only their election officials can be present during this process. The absence of candidate agents, media representatives, and domestic and international witnesses at this crucial juncture of the election process severely undermines the overall transparency of the election results.
- DGC facilities were orderly and well secured by police and military officials. It is noteworthy that security forces were also observed inside aggregation centers in more than three quarters of cases.
- In all cases observed, the polling station count results were delivered to the DGCs by presiding judges and sensitive materials were recorded through an organized intake process.
- While the aggregation processes observed were free from any disruptions, Carter Center witnesses reported that in over half of the DGCs visited, the physical layout did not allow witnesses to observe the transfer of data from count forms to aggregation forms. In general, the performance of election officials, candidate agents and the aggregation process were described as good, however, the transparency of the process was poor. While candidate agents were seen in most centers, domestic witnesses and accredited media were present in just over half.

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The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production. Visit www.cartercenter.org to learn more about The Carter Center.