

Report

Comprehensive Assessment of Egypt's Electoral Framework - Part II

10 August 2011

1. Summary

On 19 July, the Supreme Council of the Armed Forces (SCAF) amended the Law on the People's Assembly and the Law on the Formation of the Shura Council (LFSC) and passed a second batch of amendments to the Law on the Exercise of Political Rights (LEPR). This report analyses the 19 July amendments, and supplements DRI's Comprehensive Assessment of Egypt's Electoral Framework published in July.¹

On the same day as adopting the amendments, the SCAF formed the High Election Commission (HEC). Shortly thereafter, the SCAF confirmed that elections for the People's Assembly (lower house) and the Shura Council (upper house) would be held together but conducted over three phases with each phase lasting 15 days. Subsequently, the HEC Chair stated that the first election phase would start in the second half of November. This means that the final phase is likely to occur in late 2011 or possibly early 2012. Nevertheless, the SCAF has the final legal authority to set the election days.

While most of the legislation necessary to conduct parliamentary elections is now in place, the SCAF must still adopt laws establishing the electoral districts, and the HEC is required to adopt numerous regulations, some in the near future. To better ensure an environment conducive to genuine elections other laws e.g. regulating public assembly and media should also be revised before the elections are called.

The LOPA sets out the main elements of the election system. Most previous elections were held under an individual candidate (majoritarian) system although a form of proportional representation (PR) was used in 1984 and 1987. Draft amendments to the LOPA were published on 30 May. These proposed a mixed system combining 'closed' candidate lists with seats allocated by PR and the old individual candidate system based on 'two-member' constituencies (TMCs). The draft stipulated that there would be twice as many majoritarian as PR seats. During June, the government consulted with political parties and civic groups on the text of the draft. Reformists, many of whom have long advocated for the re-introduction of a system based *fully* on PR, strongly disagreed with the proposed majoritarian/PR split as they believe that the old majoritarian election system favours candidates close to the former regime. The final text of the amendments introduces a 50:50 split between the two election components, whereby 252 members will be elected from party (or coalition) lists in 58 multi-member election districts (MMDs) and 252 individual candidates will be elected in 126 TMCs.

¹ This analysed the 30 March Constitutional Declaration, amendments to the Law on Political Party Systems (adopted on 28 March), amendments to the LEPR (adopted on 19 May) and draft amendments to the LOPA (published on 30 May).

Despite some improvements, the revised LOPA retains a number of questionable arrangements from the past e.g. the requirement that 50% of elected members must be 'workers' or 'farmers'. This seriously disadvantages other occupational groups, and the implementation methods chosen conflict with principles for democratic elections and may lead to a Parliament numerically dominated by these occupational groups.

The increase in the number of list-PR seats (from 33% to 50%) did not appease reformists and overall, the revised law does not appear to meet their expectations. Indeed, the media reported that some parties are considering boycotting the election unless the system is changed. Nevertheless, the text of the adopted amendments does incorporate some technical changes suggested by reformists during the consultations on the 30 May draft text, for example:

- Dispensing with a mandate allocation system which would have provided an unreasonably large electoral dividend to the highest scoring party list in MMDs;
- Reducing from 30 to 25 the age at which citizens can seek election to the People's Assembly;
- Further lessening the influence of the Ministry of Interior in the electoral process;
- That the national vote threshold necessary for representation is set at a low level (0.5%).

While the 30 March Constitutional Declaration retains the possibility of instituting a quota to ensure a minimum representation level for women, the final text of the LOPA provides only that each party list must contain at least one female candidate, without specifying where they should be placed on this list. Hence, while women will probably constitute at least 20-25% of list-PR candidates (10-12.5% of all candidates), there is no guarantee that this proportion will be elected.

Amendments to both the LOPA and the LFSC require adopting new laws to delineate TMC and MMD boundaries. The LOPA and LFSC do not contain many details on the modalities for the delineation process, but do require that the number of list-PR mandates and individual candidate mandates allocated to Egypt's 27 governorates must be the same. However, it appears that the total number of mandates allocated to the governorates will vary and that some governorates will be divided into more than one MMD. It is a fundamental principle of fair elections that "the vote of one elector should be equal to the vote of another", but neither the LOPA nor the LFSC establish criteria ensuring respect for this principle. It is not known when the laws on constituencies will be adopted, who will conduct the delineation process or how long the process will last.

Unlike elections in the 1980s when a similar system was in place, in 2011 only half of the seats will be allocated under the list-PR system. The decision to divide Egypt into 58 MMDs for the People's Assembly elections creates a large number of districts with low magnitudes². The seat magnitude (as well as other factors such as the mandate allocation mechanism) is extremely important in determining the degree of proportionality possible in any 'PR system' and has a potentially decisive bearing on

² The magnitude is calculated by dividing the total number of seats nationwide (252) by the number of MMDs. In 2011, each MMD has a magnitude of just 4.35 seats whereas in 1984 the magnitude was 8.7 seats.

whether parties are able to translate their vote-share into parliamentary representation. Small magnitude districts favour higher-polling parties and the system thus invites the formation of party coalitions.

Other noteworthy issues regarding the LOPA include:

- The amendments do not mention procedures for political parties to nominate individual candidates, raising a possibility that *all* individual candidates are considered as non-partisans. This would have implications for the formation of a stable parliamentary majority;
- The draft text allowed groups of non-party candidates to present election lists. The adopted text restricts this to political parties. This change lessens the choice available to voters;
- If elections are announced 30 days before the election day(s), the timeframe for candidate registration and appeals (up to 26 days) may be problematic. Reducing the registration period may lessen the reliability of the process. It would be better to extend the period between the call for elections and election day. This would also enable a longer election campaign thereby enhancing voters' exposure to political information;
- As polling will be phased, the HEC may need to establish phased candidate registration and campaigning to ensure that candidates / parties in all areas have equal opportunities and that campaigning in one area does not unduly influence polling in another area;
- Post-election challenges may be filed up to 30 days after the polling day(s). The court has 90 days to decide challenges. This timeframe could cause a delay in the formation of the new People's Assembly. The amended law does not stipulate when repeated (or entirely new) elections would occur in the event that the court annuls any election results;
- The Constitutional Declaration describes the powers of the People's Assembly in less detail than the (suspended) 1971 Constitution. The LOPA does not provide any elaboration, but does provide that the Assembly will inherit the procedural rules of its predecessor.

The Shura Council elections are significant because the body will have a key role in deciding the formation (and possibly the functioning) of the Constituent Assembly which will draft Egypt's new Constitution. The Council has a mixed election system and electoral procedures similar to those of the Assembly. The major difference concerns the Council's composition; controversially, one third of the Council's members will be appointed by the future President after his/her election.

Amendments to the LFSC significantly increase the number of elected Shura Council seats from 176 to 260. The rationale for the change is not known. 28 MMDs (with a magnitude of 4.6), and 65 TMCs will be established for the Shura Council elections. However, the requirement that half the Shura Council members be elected every three years could, if applied to future elections without further revising the LFSC, mean that just 65 members will be elected under the list-PR system, giving a magnitude of just 2.3 seats. As workers and farmers must be placed first on lists, they would predominate among the candidates elected.

On 19 July, the SCAF adopted a further batch of amendments to the Law on the Exercise of Political Rights (LEPR).³ In part, the amendments harmonise LEPR provisions with the LOPA and LFSC but also introduce potentially very significant changes, including:

- Dispensing with the requirement to establish a HEC Technical Secretariat. It is unclear what alternative will be put in place. Seconding staff from government departments could lessen the HEC's independence. In all events, it is still necessary to formally regulate to ensure clarity regarding its role and the transparency of its operations;
- Article 5 Bis provides that as an exception voter registration for 2011 shall cease on 20 July. The change implies that the draft voter registers have already been compiled from ID card data without the supervision of the HEC, which is required by law;
- The Minister of Interior was responsible for adopting Executive Regulations for the work carried out on the voter registers between 19 May and 19 July. Following the 19 July amendments, the HEC is responsible for adopting new Executive Regulations. These will cover the arrangements for displaying the registers and deciding registration appeals;
- Citizens will be included in the voter registers according to their domicile indicated in the national ID card database. A potentially large numbers of citizens may be included in the ID card database at a place other than their de facto residence. Prior to adopting the 19 July amendments, the authorities did not forewarn citizens that work on the voter registration database was about to cease;
- Registers are publicly displayed for ten days and appeals may be submitted up to 15 September. Depending on the number of appeals filed, and given that a completely new system of registration has been introduced, this period may not be sufficient. Additional time will be needed to enter any changes into the final voter registration database;
- The amendments require that all list-PR ballots be counted by General Committees (GCs) (rather than at the polling premises). However, election results will be announced by Governorate Election Committees (GECs) rather than GCs. This arrangement will delay the announcement of results. The HEC ought to ensure that the procedures for vote counting are properly regulated to ensure integrity and transparency.

³ The first batch of amendments was adopted on 19 May 2011. See DRI's comprehensive assessment of July.

2. Introduction

In July, Democracy Reporting International (DRI) published a “Comprehensive Assessment of Egypt’s Electoral Framework”,⁴ which analyses the Constitutional Declaration (adopted on 30 March), amendments to the Law on Political Party Systems (LPPS, adopted on 28 March), amendments to the Law on the Exercise of Political Rights (LEPR, adopted on 19 May), and draft amendments to the Law on the People’s Assembly (LOPA, published on 30 May).

This is a supplement to DRI’s July assessment. It analyses the final version of amendments to the LOPA (Law 108/11), amendments to the Law on the Formation of the Shura Council (LFSC, Law 109/11) and a second batch of amendments to the LEPR (Law 110/11) which were adopted on 19 July and published on 28 July.

During June and July, consultation on the draft LOPA took place between the government, political parties and civil society groups. In June, the ‘Democratic Civil Coalition’, a gathering of political parties, civil society groups and protest / youth movements, sent the Prime Minister their suggestions for revising 23 articles of the draft. The adopted amendments reflect many of these suggestions, although there is still considerable scope to improve the law in future.

Most of the legislation necessary to conduct elections is now in place. However, both the LOPA and the LFSC require the adoption of laws establishing electoral constituencies. These laws are crucial as they will determine whether electoral units are drawn on an equal i.e. ‘fair’ basis. The SCAF and the government ought also to address laws which affect the electoral environment and the context in which political debate takes place e.g. repealing the Emergency Law (162/58) and revising laws regulating public assembly, the Penal Code, and the media. It may also be necessary to adopt a law to restore political rights to those whose rights were suspended as a result of questionable legal processes during the Mubarak period.

In response to pressure from the protest movements to bar the members of the National Democratic Party (NDP), the former ruling party, from the elections, on 27 July, the newly-appointed Deputy Prime Minister, Ali al-Selmi, announced that the ‘Treachery Law’ – adopted shortly after Egypt’s 1952 Revolution will soon be revised.⁵

The High Elections Commission (HEC) will also be required to adopt regulations covering various aspects of the electoral process before specific phases can begin governing e.g. candidate registration, campaigning, and polling procedures. Following the adoption of a second batch of amendments to the LEPR, the HEC must adopt Executive Regulations before draft voter registers are displayed on 20 August. HEC Regulations can also serve to address ambiguities and fill gaps which exist in the legislation.

⁴ DRI also issued a briefing paper “The Road to Elections in Egypt: Electoral Reforms Since February 2011”, which summarised the main legislative developments since the revolution. See: <http://www.democracy-reporting.org/publications/country-reports/egypt.html>.

⁵ “Cabinet agreed in principle on bill to amend Treachery Law” (28 July 2011, State Information Service, <http://www.sis.gov.eg/En/Story.aspx?sid=57102>). The law would be revised such that suspects would be tried in regular courts rather than the special courts established by the 1952 Law. The Deputy Prime Minister stated that the law would be used to prosecute “corrupt people and all who rigged elections” and made it clear that “they would be deprived from running for elections, voting and taking part in political life.” See: “Deputy PM: Treachery law to be applied on election rigging” (28 July 2011, State information Service, <http://www.sis.gov.eg/En/Story.aspx?sid=57108>).

3. The Timing of Parliamentary Elections

Article 41 of the Constitutional Declaration provides “Electoral *procedures* will begin within six months of the date of this Announcement” (emphasis added). This could be interpreted to mean that the elections will be *held* in September or that election preparations will begin in September. Until recently, the SCAF maintained that parliamentary elections will be held in September. In its July assessment, DRI stated that “unless the preparatory work begins in earnest in the very near future, this timetable may soon become unrealistic.”

On 19 July, the SCAF issued a decree forming the HEC.⁶ The same day, the HEC Chair announced that the Commission would hold its first meeting on 25 July and stated that he expects that parliamentary elections will be held in three phases in October and November 2011, although he reiterated that the election date(s) are decided by the SCAF.⁷ A few days later, the SCAF had announced that the elections would be held over three phases, with 15 days set aside for each phase and that the Shura Council and People’s Assembly elections would be held simultaneously.⁸ On 24 July, the HEC Chair stated that elections would be held in the second half of November; presumably meaning that the first phase of the elections would start at this time.⁹

The decision to hold the two parliamentary elections simultaneously will increase the already significant challenges caused by the need to hold phased elections. Voters will have to mark four ballots instead of a single ballot paper (as was the case prior to the 2010 elections).¹⁰ The alternative – holding separate elections – would have necessitated twelve different election days.¹¹

4. Law 39/1972: the Law on the People’s Assembly (LOPA)

Inter alia, the LOPA regulates: the composition of the People’s Assembly; the election system; candidate eligibility and registration; campaigning; legal challenges.

Law 108/11 sets out amendments to the LOPA. The preamble states that the amendments were issued after “taking the opinion of the High Election Commission”, although the amendments were adopted on the day the HEC was appointed (19 July).¹²

While the amendments introduce a number of major changes, notably to Egypt’s election system, many articles have not been altered. As is the case with the LEPR, it is not easy

⁶ Amendments to the LEPR were adopted on 19 May, but the HEC was not formed until two months later.

⁷ “HEC committed to 100% sound electoral rolls” (20 July 2011, State Information Service, <http://www.sis.gov.eg/En/Story.aspx?sid=56943>).

⁸ On 20 July, a SCAF member stated that the elections would go ahead as scheduled and that there was no intention to postpone the process. See: “SCAF member: Elections to be held on schedule” (21 July 2011, State Information Service, <http://www.sis.gov.eg/En/Story.aspx?sid=56972>).

⁹ “Parliamentary elections in second half of November” (24 July 2011, State Information Service, <http://www.sis.gov.eg/En/Story.aspx?sid=57024>).

¹⁰ In 2010, there was a separate ballot for voters for the 64 reserved seats for women.

¹¹ With three election phases plus run-off elections to decide the winners of the ‘individual candidate’ contexts there will be six election days. If the two parliamentary elections were held separately the number of voting days would be doubled.

¹² The HEC did not hold its first meeting until 25 July i.e. after the issuance of the law.

to categorise the proposed changes as being wholly 'positive' or 'negative', because many could have a beneficial and/or a detrimental effect.

4.1 The Election System

Most previous Assembly elections in Egypt were held under a majoritarian election system (although a form of proportional representation (PR) was used in the 1984 and 1987 elections).¹³ For the 2010 People's Assembly elections, 444 members were elected in two-member election districts, and 64 women MPs were elected in a separate ballot.

Article 3 of the 30 May draft amendments proposed a mixed election system based on:

- i) Multi-candidate 'closed',¹⁴ election lists registered in election districts with mandates allocated by PR.
- ii) The 'individual' candidate system, with Assembly members elected in election constituencies according to the 'majoritarian principle'.

The draft amendments did not stipulate the total number of People's Assembly members to be elected, or the number of election districts and constituencies into which Egypt will be divided, but did state that there would be twice as many seats for individual candidates as 'list-PR seats' i.e. that there would be a two-thirds : one-third split. The adopted amendments provide that the People's Assembly will be composed of 504 members (article 1) and that there will be a 50:50 split between individual and list-PR seats (article 3).

Most Egyptian reformers have long advocated the re-introduction of a system based *fully* on PR (i.e. the system used in 1984). They strongly disagreed with the initially proposed individual/list-PR split. Consequently, during June and July, most discussion centred on this issue. They were not appeased by the increase in the number of PR seats, because in their view, retaining the individual candidate system (even in part), opens the door to the election of "remnants of the former regime" and consequently that "money and bullying will affect political life".¹⁵ The media reported that some parties are even considering boycotting the elections unless the system is changed.

Under the suspended 1971 Constitution, the President was entitled to appoint 10 People's Assembly members. Article 32 of the Constitutional Declaration retains this provision while article 56 specifies that the SCAF will have the right to appoint these MPs. Potentially, this allows the SCAF to alter the parliamentary majority after the elections.

The Constitutional Declaration requires that *at least* 50% of the 'PR seats' and *at least* 50% of the seats in both houses will be allocated to 'workers and farmers'. This

¹³ In 1984 a party list election system was used whereby Egypt was divided into 48 multi-member districts. Election lists required at least 8% of the total vote to participate in the allocation of seats. 418 MPs were elected under this system and 30 seats were reserved for women MPs. In 1987, the multi-member district system was retained but 48 single mandate districts were added.

¹⁴ A closed list is one in which the order of candidates is fixed at the time of registration and where voters select the list rather than rank individual candidates on a list (open list or preference voting).

¹⁵ "35 political parties, presidential candidates reject elections bill" (25 July, State Information Service, <http://www.sis.gov.eg/En/Story.aspx?sid=57039>).

requirement is repeated in the LOPA and LFSC.¹⁶ Most political parties and civil society groups are strongly against retaining the provision, although some leftist parties favour retaining the quota, albeit with some modification.¹⁷

4.1.1 Seat Quota for Workers and Farmers

The quota for workers and farmers has had a major effect on the election system. Indeed, ostensibly the two member system was established as a way to implement the quota without conducting a separate election i.e. using a separate ballot paper. The decision to retain the quota and (in part) the individual candidate system means there is limited scope to change the two-member system – at least not without complicating the polling arrangements.¹⁸

The 30 May draft did not state how the seat quota for workers and farmers would be achieved for list-PR seats. Law 108/11 requires that the first placed candidate on all candidate lists must have the status of a worker or farmer. A likely consequence of this approach will be the election of far more persons with these occupational statuses than the minimum 50% required - especially if the vote is split among a large number of electoral lists. This would exacerbate the discrimination against other occupational groups which stems from the decision to retain the provision. It could also jeopardize the election of senior party representatives who are not classified as a 'worker' or 'farmer' as they will not be entitled to be listed as a first-placed candidate.

4.1.2 Women's Representation

Amendments to the 1971 Constitution adopted in 2007 opened the possibility of introducing a minimum level of women's representation in both houses of Parliament. This provision is retained in the Constitutional Declaration.¹⁹ For the 2010 elections, 64 seats were set aside for women only candidates.

The 30 May draft made no mention of any arrangement to enable a minimum number of women to be elected to the People's Assembly.²⁰ The final text of the LOPA stipulates that "each list will contain one female candidate at least". This provision means that women will probably constitute at least 20-25% of list-PR candidates. However, it does not guarantee the election of a minimum number of women MPs because it does not

¹⁶ DRI's 11 July paper elaborates a number of serious problems associated with this quota.

¹⁷ See: "Pre-Revolutionary Practices", Al Ahram, <http://weekly.ahram.org.eg/2011/1058/eg6.htm>

¹⁸ It is possible to conduct one series of elections for 'workers and farmers' and a separate one for 'others' (which is also open to worker and farmer candidates). But in order to give voters and candidates equal choice and opportunities the constituencies in which the elections take place must be identical. Thus de facto, each constituency would still elect two members, albeit in separate contests.

¹⁹ Article 38 of the Constitutional Declaration provides that: "The law regulates the right to candidacy to the People's Assembly and Shura Council in accordance with a specific electoral system set by the law. It is permissible that this system includes a minimum of women participation in the two houses."

²⁰ Devising a closed list system to achieve a minimum 50% quota for workers and farmers while simultaneously requiring a minimum number of women to be elected using the same system could seriously complicate the requirements on the sequencing of the various categories on the election lists. Applying a women's seat quota would probably have necessitated an additional ballot paper.

require parties to place women candidates in 'electable positions' on their election lists.²¹

4.1.3 Election Districts and Constituencies

The 30 May draft law did not mention how many election constituencies (individual candidate system) and districts (list-PR system) would be established. Law 108/11 (article 3) provides that there will be 126 constituencies for the individual candidate system and that each constituency will elect two MPs (these constituencies are hereafter referred to as 'Two Member Constituencies' – TMCs) and 58 list-PR districts (hereafter referred to as 'Multi Member Districts – MMDs).

Law 108/11 requires that "the number of members representing each governorate elected on the closed political parties lists shall be equal to the number of the elected representatives of this governorate elected based on the individual candidate system". It is understood that the total number of seats allocated to a governorate will vary from governorate to governorate – presumably based on its population size. However, the consequence of the provision is that each governorate must be allocated at least four seats (two individual candidate seats and two PR-list seats), regardless of its size, and that in all cases the number of seats allocated to a governorate must be divisible by two. If this provision had not been introduced it would have been easier to allocate governorates a variable number of seats which better corresponded to its population size.²²

The requirement that Egypt be divided into a large number of MMDs re-introduces a system similar to the one used for the 1984 elections (although at the time 418 of the 448 seats were allocated under a list-PR system in 28 districts).²³ However, in 2011 only 252 list-PR seats are available. This means that in 2011 on average each MMD will be allocated just 4.35 seats, whereas in 1984 on average of 8.7 seats were allocated to the MMDs.

The number of seats allocated to a district (magnitude) is an important issue in determining whether parties win seats. In general, the greater the magnitude, the lower the share of the vote required to win at least one seat. For example, if there are 25 districts each with a magnitude of ten seats, a party or coalition scoring 10% of the vote would probably win at least one seat in all districts regardless of the number of votes received by other parties/coalitions. However, if there are 50 districts with a magnitude of five seats, it is possible that the party or coalition may not win any seats with this share of the vote. This illustrates that even if a system is called 'a PR system', the mandate allocation method (see below) and the magnitude are key variables in determining the actual degree of proportionality. The system chosen favours parties with higher vote shares and invites the formation of coalitions of 'like-minded' parties as a strategy to maximise the representation.

²¹ Placing women candidates in lower positions on parties' lists will reduce the likelihood of their election. The small magnitude of the multi-member districts will exacerbate the problem.

²² For example each governorate could have been allocated more or less PR seats than the number of individual seats so long as the total number of seats allocated to all governorates in Egypt respected the 50:50 split, i.e. at the national level. In such a case it would have been possible to have governorates allocated 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 mandates and so on, instead of 4, 6, 8, 10, 12, 14 mandates and so on.

²³ The remaining 30 seats were reserved for women MPs.

Neither the 30 May draft nor Law 108/11 mention any criteria or principles for establishing MMDs and TMCs or how a governorate's 'seat entitlement' will be determined (beyond the requirement that within a specific governorate the number of individual candidate and list-PR seats be the same). The amendments to the LOPA and the LFSC require new laws to be adopted to determine the boundaries of each TMC, the administrative composition of each TMC,²⁴ and the number of member representatives of each MMD. These laws will be very important.

It is a fundamental electoral principle that 'the vote of one elector should be equal to the vote of another' (hereafter the 'voting equality' principle).²⁵ To achieve this, it is necessary either to form electoral units with broadly equal population sizes, or allocate each unit a variable number of mandates corresponding to its population size. DRI noted in its 11 July assessment that: "One problem with using the governorates as a basis for [MMDs] is that their population sizes vary considerably. According to official data²⁶ South Sinai has just 157,000 inhabitants whereas Cairo has over 7,302,000 million."²⁷ This fact, taken together with the parameters of the electoral system as set out in Law 108/11, will make it very difficult for the law on constituencies to design a mandate allocation system which fully respects the voting equality principle. However, it is possible to avoid the clear inequalities which existed in the past.²⁸ The following table shows a hypothetical mandate distribution to demonstrate the problem in achieving an equal distribution.

²⁴ This suggests that the TMCs (and probably the MMDs) will be based on agglomeration of existing administrative units.

²⁵ General Comment 25 on the ICCPR states: "The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group [...]."

²⁶ See <http://www.sis.gov.eg/VR/egyptinfigures/Tables/1-%20السكان/4.pdf>.

²⁷ South Sinai has such a small population that if mandates were allocated to governorates in proportion to their population size, South Sinai would only be entitled to one People's assembly seat and just 0.5 of a Shura Council seat. One solution to this problem would have been to merge smaller governorates with larger units to ensure that they contain a given minimum number of citizens.

²⁸ In the past, TMCs' population size varied by a factor of ten. See DRI and EOHR's April 2007 report (p. 33), http://www.democracy-reporting.org/files/dri_egypt.pdf.

Governorate	Population ²⁹	% of population	Seat entitlement	Possible Allocation		% of entitlement
				TMC	PR	
S Sinai	157,000	0.2	1.0	2	2	402
El Wadi El Gidid	204,000	0.3	1.3	2	2	310
Red Sea	313,000	0.4	2.0	2	2	202
Matrouh	372,000	0.5	2.4	2	2	170
N Sinai	385,000	0.5	2.4	2	2	164
Suez	563,000	0.7	3.6	2	2	112
Port Said	617,000	0.8	3.9	2	2	102
Luxor	1,043,000	1.3	6.6	4	4	121
Ismailia	1,057,000	1.3	6.7	4	4	120
Damietta	1,211,000	1.5	7.7	4	4	104
Aswan	1,292,000	1.6	8.2	4	4	98
Helwan	1,866,000	2.3	11.8	6	6	102
Beni-Suef	2,540,000	3.2	16.1	8	8	99
Qena	2,738,000	3.4	17.3	8	8	92
Fayoum	2,803,000	3.5	17.7	8	8	90
Kafr El Sheikh	2,875,000	3.6	18.2	8	8	88
Sixth October	3,062,000	3.8	19.4	10	10	103
Giza	3,148,000	4	19.9	10	10	100
Menoufua	3,580,000	4.5	22.7	10	10	88
Asyout	3,800,000	4.8	24.1	12	12	100
Suhag	4,124,000	5.2	26.1	12	12	92
Gharbia	4,347,000	5.5	27.5	14	14	102
Alexandria	4,438,000	5.6	28.1	14	14	100
Menia	4,607,000	5.8	29.2	14	14	96
Kalyobia	4,636,000	5.8	29.4	14	14	95
Behera	5,206,000	6.5	33.0	16	16	97
Dakahlia	5,440,000	6.8	34.4	18	18	105
Sharkia	5,876,000	7.4	37.2	18	18	97
Cairo	7,302,000	9.2	46.2	22	22	95
Total	79,602,000	100	504	252	252	

²⁹ Source: <http://www.sis.gov.eg/VR/egyptinfigures/Tables/1-%20السكان/4.pdf>.

In seeking to achieve an equal distribution of population per electoral unit, it is generally considered good practice to allow a deviation of 10-15% from the average. As Law 108/11 appears to preclude the merging of governorates with small populations with governorates with larger populations – in the example above, seven governorates will receive a number of mandates in excess of the 15% deviation (i.e. 115% or more). The example also shows another possible consequence of using governorates as the basic unit of allocation; that seven governorates will have a MMD with just two seats to allocate. In these cases, a list would require over 33.34% of the vote to be guaranteed a seat.

In order to delineate 58 MMDs, it will be necessary for governorates with larger population sizes to be split into two or more MMDs. For example, Cairo with 22 seats could be split into three or even four MMDs. When splitting governorates into MMDs, it is also important that the voting equality principle is respected i.e. that the MMDs that exist within a governorate are allocated a number of mandates which corresponds to its population size relative to the other MMDs.

Because there will be approximately half as many TMCs as previously, the constituency boundaries will also require modification. The voting equality principle ought also to apply to the formation of TMCs. Indeed, it ought to be easier to correct imbalances when delineating the TMCs than for MMDs. However, if done properly, this could be a time consuming process.

The number of TMCs for Shura Council elections (130) is different than in the past (176) and the number of TMCs for the People's Assembly (252). Thus, the body which carries out the delineation process will have to undertake different delineation exercises for the People's Assembly and for the Shura Council elections. This also has consequences for the structure of the election administration.

Other important issues that the laws on constituencies ought to clarify include:

- i) Which body has competence to carry out the delineation exercise;
- ii) Whether TMCs must be contiguous and take into account geographical features;³⁰
- iii) Whether appeals against constituency delineation decisions can be filed and if so, to whom;
- iv) When the constituencies and election districts will be formed i.e. where it fits in the overall calendar of electoral activity.

As yet there is no clear indication when the laws on constituencies will be adopted or when the TMCs and MMDs will be formed. Normally this would be synchronised with the calendar for voter registration and must in all events be completed before candidate registration can begin.

³⁰ This is good practice, but is not always possible particularly if 'equal representation' is prioritised.

4.1.4 Method of Allocating Mandates to the Closed Lists

In one notable improvement over the draft, Law 108/11 now provides that mandates shall be allocated proportionally and will employ the largest-remainder method,³¹ whereas the 30 May draft had established an allocation method which provided a potentially very large dividend to the highest scoring party in a MMD and significantly reduced the proportionality of representation.³²

In a hypothetical MMD with 720,000 registered voters of which 500,000 participate, and with four mandates available, in DRI understanding of article 15 of Law 108/11, seats would be allocated as follows:

	Party A	Party B	Party C	Party D	Party E	Party F
Votes	200000	115000	80000	50000	30000	25000
Number of quotas ³³	1.6	0.92	0.64	0.4	0.24	0.2
Whole quotas (seats)	1	0	0	0	0	0
Remainder	0.6	0.92	0.64	0.4	0.24	0.2
Seats based on largest remainder	1	1	1			
Total	2	1	1	0	0	0

In the example above, party A will receive the first seat to be allocated because it has a number of votes greater than the ‘quota’ required to win one seat.³⁴ Party B will receive the second seat to be allocated because it has the ‘largest remainder’ (0.92). Party C will receive the next available seat because its remainder (0.64) is greater than that of party A (0.6), despite the fact that it has less than half the votes of Party A. The allocation of the last two seats demonstrates one of the main differences between the ‘largest remainder’ and ‘highest average’ methods.³⁵

³¹ Article 15 stipulates that mandates will be allocated by “giving each list a number of seats of the constituency proportional to the number of valid votes that the list received from the voters who voted for the lists in the [MMD]” The remaining seats shall be distributed on the lists with the lists having the largest remaining votes respectively.”

³² See DRI’s July assessment.

³³ The quota is established by dividing the total number of valid votes by the number of available seats. In this example, the quota is 125,000 votes.

³⁴ The quotient is calculated by dividing the number of valid votes received by each list by the total number of valid votes cast and multiplying this figure by the number of seats to be allocated. Where this number is between 1.0 and 1.99, a party will receive one seat. It may receive a second seat depending on the size of its ‘remainder’.

³⁵ If the D’Hondt ‘highest average’ system was applied, Party A would receive a mandate before Party C.

Representation Threshold

Article 15 requires that for parties to receive any list-PR mandates they must receive at least 0.5% of the vote nationwide (hereafter 'representation threshold'). Where a national threshold applies, it is usual to have a two-stage mandate allocation process. Firstly, it is calculated whether a party has received enough votes to win a mandate in a MMD. Secondly, it is calculated if a party has enough votes to pass the representation threshold. However, the LOPA does not set out the procedures for reallocating mandates in case a party wins a mandate in the first stage but not the second stage.³⁶ The 30 May draft addressed this issue, but Law 108/11 does not.

The decision to establish a large number of 'small districts' makes the 0.5% representation threshold almost redundant as a party achieving 5-10% of the vote across the country might not receive even a single mandate unless it manages to secure sufficient votes in at least one MMD. Moreover, if a party manages to achieve 20% of the vote in two MMDs it is likely to equal or surpass 0.5% of the vote nationwide.³⁷

The issue could however become more relevant depending on the approach taken by the HEC concerning how the threshold will be calculated for a party which is in coalition in one or some districts but not in others. This will require clarification by the HEC prior to the elections.

The introduction of a 'national' threshold in a situation where elections are phased could create a situation where the results of one phase influence voting preferences in subsequent phases e.g. in a situation where a party is just above or just below the threshold prior to the final voting phase.

Individual Candidates

While Law 108/11 makes clear that two candidates are elected from each TMC,³⁸ it does not explicitly state the number of candidates for whom a voter may vote.³⁹ Article 5 Bis states that: "Votes shall be considered invalid [...] if the voter elects more or less than the *required number*" (emphasis added). It is believed however that voters will vote for two individual candidates.⁴⁰ To be elected, candidates require an absolute majority of valid votes (article 15). Supplementary (run-off) elections are required where:

³⁶ In most systems which apply a national threshold but use a multi-district based PR system, an 'initial' mandate allocation takes place at district level, before it is established whether the party has overcome the national threshold. In cases where it does not, the law ought to state what happens to the mandate(s) 'won' by the party at the initial stage. Normally, the mandate allocation at district level would be repeated without taking into consideration the votes won by the party.

³⁷ Assuming that the MMD is not located in one of the governorates with a very small population.

³⁸ The 30 May draft did not.

³⁹ Article 5 Bis of the draft law stated: "votes shall be considered invalid if they elect more than one candidate". This implied that voters may only vote one candidate.

⁴⁰ Article 15 foresees a situation where two or more candidates can gain a majority (50% + 1) of votes – a mathematical impossibility unless voters can vote for more than one candidate.

- i) No candidate gains an absolute majority of votes;⁴¹
- ii) Two candidates secure a majority of the vote but neither is a worker or farmer;⁴²
- iii) Only one candidate receives a majority of votes.⁴³

The second and third scenarios create situations where a candidate with fewer votes than another participates in the run-off by virtue of their occupational status, and potentially is elected with fewer votes than other candidates. This ignores voters' preferences and therefore is undemocratic.⁴⁴

4.2 Definition of 'Workers' and 'Farmers'

The amendments do not alter the existing legal definitions of 'workers' and 'farmers'.⁴⁵ DRI stated in its July assessment that "Arguably [the definitions] conflict with the ICCPR."⁴⁶

In the case that a sitting MP loses his/her status as a 'worker' or 'farmer', his/her membership of the People's Assembly (or Shura Council) can be terminated by a two-thirds majority vote of the respective house of Parliament. This is highly questionable as it places the significance of a candidate's occupational status above voters' electoral choices. Moreover it is open to arbitrary and self-interested application by a parliamentary majority. Ideally, the provision should be repealed but if retained it should be a neutral body (such as a court or the HEC) which determines whether a candidate has retained his/her occupational status.

⁴¹ In which case a run-off election will be held between the top four scoring candidates provided that at least two are workers and farmers, with the top two scoring candidates receiving the seat, provided that at least one is a worker and farmer. If neither of the two top-scoring run-off candidates is a worker or farmer, the top-scoring candidate and the highest scoring worker and farmer are elected.

⁴² In which case the first placed candidate shall be elected but the second placed candidate will not. Instead a run-off election is held between the two top-scoring workers and farmers (regardless of the number of votes they received).

⁴³ In which case the candidate securing a majority of the vote is elected. If the elected candidate is from the category 'other', then a run off takes place between the two top-scoring workers and farmers. If the elected candidate is a worker or farmer, the run-off will be between the second and third placed candidates.

⁴⁴ While possible solutions to this problem exist, they would further complicate the election system. It would be more preferable for the quota for workers and farmers to be removed altogether.

⁴⁵ LOPA, article 2. In the past, candidates were able to easily circumvent the definitions e.g. rich businessmen were able to stand as 'workers'. The LOPA contains provisions requiring that in order for a farmer to stand as a candidate he must own or rent less than 10 'feddans' and also stipulates that a worker who wishes to stand for election may not hold a high academic qualification and must be a member of a trade union.

⁴⁶ Paragraph 3 of General Comment 25 on article 25 of the ICCPR states that: "No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, *property, birth or other status*" (emphasis added). Paragraph 15 of General Comment 25 (ibid) states: "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education [...]" The provisions on whether workers can be members of a trade union and how this affects their eligibility to stand for election are confusing and arguably also discriminatory.

4.3 Candidate Eligibility

Positively, Law 108/11 amended article 5, clause 3, by reducing the age at which Egyptian citizens can stand for election from 30 years to 25 years. Some discriminatory provisions on candidate eligibility were however retained.⁴⁷

4.4 Candidate Nomination and Registration

The final text of the amendments did not alter requirements for nomination of individual candidates as set out in the 30 May draft.⁴⁸ However neither the draft nor Law 108/11 set out procedures for *political parties* to nominate individual candidates. This raises the possibility that all individual candidates are considered as non-party candidates, an interpretation which would have implications for forming a stable parliamentary majority.⁴⁹

Law 108/11 requires parties to pay a deposit of EGP 1,000 (EUR 120) per candidate. Supporting documents are to be submitted by parties' specialist committees. Whilst deposits are 'returnable', a party wishing to contest all MMDs would have to deposit EUR 30,240 – a considerable sum in the Egyptian context.⁵⁰

A coalition of parties may form a joint election list. The draft amendments permitted non-party (i.e. independent) candidates to form election lists. This would have allowed groups of like-minded individuals, e.g. civic groups, to field candidates without the need to form a political party. Unfortunately, this provision was deleted from the final version of the amendments. Thus, any group wishing to contest elections under the list-PR system must be registered as a party by the deadline for closing candidate nominations. Thus non-partisan candidates can only seek election in a TMD. The change, coupled with the arrangements for implementing workers and farmers quota in TMDs, places non-worker and farmer independent candidates at a big disadvantage.

Review Committees (RCs) will be established to decide candidate nominations and prepare lists of approved individual and list-PR candidates. The 30 May draft, whilst overall reducing the role of the Ministry of Interior in the election process, granted the Minister the right to nominate a RC member.⁵¹ Law 108/11 relegates the Minister's appointee to the role of 'Technical Secretary', implying he/she will have no role in deciding on candidate nominations.⁵² As for the draft, the law does not stipulate any

⁴⁷ See DRI's July assessment, op cit.

⁴⁸ Independent candidates are required to pay a deposit of EGP 1,000 (EUR 120) and provide supporting documents establishing his/her eligibility. A positive change from the previous version of the LOPA is that individual candidates nominate themselves by applying to a Governorate Electoral Committee (GEC) rather than a Security Directorate, as in the past. The nomination period may not be less than 5 days. The HEC is required to adopt a regulation elaborating the procedures for candidate nomination, registration and the filing and adjudication of objections.

⁴⁹ While independent MPs may join a parliamentary faction after the election, thereby forming a parliamentary majority, the party would always be in a slightly weaker position vis-à-vis these MPs than if they were elected on a party ticket.

⁵⁰ Costs associated with removal of campaign material and court costs may however be deducted.

⁵¹ This also applied to the separate candidate registration 'appeals committee' which is formed to adjudicate challenges (see Law 108/11 articles 9, and 9 Bis A).

⁵² As a result, the RC is now composed of only two judges.

deadline for the RC to issue decisions⁵³ or set out any procedure for filing an appeal against a decision of a RC to a higher electoral body or a court.⁵⁴

Law 108/11 reduces from five to three days the display period for candidate lists and the names of individual candidates.⁵⁵ An 'Adjudication Committee' (AC) must issue its decisions on candidate registration challenges within seven days from the date of the closing of the nomination period.⁵⁶ Positively, a shorter display period gives ACs four days instead of two to decide challenges. The final text of the law requires that after all challenges have been adjudicated, two 'final' candidate lists are prepared (one for individual candidates, one for list-PR candidates) and that the HEC will publish the names of the candidates in two mass circulation newspapers.⁵⁷ Subsequent appeals may be filed with the Administrative Court within seven days (article 9 Bis B). The Court then has seven days in which to issue its verdict.

The period for candidate nomination, review, challenges and appeals (excluding appeals to the Supreme Administrative Court)⁵⁸ is 26 days. Elections must be formally called no later than 30 days prior to the election day.⁵⁹ Thus, it is conceivable that some candidates may only know four days before election day whether they are on the ballot or not. While article 14 permits the President (SCAF), to shorten candidate registration timeframes, it would be far more preferable to establish an election calendar with a longer period between the call for elections and election day.

The 30 May draft permitted candidates to withdraw (or parties to re-organise their list) no later than ten days before election day. Law 108/11 (article 13) extends this to 15 days. This is a positive change – as it gives the HEC more time to make any changes to the names of the candidate lists as they will appear on the ballot papers before they are printed.⁶⁰

The law requires that the number of candidates on an election list shall be equal to the number of mandates available in the election district. This causes unnecessary complication in the event of a candidate's death or withdrawal or a rejection of prospective candidate's nomination, particularly if a candidate withdrawal, death or nomination rejection occurs just before the 15 day deadline set out in article 13. While

⁵³ Article 9 requires the public display of the lists on the day after the closing of candidate nominations, implying that all nominations must be decided by the candidate nominations close. Ideally, it would have been set at least one day after the close of the nomination period in order to give the RC time to properly review any nomination made shortly before the close of the nomination period.

⁵⁴ It is possible that the provisions of articles 9, 9 Bis, 9 Bis A, and 9 Bis B (which deal with objections and challenges) are applicable. If this is the case, then article 9 ought to state that rejections of candidate nomination applications by the RC can be appealed to the Appeals Committee and stipulate deadlines.

⁵⁵ During this period candidates or parties may request the inclusion of any candidate inadvertently omitted or challenge the inclusion of any candidate's name. Challenges are decided by an 'Adjudication Committee' (AC) formed by the HEC.

⁵⁶ Unlike the RCs, the 'Adjudication Committees' are composed of three judges.

⁵⁷ This was not required in the 30 May draft.

⁵⁸ Article 9 Bis B foresees that the Supreme Administrative Court (SAC) can issue a stay against the decision of the Administrative Court if the Administrative Court's decision is appealed. No timeframe is given for appeals at the SAC, and it is highly possible that the SAC's final ruling could be issued after an election has actually taken place.

⁵⁹ LEPR, article 22.

⁶⁰ Ideally, the names of withdrawn candidates should not appear on ballot papers.

article 16 in part addresses this problem, the deadlines contained in this article are confusing and it is unclear if they address all eventualities.⁶¹

Article 10 was amended by specifying that candidates are entitled to receive an *electronic version* of the voter register. This enhances transparency and facilitates candidates' electoral activities including campaigning.⁶² Hopefully the voter registers provided will be segmented according to polling station.

4.5 Election Campaigning⁶³

Neither the 30 May draft nor Law 108/11 revises the legal provisions on campaigning (LOPA, article 11). DRI's July assessment highlights a number of potential shortcomings with the existing law.

In view of the fact that since February many new parties have registered,⁶⁴ or are currently engaged in securing registration, it would be preferable to have a longer campaign period than for previous elections. This would grant voters more time to learn about parties' political programmes.

The HEC is required to adopt a regulation on campaigning and thus is able to adopt measures protecting parties' and candidates' rights during the campaign period and to better ensure a level field for campaigning, including in the media and that rights and duties are enforced.

4.6 Uncontested and Vacant Seats

In cases where only one or two individual candidates are nominated (or remain as candidates e.g. following the withdrawal of other candidates) the law provides that the election will go ahead (so long as at least one of the candidates is a worker or farmer) and the candidates will be declared as elected if they receive votes amounting to at least 2% of the number of registered voters in the TMC.⁶⁵ Similar arrangements also apply to an unopposed candidate list in a MMD. For past elections, this percentage was set at 10%.

Some civil society groups felt that the percentage required by unopposed individual candidates should be raised to 20% of the vote because they claimed that in the past one registered candidate had intimidated or bribed other candidates to withdraw (or not nominate themselves).⁶⁶

⁶¹ For example, it is not clear to which period it refers. As a nominated candidate's appeal may potentially only be decided five days before an election, the deadlines set out in article 16 appear unworkable.

⁶² The 30 May draft did not contain this provision.

⁶³ As set out in LOPA, article 11.

⁶⁴ According to official data (State Information Service Website), ten parties have registered since February 2011: al Wasat (19 February, by a court ruling); Freedom and Justice Party (6 June); Social Democratic Party, Free Egypt Party, Masra al Sawra (Revolution's Egypt), and Modern Egypt Party (all registered on 3 July); Aran Justice and Equality Party (6 July), Horiya (date unknown); Al Adl and al Islah (both on 27 July).

⁶⁵ Law 108/11 sets out the procedures for other scenarios such as a single candidate being nominated or where there are multiple candidates but only one of which is a worker or farmer.

⁶⁶ In the past, relatively large numbers of seats were filled by unopposed candidates.

According to Law 108/11, in the event of a need to fill a vacant seat won through the list-PR system, e.g. in the case of an MP's death, the 'next-in-line' unelected candidate on a party's list would receive the mandate (providing that the quota of workers and farmers is respected).⁶⁷ To an extent, this reduces the need for 'unnecessary' by-elections although in the event that a list won all the mandates in the respective constituency a by-election will be required.

4.7 Post-Election Legal Challenges

Law 108/11 stipulates that the Court of Cassation decides on the validity of the membership of the People's Assembly members.⁶⁸ Unlike the 30 May draft, the final text of the law mentions the 30 day deadline for filing challenges and the 90 day deadline for the court to issue all its rulings. This timeframe could lead to a long delay in the formation of the People's Assembly after the elections. Neither the draft nor Law 108/11 establishes the timeframe for the holding of repeat or completely new elections in the event that the court annuls an election result.⁶⁹

4.8 Membership of People's Assembly

Law 108/11 does not introduce any changes to part 3 of the LOPA (which deals with membership of the People's Assembly). In its 11 July assessment, DRI suggested that it would be worthwhile considering ways in which the LOPA could be amended to avoid past pitfalls. In particular, it may be beneficial to require the Assembly to adopt new procedural rules rather than inherit those already in force.⁷⁰ Importantly, the LOPA does not provide many indications as to how the People's Assembly will function during the transitional phase.⁷¹

⁶⁷ This principle is also likely to apply in the event of the death of a candidate after the deadline for replacing candidates (article 16) has expired.

⁶⁸ This reflects the February constitutional amendments and article 40 of the Constitutional Declaration.

⁶⁹ Repeat elections are where polling is repeated in part or in full with the same candidates. A new election is one where the election takes place from the beginning i.e. from candidate registration onward.

⁷⁰ See article 36, clause 2.

⁷¹ The 1971 Constitution (Chapter II) contains 50 articles setting out the functioning, powers, and procedures of the People's Assembly. However, the 1971 Constitution is suspended and while the Constitutional Declaration does set out the competencies of the People's Assembly (notably article 33), it does not provide much detail on how they will be exercised.

5. Amendments to Law 120/1980 on the Formation of the Shura Council (LFSC)

The amendments to the Law on the Formation of the Shura Council were deposited with the Cabinet on 3 July, but were not published prior to their adoption as Law 109/11 on 20 July 2011 and did not form part of DRI's July assessment.

5.1 Background to the Shura Council

The Shura Council, established in 1980, is to all intents and purposes Egypt's upper chamber of Parliament although initially, its powers were limited and it functioned as a consultative body. In 2007, Hosni Mubarak pushed through constitutional amendments strengthening the Council's legislative powers; a change which in effect weakened the law-making powers of the lower house, the People's Assembly.⁷² Under the 1971 Constitution, the President appoints one third of the Council's members, thereby giving him considerable influence on its orientation.

Since its dissolution in February 2011, the future role of the Shura Council has not received much attention, partly because reformists dislike the body and were glad to see its dissolution. However, it has been granted a key role – together with the incoming People's Assembly – in deciding the composition (and possibly the terms of reference) of the Constituent Assembly, which will adopt Egypt's new constitution.⁷³

Article 37 of the Constitutional Declaration provides that "The Shura Council will assume its responsibilities upon election".⁷⁴ Other than having a role in forming the Constituent Assembly, the purpose of the Council during the transitional period is however unclear.⁷⁵ Notably, the Declaration does not retain as powers the Council's competencies it received in 2007 and it appears to relegate the Council to its former status as a 'consultative' body.

5.2 The Law on the Formation of the Shura Council (Law 120/1980)⁷⁶

According to article 35 of the Constitutional Declaration, "The Shura Council will be composed of [...] not fewer than 132 members, two-thirds of whom will be elected by direct, public and secret voting". The precise number of the Council's members is set out in law rather than the Constitution. Controversially, the Constitutional Declaration retains arrangements that the President appoints one-third of its members. As for the

⁷² Notably, the approval of the Council was required for laws which elaborate 33 articles of the Constitution. Previously, it only required that the Council be consulted on draft laws complementary to the Constitution.

⁷³ See article 60 of the Constitutional Declaration.

⁷⁴ The Council will assume its duties with only its elected members. It is believed that the remaining members of the Council will be appointed by the President after his/her election.

⁷⁵ According to article 37 of the Constitutional Declaration, the Shura Council "will study and recommend what it views as necessary to preserve support for national unity and social peace and protect the foundational elements of society and its highest values, in addition to rights, freedoms and general obligations." The Constitutional Declaration goes on to elaborate for the Shura Council a few vaguely worded competencies; specifically "to consider [...]: i) The project of general planning for economic and social development; ii) Draft laws it refers to the President of the Republic, iii) Whatever the President of the Republic refers to the Council on subjects related to the state's public policy or policies related to Arab and foreign affairs."

⁷⁶ The Law on the Formation of the Shura Council (LFSC) was adopted in 1980. It has been amended on seven occasions including the 2011 amendments.

People's Assembly, at least half the members must be designated as workers and farmers.

Council members are elected for six year terms. Under legislation previously in force, the Shura Council had 264 members of which 176 were elected, of which half (88) were elected every three years.

Article 1 of the amended Law on the Formation of the Shura Council (LFSC) provides that the incoming Shura Council will have 390 members (260 elected and 130 appointed). This represents a significant increase in the number of council members, the rationale for which is not known. For the 2011 elections, all 260 'elected members' will be elected at the same time.⁷⁷

The amended LFSC⁷⁸ introduces a mixed electoral system (almost) identical to the system for the election of the People's Assembly. Half of the elected council members (130) are elected in MMDs on the basis of closed lists (only for political parties) with mandates allocated by PR, while the other half is based on the 'individual candidate' system, with members elected in TMCs.

The amendments provide that there will be 28 MMDs, and 65 TMCs. The number of MMDs closely matches the number of governorates in Egypt (27) and the law strongly implies that governorates will serve as the basis for MMDs, although this is not explicit.⁷⁹ If the total number of list-PR mandates (130) is divided by the number of MMDs (28), each MMD will have a magnitude of some 4.6 seats. Thus, as for the People's Assembly elections there will be a large number of 'small magnitude' districts with governorates allocated a variable number of mandates.

As for the LOPA, the LFSC requires that a new law on constituencies and districts is adopted. Issues identified in section 4 of this report regarding the constituencies and districts for the People's Assembly are equally applicable for the Shura Council elections. However the requirement that half the Shura Council members be elected every three years⁸⁰ may, if applied to future elections, create an additional problem in 2014 - as just 65 members will be elected under the list-PR system, each MMD would have an average magnitude of just 2.3 seats. Additionally, because workers and farmers must, as for People's Assembly elections, be placed on lists first, they would predominate among the candidates elected.

Article 6, clause 3, of the LFSC requires that candidates are at least 35 years of age on the day of the election. This is high, and in contrast with the age restriction for People's Assembly MPs was not reduced. The arrangements for candidate nomination, challenges and appeals, seat vacancies, quota for workers and farmers, candidate withdrawal, uncontested elections, run-off elections, allocation of mandates and post-election challenges are almost identical to the LOPA.

⁷⁷ Constitutional Declaration, article 37

⁷⁸ LFSC, article 2.

⁷⁹ The first paragraph of article 2 repeats the text found in the amended LOPA that "the number of members *representing each governorate* elected on the closed political parties lists shall be equal to the number of the representatives of this governorate elected based on the individual candidate system" e.g. if there are two TMCs in a governorate there shall be one four mandate MMD.

⁸⁰ According to article 3 of the LFSC, a 'ballot' (lottery) will be held to determine the Shura Council members that will 'lose' their seat after three years. It may however be possible either to revise the LFSC before 2014 or alter the Shura Council's statute.

6. Law 110/11 amending the Law on the Exercise of Political Rights (LEPR)

Simultaneously with adopting laws on the People's Assembly and Shura Council, the SCAF adopted a further batch of amendments to the LEPR (Law 110/11).⁸¹ While it was necessary to harmonise the LEPR with the two other acts, notably as regards the implications of the new election system, the timing and scope of the amendments were unexpected – especially as some of the amendments introduce potentially significant changes in the organisation of elections. In total eight articles were modified and two new articles were introduced.

6.1 The HEC Secretariat and the Secretariats of General Committees

Article 3 Bis A was amended to dispense with the need to establish a permanent Technical Secretariat for the HEC and also the need to adopt regulations on its work.⁸² It is hard to understand the SCAF's thinking in this regard. Clearly, the HEC cannot function without the technical and operational support provided by a Secretariat. It may be that the SCAF believes that the HEC will be able to function effectively with a temporary or ad-hoc Secretariat or that the lead time is too limited to establish a permanent support structure.

Without having its own permanent staff, the question arises: who will fulfil the various tasks required of the Secretariat? Ultimately, the HEC may have no choice but to request the secondment of public sector staff from government departments – but this course of action could lessen its independence from the government.⁸³ Utilising Ministry of Interior staff on a secondment basis would probably be regarded as the ministry organising elections 'through the back door'. Whether permanent or ad hoc, the work of the HEC's Secretariat does require proper regulation, if nothing else for the sake of transparency and clarity as regards its composition, authority and scope of work.

The amendments to the LEPR do not change the right of the General Committees (GCs) to form Secretariats.⁸⁴ But an amendment to article 3 Bis H allows for "any other members of judicial authorities of standing equal to that of a judge" to be appointed to a GC Secretariat.

6.2 Voter Registration

The SCAF adopted a new article (5 Bis) as follows:

"As an exception to article 5 of this law, [⁸⁵] the registration in the voters' list for the year 2011 shall stop as of the 20th of July 2011, the voters' lists shall be published within the

⁸¹ The first batch had been adopted on 19 May 2011.

⁸² According to amendments adopted in May 2011, the regulation on the HEC's Secretariat was to be adopted by the President of the Republic (or in the transitional period, the SCAF). In the previous version of the law, the regulation was adopted by the Chair of the HEC. The previous arrangements were more appropriate.

⁸³ DRI noted in its July assessment that "reassigning key tasks to the Ministry of Interior is likely to provoke a strong reaction from some political and civic groups".

⁸⁴ GCs will be established at the level of the electoral units (presumably the TMCs and MMDs).

⁸⁵ Article 5 provides that "A voter database shall be created based on national ID data, established in the database of the Civil Status Authority, the Ministry of the Interior, where data on eligible voters who have not been precluded by any reason to practice their political rights *throughout the year* will be automatically registered, at the place and in the manner set forth in the executive regulations" (emphasis added).

period from 20th of August through the 31st of the same month, in the place and the way that will be stipulated in the executive regulation of this law.

The applications stipulated in article 15^[86] of this law shall be presented as of the date of publication of the list through the 15th of September.”

The meaning of the amendment is not entirely clear. The most probable interpretation is that the work to compile a new register based on the ID card system has been ongoing but will cease on 20 July.⁸⁷ If this interpretation is correct, then the Ministry of Interior has compiled the draft voter register without supervision by the HEC – which is explicitly required by law.⁸⁸

6.3 Composition of the Committees Formed to Decide Complaints Regarding the Voter Register

Article 16 of the LEPR provides that committees are formed to hear voter registration complaints. They are headed by the President of the Court of First Instance in the Governorate. The previous text of the law, provided that a member of the Governorate’s Security Directorate and a head of public prosecution chosen by the Attorney General were members of the committee. Law 110/11 replaces these appointees with two judges of the Court of First Instance, but requires that the Secretary of the Committee is a representative of the Ministry of Interior.

Citizens will be included in the voter registers according to their domicile indicated in the national ID card database. A potentially large numbers of citizens may be included in the ID card database at a place other than their de facto residence. Prior to adopting the 19 July amendments, the authorities did not forewarn citizens that work on the voter registration database was about to cease or conduct a public information campaign encouraging citizens to change their ID card data to match their residence.

Voter registers are displayed between 20 and 31 August, and challenges may be filed from the start of the display period up to 15 September. All complaints must be decided within one week from 15 September and all appellants must be notified of the committee’s decision within three days. This time period could, depending on the volume of complaints received, be insufficient. Thereafter, the registration database must be updated to take account of changes.

This could create a situation where a large number of citizens request changes to their registration data – however, it is not clear if this will be possible in the case of requests to change residency data. This could de facto lead to a situation where many citizens face difficulties in exercising their right to vote – and lead to disillusionment with electoral management.

⁸⁶ Article 15 sets out the procedures for citizens to challenge their omission from the voter register or any other error.

⁸⁷ Another possible, though less likely interpretation of article 5 Bis is that all arrangements set out in article 5 will not be applied i.e. that there will not be a new database of electors based on the ID card system for use during the 2011 elections.

⁸⁸ LEPR, article 3 Bis E, second) requires the HEC to “oversee preparation, content, review, filtering [...] of election lists, based on national ID data, and to supervise the registration process [...]”. The HEC was only formed on 19 July, one day before the second batch of LEPR amendments was adopted.

6.4 LEPR Executive Regulations

The 19 May amendments did not alter article 57 which provides that the LEPR Executive Regulations are adopted by the Minister of Interior. It is believed that the Executive Regulations *inter alia* cover voter registration. It is not known whether since 19 May (the date the LEPR was amended) and 19 July, the Ministry adopted new Executive Regulations.

Law 110/11 amends article 57 and tasks the HEC with adopting the LEPR Executive Regulations. This change comes at a very late juncture i.e. after the draft voter registers have already been compiled. The adoption of Executive Regulations will probably be one of the HEC's first tasks as they need to be in place before the draft voter registers are displayed on 20 August.

6.5 Polling Staff

Article 24 has been amended to allow for the appointment of more polling staff. This may be necessary as the polling committees will have to process twice the number of ballots as in the 2010 elections because the Shura Council and People's Assembly elections will be held simultaneously and because turnout is likely to be much higher than during previous elections. In addition to a head of a polling station, nominated by a judicial body, polling committees will be composed of two secretaries and two polling officers (previously only one of each category was appointed).

6.6 Party and Candidate Representatives

Article 24 has been amended such that party lists are entitled to nominate representatives to attend polling for both People's Assembly and Shura Council elections.⁸⁹ Positively, the total number of candidate/party representatives that may be in attendance during polling has been raised from six to eight.

6.7 Polling arrangements

In an apparent attempt to enhance the secrecy of the vote for illiterate voters, article 29 has been amended by introducing symbols to be used by candidates and party lists or for referenda questions. While this is a potentially positive initiative, it does not in itself address issues raised in DRI's July assessment concerning procedural shortcomings which if not tackled could lessen the secrecy of the vote.

Article 29 Bis provides that polling for the individual candidate and list-PR elections shall take place on different ballots and that the ballots shall be of a different colour. In addition, there will be two copies of the voter list, and two ballot boxes. However, it is not clear whether there will be two ballot boxes and voters' lists each for the People's Assembly and the Shura Council elections. Article 33 of the law specifies that any irregularity in one contest e.g. the individual candidate contest will not invalidate the other contest i.e. the list-PR context at that polling station.

⁸⁹ The previous version of the text granted this right only to individual candidates.

6.8 The Counting and Announcement of Results

An amendment to article 34 requires that the sorting and counting of list-PR ballots will be conducted at the premises of the General Committees (i.e. not at the Voting Centres). In all cases however, the votes contained in each ballot box will be counted separately and separate procedural reports prepared for each box. However, the amendments do not explicitly require that the results for each ballot box must be recorded separately. The transparency of the count could be reduced if this is not done.

The amendments specifically require that the General Committees may not declare the results of the vote count. Instead all ballot papers and reports shall be sent to the Governorate Election Committees (GECs). The GECs will issue a report on the vote count and shall announce the number of valid votes obtained by each list.

7. About DRI's Programme in Egypt

Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit organisation registered in Berlin, Germany. DRI promotes political participation of citizens, accountability of state bodies and the development of democratic institutions world-wide. DRI helps find local ways of promoting the universal right of citizens to participate in the political life of their country, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

DRI has received an 18-month grant from the European Union to support Egyptian civil society organisations during the country's current transition. The programme aims at fostering linkages between civil society groups and supporting their capacity to respond to the transition.

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