



EGYPT CONSTITUTIONAL REFERENDUM OBSERVATION REPORT

APRIL 2014

 **Democracy**
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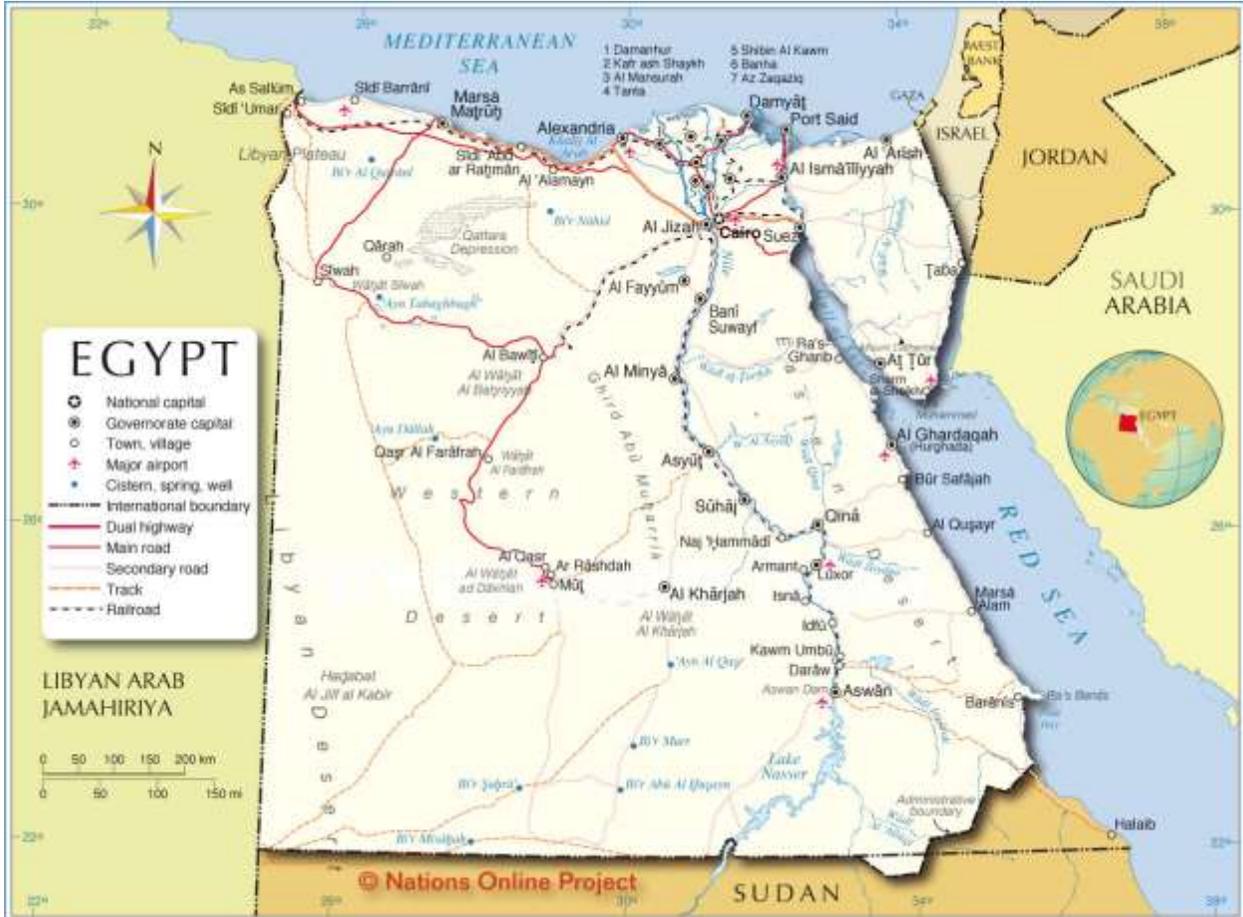
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MAP OF EGYPT



Map credit: Nations Online Project

ACKNOWLEDGMENTS

This report is based on information gathered through the ongoing work of Democracy International's (DI) international election observation mission in Egypt. It is primarily based on the work of a dedicated core team and the findings of DI's short-term observers who deployed throughout the country to observe the 2014 Constitutional Referendum.

DI's core team began its observation of Egypt's constitutional referendum process in early December 2013 and held dozens meetings with myriad domestic and international stakeholders who generously gave their time to share their views on the referendum and the broader context of Egypt's political environment.

Although we believe that this report reflects the collective views of our observer delegation, DI takes full and complete responsibility for the content herein. Each member of DI's observer delegation and core team made vital contributions to the mission and we are deeply grateful for their efforts. Members of DI's short-term observer delegation volunteered their time and traveled great distances to assist this mission. Without their willingness to perform this critical function, DI's observation mission would not have been possible.

We are extremely proud to have gathered an impressive team whose varied experience in election observation, election administration, political campaigning, Egyptian politics, and international relations contributed greatly to the context of this report and DI's overall observation mission. A list of the delegation members is below.

We greatly appreciate the tireless effort of our core team that worked extremely long hours in the weeks leading up to the referendum. DI Director of Programs Jed Ober and Program Manager Dan Murphy led DI's team and Program Officers Alice Guilford and Naomi Rasmussen were instrumental in ensuring that all aspects of the mission move forward smoothly. Their stamina and enthusiasm were laudable. Logistics and Operations Manager Augusto Comé handled the accommodations and deployment of the observer delegation with amazing attention to detail. Observer Coordinator Emanuel Gény was unflappable as he managed the preparation of briefing materials and ensured necessary arrangements were made for the arrival, training, and deployment of our observer teams. Electoral Legal Expert Christopher Jackson and Civic Engagement Expert Kourtney Pompei held more meetings than anyone could have imagined possible in the few short weeks before and immediately after the referendum. These meetings were vital in developing the mission's understanding of the broader political context during the referendum process. Kaouther Mansouri was indispensable in handling the mission's finances. Tim Neill coordinated the mission's security needs and Naveen Abdalla gave valuable

insight on the overall security context. Four members of DI's home office staff came to Cairo to assist as observer liaisons. We recognize the efforts of Emily Fowler-Cornfeld, Josh Linden, Claire Robertson, and Morgan Simpson who all lost a great deal of sleep so that DI's observer teams were provided the support they needed. In addition, many members of DI's staff from around the world provided some manner of support to this process. We would like to thank Patricia Alejandro, Kate Cummings, Radhouane Fazai, Nadia Haddad, Rym Othman, Liza Prendergast, Haley Smith, and Dexter Thompson-Pomeroy for bringing their experience from DI's global programs to their work as observers. The team from DI's Bethesda Home Office, led by Will Covey, provided invaluable support and encouragement throughout the process. We also thank Julia Fusfeld, James Pagano, Evan Smith, and Kris Thorpe for their support from the home office. Heidi Jafaar provided crucial assistance during the accreditation process.

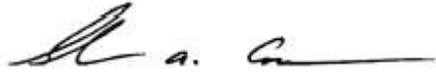
We can only begin to express our gratitude to and admiration for our national staff in Cairo. Their commitment to this mission was an inspiration. Program Officers Asmaa Fahim, Sameh Ibrahim, and Mohamed Galal provided critical political analysis and media monitoring as well as translation, interpretation, and assistance for all aspects of mission preparation. Their work was exemplary. ICT Officer Ali Aboutera almost singlehandedly provided all technological support and coordination for the mission—always with a smile. Communications Director Cherif Barakat developed and implemented a media outreach plan with blinding speed and coordinated the vast amount of media requests and interviews for the team. Youssef Aboutera performed the key function of supporting virtually every aspect of the team's logistical needs and solving any and every kind of problem with competence and good humor. Noha Ismail served the important function of coordinating the interpreters for the STO teams. It is not possible to thank them enough.

DI is extremely grateful for the assistance of the High Electoral Commission in Egypt, specifically Judge Ahmed Soheim for inviting DI to field an international observation mission and providing insight into the process. DI is also particularly grateful for the help of Mohamed Mansour of the Ministry of State for Administrative Development. Mr. Mansour was available virtually around the clock to provide clarification and assistance in ways too numerous to even begin to mention.

Alessandro Parziale, Andy Jones, and Ebie Dupont from the Carter Center generously gave their time to provide advice and support both to the mission and the team. Fida Nasrallah of the International Foundation for Electoral Systems; Isabel Otero, Ramona Canaan, and Daniel Stroux from the United Nations Development Program all graciously provided their time and expertise to assist us.

Finally, we would like to thank the United States Agency for International Development and the United States Embassy in Cairo for their support to the mission and the confidence that they have showed in Democracy International. In particular Brendan Wheeler, Taly Lind, Alex Klaitz, Andy Lentz, and Brooke Sahn were each extremely committed to helping DI's observation mission succeed.

Democracy International is proud of the efforts of everyone connected with this mission and we are grateful for the opportunity to witness this important event in Egypt's history.



Glenn Cowan, CEO



Eric Bjornlund, President

ABOUT DI

Democracy International, Inc. (DI) provides analytical services, technical assistance, and project implementation for democracy, human rights, governance, and conflict mitigation programs worldwide. Since its founding in 2003, DI has worked with civil society organizations, political parties, election management bodies, government agencies, legislatures, justice-sector institutions, and others in 70 countries, including some of the world's most challenging environments. Unique among consulting firms, DI's core capabilities and principal focus are in international democracy and governance (DG) assistance. DI offers expertise and practical, field-based experience across the entire range of DG programming, including: (1) elections and political processes (voter education, political party development, election management and administration, international and domestic election monitoring); (2) governance (legislative and institutional strengthening, local government and decentralization); (3) the rule of law (constitutional and legal reform, justice-sector reform, court administration, legal profession, anticorruption, human rights); and (4) civil society development and advocacy. The firm also has extensive experience with analytical services, including assessments, evaluations, project designs, democracy assistance studies, survey research, quantitative methods, M&E, and strategic communications. DI holds four Indefinite Quantity Contracts (IQCs) with USAID, including the—Democracy and Governance Analytical Services IQC; Support That Augments Rapid Transition (START) IQC; Rule of Law IQC; and the Programming Effectively Against Conflict and Extremism (PEACE) IQC. It also held the Elections and Political Processes (EPP) IQC until that IQC expired on September 30; a re-award of the EPP IQC is pending.

The founding principals of DI are among the world's leading experts on international and domestic election monitoring and elections in emerging democracies. They have helped launch and advised nonpartisan domestic election monitoring organizations around the world and have directed long-term monitoring programs and international observer delegations. In the late 1980s, DI Principal Glenn Cowan invented the path-breaking, sample-based parallel vote tabulation (PVT) election-monitoring methodology, which is now an institutionalized component of serious election monitoring, to deter or detect fraud in the aggregation and tabulation of election results. DI Principal Eric Bjornlund wrote a comprehensive, leading study of election monitoring, *Beyond Free and Fair: Monitoring Elections and Building Democracy* (Woodrow Wilson Center Press and Johns Hopkins University Press, 2004; Arabic edition, 2013). Mr. Bjornlund and Mr. Cowan are co-authors of *Vote Count Verification: a User's Guide for Funders, Implementers, and Stakeholders* (2010). By designing and implementing specialized monitoring programs and innovative techniques focused on voter registration, vote counting, media access and fairness, campaign finance, election violence, and other election-related issues, DI's

principals have significantly influenced the practice and methodology of international election observation.

DI has conducted extensive election monitoring and election support programs. DI conducted comprehensive election observation projects in Afghanistan for presidential and provincial council elections in 2009 and parliamentary elections in 2010. DI's observation missions were the most robust international missions, deploying observers to parts of the country others were not able to reach. In 2009, we deployed 60 international observers for the August 20 elections. DI also organized an international observation of the aborted presidential runoff election. In 2010 DI organized and led a 70-person international election observation mission of the parliamentary elections including both long- and short-term observers.

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ACRONYMS AND ABBREVIATIONS

ANHRI	Arab Network for Human Rights Information
CSO	Civil Society Organization
DG	Democracy and Governance
DI	Democracy International
EIPR	Egyptian Initiative for Personal Rights
EPP	Elections and Political Processes
FJP	Freedom and Justice Party
HEC	High Election Commission
ICT	Information and Communications Technology
IFES	International Foundation for Electoral Systems
IQC	Indefinite Quantity Contract
Mol	Ministry of Interior
NGO	Non-Governmental Organization
PEACE	Programming Effectively Against Conflict and Extremism
PVT	Parallel Vote Tabulation
SCAF	Supreme Committee of Armed Forces
SCC	Supreme Constitutional Court
START	Support that Augments Rapid Transition
STO	Short Term Observer
UNDP	United Nations Development Program
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

Assessment of Egypt's Constitutional Referendum

Democracy International (DI) organized a comprehensive international observation mission for the constitutional referendum in Egypt on January 14 and 15, 2014. Although the actual administration of the process on the referendum days appeared to allow those citizens who participated to express their will, DI concluded that the restrictive political climate in Egypt impaired the referendum process. The referendum took place against a backdrop of arrests and detention of dissenting voices. There was no real opportunity for those opposed to the government's "roadmap" or the proposed constitution to dissent. This constrained campaign environment made a robust debate on the substance and merits of the constitution impossible.

Observation of the Referendum

Democracy International conducted a comprehensive observation of the January 2014 constitutional referendum in Egypt. DI deployed 83 accredited international observers to 23 of the country's 27 governorates. DI observed all aspects of the referendum process, including the political context in which the referendum took place, the conduct of polling, and the count. DI's observers included election experts, regional experts, and development and political professionals from 10 countries. DI's mission was the largest international observation mission for this referendum.

With accreditation from the High Electoral Commission of Egypt (HEC), Democracy International established a referendum observation mission in Egypt in early December 2013. DI deployed a core team that began to observe the political context and the preparations for the referendum. DI's representatives held numerous meetings with relevant stakeholders, including the HEC and other entities responsible for the administration of the referendum process, political parties and social movements both in favor of and opposed to the referendum, civil society organizations including groups monitoring the referendum process, government officials, representatives of the committee that developed the revised constitution, diplomats, representatives of international election observation organizations, and diplomats and other representatives from the international community.

Democracy International is a signatory to the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers and has conducted its mission in accordance with these principles, which provide that election observers must be independent and impartial, uphold the values of democratic government, and respect the na-

tional sovereignty of their host country. In accordance with the Declaration of Principles, DI observers witnessed all phases of the referendum process, including the legal context and political environment for the referendum and the procedures for the balloting and counting on the two referendum days. In accordance with Article 11 of the Declaration of Principles, the decision to conduct international observation of the referendum did not imply that the process should be considered credible or legitimate. Observation of highly flawed or controversial electoral events can provide valuable insight into the process.

DI's election observation mission used an innovative process to collect information from around the country on polling days. DI's observer teams used handheld tablets to record their observations through FormHub, an open-source mobile data-collection platform. This enabled DI's observation mission to receive information from teams deployed in the field virtually in real time. This data-collection method enabled the mission to analyze observer findings more quickly than has been possible in the past.

Political Context and Legal Framework

On July 8, 2013, Interim President Adly Mansour issued a constitutional declaration setting forth a "roadmap" for drafting revisions to the constitution and holding a referendum on the constitution and setting an expectation for future presidential and parliamentary elections. The constitutional declaration established the legal framework for the interim government, including the affirmation that existing laws were still in effect unless specifically changed. The constitutional declaration granted unilateral legislative power to the interim president, which has been used to enact election specific legislation.

Many political parties and movements questioned the legitimacy of the constitutional declaration and the roadmap from the outset, and many eventually decided to boycott the referendum. The interim government deviated from the roadmap in the timing of different stages of the process and by authorizing consideration of a new constitution rather than approving amendments to the 2012 constitution.

Electoral Framework and Administration

The High Electoral Commission had authority to conduct the constitutional referendum as defined under the electoral law. The Ministry of the Interior was responsible for providing logistical and operational support for the election. In coordination with the Egyptian armed forces, the Ministry of the Interior was also responsible for security at the polling places and around the country.

Initially, as in past elections, voters were required to vote at pre-assigned polling locations. However, on January 6, Interim President Mansour issued a decree establishing special (*wafi-deen*) polling stations where voters could cast ballots outside their home governorates.

The national identity card and civil registry formed the basis for the voter list. All Egyptian citi-

zens age 18 and over were permitted to vote, except active duty military, persons convicted of crimes, mentally disabled persons who were institutionalized, and any citizens naturalized for less than five years.

Electoral Procedures and Administration

The division of responsibilities for electoral administration and management among different governmental entities complicated electoral administration and hampered the HEC's ability to control the process and effectively plan for electoral events.

The abbreviated electoral calendar also provided a substantial challenge to electoral preparations, including the development and announcement of specific polling procedures, the training of polling station staff members, and the accreditation of observers. Polling station procedures were not well specified and were inconsistently applied at polling places. A polling place procedures manual was finalized only days before the referendum, too late to serve as the basis for training of polling station workers, including judges or lower-ranking officials.

The addition of *wafideen* polling places provided an opportunity for greater political participation, but the presidential decree establishing such centers was adopted much too late, only days before the referendum. This left the HEC insufficient time to implement or explain the process and made the process vulnerable to the risk of multiple voting.

Campaign Environment and Political Party Engagement

The campaign environment was characterized by severe limitations on the political freedom of the Egyptian people and prohibited any debate on the merits or weaknesses of the constitution. The lack of any debate on the substance of the constitution harmed the legitimacy of the referendum process and provided no basis to conclude that Egypt in 2014 was moving toward a more open and participatory democracy.

During the referendum period, DI's core team held dozens of meetings with political parties and movements including many parties represented by the National Coalition for Legitimacy, sometimes called the anti-coup alliance. The parties generally fell into two categories: those that supported the constitution and encouraged their members to vote Yes and those that opposed the process in general and were calling for citizens to boycott the referendum. A much smaller third category campaigned for a No vote, despite significant restrictions on their activities.

Most parties, even those that were generally supportive of the draft constitution, objected to specific provisions allowing for military trials of civilians and related to spending on the national budget. Despite their opposition to these key provisions, most were optimistic that the process for amending the constitution through legislative action would be sufficient to ensure that future changes could be made.

Civil Society and Domestic Observation

Restrictions on nonpartisan national observation of the referendum process were cause for concern. Independent domestic observation can provide a check on the possibility of fraud and build public confidence in the process. Many civil society organizations, including organizations that had been accredited to observe Egyptian elections in the past, were denied accreditation to observe, often without any explanation to those groups. In some cases, the HEC denied these groups access to the process because of alleged affiliation with illegal groups or because the Ministry of Social Solidarity had suspended their legal registration. Other Egyptian observer groups complained that they had received far fewer accreditations of individual observers than they had requested or that the HEC had claimed publicly were issued. Ultimately, there were relatively few observers in polling places for the two days of the referendum.

Election Day Observations and Results of the Referendum

The actual administration of the process on the referendum days appeared to allow those citizens who participated to express their will. DI observers did note specific concerns about the administration of the balloting in some locations, including the heavy presence of security forces inside polling places, problems with the layout of some polling places that could have jeopardized voters' ability to cast a ballot in secret, and instances where campaign materials were prominently displayed inside or immediately outside polling locations. They also noted the relative absence of nonpartisan domestic observers. There is no evidence that such problems substantially affected the outcome of this referendum, but they could affect the integrity or the credibility of more closely contested electoral processes in the future.

As expected, the constitutional referendum passed overwhelmingly with 98.1 percent voting in favor and 1.9 percent voting against. By comparison, the 2012 Constitution passed with 63.8 percent support and 36.2 percent against. Reported turnout for the 2014 referendum—38.6 percent of eligible voters—just managed to exceed turnout for the 2012 referendum of 32.9 percent.

Although this result indicates that a broad segment of Egyptian society supported the constitution, the large number of citizens who boycotted the process or otherwise did not participate suggests the country has yet to achieve consensus on its future.

Concerns about Political Freedoms

Democracy International has serious concerns about the political environment in which this referendum took place. Limits on freedom of assembly and freedom of speech seriously constrained the campaign environment, and this constrained campaign climate made a robust debate on the substance and merits of the constitution impossible.

In November 2013, the interim government adopted a new law severely restricting public protests. Since the adoption of this law, a number of high-profile activists and opponents of the

roadmap have been jailed, and the police and other security forces have met public protests with violent responses. Some prominent groups were specifically prevented from campaigning against the adoption of the constitution and citizens were arrested simply for posting campaign materials urging Egyptians to vote No. Other individuals attempting to campaign against the passage of the referendum were harassed or prevented from doing so. Some journalists were also arrested and imprisoned for covering dissenting views.

Egyptian media coverage of the referendum process was biased in support of the adoption of the constitution. Those opposed to the passage of the referendum were not afforded reasonable opportunities to express their opposition.

Recommendations

Democracy International offers the following recommendations to improve the political climate and procedures for future elections.

1. End the crackdown on dissenting political voices.

The government, state-run and independent media, and the military and other security forces should end their aggressive campaign against parties, movements, and individuals offering alternative viewpoints to the government narrative. Instruments of the state should not be used to suppress dissent.

2. Review and amend the protest law.

The government should ensure freedom of expression, assembly, and association. The government should immediately review and amend the protest law to ensure that it does not restrict the very freedoms articulated in the new constitution.

3. Promote broader political participation in the lead up to future elections.

The interim government should use upcoming presidential and parliamentary elections as an opportunity to actively encourage opposition parties and movements to engage in the political process.

4. Strengthen electoral procedures to be more consistent with international standards.

Egypt's electoral authorities should conduct a thorough review of polling day procedures to bring such procedures in line with international standards, including limiting the role of security forces, protecting the secrecy of the vote, and preventing campaigning within polling stations.

5. Ensure proper training for polling place officials and make an effort to publicize Election Day procedures.

In addition to strengthening procedures, electoral authorities should make an effort to publicize them so that stakeholders such as political parties, civil society organizations, and ordinary citizens can be more aware of the voting process and that civic and voter education can be more successful.

6. Develop more robust operational plans and timelines and better training for future elections.

The HEC should improve its procedural and operational planning for future elections, including establishing more robust operational plans and timelines, and provide better training for judges and other poll workers.

7. Ensure that the process of accreditation for domestic observer groups is clearly defined and publicly communicated.

Any situation where the accreditation process is unclear should be avoided. Disallowing groups from observing the process should only be done in extreme cases. It is critical that any denial of accreditation be clearly communicated and the decision to do so based upon extremely clear and widely disseminated criteria.

8. Review and revise the process for electoral complaints.

The electoral law should be revised to specify an effective, transparent and fair process for addressing electoral complaints.

9. Safeguard constitutional rights.

Democratic rights and freedoms articulated in the new constitution should be fully respected and protected in accordance with international standards. Lawmakers should ensure that laws affecting the exercise of fundamental rights and freedoms are not unduly restrictive.

10. Promote political reconciliation.

A successful transition to democracy in Egypt will depend on the willingness of opposing political forces to agree to participate peacefully in a political process. The interim government and its opponents should seek opportunities to engage in inclusive dialogue that could help bring about broader participation in the political process, including in future elections.

In the future, the Egyptian government must take steps to ensure that sectors of the society are afforded the opportunity to contribute to the debate on the future of the country. The legitimacy of these processes is for the Egyptian people to decide. Ultimately, a successful transition to democracy in Egypt will depend on meaningful opportunities for all political forces in the society to participate peacefully in a political process. The interim government and its opponents should seek opportunities to engage in inclusive dialogue that could help bring about

broader participation in the political process, including in future elections. The process of preparing for upcoming elections is an opportunity to reorient Egypt toward effective, democratic institutions that are broadly viewed as legitimate across the society.

INTRODUCTION

In early 2013, Democracy International (DI) sought and received accreditation from Egypt's High Elections Commission (HEC) to observe elections for the lower house of the Egyptian parliament, originally anticipated to take place in spring of 2013. President Mohammed Morsi later suspended these elections after Egypt's Supreme Constitutional Commission (SCC) rejected successive versions of an electoral law drafted by the Shura Council. A popular uprising in June of 2013 led to the removal of President Morsi, the suspension of the 2012 constitution, and the installation of an interim government tasked with overseeing the drafting and adoption of a new constitution as well as new parliamentary and presidential elections. The HEC disbanded following the change in government and was reconstituted with a new mission to administer a constitutional referendum. In October 2013, the HEC invited DI to renew its accreditation in order to observe the constitutional referendum process. DI applied and received accreditation from the HEC to field an international observation mission to the constitutional referendum.

In early December, DI deployed core staff for an international observation of the constitutional referendum. This core team immediately began to observe the referendum process and prepare for the arrival of an observer delegation. On December 14, it was announced that the constitutional referendum would take place over two days of voting on January 14 and 15, 2014. DI deployed more than 80 international observers from 10 countries to 23 of Egypt's 27 governorates. DI Principal Eric Bjornlund served as Head of Delegation and Dan Murphy and Jed Ober led the core team in Cairo.

The purpose of this international election observation mission was to evaluate the degree to which the conduct of the referendum and the broader political and legal contexts conform to accepted international norms of election administration, human rights, and democratic representation. The credibility of the referendum process was vital to Egypt's prospects for a legitimate democratic future.

METHODOLOGY

Experience has shown that international election observation can contribute to building the foundation for democracy. In politically uncertain environments, such as Egypt today, election observation can contribute to public confidence in the integrity of elections by encouraging fairer electoral rules, better campaign practices, and a more informed electorate. By increasing transparency, election observation deters fraud and helps reduce irregularities in election administration. Election observation can also provide meaningful moral support to democratic activists and political opposition leaders and educates audiences around the world about the struggle for democracy in transitional countries. Properly conceived and implemented, comprehensive international election observation not only provides an objective assessment of a given country's electoral process, it can also promote the integrity of the elections and related institutions, encourage public participation, and reinforce domestic engagement in democratic politics.

Members of DI's core team arrived in Egypt in early December and held numerous meetings with relevant stakeholders, such as the HEC and other entities responsible for the administration of the referendum process. These entities included the Egyptian Ministry of the Interior and the Ministry of State for Administrative Development; political parties and social movements both in favor of and opposed to the referendum; civil society organizations (CSOs) including groups monitoring the referendum process; other government officials; representatives of the Committee of 50 that developed the revised constitution; representatives of international and domestic observation organizations; and diplomats and other representatives from the international community.

In parallel, DI recruited, trained, and deployed more than 80 short-term observers to observe both days of voting. Our short-term observers deployed in teams of two to 23 of Egypt's 27 governorates. Each team was accompanied by a professional interpreter. The HEC accredited each individual observer and interpreter to observe all stages of the voting process from the opening of the polling stations on the first day of voting through the counting of ballots on the second day. DI's observers included election experts, regional experts, and development and political professionals from 10 countries. DI's mission was the largest international observation mission for this referendum. The observations of our observer delegation informed our statements following the referendum and as well as this observation report.

There is now an international consensus that democratic elections extend far beyond activities on Election Day, and, thus, election observation programs should have a broad scope. As such, DI's referendum observation mission to Egypt assessed a broad range of substantive issues,

including the administration of the referendum, including the processes of voter registration, balloting, counting, and complaint resolution; the institutional framework for the election, including electoral laws and the credibility and neutrality of the election commission; and the political context and environment in which the referendum took place, including the extent of freedoms of speech, movement, and association, the fairness of the media, the opportunities for the opposition to compete, and the nature of the campaign. In general, in order to provide the most complete assessment possible of an electoral event, it is necessary and appropriate for observation missions to consider all phases of an election process over time.

DI's election observation mission used an innovative process to collect information from around the country on polling days. DI's observer teams used handheld tablets to record their observations through FormHub, an open-source mobile data-collection platform. This enabled DI's core team to receive information from teams deployed in the field virtually in real time. This data-collection method enabled the mission to analyze observer findings more quickly than has been possible in the past.

As a signatory to the Declaration of Principles for International Election Observation, DI conducted its mission in accordance with the principles and code of conduct articulated in the declaration. As such, DI's international observation mission operated on a foundation of respect for Egypt's sovereignty. DI's international observers were required to sign and abide by the Code of Conduct for International Observers. In accordance with Article 11 of the Declaration of Principles, it is worth emphasizing that the decision to conduct international observation of the referendum did not imply that the process should be considered credible or legitimate.

POLITICAL CONTEXT AND LEGAL FRAMEWORK

In January 2011, Egyptians took to the streets to protest the rule of President Hosni Mubarak who had been in power for three decades. What began as a grassroots movement ended in President Mubarak's resignation and one of the most tumultuous periods in Egypt's history. The Supreme Committee of Armed Forces (SCAF) took charge of the interim government and oversaw the process toward Egypt's first democratic elections. In March, the SCAF adopted a provisional constitution to effectively replace the suspended constitution until a new one could be drafted. In 2011 and 2012, Egyptians voted for representatives to the upper and lower houses of parliament, known as the Shura Council and People's Assembly, respectively. In June 2012, the Supreme Constitutional Court (SCC), Egypt's highest court, dissolved the People's Assembly on the grounds that the electoral law under which it was elected was unconstitutional, leaving only the Shura Council in place, whose role was designed to be primarily advisory. In June, presidential elections brought to power Mohamed Morsi, leader of the Muslim Brotherhood-aligned Freedom and Justice Party.

Despite high expectations, social divisions increased during Morsi's presidency. Domestic and international analysts criticized the drafting process for the new constitution, ratified in popular referendum in December 2012, as undemocratic and overly representative of the interests of Islamist parties. President Morsi called for new parliamentary elections in spring 2013 only to suspend them indefinitely after the SCC declared successive versions of an electoral law drafted by the Shura Council unconstitutional. On June 2, 2013, the SCC ruled the Shura Council unconstitutional because it was elected under the same law as the People's Assembly and would therefore be restricted to writing a new law and then be disbanded as soon as a satisfactory law was issued. This left Egypt without a legislative branch that could provide balance to executive authority and no legal way to sanction or impeach an unpopular president.

During the spring, Morsi and his allies were losing the backing of key institutions in the country, as well as the support of a growing percentage of the Egyptian population. During Morsi's time in office, the nation's economy deteriorated sharply. Many Egyptians claimed that Morsi's constitutional declarations seemed to place his administration above the law and calls grew for his ouster or a new presidential election. Many expressed fear that the Muslim Brotherhood and its affiliated Freedom and Justice Party did not intend to govern democratically.

The Tamarod movement, a grassroots organization, sought to collect 15 million signatures of

citizens to express their dissatisfaction with the Morsi government. The movement had a number of key demands, most notably a call for an early presidential election. On June 29, the group announced that it had collected 22 million signatures. Although many have suggested that this number was exaggerated, it would have exceeded the number of votes cast for President Morsi in the previous presidential election by several million.

On June 30, 2013, the one-year anniversary of Morsi assuming the presidency, Egyptians took to the streets in large numbers. Protestors gathered in Tahrir Square in Cairo and other locations throughout Egypt to demand President Morsi's resignation. As the protests continued, the Egyptian military announced a 48-hour deadline for the president and the protestors to come to an agreement. Otherwise, the military warned ominously it would be forced to take action, citing the large number of protestors as a threat to public safety.

On July 3, following days of these protests (and smaller but equally fervent protests in support of Morsi) and after the Morsi Government's rejection of an ultimatum from the military to resolve political differences, General Abdel Fattah el-Sisi, commander-in-chief of the Egyptian armed forces and minister of defense, appeared on television to announce the suspension of the 2012 Constitution and the end to President Morsi's administration. He announced a plan for new elections and appointed the head of the Supreme Constitutional Court, Adly Mansour, as interim president. On the same day, Islamist media and television outlets were forcibly shut down.

On July 8, Interim President Mansour issued a constitutional declaration that provided additional details on the roadmap, including a constitutional drafting process that would lead to a referendum and new elections for parliament and the presidency. Specifically, the declaration called for the establishment of a Committee of Experts to develop recommendations for amendments to the 2012 Constitution and present those recommendations to a constitutional review committee within 30 days. The committee, in turn, would have 60 days to prepare an amended draft constitution to be presented to the interim president. According to the constitutional declaration, the president was then to submit the constitutional draft for a public referendum within 30 days of receiving it.

After the issuance of the constitutional declaration, the Committee of Experts met and concluded its work on August 18, 2013. Its proposals were then sent to interim President Mansour who, on September 1, issued a decree establishing a constitutional review committee of 50 individuals responsible for drafting an amended constitution. The Committee of 50 named former secretary general of the Arab League, Amr Moussa as its chairman. Both the composition and the work of the Committee of 50 quickly became controversial. Many stakeholders criticized the lack of transparency of the committee and called for its sessions to be accessible to a larger group of stakeholders. The composition of the committee, however, was even more controversial. While the declaration called for a committee that was representative of all Egyptian political society, the committee did not include any representatives of the Muslim Brotherhood's Freedom and Justice Party.

The Committee of 50 began its work to amend the 2012 Constitution on September 8. The work of the committee was both meticulous and time consuming as it was charged with considering and voting on each article of the 2012 Constitution individually. One notable point of controversy was the committee's decision to abandon the 2012 Constitution entirely and draft a new constitution, which the 2013 constitution is widely considered to be. This decision came under considerable scrutiny, given that it was a departure from the roadmap articulated in the constitutional declaration.

On December 3, 2013 the Committee of 50 submitted the new draft constitution to Interim President Mansour. According to the roadmap, the interim president was to submit the new constitution for a public referendum within 30 days. The announcement of the referendum, however, did not come until December 14. On that date, he announced that a public referendum would be held on January 14 and 15, 2014.

Many political parties and movements questioned the legitimacy of the constitutional declaration and the roadmap from the outset, and many eventually decided to boycott the referendum. Some of these stakeholders believed that the interim government deviated from the roadmap in the timing of different stages of the process and by authorizing consideration of a new constitution instead of amendments to the 2012 Constitution. Many groups sympathetic to former President Morsi believed that the entire roadmap was illegitimate and chose to boycott the process altogether.

Nonetheless, the interim government moved forward with the roadmap. The roadmap, and specifically, the constitutional declaration, combined with the Law on the Practice of Political Rights formed the legal framework for the referendum process.

ELECTION ADMINISTRATION

The responsibility for the conduct of elections in Egypt is divided among several government entities. The HEC has the authority to conduct the election as defined under the law governing political rights. The Egyptian civil registry forms the basis for the voter list, and all Egyptian citizens aged 18 years and older are eligible to vote with the exception of active duty military and police, convicted criminals, mentally disabled persons who are institutionalized, and any citizens naturalized less than five years before the electoral event.

For the constitutional referendum there were more than 13,000 polling centers made up of more than 30,000 polling stations throughout the country. The HEC was responsible for staffing polling locations and actually administering the election itself. Judges acted as the presiding officers in each polling station, and the poll workers came from other ministries including the Ministry of Education. The Ministry of Interior (Moi) was responsible for providing logistical and operational support for the electoral process, including delivery of all sensitive and non-sensitive materials for the election. In coordination with the Egyptian armed forces, the Moi was responsible for security at and around polling stations.

The abbreviated electoral calendar provided a substantial challenge to electoral preparations, including the development and announcement of specific polling procedures, the training of polling station staff members, and the accreditation of observers. Polling station procedures were not well specified and were inconsistently applied at polling places. A polling place procedures manual was finalized only days before the referendum, too late to serve as the basis for training of polling station workers, including judges and other lower-ranking polling officials.

The addition of 100 *wafideen* polling places, where voters who were outside their home governorates on the two days of the referendum could cast ballots, provided an opportunity for greater political participation, but the presidential decree establishing these centers was adopted just days before the referendum, much too late to reasonably inform voters. Voters participating at *wafideen* stations were not required to preregister and were able to vote by presenting their ID card to be cross-referenced against the voter registry at the polling station. The short notice left the HEC insufficient time to implement or explain the process and made the process vulnerable to the risk of multiple voting.

This division of responsibilities for electoral administration and management among different

governmental entities complicates electoral administration in Egypt and hampered the HEC's ability to control and effectively plan the referendum process. The HEC would have benefitted from additional human resources, but it performed well in actually administering the election and should be commended for accomplishing a great deal in an extremely tight timeframe.

CAMPAIGN ENVIRONMENT

Once the legal foundation of the constitutional declaration was in place, the interim government began methodically reshaping the political environment by restricting the ability of the opposition to influence public opinion and public policy. This was extremely effective in shrinking political space for opposition voices while simultaneously expanding the pro-government space.

In early August 2013, the Judges Club filed a lawsuit before the Supreme Judicial Council accusing 75 judges of using their positions to favor the interests of former President Morsi and the Muslim Brotherhood as well as joining the Brotherhood-supported sit-in at Rabaa al-Adaweya Mosque. The lawsuit also claimed that the defendant judges had lost their credibility by supporting the Brotherhood and further accused them of "releasing statements that spread rumors and lies that threaten the Armed Forces."

Ultimately, in response to a separate lawsuit filed in September, a Cairo court finally ordered a ban on all Muslim Brotherhood activities, which was consistent with the provisions of the declaration requiring judicial approval of such a governmental act that effectively dissolved the Brotherhood as a legally recognized political entity.

The restrictions on the right to assembly and protest began in earnest with the government break-up of the protest sit-in at the Rabaa al-Adawiya Mosque. Estimates of the fatalities of protesters and police range from approximately 400 to more than 2,000. Shortly thereafter the interim government issued a new protest law.

Before the enactment of the 2013 Protest Law, the 1923 Public Gathering Law governed public gatherings, and by decades of custom it had not been enforced. The only enforcement concerning such public gatherings was general enforcement of the criminal laws for any crimes committed during the protest, such as assaults, and property damage. The new protest law held, in short, that public demonstrations needed prior government approval and acts of violence and acts such as the carrying of weapons were banned, as was the wearing of masks or the use of religious institutions as staging areas. Even the title of "Protest Law" was designed to send a message as it implied that it would not be enforced against those gatherings other than protests. The new law was worded very generally and broadly prohibited violations of "general security and public order" or "disrupting public interests," as well as banning actions that "could impact on public services, transportation or the flow of traffic, as well as assaults on security forces or exposure of danger to individuals, public or private possessions."

The new procedures for obtaining permission to protest left the ultimate decisions with gov-

ernment security agencies and little recourse for timely appeal if any applications were denied. Possible punishments for violations ranged from imprisonment up to seven years and fines between 10,000 and 300,000 Egyptian pounds (approximately US\$1,450 and US\$43,500 respectively). The government annulled the prior 1923 law regulating public meetings and demonstrations on public roads and all other laws inconsistent with the 2013 law. Since the adoption of this law, a number of high-profile activists and opponents of the roadmap have been jailed including the founders of the April 6th youth movement. The police and other security forces have often met public protests with violent responses.

The political space continued to be narrowed with the arrest of protesters, summary trials without adequate time to prepare defenses, and extremely harsh sentences. In one case, 21 young women in Alexandria who had not committed or even threatened to commit acts of violence and whose crimes consisted only of failing to properly register to hold a public protest received sentences ranging from two years to 11 years in prison. Ultimately many of these sentences were reduced, but the message had been sent.

In the wake of a bombing attack on police headquarters in Mansoura, a city in the Nile Delta region, on December 24, 2013, the interim government labeled the Muslim Brotherhood a terrorist organization, even though a separate organization had claimed responsibility for the bombing. In late December 2013, the interim government froze the assets of more than 1,000 NGOs with alleged associations and connections to the Brotherhood. Separately, an Egyptian court convicted 139 supporters of former President Morsi on charges ranging from rioting to sabotage and sentenced each to two-year prison terms.

In general, individuals and groups who supported the removal of President Morsi and thereafter supported the actions of the interim government tended to view the interim government's actions within the context of state security. The sense among such supporters was that the process supported the rule of law. Many viewed Islamists and other oppositionists as criminals, anarchists, or terrorists. This was the case even though some were non-violently seeking a return to the previously elected Islamist government and 2012 Constitution, and some simply found flaws with the 2013 Draft Constitution and were opposed to the passage of the same for that reason alone.

The interim government took a number of deliberate steps designed to limit opposition and prevent dissenting voices from proposing any arguments that encouraged voters to vote no in the referendum. This began with the July 3, 2013, suspension of the 2012 Constitution and its protections for freedom of assembly, freedom of press and expression, and formation of political parties. The 2012 Constitution was replaced with the July 8, 2013, constitutional declaration that made changes to the language concerning basic rights. The changes to Articles 2, 8, 10, and 15 appeared to be carefully crafted to narrow the freedom of assembly, freedom of press and thought, and the formation of political parties.

The July 8, 2013, Constitutional Declaration issued by President Adly Mansour, which replaced the suspended Constitution of 2012, reflected the political environment and perceived security

concerns of the interim government at that moment. Article 10 of the Declaration, which prohibited associations who conduct activities “hostile” to society or that are based on that are of a secret nature, targeted the Muslim Brotherhood as an organization. It also targeted all political parties, including presumably the MB-affiliated Freedom and Justice Party (FJP) that are formed based on religious “distinctions” between citizens.

Coupled with restrictive laws passed after it, the Constitutional Declaration failed to provide an adequate guarantee of a free press and free public assembly, two essential conditions for democracy and a free and fair referendum process. Article 8, establishing freedom of the press, allowed for media censorship in the interest of “national security,” a vaguely defined interest that the government could cite whenever a media outlet expressed an opposition viewpoint or was merely perceived as an ally of those groups or movements opposing the government.

A number of journalists have also been arrested and imprisoned. In one extreme example, security forces raided the office of Al-Jazeera English in the Cairo Marriot Hotel in January 2014 and arrested three journalists. They were charged with aiding a terrorist group and possessing terrorist material. Despite widespread condemnation, the government has refused to drop these charges. Other journalists, both domestic and international, have faced harassment, including temporary detainments, deportation, and alleged torture. According to credible media sources that were corroborated through direct conversations with specific journalists and information from Reporters Without Borders, more than 80 journalists were detained for short and long-term periods between the events of June 30 and the dates of the referendum.

The legal framework overall, and the actions of the government in implementing and enforcing this framework during the referendum process, severely limited the political freedom of the Egyptian people and prohibited any debate on the merits or weaknesses of the constitution. The lack of any debate on the substance and merits of the constitution harmed the legitimacy of the referendum process and provided no basis to conclude that Egypt in 2013 was moving toward a more open and participatory democracy.

POLITICAL PARTY ENGAGEMENT

During the referendum period, DI's core team held dozens of meetings with political parties and movements including many parties represented by the National Coalition for Legitimacy, sometimes called the anti-coup alliance. The parties generally fell into two categories. Either they supported the constitution and encouraged their members to vote Yes or they opposed the process in general and were calling for citizens to boycott the referendum.

The only party that DI met with that was actively encouraging citizens to cast votes against the adoption of the constitution was the Strong Egypt Party. Strong Egypt was, however, prevented from freely campaigning against the adoption of the constitution. On January 7, 2014, a number of party members from the Strong Egypt Party were arrested for posting campaign materials urging Egyptians to vote No in the referendum. These party members were eventually sentenced in absentia to three years in prison on the charges of campaigning against the constitution. Other individuals attempting to campaign against the passage of the referendum were reportedly harassed or prevented from doing so.

Most parties, even those that were generally supportive of the draft constitution, objected to specific provisions allowing for military trials of civilians and related to spending on the national budget. Despite their opposition to these key provisions, most were optimistic that the process for amending the constitution through legislative action would be sufficient to ensure that future changes could be made.

Many parties, including all that are members of the National Coalition for Legitimacy, noted that no discussion had been held on how to proceed if the constitution should be rejected in the referendum. As a practical matter, it was extremely unlikely that such a result would have occurred. Nonetheless, it is troubling that there was no scenario articulated in advance that would have proceeded if Egyptian voters had not approved the draft constitution. In an open and fair process, the consequences of both outcomes should be clearly articulated and communicated in advance. Some voters who did not support the constitution may have abstained from voting or may have voted Yes because of uncertainty surrounding the process and confusion over what would happen in the event of a majority No vote.

Now that the constitution has been adopted, it is unclear how political parties can and will be structured going forward. The new constitution expressly forbids religious parties, but what this means on a practical level is not clear. The Salafist Nour party is one example of a party that

will need to amend its party constitution in order to be legally recognized under the new structure. Moreover, it is unclear whether such changes will mean simply that the parties remove overt references to religion but remain essentially unchanged.

CIVIL SOCIETY IN EGYPT

Egyptian civil society has been growing steadily in recent years and has experienced both new opportunities and challenges following the February 2011 ouster of President Hosni Mubarak. Despite the highly restrictive nature of its civil society laws, Egypt still has a vibrant and diverse civil society sector. The number and diversity of the organizations populating Egypt's CSO sector is expansive, with organizations focused on everything from political monitoring, good governance, social and human rights, gender, or the environment to charity and other issues. The sector, however, is highly fragmented, and most organizations have limited financial resources.

Since the July 3 transition of power, the political space for civil society to operate has increasingly become more restrictive. The November protest law and the designation of the Muslim Brotherhood as a terrorist organization in December have polarized citizens. The large number of arrests of opposition activists, raids on human rights organizations and the inability for anyone to actively campaign against the draft constitution punctuate the government's unwillingness to allow alternative points of view.

This closing of political space for civil society to operate should be of great concern. One of the key functions of civil society is to provide a check on government and to offer avenues for citizens to engage their government across a variety of perspectives. In an electoral environment, civil society plays an important role: mobilizing voters, helping the electorate understand the issues on which they are voting, providing voters with a variety of opinions and perspectives on the issues up for vote, and to monitoring and commenting on the voting process. Civil society organizations fall all along the political spectrum—from those aligning with government positions and policies to groups that challenge those policies in an attempt to make them more responsive to international standards as well as citizen needs. Although the need to provide a secure enabling environment for civil society to be effective is important, actively curtailing their ability to engage in any way that may be seen as opposing government is extremely problematic. Civil society, by its nature, exists in part to provide alternatives to government. Civil society must be given the space to provide these alternatives even if they differ from government positions.

Domestic Election Observation

An overarching goal of domestic election observation is to contribute to the integrity of the electoral process, with local observer groups focusing on the process rather than the outcome of the vote. Domestic observation contributes to a more informed electorate and can reduce the possibility of fraud and irregularities on election day. At the same time, observation by local

organizations can increase the public's confidence in the process and help to develop a more robust civil society sector. This is particularly important in times of political transition when there is an increased need to encourage public participation in and acceptance of an election's outcome. In the run up to the January referendum, Democracy International found that civil society and domestic election observer groups were severely restricted, or completely inhibited, in carrying out these types of activities.

According to the HEC website, 47 domestic observer groups requested accreditation for more than 80,000 observers. In the week before the referendum, DI met with a broad range of CSOs, all of whom indicated that they received far fewer accreditations than indicated on the HEC website. In discussions with specific groups following the referendum, they indicated that they received a total of less than 6,200 accreditations combined. This is significantly fewer than the 83,467 figure posted on the HEC website. DI formally requested a revised count of domestic accreditations as well as an explanation for this reduction from the HEC, but no official clarification or list was provided other than to say denied accreditation applications were mostly due to missing information, illegible ID scans, or unacceptable photos. Although in some cases these may have been valid reasons for rejecting applications, the difference between the stated numbers from the HEC and the actual number of domestic observers suggests that there was a deliberate attempt to reduce the amount of domestic observers.

DI held a number of discussions with domestic observer groups about the timeframe for submitting applications, how applications should be submitted, and when the final accreditations were received. Every domestic observer group that DI met with reported that the application process for accreditation was burdensome, asked for information local volunteers were not able to provide, did not allow enough time to submit all applications, and did not allow for new recruits to be added once the election timetable was announced. Domestic observer groups stated that they were not provided any redress options to resubmit rejected applications or required supporting documentation. Moreover, domestic observer groups were not provided final accreditation badges until one to three days before the referendum, significantly inhibiting their ability to get the accreditation badges to observers located in governorates outside Cairo.

In addition to the challenges faced by accredited domestic observation organizations, the HEC also denied accreditation to many civil society organizations all together or rescinded accreditation after it had been given. The HEC indicated these groups were denied because of affiliation with the Muslim Brotherhood or because these groups were not registered as election monitoring organizations with the Ministry of Social Solidarity. However, it was widely asserted that the reason for rejecting these groups on administrative grounds was because of perceived links with or sympathy for the Muslim Brotherhood rather than due to registration issues.

While DI is not able to definitively comment on the rejection of accreditation for any specific group, as noted earlier it is reasonable to assume it is possible—indeed likely given all of the actions taken by the government to restrict the ability of any group to oppose the referendum that many of these rejections were more likely political rather than administrative. Further, it

should be noted that DI teams did not encounter domestic observers in 86.8 percent of the more than 1,900 polling station visits on which our teams reported. A robust domestic monitoring effort should be visibly present. During the referendum it was not.

This is deeply troubling, as all citizens, regardless of political affiliation or official registration status, should be allowed to observe and witness all political processes, including elections. The process used by the HEC to deny accreditation was not sufficiently transparent nor were groups given any chance to appeal these decisions. In any case where the ability to observe the process is being limited in any way, it is critical that the criteria used to make these decisions be clearly established and communicated in advance to all interested stakeholders.

DI recommends that Egyptian electoral management bodies and other authorities review these issues and make improvements to the accreditation process so that is more accessible and accommodating. Addressing these concerns would better enable civil society to play its role in observing the electoral process and to provide evidence-based reports post-election day.

Civil Society Engagement and the Referendum

In the run up to the referendum, DI met with a number of the accredited local organizations, including Ibn Khaldoun Center, One World for Development Foundation, Egypt Pact NGO, Egyptian Association for Community Participation Enhancement, Egyptian Organization for Human Rights, and Rakeeb 2014. DI also met with other civil society groups that are strong within the sector, including the Egyptian Initiative for Personal Rights, Al Andalus Institute for Tolerance and Anti-Violence Studies, the Freedom Center for Human Rights, Cairo Institute for Human Rights Studies, Al Nakib Center for Training and Democracy Support, Cairo Center for Development and Human Rights, and the Houqouqi Association for the Rights of People with Disabilities.

Civil society, on the whole, did not actively campaign for a Yes or a No vote, although a few prominent figures appeared on television or radio to discuss their opinions and developed campaigns to promote the constitution. As mentioned previously, the DI mission noted a complete absence of a public No campaign, while very visible “vote yes” materials were widely displayed throughout the country. For the most part, the only public displays urging voters to reject the constitution were in the form of graffiti and were not official posters or campaign materials.

Most CSOs held the public position that voters should turn out, but did not necessarily advocate a particular position. Silence was interpreted as being in support of the proposed constitution. Based on discussions with groups from across the political spectrum, civil society seems to fall into three main categories: (1) those that were repeating the State narrative, (2) those that accepted the current situation but would actively seek changes to the constitution post-referendum, and (3) those that were silent. DI did not meet directly with any CSOs who were actively campaigning for a No vote or a pushing actively for their members to boycott.

For those groups that were active in the pre-referendum period, some have described conducting small-scale public awareness campaigns that were focused on encouraging citizens to participate in the referendum, or providing information on specific articles of the constitution. None of these activities, however, appears to have been widespread. Shayfeenkom, a local organization with an already-active anti-corruption hotline, planned to use it to enable citizens to give information on the referendum process. They promoted the hotline in advance of the referendum so that citizens could report election-related violations. Shayfeenkom observers could then followed up in person by trained and accredited Shayfeenkom observers.

A number of prominent civic actors published and distributed discussion papers analyzing the draft constitution based on their organizations' **key focus areas**. Several organizations stated that they did not feel that there was sufficient time to develop and carry out useful and effective public awareness campaigns on the draft constitution provisions.

ELECTION DAY OBSERVATIONS

Democracy International deployed observers to 23 of Egypt's 27 governorates. Our teams submitted more than 1,900 polling station observation reports. Observers deployed in teams of two, each assigned a local interpreter. In general, teams observed voting at as many as several dozen polling stations throughout the two days of voting and were present for the opening and closing/securing of polls on day one as well as the opening, closing and counting phases on day two.

DI observers reported that the balloting process was generally smooth and that there was no widespread evidence of fraud and intimidation. The process on the referendum days appears to have allowed those citizens who participated to express their will. Polling places generally appeared to open on time, supplies and materials were delivered to polling locations, and the judges and polling place workers seemed to take their responsibilities seriously.

DI observers, however, did note concerns about the administration of the balloting in some locations. For one thing, DI observer teams noted a lack of strict adherence to standards and procedures for ballot accountability including 18.5 percent of polling station reports showing that judges did not fill out the opening protocol. In many locations there was a heavy presence of security forces inside polling places, and DI teams observed that in nearly 20 percent of polling locations voter secrecy was not ensured. Many teams also reported instances where campaign materials were prominently displayed inside or immediately outside polling locations.

Teams specifically noted a lack of uniformity in the use and verification of indelible ink. In 20.6 percent of polling stations where DI teams observed, polling officials did not check voters' fingers before they were allowed to cast ballots. There was no consistent procedure for applying ink, since most voters chose which finger they wished to ink rather than officials consistently inking the right index finger as dictated by the procedures.

DI observers reported a small number of more serious violations such as ballots that had not been stamped before they were cast—which should have made them invalid—being stamped before counting. In more than 20 percent of polling stations that DI teams visited at the opening of polls on day 2, the wax seals on doors were not intact. At 6.9 percent of polling locations, DI teams were either prevented from entering the stations in a timely manner or were asked to leave after an arbitrary amount of time as determined by the presiding officer. Finally, in nearly half of the locations where DI observed the counting of ballots (46.6 percent) the pre-

siding officers did not post results publicly.

The procedures for conducting elections, while generally laid out in the Law on Political Rights and in subsequent decrees, are not sufficient to ensure uniformity among polling stations. It should be the goal of any election authority to clearly define—and, to the extent possible, publicize—electoral procedures so that voters are aware of the process and that all citizens have the same ability to participate in the process.

There is no evidence that such problems substantially affected the outcome of this referendum, but they could affect the integrity or the credibility of more closely contested electoral processes in the future. This is of particular concern in upcoming elections, as opposed to the referendum, since candidates on the ballot could use lack of clarity or uniform application of rules and procedures as a basis for challenging results.

RESULTS OF THE REFERENDUM

As expected, the constitutional referendum passed overwhelmingly with 98.1 percent voting in favor and 1.9 percent voting against. By comparison, the 2012 Constitution passed with 63.8 percent support and 36.2 percent against. Turnout for the 2014 referendum—38.6 percent of eligible voters—just managed to exceed turnout for the 2012 referendum of 32.9 percent.

Although this result indicates that a broad segment of Egyptian society supported the constitution, the large number of citizens who chose not to participate as well as the large number of groups who actively boycotted the process indicates that a clear consensus among citizens on the future of Egypt has still not been achieved.

The New Constitution

The analysis of a constitution's text should be only the beginning of a process of assessing an overall constitutional legal framework. Egypt's courts will have to interpret broad terms and concepts. Egypt's legislative authority must enact the complementary laws referenced in the Constitution and the additional laws that will give shape to the broad principles contained in the document. The Egyptian state, through its three branches of government, will ultimately determine many of the 2014 Constitution's provisions. It may be useful, however, to compare select provisions of the new Constitution, drafted during the interim Presidency of Adly Mansour and approved in the January referendum, with provisions contained in its immediate, and short-lived, predecessor, the Constitution of 2012, ratified during the administration of President Mohammad Morsi.

Focusing on its text, the 2014 Constitution appears to take firm steps toward equality based on religion and gender. Although both constitutions hold that the principles of Islamic *sharia* shall be the basis of all legislation, the text of the controversial Article 219 in the 2012 Constitution, defining further the principles of Islamic *sharia*, does not appear in the new Constitution. This, coupled with the assertion in the 2014 Constitution that the civil Supreme Constitutional Court (SCC) shall be the interpreter of Islamic *sharia* principles, would appear to give civilian authorities a greater say in how these principles are to be embodied in legislation.

The 2014 Constitution also appears to be more assertive in establishing the State's obligation to promote women's equality with men. The 2012 Constitution guaranteed State efforts toward "equal opportunities" for all citizens and included mention of the principle of "equality" be-

tween men and women. The 2014 Constitution indicates that the State will work to achieve equality between women and men regarding “all civil, political, economic, social, and cultural rights.” The 2014 also includes a promise of “appropriate” representation for women within (future) houses of parliament.

Both Constitutions guarantee personal rights and liberties, such as the freedoms of speech, assembly, and association. The 2014 Constitution, however, bans political parties formed on the basis of religion and any association that operates in secret. It seems likely that these provisions are directed at the Freedom and Justice Party and the Muslim Brotherhood. Regarding individual political rights and civil liberties generally, the proof of the Egyptian state’s seriousness in protecting these rights will be found in its implementing legislation. As has been the case in Egypt’s modern history under Emergency Law provisions, and with the more recent example of Egypt’s repressive 2013 Protest Law, strongly and nobly worded constitutional rights to free speech, a free press, public assembly, and the right to form associations, among other rights, may be undercut or even obliterated by restrictive laws limiting an Egyptian citizen’s enjoyment of those rights.

The new Constitution appears to grant greater authority and autonomy to key institutions, including the military and the judiciary. Most notably, under Article 234 the Supreme Council of the Armed Forces has been granted effective veto power over the appointment of the Minister of Defense during the next two presidential terms. Typically, in a democracy, the appointment of cabinet members is an authority granted to elected civilian authorities alone. This provision did not appear in the 2012 Constitution, which itself granted a great deal of institutional authority and independence to the military.

Although both the 2012 and 2014 Constitutions permitted military trials of civilians, the new Constitution appears to potentially expand the authority of the military courts over civilian defendants. The 2014 Constitution grants the military courts jurisdiction over any civilian who has been accused of “direct assault” against military facilities, resources, officials, or “whatever falls under [military] authority.” The 2012 Constitution allowed for military prosecution for alleged crimes “against the Armed Forces” as defined by law. Neither provision adequately protects civilians, but the 2014 provision appears to codify a broader range of potential “crimes” by civilians against the Egyptian military.

The judiciary retains a greater degree of independence in the 2014 Constitution than it did in 2012. The 2012 Constitution sought to limit both the size of the Supreme Constitutional Court and its authority, by authorizing the pre-approval by the SCC of draft electoral laws, which would then become immune to judicial review following enactment. The 2014 Constitution appears to enhance judicial independence, by removing these limits to the SCC’s size and oversight, and by explicitly indicating that various judicial branches budgets shall be “a single line” in the overall State budget. The 2012 Constitution stated only that the branches would have “independent” budgets.

CONCLUSION

Democracy International has serious concerns about the political environment in which this referendum took place. The referendum took place against a backdrop of arrests and detention of dissenting voices. There was no real opportunity for those opposed to the government's roadmap or the proposed constitution to dissent. The lack of any plan articulated in the roadmap or elsewhere in the event of a No vote seemed to show that the government considered the outcome of the referendum as pre-ordained.

Egyptian media coverage of the referendum was strongly biased in favor of adoption of the constitution. Those opposed to passage were not afforded any reasonable opportunity to express their opposition. The curtailment of freedom of expression in the name of security shows a troubling trajectory for the political future of Egypt. In the immediate aftermath of the constitutional vote, the rights and freedoms promised in the new constitution do not seem to have improved the political climate in the country.

The actions of the government during the referendum process severely limited the political freedom of the Egyptian people and prohibited any debate on the merits or weaknesses of the constitution. The lack of any debate on the substance of the constitution harmed the legitimacy of the referendum process and does not provide a basis to conclude that Egypt is moving toward a more open and participatory democracy.

Generally the rule of law should serve as shield to protect personal freedom and expand political space while balancing the security of the people and the state. During the referendum process, however, the law was actually used to restrict freedom and political space in the name of security.

Ultimately, a successful transition to democracy in Egypt will depend on meaningful opportunities for all political forces in the society to participate peacefully in a political process. The legitimacy of such a transition is for the Egyptian people to decide. The interim government and its opponents should seek opportunities to engage in inclusive dialogue that could help bring about broader participation in the political process, including in future elections. The process of preparing for upcoming elections is an opportunity to reorient Egypt toward effective, democratic institutions that are broadly viewed as legitimate across the society.

RECOMMENDATIONS

Democracy International offers the following recommendations to improve the political climate and procedures for future elections.

1. End the crackdown on dissenting political voices.

The government, state-run and independent media, and the military and other security forces should end their aggressive campaign against parties, movements, and individuals offering alternative viewpoints to the government narrative. Instruments of the state should not be used to suppress dissent.

2. Review and amend the protest law.

The government should ensure freedom of expression, assembly, and association. The government should immediately review and amend the protest law to ensure that it does not restrict the very freedoms articulated in the new constitution.

3. Promote broader political participation in the lead up to future elections.

The interim government should use upcoming presidential and parliamentary elections as an opportunity to actively encourage opposition parties and movements to engage in the political process.

4. Strengthen electoral procedures to be more consistent with international standards.

Egypt's electoral authorities should conduct a thorough review of polling day procedures to bring such procedures in line with international standards, including limiting the role of security forces, protecting the secrecy of the vote, and preventing campaigning within polling stations.

5. Ensure proper training for polling place officials and make an effort to publicize Election Day procedures.

In addition to strengthening procedures, electoral authorities should make an effort to publicize them so that stakeholders such as political parties, civil society organizations, and ordinary citizens can be more aware of the voting process and that civic and voter education can be more successful.

6. Develop more robust operational plans and timelines and better training for future elections.

The HEC should improve its procedural and operational planning for future elections, including establishing more robust operational plans and timelines, and provide better training for judges and other poll workers.

7. Ensure that the process of accreditation for domestic observer groups is clearly defined and publicly communicated.

Any situation where the accreditation process is unclear should be avoided. Disallowing groups from observing the process should only be done in extreme cases. It is critical that any denial of accreditation be clearly communicated and the decision to do so based upon extremely clear and widely disseminated criteria.

8. Review and revise the process for electoral complaints.

The electoral law should be revised to specify an effective, transparent and fair process for addressing electoral complaints.

9. Safeguard constitutional rights.

Democratic rights and freedoms articulated in the new constitution should be fully respected and protected in accordance with international standards. Lawmakers should ensure that laws affecting the exercise of fundamental rights and freedoms are not unduly restrictive.

10. Promote political reconciliation.

A successful transition to democracy in Egypt will depend on the willingness of opposing political forces to agree to participate peacefully in a political process. The interim government and its opponents should seek opportunities to engage in inclusive dialogue that could help bring about broader participation in the political process, including in future elections.

ANNEX A: TIMELINE OF KEY EVENTS

2011

- January 25 Protests erupt throughout Egypt against President Mubarak
- February 11 President Mubarak resigns, Constitution suspended
- March 30 Provisional Constitution adopted by the SCAF
- November 28 First of three stages of elections for People's Assembly begins

2012

- June 14 People's Assembly dissolved after SCC ruling
- June 24 Mohamed Morsi announced winner of presidential elections after two rounds of voting
- December Egypt votes by referendum to adopt a new constitution to replace the 2011 Provisional Constitution

2013

- April Tamarod campaign begins collecting signatures to call for early presidential elections
- June 2 SSC Rules Shura Council unconstitutional
- June 30 Tamarod campaign culminates in massive protests against President Morsi
- July 3 General Sisi announces the end of President Morsi's presidency and the suspension of the 2012 Constitution
- July 8 Interim President Mansour releases constitutional declaration with roadmap
- August 14 Security forces break up sit-ins at Rabaa Square and al-Nadha Square

August 18 Committee of Experts completes recommended amendments to 2012 Constitution

September 1 Constitutional Review Committee (Committee of 50) formed

September 8 Committee of 50 begins reviewing articles and voting on amendments

November 24 Interim government issues new protest law

December 3 Committee of 50 presents new constitution to Interim President Mansour

December 14 Interim President Mansour announces referendum dates

December 25 Interim government declares the Muslim Brotherhood a terrorist organization

2014

January 14-15 Constitutional Referendum

January 16 HEC announces that constitutional referendum passed with 98% support

ANNEX B: CORE TEAM MEETINGS

Amr Moussa

Al Andalus Institute for Tolerance and Anti-Violence Studies

April 6 Movement

Arab Network for Human Rights Information (ANHRI)

Association of Egyptian Human Rights Activists

Cairo Center for Development and Human Rights

Cairo Institute for Human Rights Studies

Center for Rights and Law

Center for Women's Empowerment

Construction and Development Party

Egypt Pact NGO

Egyptian Association for Community Participation Enhancement

Egyptian Association for Disseminating Legal Information

Egyptian Association for Dissemination and Development of Legal Awareness

Egyptian Democratic Academy

Egyptian Initiative for Personal Rights (EIPR)

Egyptian Organization for Human Rights

Egyptian Popular Current

Free Egyptians Party

Freedom and Justice Party

Freedom Center for Human Rights

Houquouqi Association for the Rights of People with Disabilities

Human Rights Watch Egypt

Ibn Khaldoun Center
International Foundation for Electoral Systems (IFES)
Ministry of Interior
Ministry of State for Administrative Development, Elections Unit
Al Nakib Center for Training and Democracy Support
National Center for Human Rights
National Coalition for Legitimacy
National Council for Human Rights
National Partnership Current January 25-June 30
Negad El Borai
New Labor Party
Nour Party
One World for Development Foundation
People and Police for Egypt
Rakeeb 2014
Reform and Development Party
El Sadat NGO
Shayfeenkom (Egyptian Organization for Public Monitoring and Human Rights)
Social Democratic Party
Strong Egypt Party
Taharor (Tamarod II)
Tagammu Party (National Progressive Unionist Party)
Tamarod
United Nations Development Program (UNDP)
Wafd Party
Wasat Party
Al Watan Party