



Elections in Egypt:
*The Electoral Framework in Egypt's
Continuing Transition:
February 2011 – September 2013*

Middle East and North Africa
International Foundation for Electoral Systems

1850 K Street, NW | Fifth Floor | Washington, D.C. 20006 | www.IFES.org

October 11, 2013

Table of Contents

1. Introduction	1
2. Changes to the Electoral Framework, 2011-2012	2
March 2011 Constitutional Declaration.....	2
The Law on the People’s Assembly.....	3
The Law on the Regulation of the Exercise of Political Rights	4
Elections in 2011 and 2012	5
Dissolution of the People’s Assembly	7
Constituent Assembly	7
3. The Electoral Framework in the 2012 Constitution	9
The Legislature	9
The Presidency	11
Judicial Authorities.....	12
The National Elections Commission.....	12
Amending the 2012 Constitution.....	13
Electoral Systems and Transitional Provisions.....	13
4. Development of the Law on the Exercise of Political Rights under the 2012 Constitution.....	14
The January 2013 Amendments	14
The SCC’s February 18, 2013 Ruling.....	15
New Law Issued, February 21, 2013	15
Draft Law, April 11, 2013	15
SCC Ruling, May 26, 2013	17
Analysis of April 2013 Draft LEPR.....	18
Conclusions	19
5. Development of the Law on the House of Representatives under the 2012 Constitution	20
The January 2013 Amendments	20
The SCC’s February 2013 Ruling.....	20
New HoR Law Issued, February 21, 2013.....	21
Draft Law, April 11, 2013	22
SCC Ruling, May 26, 2013	22
Allocation of HoR Seats to Governorates	24
Delimitation of Boundaries of Electoral Districts and Constituencies.....	26

Conclusions	27
6. Changes to the Electoral Framework after July 3, 2013	28
Draft Constitutional Changes	29
Consideration of Proposed Amendments by the Committee of Fifty	31
Possible Timetable of Electoral Events	33
7. Conclusions: Egypt’s Ongoing Transition to Democracy.....	35
8. Annex 1: Seat allocations for the House of Representatives, Proportional Representation Electoral System.....	37
9. Annex 2: Indicative Allocation of 500 Seats to Governorates, First-Past-the-Post Electoral System.	39

1. Introduction

Egypt has been undergoing a tumultuous and uncertain democratic transition for more than two years. Inspired by the events in Tunisia, Egyptians organized and participated in mass protests to oust President Hosni Mubarak. When he stepped down on February 11, 2011, the Supreme Council of the Armed Forces (SCAF) occupied the power vacuum to lead the political process forward. The Supreme Council represented military leadership – a historically powerful establishment in Egypt – and was the only institution with the resources and organization immediately able and willing to take charge.

Since then, Egypt has held two referendums and three elections; while none were perfect, each one met minimum technical international standards of acceptability. Nevertheless, increasing popular discontent with President Mohamed Morsi and his government culminated in widespread, sustained mass demonstrations in June and July 2013. On July 3, 2013, General Abdul Fatah al-Sisi, a military general who is Commander-in-Chief of the Egyptian Armed Forces and the Minister of Defense, announced the removal of President Morsi. This was done with a great deal of popular support. General Sisi then suspended the 2012 Constitution of Egypt and appointed the head of the Supreme Constitutional Court Adly Mansour as Interim President. On July 8, President Mansour issued a constitutional declaration that serves as an interim constitution and provides a road map for a return to civilian rule under a new constitution that is to be put to the people in a referendum.

This is the second time since Egypt's 2011 revolution that the armed forces have issued a road map for a transition to democracy. The 2013 road map envisaged a return to civilian rule after a transition period of about nine months. However, as discussed within this paper (in Section 6), one year now seems the minimum possible time. The road map also includes a plan for drafting amendments to the 2012 constitution and a constitutional referendum, followed by elections for the House of Representatives (HoR) and presidency. So far, the transition period governed by this road map has been marked by ongoing demonstrations by President Morsi supporters who are outraged by his ouster. Clashes between demonstrators and security forces have resulted in many deaths and injuries on all sides. These events are likely to have significant consequences for Egypt's democratic prospects, including the credibility of elections, but the precise effects remain unclear at the time of writing.

As noted, the 2013 road map envisions elections for the HoR after a referendum has approved amendments to the 2012 constitution. This paper traces the evolution of the legal framework for elections to the HoR (formerly known as the People's Assembly) since the January 2011 revolution. It focuses on changes to the constitutional framework, Law 38/1972 on the People's Assembly (LOPA) and Law 73/1956 on the Regulation of the Exercise of Political Rights (LEPR).

Section 2 provides an overview of the changes in the electoral framework from February 2011 to the adoption of Egypt's new constitution in December 2012. The electoral provisions of that constitution are discussed in Section 3. The evolution of the two main electoral laws governing HoR elections (LOPA and LEPR) under the 2012 constitution are analyzed in Sections 4 and 5, respectively. Section 6 outlines the initial changes in the electoral framework resulting from the overthrow of President Morsi in July 2013,

including the timetable of electoral events provided for in the constitutional declaration issued on July 8, 2013. Finally, Section 7 draws conclusions from the recent events in Egypt's transition and discusses the main electoral priorities that must be addressed if Egypt is to have a realistic chance of returning to the path of democratic development on which it embarked only two and a half years ago.

2. Changes to the Electoral Framework, 2011-2012

Changes to the legal framework governing the People's Assembly (PA), the lower house of Egypt's bicameral parliament, began shortly after the February 2011 revolution. These changes included amendments to the constitutional framework and legislative changes.

March 2011 Constitutional Declaration

On February 13, 2011, the SCAF dissolved parliament and suspended the 1971 constitution. It then established an eight-member committee of experts to draft amendments to that constitution. The constitutional committee performed its drafting without wide or representative public consultation, and released its proposals on February 26, 2011. These proposals were put to a referendum on March 19, 2011, as one combined aggregate proposal, in which voters had the option of voting simply either "yes" or "no." Despite technical and logistical difficulties in preparing for and then administering the referendum,¹ it was held as scheduled. The official turnout was 41 percent of all estimated eligible voters. Seventy-seven percent of those who voted approved the changes.² This led the SCAF to issue a constitutional declaration on March 30, 2011, which effectively served as the interim constitution until Egypt's new constitution was approved by referendum in December 2012.

Much of the constitutional declaration explicitly left matters to be defined by legislation.³ Some of the most significant parts relating to PA elections and their legal framework are listed below.

- **Direct Elections:** In line with democratic standards, it provided that the PA would be "elected by a direct, public and secret [ballot] election" (Article 32).
- **Role of Judiciary:** The judiciary's previous role supervising elections was reinstated (Article 39).⁴ The judiciary was also given the role of final arbiter in the event of legal challenges to parliamentary election results (Article 40).⁵
- **Electoral System:** The declaration required the PA to have at least 350 members, half of whom had to be workers and farmers (Article 32).⁶ The specifics of the electoral system were to be defined by legislation (Article 38).

¹ IFES Briefing Paper. *Elections in Egypt: Lessons from the 2011 Constitutional Referendum and the Constitutional Declaration*. P. 4. April 2011. Web.

http://www.ifes.org/~media/Files/Publications/White%20PaperReport/2011/2011_Egypt_Briefing_Paper_III_Political_Rights.pdf.

² Ibid.

³ For example, see the first sentence of Article 39 and Article 38.

⁴ Under Article 88 of the 1971 constitution, the judiciary also played a supervisory role.

⁵ Under Article 93 of the 1971 constitution, it was the PA itself that served as final arbiter.

It is noteworthy that the SCAF amended one of the proposed provisions approved in the referendum before issuing the declaration.⁷ Similarly, there were provisions included in the declaration that had not been put to Egyptians in the referendum.⁸ In short, the 2011 interim constitution was developed without meaningful public participation and without any attempts at consensus-building.

The Law on the People's Assembly

On May 30, 2011, a draft of the LOPA was published by the SCAF. It provided a mixed electoral system, with one-third of the PA seats elected through a closed-list proportional representation system, and the remaining two-thirds of the seats elected using an individual candidacy system with two-seat constituencies. The draft law permitted both party-backed candidates and independent candidates to form election lists. The 50 percent worker and farmer quota was also included, as required by the March 2011 constitutional declaration.

After the initial draft LOPA, the SCAF made a number of changes to it. There were consultations on the draft LOPA in June and July, involving political parties and civil society and the changes made to the draft reflect many of their proposals.⁹ The final version of the LOPA was issued on July 19, 2011.

The following table provides an overview of some of the major legal changes to the LOPA between the release of the final version and the beginning of the elections for the PA on November 28, 2011. It is worth noting that some of these changes were made after the call for elections.

Date Issued	SCAF Decree	Significance for PA Elections Framework
July 19, 2011	Decree 108	Amended the draft LOPA, maintaining the mixed election system but changing the proportions of seats to 50 percent closed lists and 50 percent individual candidacy (Article 3). The decree also removed the clause allowing independent candidates to be on election lists (Article 3).
September 25, 2011	September 2011 Constitutional Declaration	Amended Article 38 of the March 2011 Constitutional Declaration. The mixed electoral system remained but the proportions changed again to two-thirds of

⁶ This was also required under Article 87 of the 1971 constitution.

⁷ Kristen Stilt. *The End of "One Hand": The Egyptian Constitutional Declaration and the Rift between the "People" and the Supreme Council of the Armed Forces*. Northwestern University School of Law Faculty Working Papers, 2012. Web. <http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/208>.

⁸ Nathan J. Brown and Kristen Stilt. *A Haphazard Constitutional Compromise*. Carnegie Endowment for International Peace. April 11, 2011. Web. <http://carnegieendowment.org/2011/04/11/haphazard-constitutional-compromise/10ls>.

⁹ Democracy Reporting International (DRI). *Comprehensive Assessment of Egypt's Electoral Framework – Part II*. P. 5. August 10, 2011. Web. http://www.democracy-reporting.org/files/dri_assessment_part_ii.pdf.

		the seats elected by closed lists and one-third by individual candidacy (Article 1) compared to the 50-50 mixed system established by Decree 108.
September 26, 2011	Decree 120	Restricted candidates belonging to political parties from competing in the individual candidacy system (Article 5).
September 26, 2011	Decree 121	Defined the number of PA constituencies for both the closed list and the individual candidacy systems (Article 1).
September 27, 2011	Decree 199	Called for PA elections in November 2011, which would be held in three phases (Article 2). Provided that the PA should convene on March 17, 2012 (Article 3).
October 8, 2011	Decree 123	Repealed Article 5 of Decree 120, allowing political party members to contest the individual candidate seats in the PA (Article 1).
November 19, 2011	Decree 130	Stated the rules for voting by Egyptians living abroad.

The Law on the Regulation of the Exercise of Political Rights

The LEPR has been amended many times since it was first adopted in 1956.^{10,11} It generally governs the administration of elections and regulates matters such as voter registration and vote counting procedures.

After the March 2011 Constitutional Declaration, the SCAF issued Decree 46 on May 19 to amend 23 articles of the LEPR. There was no public consultation before this decree was issued,¹² in part necessitating further amendments on July 20 (Decree 110, amending 10 articles and adding two new articles), and October 8 (Decree 124, amending nine articles and adding two new articles).¹³

¹⁰ DRI. *Comprehensive Assessment of Egypt's Electoral Framework*. P. 9. July 11, 2011. Web.

http://www.democracy-reporting.org/files/egypt_electoral_framework.pdf. According to this report, the law has been amended 14 times since July 11, 2011.

¹¹ For an unofficial translation of the LEPR incorporating all amendments up to February 2013, see DRI's unofficial translation of Law No. 73 of the year 1956 Regulating the Exercise of Political Rights and its Amendments. February 28, 2013. Web. http://www.democracy-reporting.org/files/lepr_unofficial_translation.pdf

¹² DRI, *Comprehensive Assessment of Egypt's Electoral Framework*. P. 10. July 11, 2011. Web.

http://www.democracy-reporting.org/files/egypt_electoral_framework.pdf

¹³ It is understood that further decrees amending the LEPR were issued in November and December, but these were not available at the time of writing. For an outline of the amendments made by Decrees 46 and 110, see: IFES' Briefing Paper, *Elections in Egypt: Structure and Responsibilities of the Higher Elections Commission, and Other Issues Concerning Electoral Operations*. August 2011. Web.

http://www.ifes.org/~media/Files/Publications/White%20PaperReport/2011/2011_Egypt_Briefing_Paper_III_Political_Rights.pdf.

Some of the major changes to the LEPR during 2011 related to the following:

- Composition, structure and responsibilities of the High Elections Commission (HEC)
- Voter lists and the voter registration system
- Election observation

The amendments continued into 2012. On April 23, 2012, the SCAF issued Decree 17 to implement legislation passed by the recently elected PA, which amended Article 3 of the LEPR. Known as the Political Isolation Law, it suspended political rights for those who held leadership positions in the ruling National Democratic Party (NDP) during the 10 years before President Mubarak's ouster.¹⁴ However, soon after, on June 14, 2012, the Supreme Constitutional Court (SCC) found the law to be unconstitutional based on a number of provisions in the March 2011 Constitutional Declaration.

Elections in 2011 and 2012

Since February 2011, Egypt has held three elections to elect state representatives. These elections have not met international standards perfectly but they have been accepted by international observers and by Egyptian citizens as "broadly" representing the will of Egyptians.¹⁵

The PA elections were the first in post-Mubarak Egypt. On November 28, 2011, elections for the 498 seats¹⁶ of the PA began and continued until January 2012. There were 166 seats available for individual candidates. Of those seats, political party members won 151 seats, while independent candidates won only 15. The Freedom and Justice Party and its allies won 225 seats; the parties in the Islamist Alliance won 125 seats; al-Wafd won 41 seats; the three parties in the Egyptian Bloc won 34 seats; and 11 parties shared the remaining seats won by party candidates.

There were, however, a number of concerns about the conduct of the elections, including campaigning around polling stations, "incorrect implementation of procedures put in place to ensure confidence and transparency in the process" and "administrative mistakes which led to last-minute legal challenges re-

¹⁴ IFES Briefing Paper. *Elections in Egypt: Implications of Recent Court Decisions on the Electoral Framework*. P.4 August 2012. Web.

http://www.ifes.org/~media/Files/Publications/White%20PaperReport/2012/Egypt_SCC_Decisions_August9.pdf.

¹⁵ For example, The Carter Center. *Final report of the Carter Center Mission to Witness the 2011-2012 Parliamentary Elections in Egypt*. P. 2. Web.

http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/egypt-2011-2012-final-rpt.pdf; Electoral Institute for Sustainable Democracy in Africa (EISA). *EISA Witnessing Mission to the Egyptian Shura Council Elections, Second and Final Phase, 14 – 22 February 2012: Preliminary Statement*. P. 5. Web.

<http://www.eisa.org.za/PDF/egy2012eom8.pdf> at p.5; The Carter Center. *Preliminary Statement on Egypt's Shura Council Election*. P. 1. February 28, 2012.

¹⁶ According to article 32 of the March 2011 Constitutional Declaration, the President of the Republic is allowed to appoint up to 10 members in the People's Assembly.

sulting in costly rerun elections across many jurisdictions.” Overall, there was “uneven enforcement of the law and regulations.”¹⁷

While PA elections had a 62 percent voter turnout, the Shura Council elections that followed in January and February 2012 reflected voter fatigue and little confidence in the Shura Council’s usefulness as an institution.¹⁸ Voter turnout was comparatively low. Election observers noted this among many other concerns, such as inconsistency in execution of voting procedures. Many of the concerns raised were similar to those raised about the PA elections.¹⁹

The 2012 presidential elections were held on May 23 and 24, with a run-off on June 16 and 17. Voter turnout was better than the previous elections, at approximately 50 percent in each round.²⁰ President Morsi won with 51.73 percent²¹ of the vote, but the credibility of the vote was disputed. Election observation missions were not given the required accreditation until late in the process. Even then, they were not given the access needed to properly witness the elections.²²

In addition to various observed irregularities,²³ the claim from former presidential candidate Ahmed Shafiq that he won further complicated an assessment of the election. Shafiq submitted a legal challenge against the 2012 presidential elections and the legal process is ongoing.²⁴ Overall, however, irregularities in the election were “perceived as minor.” Observers criticized more strongly the political and

¹⁷ The Carter Center. *Final report of the Carter Center Mission to Witness the 2011-2012 Parliamentary Elections in Egypt*. P. 2. Web. http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/egypt-2011-2012-final-rpt.pdf. P. 2.

¹⁸ Salem Mostafa Kamel. “Shura Council Elections See Low Turnout and Voter Apathy.” *Atlantic Council*. February 2, 2012. Web. <http://www.acus.org/egyptsource/shura-council-elections-see-low-turnout-and-voter-apathy>

¹⁹ The Carter Center, *Preliminary Statement on Egypt's Shura Council Election*. P.1. February 28, 2012. Web. http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/egypt-022812-shoura-council-elections.pdf

²⁰ The Carter Center. *Presidential Election in Egypt, May-June 2012, Final Report*. P. 5. Web. http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/egypt-final-presidential-elections-2012.pdf

²¹ Ibid. P. 5.

²² Ibid. P. 3.

²³ For example, The Egyptian Organization for Human Rights. *The Egyptian Federation for Election Observation has complained against violation of electoral silence in 15 governorates*. May 23, 2012. Web. <http://en.eohr.org/2012/05/23/the-egyptian-federation-for-election-observation-has-complained-against-violation-of-electoral-silence-in-15-governorates>.

²⁴ In June 2013, the Presidential Election Commission postponed consideration of the challenge. See: “Judges recuse ruling on Shafiq election challenge.” *Al-Masry Al-Youm*. June 27, 2013. Web. <http://www.egyptindependent.com/news/judges-recuse-ruling-shafiq-election-challenge>.

legal context in which the election took place, such as the lack of a defined role for the President in constitutional law and the continuing imposition of emergency law during election time.²⁵

Dissolution of the People's Assembly

All Egyptian elected state institutions have experienced dissolution or an ousting of the incumbents at least once since the 2011 uprising, and the PA is no exception. Only a few months after the PA election and a few days before President Morsi was sworn in, on June 14, 2012, the Supreme Constitutional Court (SCC) found that the LOPA was unconstitutional, leading to the PA's dissolution. In particular, the SCC ruled that the following provisions violated the March 2011 Constitutional Declaration:

- Article 3(1) of the LOPA (substituted by the Decree 120)
- Article 6(1) of the LOPA (substituted by Decree 108)
- Article 9 bis(a) of the LOPA (substituted by Decree 108)
- Article 1 of Decree 123 issued by SCAF in 2011

In finding these provisions unconstitutional, the SCC decided that permitting both party-backed and independent candidates to compete for individual candidate seats, while not allowing independent candidates to compete in the same way on PR lists, was a violation of a number of provisions of the March 2011 Constitutional Declaration. This also included Article 3 ("Sovereignty is for the people alone and they are the source of authority") and Article 7²⁶ ("Law applies equally to all citizens, and they are equal in rights and general duties").

In response to the SCC decision, the SCAF issued Decree 350/2012 the next day, which dissolved the PA. On July 8, 2012, the PA made a temporary return after then-President Morsi issued Decree 11/2012, instructing the PA to reconvene. However, on July 10, 2012, the SCC issued a decision that suspended President Morsi's decree, and the PA has remained dissolved since then. Whether or not its dissolution was politically and legally justified was debated intensely at the time. Disputes about the legality of the PA's composition and its dissolution illustrate the institutional competition that has characterized much of Egypt's legal reform process.

Constituent Assembly

In March 2012, before the dissolution of the PA, the PA and the upper house, the Shura Council, elected 100 members of the Constituent Assembly (CA) under Article 60 of the March 2011 Constitutional Declaration. The CA was responsible for drafting a new constitution within six months, which would then be put forward for public approval at a referendum. However, problems arose quickly regarding the composition of the CA. Article 60 of the March 2011 Constitutional Declaration was vague about the selection criteria, leaving room for different opinions. Many claimed that the CA was heavily Islamist and the Muslim Brotherhood was controlling the process to the detriment of genuine public participation and

²⁵ Nadine Marroushi. "Election monitoring hindered by restrictions." *Al-Masry Al-Youm*. May 28, 2012. Web. <http://www.egyptindependent.com/news/election-monitoring-hindered-restrictions>.

²⁶ Although the SCC decision refers to Article 6, which appears to be an error.

consensus building. In fact, the first CA was dissolved very soon after its formation due to an administrative court decision on April 10, 2012. The court ruled that including 50 PA members in the CA was not in line with the March 2011 Constitutional Declaration or with a 1994 SCC ruling that parliamentarians cannot elect themselves.²⁷ Once again, this decision was viewed as reflecting institutional competition in the transition process, and as evidence of the Egyptian judiciary being aligned with the military and anti-Islamists.

On June 13, 2012, the PA and Shura Council elected 100 members for the second CA.²⁸ However, problems continued. The SCC's ruling that the law used to elect the PA in 2011-2012 was unconstitutional also raised questions about the status of the CA. The SCAF issued another constitutional declaration on June 17 granting itself the authority to exercise significant powers and to form a new CA if the current one was ruled unconstitutional. On July 12, newly-elected President Morsi issued Law 79/2012 establishing new criteria for selecting members of the CA. One month later, he issued a constitutional declaration giving the President full executive and legislative powers, including the power to form a new CA if the existing body could not carry out its functions.

The CA continued to face difficulties reaching agreement on key points. By November 18, 2012, over 40 members identified as belonging to liberal/secularist forces and Church representatives had withdrawn in protest, leaving the CA without the majority required to pass constitutional articles.²⁹ Three days later, President Morsi issued a highly controversial constitutional declaration which prompted a 17-hour CA meeting at the end of November with new members to replace those who had left. The finalization of the draft constitution was done speedily and amidst circumstances of deep mistrust.

In addition to all the other difficulties, six months was simply not enough time to draft a constitution in the context of a revolution and amid calls for deep and meaningful democratic change. It has been suggested that the short, six-month timeframe may have been imposed by the SCAF due to a lack of appreciation of the complexities of constitution building. It may also have reflected a strategic interest on the part of the SCAF, since a short timeframe would reduce the chances of major changes to the pre-existing constitutional framework.³⁰

The CA formally submitted the draft constitution to President Morsi on December 1, 2013. That same day he issued a decree calling for a referendum on December 15. Despite the fact that a visible and large

²⁷ IFES Briefing Paper. *Elections in Egypt: Implications of Recent Court Decisions on the Electoral Framework*. P. 6. August 2012. Web.

http://www.ifes.org/~media/Files/Publications/White%20PaperReport/2012/Egypt_SCC_Decisions_August9.pdf.

²⁸ "Update: Parliament elects new Constituent Assembly." *Egypt Independent*. June 13, 2012. Web.

<http://www.egyptindependent.com/news/update-parliament-elects-new-constituent-assembly>.

²⁹ Ahmed Aboul Eein. "More withdraw from Constituent Assembly." *Daily News Egypt*. November 18, 2012. Web.

<http://www.dailynewsegypt.com/2012/11/18/more-withdraw-from-constituent-assembly>.

³⁰ Zaid Al-Ali. "The new Egyptian constitution: an initial assessment of its merits and flaws." *Open Democracy*. December 26, 2012. Web. <http://www.opendemocracy.net/zaid-al-ali/new-egyptian-constitution-initial-assessment-of-its-merits-and-flaws>.

proportion of the population did not accept the political legitimacy of the 2012 constitution, it was approved in the referendum by 64 percent of those who voted, with a voter turnout of 33 percent. There were allegations of fraud and vote rigging but no irregularities were found. The HEC announced results on December 25, 2012, and the new constitution was promulgated on December 26, 2012.³¹ Given the context, experts predicted that while the new constitution might have legal legitimacy, its political legitimacy would continue to be seriously questioned.³²

3. The Electoral Framework in the 2012 Constitution

The electoral framework established by the 2012 constitution was similar to that of the 1971 constitution in many ways. The preamble of the 2012 constitution states a commitment to a democratic system of governance that enables “the peaceful transfer of power, deepens political and factional pluralism, ensures integrity of elections and the people’s participation in national decision-making.”

Chapter One contains seven articles that set out a number of political principles:

- Egypt is to have a “democratic system” (Article 1)
- The “principles of Islamic Sharia are the principal source of legislation” (Article 2)
- The political system is based on “the principles of democracy, *shura* (consultation), and citizenship;” equality of “general rights and obligations” among citizens; and “respect for human rights and freedoms” (Article 6)
- Political parties cannot be formed that discriminate among citizens based on gender, origin or religion (Article 6)

The Legislature

Chapter One of Part III of the 2012 constitution sets out the provisions concerning the legislative authority, re-establishing a bicameral legislature consisting of the House of Representatives (HoR, called the “People’s Assembly” in the 1971 constitution) and the Shura Council (Article 82). In an important change from the 1971 constitution, the Court of Cassation has jurisdiction over the validity of membership of the HoR and the Shura Council (Article 87).³³ In a new provision, Article 88 requires members of both Houses to provide a regular “financial declaration”; the information to be included in these declarations is to be specified in the law.

³¹ On December 23, 2012, President Morsi appointed 90 members to the Shura Council under Article 35 of the March 2011 Constitutional Declaration, which empowered the President to appoint one-third of its members. Under Article 230 of the new constitution, the existing Shura Council acts as the sole legislative body until a new House of Representatives is convened. See: “Update: Islamists and old regime men in Morsy’s Shura Council appointments.” *Al-Masry Al-Youm*. December 23, 2012. Web. <http://www.egyptindependent.com/print/1332296>.

³² Zaid Al-Ali. “The new Egyptian constitution: an initial assessment of its merits and flaws.” *Open Democracy*. December 26, 2012. Web. <http://www.opendemocracy.net/zaid-al-ali/new-egyptian-constitution-initial-assessment-of-its-merits-and-flaws>.

³³ Article 93 of the 1971 constitution states: “The People’s Assembly shall be the only authority competent to decide upon the valid election of its members.”

Article 110 covers resignations of members. Articles 111 and 112 allow membership in either house to be revoked by a two-thirds majority of the house in question, although it is not clear whether this refers to two-thirds of the members present or two-thirds of the total membership. A seat becoming vacant earlier than six months before the end of term must be filled within 60 days.

Articles 113 to 127 cover the membership and powers of the HoR. The House must have at least 350 members, elected by “direct secret public ballot” (Article 113). A candidate for the HoR must be “an Egyptian citizen, enjoying civil and political rights, holder of a certificate of at least basic education, and at least 25 years old at the time of candidacy” (Article 113). Other conditions for membership may be defined in the law, which also sets the electoral system and constituency boundary delimitation “in a manner that takes into account the fair representation of the population and governorates” (Article 113). Except for the transitional provision in Article 229 (see below), the long-standing requirement that half the membership of the HoR be workers and farmers has been dropped.³⁴

Members of the House are elected for a five-year term, and the elections for renewing the HoR must be held within 60 days preceding the end of the House’s term (Article 114). In what many regarded as a creative move to prevent the rash dissolution of the HoR and limit presidential powers, the President may not dissolve the HoR “except by a causative decision and following a public referendum” (Article 127). A President who wishes to dissolve the HoR must suspend House sessions and hold a referendum within 20 days. If a majority of those voting approve the dissolution, the President issues a decision accordingly and calls for elections for a new House, which must take place within 30 days. The new HoR must then meet within 10 days of the announcement of the final election result. On the other hand, the President must resign if a majority of voters do not approve the dissolution. The constitution does not set any minimum turnout for such a referendum.

The composition and powers of the Shura Council are set out in Articles 128-131 of the 2012 constitution. In brief:

- The Shura Council has at least 150 members, elected “by direct secret ballot” (Article 128). The President may appoint additional members – equivalent up to 10 percent of the number of elected members. The constitution does not specify any special criteria or procedures for making these appointments.

³⁴ See Article 87 of 1971 constitution. While there are arguments in favor of the quota to ensure leftist and working class representation in the House, many Egyptians view it as a critical component of the patronage system that helped maintain the status quo under Mubarak by ensuring large numbers of votes for the ruling National Democratic Party. For a discussion about the quota, see: Jano Charbel. “Constituent Assembly may scrap workers’ and farmers’ quota in Parliament.” *Egypt Independent*. August 26, 2012. Web.
<http://www.egyptindependent.com/news/constituent-assembly-may-scrap-workers-and-farmers-quota-parliament>.

- A candidate for membership of the Shura must be an Egyptian citizen with civil and political rights, who is at least 35 years old at the time of candidacy and has at least a certificate of higher education (Article 129).
- The term of membership of the Shura Council is six years, “with renewal of half of the members every three years, as defined by law” (Article 130).
- Article 131 has been an important provision, since it provides that “in the case of the dissolution of the House of Representatives, the Shura Council shall carry out its joint legislative responsibilities.” However, any legislation approved by the Council during that period must be presented to the newly-elected HoR “for consideration as soon as it is convened.” Although the constitution is not explicit on the point, it seems that the HoR would have to propose amending legislation if it did not approve a bill passed by the Shura Council during the period of the dissolution of the House.
- If both houses of the legislature are dissolved, and “where there is a requirement for urgent measures,” Article 131 gives the President the power to issue decrees “that have the force of law.” Those decrees must then be presented to the new HoR and Shura Council within 15 days of the start of their respective sessions. If they are not presented, or if they are not approved, “their force of law shall be retroactively revoked, unless the Council affirms their validity for the previous period, or chooses to settle the consequent effects in some other manner.”

The Presidency

The presidency is covered in Articles 132-154 of the constitution. The President is elected “by direct secret ballot, with an absolute majority of valid votes” (Article 136). The President’s term is four calendar years and a President may be re-elected once only (Article 133). The “process” of the presidential election must begin at least 90 days before the end of a presidential term, and the result of the election must be announced at least 10 days before the end of the term (Article 133).

To be nominated as a presidential candidate, a person must be “an Egyptian citizen born to Egyptian parents, must not have carried other citizenship, must have civil and political rights, cannot be married to a non-Egyptian, and at the time of nomination cannot be younger than 40 Gregorian years” (Article 134).

A presidential candidate must be endorsed by “at least 20 elected members of House of Representatives and the Shura Council, or endorsements from at least 20,000 citizens who have the right to vote, in at least 10 governorates, with a minimum of 1,000 endorsements from each governorate” (Article 135). No one can endorse more than one candidate. A President must provide the HoR with a financial declaration at the beginning of the term, at the end of the term, and at the end of each year, as regulated by law (Article 138).

If a President is unable to carry out his functions due to a “temporary obstacle,” the Prime Minister acts in his place (Article 153). The Speaker of the House exercises limited powers in case of a vacancy (as a result of death, resignation, permanent incapacity or any other reason) in the presidency, pending election of a new President within 90 days of the date of the vacancy (Article 153).

Judicial Authorities

The Sixth Principle in the preamble states that an independent judiciary is responsible for the supreme mission of protecting the constitution, setting the scales of justice and preserving rights and freedoms. The judiciary is independent (Article 168) and self-regulating (Article 169). Judges are independent and cannot be removed from office “during good behavior” (Article 170). Article 175 establishes the Supreme Constitutional Court (SCC) with “exclusive jurisdiction in adjudicating the constitutionality of laws and regulations.” In an apparent attempt to avoid further instances of an election law being declared unconstitutional after an election has been completed, Article 177 states that a specific function of the SCC is to consider the constitutionality of draft electoral laws before they are passed:

The President of the Republic or of the House of Representatives shall submit Presidential, legislative, and local elections draft laws to the review of the Supreme Constitutional Court before their promulgation to determine the extent of their constitutionality. The Supreme Constitutional Court shall issue its decision in this regard within forty-five days, otherwise proposed texts shall be deemed adopted.

If the Court shall decide that one or more texts are unconstitutional its decision shall prevail.

If the SCC rules that a draft electoral law complies with the constitution, the SCC cannot subsequently consider the constitutionality of that law (Article 177).

Article 178 requires the SCC’s decisions following prior review of an electoral law to be published in the Official Gazette. That Article also states, “The law shall regulate the consequent effects of unconstitutionality of a legislative text.”

The National Elections Commission

Part IV of the 2012 constitution concerns “Independent Bodies and Supervisory Institutions,” including the National Elections Commission (NEC) in Articles 208-211. The NEC is listed among the “supervisory” institutions rather than among the independent bodies.

Articles 200-203 contain provisions common to all supervisory and independent entities, including the NEC. Article 200 provides that they have “public legal personality and neutrality and technical, administrative, and financial autonomy.” Article 203 requires each body to be established by a law “stipulating jurisdictions and work system other than those stipulated in the Constitution,” and giving “the necessary guarantees for its members to perform their work.” Article 200 requires that each body’s opinions must be considered regarding the draft laws “relating to their jurisdictions.” Article 201 requires these bodies to submit their reports to the President and both houses of the legislature within 30 days of being issued. These reports must also be published in the Official Gazette.

The NEC has sole responsibility to “manage” referendums, presidential, parliamentary and local elections, “starting from preparing the voter database, giving opinion on constituency demarcation, determining the funding controls and electoral expenditures and their announcement, and all other proce-

dures until the announcement of the results” (Article 208). The NEC may also “supervise” elections for trade unions and others (Article 208).

The membership of the NEC is “evenly composed of ten members from among the Deputy Presidents of the Court of Cassation, Presidents of the Courts of Appeal, Deputy Presidents of the State Council, State Lawsuits, and Administrative Prosecution chosen by the Supreme Judicial Council and the special Councils of these institutions, excluding the members of these Councils” (Article 209). Members of the NEC are “delegated fully” to work in the commission for one term of six years, with half the membership being renewed every three years. The NEC is chaired by the most senior members from the Deputy Presidents of the Court of Cassation (Article 209). The NEC’s executive body and employment procedures are regulated by law.

The NEC’s role concerning voting and counting at elections and referendums is to supervise their management by its “affiliated members” (Article 210), although the constitution is not specific about who these members are. The previous practice of direct judicial supervision of voting and counting will continue for 10 years after the constitution comes into effect (Article 210).³⁵

The Supreme Administrative Court has jurisdiction over appeals against the NEC’s decisions relating to referendums and presidential and parliamentary elections, whereas the Administrative Court has jurisdiction for appeals against NEC decisions relating to local elections (Article 211). Final results of referendums and elections must be announced within eight days of Election Day. The final results of referendums and presidential elections cannot be challenged once they are announced (Article 211).

Amending the 2012 Constitution

Procedures for amending the constitution are specified in Articles 217 and 218. An amendment may be requested by either the President or by the HoR, provided in the latter case that it is signed by at least 20 percent of the members of the House. Each proposed amendment must then be discussed by the HoR and by the Shura Council within 30 days of receipt, and be accepted by a majority of members in full or in part (Article 217). If both houses accept the amendment, each must then discuss the text of the amendment within 60 days (Article 218). Then if two-thirds of the members of each house approve the amendment, it must be put to a referendum within 30 days.

Electoral Systems and Transitional Provisions

Article 224 provides that the electoral systems for the HoR, Shura Council and local council elections “be in accordance with the individual or lists system, or a combination of both, or any electoral system pre-

³⁵ “Before the 2000 PA elections, the Constitutional Court ruled that Article 88 of the Constitution required the presence of a judge at each ballot box. This was implemented for the 2000 and 2005 PA elections and was regarded as reducing fraud at those elections. Because of logistical difficulties, the amendments to the Constitution approved in 2007 included removing the requirement for a judicial presence at each ballot box.” See: IFES Briefing Paper. *Elections in Egypt: Key Challenges for Credible and Competitive Elections*. P.7. February 2011. Web.

http://www.ifes.org/Content/Publications/White-Papers/2011/~/_media/Files/Publications/White%20PaperReport/2011/2011_egypt_briefing_paper.pdf

scribed by law.” This provision effectively left the future electoral system open for debate. However, it is modified by a transitional provision in Article 231, which provides that:

The legislative elections occurring after adoption of the constitution shall be regulated by two-thirds of seats for the proportional list system and one-third for the individual system. Parties and independent candidates shall have the right to contest in any of the two systems.³⁶

Other important transitional provisions are:

- Article 228 continues the mandate of the existing HEC to “supervise” the first parliamentary elections after the adoption of the constitution. Once the NEC is formed, the funds of the HEC and the Higher Presidential Elections Committee (HPEC) are transferred to it.
- The procedures for holding the first parliamentary elections must commence within 60 days of the approval of the constitution, with the legislative term beginning within 10 days of the announcement of the final election result (Article 229). Article 229 also requires that 50 percent of the members of the first elected HoR be “workers” or “farmers” and defines those terms.
- The current Shura Council is to have “full legislative power” until the House is convened, whereupon the HoR will assume that role until a new Shura Council is elected, which must be within one year of the convening of the HoR (Article 230).
- Article 232 prohibits “dissolved National Democratic Party leaders” from “the exercise of political work” and from being a candidate in presidential or legislative elections for a period of 10 years from the date the constitution came into force, and defines the term “leader.”³⁷
- The SCC consists of its current President and the 10 longest serving members (Article 233).
- All constitutional declarations issued by the SCAF and by the President between February 11, 2011, and the date the constitution came into force are annulled, but their implications remain valid (Article 236).

4. Development of the Law on the Exercise of Political Rights under the 2012 Constitution

The January 2013 Amendments

The Shura Council did not propose many amendments to the LEPR in January 2013. It revoked Decree-law 130/2011 on out-of-country voting (OCV), changed the term “People’s Assembly” to “House of Representatives,” and removed references to parties in relation to lists. The January draft stated explicitly that provisions in the LEPR relating to OCV; the representation of farmers and workers; the electoral

³⁶ The last sentence deals with the defect in the HoR law that led the SCC to declare that law unconstitutional and to the dissolution in June 2012 of the PA elected at the end of 2011 and the beginning of 2012.

³⁷ “Leaderships shall mean everyone who was a member of the Secretariat of the Party or Policies Committee or in the Political Bureau on the 25th of January 2011, or a member of the People’s Assembly or the Shura Council in the last two legislative rounds prior to the 25th of January revolution.” See: “Article 2.” *Constitution of Egypt*. 2012.

system; delimitation; and the role of the HEC applied only to the first elections after approval of the constitution. The amendments authorized the introduction of “electronic or automated voting...round by round” provided for counting to be done in polling stations rather than in general committees, and changed the judicial composition of the electoral committee to be formed in each governorate. They also authorized the HEC to develop regulations relating to “the person in charge of submitting the lists of party or independent candidates,” and to allow that person to nominate representatives at electoral committees.

Detailed provisions were inserted in the LEPR relating to OCV to replace those provisions issued as Decree-laws 130/2011. Polling in elections and referendums was extended from one to two consecutive days at the electoral centers. Hours of polling were 9:00 a.m. to 9:00 p.m. each day. Minor changes were made to polling and counting procedures.

The SCC's February 18, 2013 Ruling

The SCC made three rulings on the proposed January amendments to the LEPR. First, the SCC ruled that Articles 208, 209, 210 and 228 of the constitution require that OCV be conducted under “full judicial supervision,” particularly the polling and counting processes. Second, the SCC referred to its ruling on Article 18 bis of the HoR law, stating that under Article 228 of the constitution, the announcement of election results by the head of the general committee can only be of the initial voting figures. Third, the SCC pointed out that the change to voting over two consecutive days meant that the indelible ink required by Article 29 of the LEPR should only be removable after 48 hours rather than the 24 hours stated in that Article.

New Law Issued, February 21, 2013

Law 2/2013 amending the LEPR and the LOPA was published in the Official Gazette on February 21, 2013. The changes included the amendments proposed in the January draft, as well as minor wording changes to meet the first and second SCC rulings. In the third case, specific mention of indelible ink was replaced with a provision requiring the HEC to “set the guarantees and means that ensure vote non-repetition.”

On March 6, the Supreme Administrative Court revoked the President's call for elections and referred Law 2/2013 to the SCC for a ruling on whether the amendments to the LEPR and Law 38/1972 were constitutional.

Draft Law, April 11, 2013

A complete draft of a new LEPR was submitted to the SCC on April 11, 2013. The new law retained most of the features of the law issued in February, but did make some significant changes, as follows:

- The exercise of political rights was restored to persons whose property has been confiscated following a property court ruling, those dismissed from employment in the public sector for moral turpitude and persons declared bankrupt

- Changes were made to the judicial membership of the electoral and voter list appeal committees in each governorate
- Detailed provisions concerning OCV were replaced by an article requiring OCV to begin before the scheduled date for voting in Egypt and to be conducted under “full judicial supervision” according to rules issued by the HEC
- Calling of a general election or a by-election must be done at least 60 days in advance, rather than the 30 days specified in the previous law
- The President may issue a decree postponing a general election or referendum or any of its stages “in case of necessity”
- The general committee in each constituency rather than the HEC is to deal with complaints
- The head of the subcommittee is required to verify a voter’s identity before handing over a ballot paper
- One of the personnel of a subcommittee at which women may vote should be a woman to assist the head of the subcommittee in verifying the identities of fully-veiled women
- Use of indelible ink lasting at least 48 hours is specifically mentioned as one of the means the HEC may employ to avoid repeat voting
- A National ID card or a passport showing a National ID number may be used to verify a voter’s identity
- Where an election is conducted in several stages, the head of the HEC is no longer required to announce election results at the end of each stage
- The time within which the head of the HEC must send a certificate of election to successful candidates after the announcement of the final result of the election has been reduced from one month to 15 days
- The penalty for failing to vote in an election or referendum has been increased from 100 Egyptian pounds to 500 Egyptian pounds
- Penalties for some electoral crimes were changed – a new crime of printing or handling ballot papers was included, and a candidate who participates in specified crimes must receive the same punishment as the perpetrator and must be barred from being a candidate for five years
- The HEC President is given the right to nullify the votes resulting from specified offences
- A new crime is introduced of electoral campaigning based on religious, sex or origin discrimination
- The Public Prosecutor is responsible for judicially investigating electoral crimes, and “may order the provisional detention of the accused pending investigation until referral to a trial”
- Every Court of Appeals or Court of First Instance must determine one or more circuits for hearing and expeditiously deciding on electoral offences
- The new law will go into effect on the date of its publication in the Official Gazette

SCC Ruling, May 26, 2013

In a ruling affecting several articles of the April 2013 draft law, the SCC noted that Articles 168-180, 210 and 228 of the new constitution distinguished between “judicial branches” and “judicial bodies,” and that the wording of the draft law needed to be amended accordingly.

The SCC also made a number of rulings on specific articles of the draft law:

- Article 1: prohibiting eligible “officers and members of the main, subsidiary, and additional armed forces, as well as police officers and members” from exercising political rights violates Articles 5, 6.1, 33, 55 and 64 paragraphs 1 and 2 of the 2012 constitution
- Article 2: the various provisions depriving some groups of convicts from exercising political rights infringe the principle of equality stated in Article 33 and Article 55, paragraph 1 of the constitution
- Article 10, fifth paragraph:
 - “International organization” and “civil society organization” need to be defined
 - The law needs to state the maximum number of representatives permitted at an election committee³⁸
 - Only organizations authorized by the HEC should be allowed to participate
- Article 10, sixth paragraph: omission of banning use of religious or doctrinal slogans and symbols or performing religious or doctrinal activities in campaigning violates Articles 5, 6, 9, 33 and 55 of the constitution
- Article 10, seventh paragraph: including private media within the scope of the HEC’s jurisdiction to regulate air time for electoral campaigning violates Articles 45 and 48 of the constitution
- Article 10, eighth paragraph, and Articles 33, 37, 45, 46, 47: references to the role of the HEC in relation to referendums infringe Article 228 of the constitution, which limits the HEC’s responsibilities to the first parliamentary elections after approval of the constitution
- Article 12: omitting the case where the polling process starts before the High Administrative Court rules on expunging the name of a candidate who neither won nor was eligible for a run-off affects voters’ right to choose and thus infringes Article 55 of the constitution
- Article 16: requiring the HEC rather than the legislative authority to set the rules for OCV by mail infringes Articles 55, 56 and 115 of the constitution
- Article 22 and last sentence of Article 30: these provisions violate Articles 6, 55, 75, 81, 82 and 115 of the constitution because court decisions could still be issued under Articles 27 and 29 of the draft law after the call for an election or referendum, hence preventing changes to the voters lists after the call encroaches on judicial authority
- Article 31: because the President has chief executive authority, giving the President the power to set the date for and postpone general elections and referenda infringes Articles 6, 55, 132,

³⁸ However, paragraph 5 of Article 33 requires the head of a sub-committee to draw lots if more than eight candidates’ representatives attend at the sub-committee and they fail to reach an agreement. It seems that the SCC’s ruling requires some such limiting provision to be specified for other election committees as well.

150, 200, 208 and 228 of the constitution since only the NEC (and, temporarily, the HEC) has the authority to manage the electoral process to achieve integrity and impartiality

- Article 33, last sentence of third paragraph: to comply with Article 210, “the presence of women in the membership of the [subcommittee in the polling station at which women may vote] should be limited only to assist the Committee’s president in verifying the identity of full-veiled women without possibility of carrying out such activity solely”
- Article 38: allowing blind and disabled voters to express their choice verbally violates the secrecy of the vote required by Articles 113 and 128 of the constitution
- Article 61: the beginning of this article omits banning the use in campaigning of religious or doctrinal slogans and symbols, or performing religious or doctrinal activities during campaigns, both of which violate Articles 5, 6, 9, 33 and 55 of the constitution
- Article 69: having the new law come into force on the date of issuance infringes Article 223 of the constitution

Analysis of April 2013 Draft LEPR

Although relatively few changes have been made to the LEPR since the adoption of the 2012 constitution, in addition to the matters identified by the SCC, there are a number of technical matters that should be addressed in future revisions of the law. There is overlap between some provisions in the LEPR and provisions in the April draft of the law on HoR. For example:

- There are rules for invalidity of votes in both Article 6 of the HoR law and Article 43 of the LEPR.
- Article 13 of the HoR law sets the rules for campaigning in HoR elections, which are similar to but not the same as those in Article 61 of the LEPR.
- Article 22 of the April draft law on the HoR sets out counting procedures in terms that are similar to but not identical with the provisions of Articles 44-48 of the LEPR.
- Article 22 of the April draft law on the HoR entitles representatives of the media and domestic and international civil society organizations to witness counting and results announcement; whereas, the fifth paragraph of Article 10 of the April draft of the LEPR mentions civil society organizations (CSOs) but does not mention the media.

If separate laws are maintained for the HoR and for the exercise of political rights, it is important that there be consistency between the provisions of each law in order to avoid difficulties of interpretation among those who have to comply with, implement or enforce the laws.

- Article 12: The HEC must submit a request to expunge a candidate’s name from a candidate list to the Supreme Administrative Court. However, the right of appeal against is also to that same court; whereas, a fair process requires that it be heard by a different court.
- Article 29: There is no right of appeal from a decision by the administrative court concerning the registration or non-registration of any voter. Moreover, the court must impose a “fine” on anyone whose appeal is rejected – a deterrent to those seeking to protect their electoral rights.

- Article 37: The law does not describe the opening procedures to be followed by a subcommittee before voting commences. Although some of these procedures will be set down in regulations issued by the HEC or NEC, at a minimum the law should require empty ballot boxes to be displayed to candidate and party representatives and observers, followed by the sealing of the boxes.
- Article 38: Where a blind or voter with disabilities votes with the assistance of another person, the law should state specifically that the assistant must be chosen by the voter, and the head and members of the subcommittee and representatives of candidates and parties cannot perform that role.
- Article 43: As well as the conditions for invalidating a vote in the first paragraph, there should be a statement that a vote is to be treated valid if the voter's intention is clear.
- Articles 44, 46: To promote transparency and accessibility, there should be specific requirements that the statement issued by the subcommittee be displayed at the premises of the subcommittee for a specified period (e.g., 48 hours), and that the minutes of the general committee should be displayed at its premises for the same period.
- Articles 44, 45: To promote transparency and confidence in the electoral process, there should be explicit statements that representatives of candidates and parties and observers are entitled to be present at the subcommittee count, and at the deliberations of the general committee.
- Article 50: The intention seems to be to require compulsory voting in elections and referendums, and the fine for not voting "without excuse" has been increased from 100 EGP (approximately \$15 USD) to 500 EGP (approximately \$75 USD). This provision should be omitted, as it is understood that compulsory voting has not been enforced in the past, and to do so is likely to be ineffective and to involve significant compliance costs.
- Article 58, second paragraph, and Article 59: Although the head of the HEC has the right to "nullify the votes" resulting from specified offences, it is difficult to see how individual ballot papers could easily be identified so they could be excluded from the final count, even if court processes could be completed before the declaration of final results. On the other hand, Article 31 of the draft LEPR gives the President the power to postpone an election if those or other offences against the electoral process are sufficiently widespread as to be likely to influence the result of an election in a constituency or electoral district. As noted, however, the SCC's May 2013 ruling held that it was unconstitutional for the President to have such a power, and it is likely that amendments will be made to vest this power in the NEC and HEC.

Conclusions

A number of matters need to be addressed in the LEPR as a result of the SCC's ruling and in order to bring the law into line with best practice. It is possible that many of them were covered in the revised draft of the LEPR that was submitted to the SCC in June 2013. However, that law was not available at the time of writing due to recent events in Egypt. The SCC has not made a decision on the latest draft of the LEPR that was submitted to it in June 2013, although a decision on it would be somewhat moot given the anticipated constitutional amendments.

5. Development of the Law on the House of Representatives under the 2012 Constitution

The January 2013 Amendments

Once the 2012 constitution was passed, the Shura Council – acting as the sole legislative chamber under Article 230 of the new constitution – prepared amendments to Law 38/1972 and submitted the draft amendment law to the SCC as required by Article 177 of the constitution. The major changes were as follows:

- The name of the People's Assembly was changed to "House of Representatives."
- The SCAF's Decree-law 121 of 2011 concerning the constituencies for PA elections was revoked, and tables were attached to the draft law determining the boundaries and seat allocations for each constituency. (Delimitation issues are discussed in detail later)
- A change in the "specific status" under which a member of the HoR was elected would terminate that person's membership of the HoR.
- New definitions of the terms "worker" and "farmer" were included to reflect those in Article 229 of the 2012 constitution.
- In response to the SCC's ruling in June 2012, independent candidates would be able to contest party lists seats as well as individual seats.
- Each alternate place on a party list would have to be occupied by a worker or a farmer.
- In response to the SCC's ruling in June 2012, a party list may also include independent candidates.
- Changes were made to the conditions for being a candidate, including preventing those who held specified positions in the National Democratic Party from being candidates for 10 years after the new constitution came into force.
- The HEC would be required to publish candidates' names and parties in newspapers.
- The procedures were clarified for allocating seats among parties according to the "largest remainder" method, and the constituency threshold was changed to one-third of the votes required for a seat in that constituency.
- Changes were made to the procedures to be adopted in the event of a vacancy in a party's list of candidates before the election, and also in the event of a vacancy in an elected list member's seat.

The SCC's February 2013 Ruling

The SCC's ruling on the January amendments issued on February 18, 2013, invalidated a number of the changes listed above. In particular:

- The SCC held that the definition of "worker" in the draft law illegally extended the definition in Article of 229 of the constitution.

- The “specific status” under which a member is elected should be specified as including a change in classification as a worker or a farmer, a change in party affiliation and a party member becoming an independent, and vice versa.
- The SCC ruled the proposed constituency boundaries and seat allocations violated the “fair representation of the population and governorates” required by Article 113 of the constitution.
- Where a party list for a constituency includes independent candidates and party candidates, the list must show the affiliation of each candidate in order to comply with Article 55 of the constitution.
- The draft law’s statement of the conditions for candidacy omits “enjoying civil and political rights” as required by Article 113 of the constitution.
- Those exempted from military service for “national security requirements” under Law 127/1980 should not be able to be candidates.
- Article 232 of the constitution prohibits candidacy by persons who were National Democratic Party members of the PA or Shura Council for both legislative terms before the January 2011 revolution, not just one term as proposed in the draft.
- The provisions in the draft law that prohibit appeals concerning candidate nominations from being presented to the State Delegates Commission infringes the independence of the judiciary required by Article 174 of the constitution.
- Because Article 228 of the constitution provides that the HEC announces final election results, it needs to be clear that any announcement of voting figures by the heads of subcommittees and general committees must be of initial numbers of votes only, not winners or losers.
- A definition of CSOs should be included.
- The maximum number of CSO representatives at an electoral committee should be stated. Only representatives of CSOs and media organizations authorized by the HEC should be allowed to have representatives at electoral committees.

New HoR Law Issued, February 21, 2013

On February 21, 2013 – three days after the SCC issued its ruling on the draft law – the Official Gazette published Law 2/2013 issued by President Morsi, which amended the LOPA and the LEPR (discussed above). In general, the amendments to Law 38/1972 addressed the matters raised by the SCC listed above, with the exception of items relating to National Democratic Party members and the HEC announcing final election results.³⁹ Additionally, however, the new law increased the total number of members of the PA from 498 to 546.

On the same day that the new law was published, President Morsi called for HoR elections to be held. These dates were subsequently changed and a presidential decree published in the Official Gazette on February 23 determined that the election for the HoR would take place in four stages, from April 22 to June 24, 2013, with the new HoR to meet on July 2.

³⁹ Because it has not been possible to obtain a copy of the seat allocations table from the January draft, it is uncertain whether tables in the new law include revised allocations.

As noted, however, a ruling of the Administrative Court on March 6 revoked the President's call for HoR elections, pending a ruling by the SCC on whether Law 2/2013 was compatible with the constitution.

Draft Law, April 11, 2013

Before the SCC issued a ruling on Law 2/2013, the Shura Council submitted a draft of a complete new law on the HoR to the SCC on April 11. That new draft law retained the main features of Law 38/1972 with the amendments proposed in earlier draft laws, and included most of the amendments in the law gazetted on February 21 after the SCC's earlier ruling. Although there were small changes to the number of electoral districts in three governorates compared to the law gazetted in February, there were no changes to the numbers of list and individual members to be elected from each governorate. However, the new draft did not cover the following matters raised by the SCC:

- The law did not include a definition of CSOs.
- There was no statement of the maximum number of CSO and media representatives that may be present at an election committee, although Article 22 of the new law does say that they are allowed to attend so long as their presence "does not hinder the work" of the polling stations.

SCC Ruling, May 26, 2013

The SCC issued its ruling on the new draft HoR law on May 26, 2013.⁴⁰ The Court made three general points, each of which affects several articles in the draft HoR law:

- The SCC ruled that Article 229 of the constitution requiring at least half the members of the HoR to be workers or farmers applies only to the first election held after the 2012 constitution entered into force, and hence that the candidacy and seat allocation provisions in the draft HoR law relating to workers and farmers apply only to that first election.
- Similarly, the SCC ruled the mixed electoral system specified in Article 231 of the constitution, under which two-thirds of seats are elected through a proportional list system and one-third are elected through individual candidacies, applies only to the first HoR elections⁴¹ after the adoption of the constitution.
- Article 228 of the constitution provides that the existing HEC has "full supervision" over the first parliamentary elections after ratification. Thereafter, the NEC, established by Articles 208-211 of the constitution, shall assume those responsibilities.

⁴⁰ For a perceptive analysis of the SCC's ruling and of the role of the SCC, see: Zaid Al-Ali, "The Constitutional Court's mark on Egypt's elections." *The Middle East Channel*. June 6, 2013. Web.

http://mideast.foreignpolicy.com/posts/2013/06/06/the_constitutional_court_s_mark_on_egypt_s_elections.

⁴¹ The text of Article 231 of the constitution reads "the legislative elections occurring after adoption of the constitution," which some have argued refers to both the HoR and the Shura Council. However, the SCC's ruling refers only to the HoR.

The implication of these general points is that one of the tasks of a newly-elected HoR will be to draft a new law for HoR elections, and the NEC will need to be established shortly after the final results of those elections have been declared.

In addition, the SCC made a number of specific rulings about the draft law.⁴²

- Article 3: once again, the SCC decided that the definition of constituencies and the allocation of seats included in a table attached to the draft law violated the “fair representation of population and governorates” required by Article 113 of the constitution (see below for further discussion).
- Article 13:
 - Failing to ban the use of doctrinal or religious slogans or symbols in election campaigning violates Articles 5, 6, 9, 33 and 55 of the constitution
 - Allowing the HEC to set the maximum campaign expenditure limit rather than specifying that limit in the law infringes Articles 55, 76 and 228 of the constitution
 - Not specifically requiring the HEC’s decrees to be published in the Official Gazette violates Articles 162 and 223 of the constitution
 - Allowing a governor to impose what is in effect a penalty for removal of illegal campaign materials interferes with judicial authority and violates Articles 6, 55, 168 and 228 of the constitution
- Article 16: allowing the President “in exceptional conditions” to shorten the timeframes specified in the law violates the principle of election integrity and lessens the independence of the HEC and NEC, contrary to Articles 55, 132, 200, 208 and 228 of the constitution.
- Article 44: by Article 223 of the constitution, the new law should come into force on the day after it is published in the Official Gazette, not on the day of publication itself.

The SCC did not comment on two matters raised in its February ruling that were not corrected in the April draft law. First, the February ruling required that the law include a definition of CSOs. This was not done in the April draft, and the SCC’s May ruling did not address the omission (although as noted above, it did so in its ruling on Article 10 of the April draft of the LEPR). Second, one of the conditions for being a candidate for the HoR in Article 5 of the April draft law was that a person had to have “fulfilled his obligatory military service, or have been exempted from fulfilling it according to the law, unless excluded due to a final judgment, including compromising the security of the State or the public interest.” Although the reference to “the public interest” was also included in the HoR law gazetted in February, it seems to go beyond the SCC’s February ruling on the equivalent provision in the January draft amendments.

Further, although the SCC’s rulings on Articles 16 and 42, noted above, address the wording in Law 38/1972 immediately prior to the adoption of the 2012 constitution, the SCC did not comment on either matter in its February ruling. Similarly, the February ruling did not mention any of the three general

⁴² The SCC’s ruling also corrected a drafting error in Article 19, saying the reference at the end of the last paragraph should be to paragraph 7 of Article 3, not paragraph 5.

points outlined above that were included in the May ruling. It is possible that the SCC interprets its mandate under Article 177 of the constitution as an enquiry into the constitutionality of the amendments in the draft law submitted to it, without considering the constitutional compliance of any principal electoral legislation that the draft law is amending. In that respect, it may be advantageous that the draft law submitted to the SCC in April was the complete law on the HoR and not an amending law, for two reasons. First, it allowed the SCC to consider the constitutional compliance of the whole law rather than just proposed amendments. Second, Article 177 also provides that a draft law submitted to the SCC “shall not be subject to subsequent review” by the SCC under Article 175 of the constitution. Hence once the SCC as an independent and impartial judicial body rules on the constitutionality of a draft election law, that law cannot later be challenged on constitutional grounds, thus in principle adding a degree of stability to the electoral process.

Allocation of HoR Seats to Governorates⁴³

One aspect of the law on HoR that is likely to continue to prove difficult to resolve will be the allocation of seats among the governorates and the determination of the boundaries of electoral districts and constituencies, all of which must take account of the principle of “fair representation of population and governorates” required by Article 113 of the constitution. The mixed system required by Article 231 of the constitution for the first HoR elections says that two-thirds of the seats are for the proportional list system, and one-third are for the individual system. Article 3 of the April draft law on the HoR requires that these ratios be applied at the governorate level. Finally, Article 3 requires that there be 49 electoral districts for the party list system and 91 constituencies for the individual system, with each constituency electing two members.

In its February ruling, the SCC pointed to marked variations between governorates in populations per seat, with one governorate having half as many seats as another with a similar population, and two governorates having the same number of seats even though the population of one was almost seven times greater. The SCC’s May ruling pointed to similar differences, although in that ruling the SCC referred to the numbers of voters in different governorates rather than total populations. In both rulings, however, the SCC recognized it is impossible for populations per seat in each district to be exactly equal. The SCC’s May ruling said, however:

Instead, to fulfill such principle, differences between such numbers and the general average of the number of voters represented by an MP at the state level shall be reasonable. Also, district delimitation should be proportionate to the number of population at each district taking into consideration the geographical distribution thereof. Moreover, districts should not be delimited unjustly or without taking public interest into consideration.⁴⁴

⁴³ It is acknowledged that allocations could have changed in the revised HoR law submitted to the SCC in June 2013. However, it has not been possible to obtain a copy of that law so that it could be included in this analysis.

⁴⁴ The wording of the first sentence in the February judgment is the same. The next two sentences in that judgment state: “Also, district delimitation shall ensure that the number of population at each district is proportionate to the geographical distribution thereof. Moreover, districts shall not be delimited using a despotic method nor

It is not clear whether the SCC sought or was given an explanation of the reasons behind the Shura Council's proposed seat allocations or delimitations to assist the court to decide whether the proposals were "reasonable."

The SCC's focus in each ruling was on the allocation of the numbers of seats among the governorates; it did not comment on the detail on delimitation of districts for the list seats or delimitation of boundaries for individual constituency seats. Both rulings draw attention to disparities in seat allocations to governorates of similar populations, and to the same seat allocations that were made to governorates of significantly different populations.

Table (a) in Annex 1 shows the 2012 population of each governorate and the allocation of 546 seats made in the draft HoR law submitted to the SCC in April 2013. The reasons for the SCC's concern are immediately obvious (although the details of the court's argument are different since it used numbers of voters rather than total populations):

- Dakahleya and Beheira have similar populations, but have been allocated 36 and 30 seats, respectively.
- Qalioubeya, Minya, Alexandria, Gharbeya and Sohag have roughly similar populations, but the first two have 24 seats and the last three have 30 seats.
- Aswan, Demietta, Ismaileya and Luxor have similar populations but the first two have 12 seats and the others have six seats, the same as much smaller governorates.

Table (a) in Annex 1 shows large variations among the governorates in the percentage deviations in population per seat, ranging from -82.22 percent to +32.88 percent. Some large variations for the very small governorates are inevitable given that each governorate must have at least the minimal number of six seats, irrespective of its population. The *ACE Encyclopaedia* reports that permitted variations in population per seat in democratic countries range from zero to ± 30 percent.⁴⁵

Table (b) in Annex 1 shows an allocation of 588 seats⁴⁶ among governorates using a quotient and largest remainder system, with adjustments to ensure that each governorate has an even number of individual

without taking public interest into consideration." The substance appears to be the same, and differences in wording between the February and May judgments may be due to differences in translation.

⁴⁵ The ACE Electoral Knowledge Network. *The ACE Encyclopaedia: Boundary Delimitation* (2013). P. 39. Web. <http://aceproject.org/ace-en/topics/bd>

⁴⁶ The Shura Council submitted an amended HoR law to the SCC on June 23, 2013, which is reported to have increased the total number of seats in the House from 546 to 588 "reflecting the allocation of additional seats to seven provinces"; see: "Shura Council gives final approval of House electoral Law." *Al-Masry Al-Youm*. June 23, 2013. Web. <http://www.egyptindependent.com/print/1873111>. However, this new draft law was not available at the time of writing, and it is not known whether the draft law's proposed allocations correspond to those in Table (b) in Annex 1 or when (or if) the SCC's ruling might be issued.

seats as required by Article 3 of the draft HoR law. This allocation shows that more governorates have population deviations within about ± 20 percent of the average population per seat. The result is an allocation of seats to nine groups of governorates corresponding to their populations:

Population of Governorate	No. seats in Governorate	Governorate/s
over 8 million	66	Cairo
about 7 million	48	Giza
about 6 million	42	Sharkeya
5-6 million	36	Dakahleya, Beheira
4-5 million	30	Qalioubeya, Minya, Alexandria, Gharbeya, Sohag
3-4 million	24	Assiut, Menoufeya
2-3 million	18	Kafr El Sheikh, Fayoum, Qena, Beni Suef
1-2 million	12	Aswan, Demietta, Ismaileya, Luxor
under 1 million	6	Port Said, Suez, North Sainai, Matrouh, Red Sea, New Valley, South Sainai

It is acknowledged that the last two groups show higher percentage deviations from the average population per seat. That is, however, a consequence of ensuring that each governorate has a minimum number of seats, irrespective of population. The result is that the 11 governorates in these two groups have just over 9 percent of Egypt's total population, but under Table (b) they have 90 of the total of 588 seats, or 15.3 percent.

Delimitation of Boundaries of Electoral Districts and Constituencies

Once the list and individual seats have been allocated to governorates, the boundaries of the electoral districts for the list seats and the constituencies for the individual seats have to be determined. This is straightforward for those governorates with the minimum number of list and individual seats, since in both cases the whole governorate will form one constituency. It is more difficult where a governorate has to be divided into districts and constituencies, particularly given the lack of any specific delimitation criteria in the draft HoR law and that "fair representation of the population" is the only guiding principle in the 2012 constitution, as interpreted by the SCC.⁴⁷

The draft HoR law gazetted in February included tables showing the electoral districts for the list seats allocated to each governorate, and the number of constituencies for individual seats in each governorate. The number of members per electoral district ranged from four to 12. The tables also showed

⁴⁷ Other possible criteria include consideration of communities of interest, topographical and geographical factors, prohibiting the boundaries of electoral districts and constituencies from crossing the boundaries of the governorates, permitted variations in populations, and whether constituency boundaries need to be contained within electoral district boundaries. The law should also specify delimitation procedures, including those that ensure a transparent process.

the “administrative components” of the electoral districts and constituencies.⁴⁸ No information was provided in the law on the numbers of the population or voters per seat in the electoral districts or in the constituencies, thus making it difficult without further research to judge whether the district and constituency boundaries complied with the “fair representation” principle.

Conclusions

The *ACE Encyclopedia* identifies five “generally accepted” guiding principles for boundary delimitation:⁴⁹

- Representativeness – district boundaries should coincide with communities of interest as much as possible
- Equality of voting strength – districts should be relatively equal in population
- Independent, impartial boundary authority – (a) those drawing the boundaries should be independent and impartial, and the boundaries should not be subject to modification or veto by the government or the legislature, or (b) at a minimum, the delimitation procedures should be clearly defined in legislation
- Transparency – the delimitation process should be as transparent as possible, with the methodology and guidelines clearly established and publicized in advance
- Non-discrimination – boundaries should not discriminate against any particular minority group

On the basis of information available at the time of writing, it seems Egypt’s delimitation process does not satisfy any of these criteria. While the role of the SCC does provide a safeguard against malapportionment and gerrymandering, that role is affected by the amount of information the court has or can obtain on the population distributions and other factors affecting the decisions about the proposed boundaries. Although Article 208 of the 2012 constitution provides that the NEC must give its opinion on constituency demarcation, and the draft laws submitted to the SCC in February and April record that the opinion of the HEC had been sought, the lack of clear and specific statutory criteria and the lack of a transparent process for boundary delimitation can give rise to perceptions that the decisions have been influenced by improper considerations.

Many Egyptians allege that members of the political Islamist-dominated Shura Council designed the districts for the PA election to suit their political preferences. For example, a local news article gave the example of Maadi, a neighborhood in Cairo that is known for its anti-Islamist political leanings. It is said that Shura Council members strategically merged Maadi with neighborhoods that could be counted on to vote for political Islamists, so as to dilute the voting power of non-Islamists in Maadi.⁵⁰

⁴⁸ However, the entry for Alexandria in the table on page 15 of the publication of the law in the Official Gazette shows two constituencies for the individual seats, whereas the table on page 20 shows three.

⁴⁹ The ACE Electoral Knowledge Network. *The ACE Encyclopaedia: Boundary Delimitation* (2013). P. 11-13. Web. <http://aceproject.org/ace-en/topics/bd>

⁵⁰ Omar Halawa. “The elections law conundrum is proving harmful for Islamists.” *Egypt Independent*. March 25, 2013. Web. <http://www.egyptindependent.com/news/elections-law-conundrum-proving-harmful-islamists>.

More generally, the Shura Council was accused of distributing seats in a manner that favors citizens in rural Egypt at the expense citizens in its major cities. Since the Freedom and Justice Party allied to the Muslim Brotherhood has greater support in the countryside, many suspected that the political Islamist-dominated Shura Council was trying to give greater voting power to the countryside.⁵¹

Because the delimitation of electoral district and constituency boundaries can have significant political consequences – for example, on the threshold of representation in the proportional list seats – it is essential for public and political confidence in the integrity of the electoral process that these deficiencies be remedied. The law should also ensure that there are periodic reviews of seat allocations and of electoral district and constituency boundaries to take account of changes in the distribution of the population, although the detail of those reviews will depend on the electoral system that is used following the first HoR elections after the adoption of the constitution.

6. Changes to the Electoral Framework after July 3, 2013

Following major demonstrations led by the Tamarod Campaign across Egypt starting in late June, the Armed Forces overthrew President Morsi on July 3, 2013. In a statement issued the same day,⁵² General Sisi, announced that the 2012 constitution had been suspended “temporarily” and that the President of the SCC, Mansour, would be sworn in as Egypt’s Interim President. The statement contained a map for the future, including the following:

- The Interim President will run the affairs of the country during the transitional period until the election of a new President, and will have the authority to issue constitutional declarations.
- A committee will be formed “that comprises all spectra and expertise” to review proposed amendments to the 2012 constitution.
- The SCC was called upon “to approve the law of the elections of the House of Representatives and start the procedures of preparation for these elections.”

On July 5, 2103, Interim President Mansour issued a constitutional declaration dissolving the Shura Council. While the Shura Council had been declared unconstitutional in the SCC ruling issued on June 3, 2013, that ruling was to become effective only after a new HoR was elected. Since the PA was dissolved in June 2012 following a SCC decision that the electoral system under which it was elected was unconstitutional and a new HoR had not been elected, the Shura Council continued to act as the sole legislative body even after the SCC decision. Thus, the effect of Interim President Mansour’s constitution declaration was to remove the one remaining source of legislative power.

⁵¹ Nathan J. Brown and Zaid Al-Ali. *Egypt’s Constitution Swings into Action*. March 28, 2013. Web.

<http://egyptelections.carnegieendowment.org/2013/03/28/egypt%E2%80%99s-constitution-swings-into-action>

⁵² State Information Service. *Statement of the General Command of the Armed Forces delivered by Colonel General Abdel Fattah El-Sisi*. July 4, 2013. Web.

<http://www.sis.gov.eg/En/Templates/Articles/tmpArticleNews.aspx?ArtID=68793#>

Interim President Mansour issued a second constitutional declaration on July 8, 2013, to specify the basic constitutional framework for the transitional period. Political parties and activist members of the Tamarod Campaign complained that they were not consulted about the declaration and were taken by surprise.⁵³ Article 24, paragraph 1 of the second declaration provides that the Interim President has legislative authority, with that authority being transferred to the HoR once elected. Although that Article includes a requirement to “consult” the Cabinet, the Interim President holds full formal legislative and executive authority with very little in terms of meaningful accountability mechanisms.

Draft Constitutional Changes

Article 28 of the second constitutional declaration requires the Interim President form a small technical “committee of experts” within 15 days of the issuance of the declaration, consisting of six judges and four constitutional law professors, to propose amendments to the 2012 constitution within 30 days of its formation. There was no requirement for any public consultation for this committee’s work. The expert committee was formed on July 20 and began its work the next day. While proposals were received from the public,⁵⁴ relatively little public education about the process occurred and the committee did its work in private.

The expert committee’s proposed amendments to the 2012 constitution were released on August 25.⁵⁵ The main changes to the electoral provisions are as follows:

- The Preamble no longer contains an explicit reference to a democratic system of governance.
- References to the “principles” of the political system in Article 6 have been replaced by a provision that “the political system is based on a multiparty system, peaceful transfer of power, and separation between authorities, within the basic principles of the Egyptian society stated in this Constitution.”
- The name of the House of Representatives reverts to “the People’s Assembly,” which will consist of at least 450 members who will be directly elected. The transitional requirement for the first elections that 50 percent of the seats be held by workers and farmers has been removed.
- The amendments will require the previous “fair representation” principle for boundary delimitation to apply to voters as well as to the population and to governorates.

⁵³ Zaid Al-Ali. “Another Egyptian Constitutional Declaration.” *Foreign Policy*. July 9, 2013. Web.

http://mideast.foreignpolicy.com/posts/2013/07/09/another_egyptian_constitutional_declaration.

⁵⁴ The Rapporteur of the expert committee has been reported as saying that the committee received “21 proposed amendments, most notably from the National Council for Women, the Medical Syndicate, the Federation of Egyptian Industries and the Council for the Defense of Media and Press,” plus “390 suggestions by email and 55 proposals from a number of concerned citizens”; see: State Information Service. *Presidential Advisor: Volume of amendments determines possibility of writing new constitution*. July 25, 2013. Web.

<http://www.sis.gov.eg/En/Templates/Articles/tmpArticleNews.aspx?ArtID=69087>.

⁵⁵ For an analysis of the proposals prior to their official release, see: Zaid Al-Ali. “Egypt’s constitutional morass.” *Foreign Policy*. August 24, 2013. Web.

http://mideast.foreignpolicy.com/posts/2013/08/23/egypt_s_constitutional_morass.

- The Shura Council has been abolished, and all employees and assets of the Shura will be transferred to the PA.
- Following adoption of the constitutional amendments, the first elections for the PA and for local councils will be conducted using the majoritarian system.
- The process for a presidential election must now begin 120 days before the end of a presidential term, and the result of the election must be announced at least 30 days before the end of that term.
- The parents of a presidential candidate must not have held any citizenship other than Egyptian.
- The President's financial declarations are published in the Official Gazette rather than being submitted to the legislature.
- The requirement for draft election laws to be submitted to the SCC for a ruling on their constitutionality has been removed.
- The NEC has been replaced by a National Election Authority (NEA), which is no longer listed among the independent bodies and supervisory institutions. However, Article 177 explicitly provides that the NEA is independent. The NEA's responsibilities are the same as those of the NEC. Members of the NEA are the same as the NEC, but they are now appointed by a presidential decree after the approval of the Supreme Judicial Council and the relevant judicial councils. The requirement for half the membership to be renewed every three years has been removed. The NEA President is to be full time.
- The current HEC and HPEC will respectively supervise the first PA and presidential elections following adoption of the constitutional changes.
- Appeals from NEA decisions will now be decided by the State Council rather than the Supreme Administrative Court.
- The eight-day deadline for announcing the results of referendums and elections appears to have been removed, along with the provision that the final results of referendums and presidential elections cannot be challenged.
- Procedures for amending the constitution have been changed, so that following a vote by the PA to approve a proposed amendment, a further vote must be held within 60 days at which the amendment must be approved by a two-thirds majority. If it is approved, a referendum must then be held within 30 days.
- If the changes to the constitution are adopted, the procedures for the first PA elections must then commence not earlier than 30 days or later than 60 days following the declaration of the final result of the referendum.
- The procedures for the first presidential election must commence within one week of the first meeting of the PA.
- The 10-year prohibition on political activity and candidacy by National Democratic Party leaders is removed.
- The SCC is composed of a President and a "sufficient number" of deputies rather than a specified number as specified in the 2012 constitution.
- The most senior deputy of the President of the SCC will act as Interim President if there is a vacancy in that office before the first presidential election.

While there are some significant proposed amendments relating to the electoral system, the 2012 constitution and its 236 articles remain largely intact. There are already more public debates about some of these proposals for constitutional reform. For example, Egypt's Social Democratic Party has already made it clear that it opposes the proposal to return to the old election system in Egypt,⁵⁶ and concerns have been expressed about the effects on women's representation of a return to a first-past-the-post electoral system for the PA.⁵⁷

Consideration of Proposed Amendments by the Committee of Fifty

In a departure from the 2011 process, Article 29 of the Interim President's second constitutional declaration requires that the expert committee's proposals be considered by a second committee of 50 members "representing all categories of society and demographic diversity."⁵⁸ The President announced nomination criteria on August 7, and the organizations concerned were asked to nominate their candidates while attaching their CVs, and to state the nature of the candidate's affiliation to the respective body and reasons for nominating the candidate.⁵⁹ Nominations were to be received from the following entities and include at least 10 candidates in total representing women and youth:

- Al Azhar: Three candidates (at least one representing youth in Al Azhar)
- Egyptian churches: Three candidates
- Four candidates representing youth, not exceeding the age of 40 (at least one from Tamarod, one from the youth of January 25, and two from the professionals who were active on January 25 or June 30 (doctors, lawyers, journalists etc...)⁶⁰
- The four major political forces should nominate their candidates as follows:⁶¹
 - Two representing Islamic forces, through consensus among them
 - Two representing liberal forces, through consensus among them
 - One representing leftists, through consensus among them

⁵⁶ "Egypt's social democrats reject individual voting system." *Ahram Online*. September 4, 2013. Web. <http://english.ahram.org.eg/NewsContent/1/64/80755/Egypt/Politics-/It-is-important-to-add-that-PM-and-vive-PM-are-fro.aspx>.

⁵⁷ "Egyptian women concerned over proposed electoral system." *World Bulletin*. September 2, 2013. Web. <http://www.worldbulletin.net/index.php?aType=haber&ArticleID=116752&q=electoral+system>.

⁵⁸ Article 29 states the categories and diversities to be represented as including "especially parties, intellectuals, workers, peasants, members of trade unions and qualitative unions, national councils, Al Azhar, churches, the Armed Forces, the Police and public figures including ten members from the youth and women at least. Each entity nominates its representatives and the cabinet nominates public figures."

⁵⁹ It is worth noting there was no official decree outlining the entities and the required number of nominees from each body. This was a verbal statement made by the President and was followed by direct communication between the President and the bodies identified in the statement.

⁶⁰ It is not clear how nominations were sought for the "active" professionals, since no group or organization was specified in the President's statement.

⁶¹ It has been reported that neither the Muslim Brotherhood nor the Freedom and Justice Party were included; see: "We were not invited to participate in the Committee of 50, says Brotherhood." *Al-Masry Al-Youm*. September 2, 2013. Web. <http://www.egyptindependent.com/print/2083731>.

- One representing national forces, through consensus among them
- Cultural Sector:
 - One representing the Writers' Federation
 - One representing technical syndicates
 - One representing the applied arts
 - One representing the Supreme Council of Culture
- Farmers and Workers:
 - Two representing farmers' syndicates and federations, through consensus among them
 - Two representing workers' syndicates and federations, through consensus among them
- Professional Syndicates:
 - One representing the lawyers' syndicate
 - One representing the doctors' syndicate
 - One representing the engineers' syndicate
 - One representing the journalists' syndicate
- Other Federations:
 - One representing the chambers of tourism
 - One representing the chambers of industry
 - One representing the chambers of commerce
 - One representing Egypt's Student Union
 - One representing the General Federation for civil society organizations
- National Councils:
 - One representing the National Council for Women
 - One representing the National Council for Childhood and Motherhood
 - One representing the National Council for Human Rights
 - One representing the Supreme Council of Universities
 - One representing the persons with disabilities council, provided that he/she has a disability
- One representing the Armed Forces
- One representing the police authority
- The Egyptian Cabinet was able to nominate 10 candidates representing public figures, provided that the nominations take into consideration geographical representation, unless this has been secured in previous nominations.

On September 1, 2013, Presidential Decree 570/2013 was issued providing names and affiliations of the members of the Committee of Fifty, including five women.⁶² The committee's first meeting was held on

⁶² For an analysis of the composition of the Committee of Fifty, see: Yussef Auf. "Egypt's Constitutional Committees." *Atlantic Council*. September 5, 2013. Web. <http://www.atlanticcouncil.org/blogs/egyptsource/egypt-s-constitutional-committees>; Muhammed Mansour. "Members of constitutional committee of 50 announced." *Al-Masry Al-Youm*. September 1, 2013. Web. <http://www.egyptindependent.com/news/members-constitutional-committee-50-announced>; "Who's Who: Nominees for Egypt's 50-member constitution committee." *Ahram Online*. September 1, 2013. Web. <http://english.ahram.org.eg/NewsContent/1/0/80519/Egypt/0/Whos-Who-Nominees-for-Egypt-s-member-constitution-c.aspx>; "Egypt names key constitutional panel," *World Bulletin*, September 2, 2013. Web. <http://www.worldbulletin.net/index.php?aType=haber&ArticleID=116666&q=constitution+panel>; Dahlia Kholaif. "Battle intensifies over Egypt's constitution," *Al Jazeera*. September 3, 2013. Web.

September 8. Amr Moussa, a presidential candidate in 2012 and former Secretary General of the Arab League, was elected chair.

The Committee of Fifty is expected to prepare final drafts of the constitutional amendments proposed within only 60 days of receiving the expert committee's proposals. That short timeframe is unlikely to allow deep and extensive analysis and deliberation. During that period, Article 29 requires the committee to submit its draft proposals to "societal dialogue." Article 29 of the second constitutional declaration provides that the committee itself will be responsible for determining the procedures for "guaranteeing" that dialogue.

Possible Timetable of Electoral Events

Once the 50-member committee has completed its work, the proposed constitutional amendments must then be put to a referendum within 30 days, supervised by the HEC (second constitutional declaration, Article 30).⁶³ Within 15 days from the approval of the amendments,⁶⁴ the Interim President must call for elections for the HoR (which will be known as the People's Assembly if the expert committee's draft amendments are accepted) to be held not earlier than one month but not later than two months (second constitutional declaration, Article 30). A call for a presidential election must then be issued within a week of the first meeting of the new House (second constitutional declaration, Article 30).

Incorporating the electoral time periods included in the second constitutional declaration, and the 2012 constitution with the proposed amendments outlined above into these timelines, a possible timeframe of electoral events is as follows:

Stage	Indicative Date/s
Expert committee formed	July 20, 2013 (began work July 21)
Expert committee reporting deadline (30 days after formation)	August 19, 2013 (actual reporting date: August 25)
Committee of Fifty formed	September 1, 2013
Committee of Fifty's first meeting	September 8, 2013

<http://www.aljazeera.com/indepth/features/2013/09/201392125842364641.html>; Zeinab El-Guindy, "Secular political forces satisfied with Egypt's constitution-amending committee," *Ahram Online*. September 2, 2013. Web. <http://english.ahram.org.eg/NewsContent/1/0/80639/Egypt/0/Secular-political-forces-satisfied-with-Egypt-con.aspx>; "The 50 members Committee: Who is Who," *Egyptian Chronicles*. September 2, 2013. Web. <http://egyptianchronicles.blogspot.co.nz/2013/09/the-50-members-committee-who-is-who.html>.

⁶³ An advisor to the Interim President has said that a new constitution would be written if the number of amended articles was "considerably high." See: State Information Service. *Presidential Advisor: Volume of amendments determines possibility of writing new constitution*. July 25, 2013. Web. <http://www.sis.gov.eg/En/Templates/Articles/tmpArticleNews.aspx?ArtID=69087>.

⁶⁴ The second constitutional declaration is silent on the consequences if the voters reject the proposed constitutional changes in the referendum. Such a rejection may be unlikely, but presumably a further constitutional declaration would be issued setting out the procedures that would then be followed.

Stage	Indicative Date/s
Committee of Fifty deadline (60 days after receiving the expert committee's proposals ⁶⁵)	December 5, 2013 (assuming proposals are received on the same day as the Committee of Fifty first met)
Referendum to approve the Committee of Fifty's proposed amendments (30 days after receipt)	January 4, 2014
Final referendum result declared	January 12, 2014 (assume eight days after polling day as per Article 21 in the 2012 constitution)
Call for People's Assembly elections (15 days after final referendum result declared)	January 27, 2014
People's Assembly elections held by (not less than 30 days and not more than 60 days after call)	February 26-March 28, 2014
Final People's Assembly election results declared	March 6-April 5, 2014 (assume eight days after polling day as per Article 21 in the 2012 constitution)
People's Assembly convenes	March 16-April 15, 2014 (assume within 10 days after result declared, as per Article 229 in the 2012 constitution)
Call for presidential election (within a week of first meeting of the People's Assembly)	March 23-April 22, 2014
Presidential election held	May 22-June 21, 2014 (assume 60 days after call)
Final presidential election result declared	May 30-June 29, 2014 (assume eight days after polling day, as per Article 21 in the 2012 constitution)

If previous timetables in post-revolutionary Egypt are any guide, this indicative timetable will also prove to be unrealistic.⁶⁶ The late reporting of the expert committee has already caused some slippage, and it

⁶⁵ Article 20 of the internal regulations adopted by the Committee of Fifty says that the 60-day period does not include official holidays – about four days for Eid, plus October 6. It was not clear at the time of writing whether the 60-day period will include Fridays and Saturdays. The indicative dates in the table assume those days are not included in the 60-day period.

⁶⁶ The timetable outlined on July 18, 2013 by an advisor to the Interim President now seems rather optimistic: “the constitution will be wrapped up within four months after which the Interim President will call for holding parliamentary elections within two months or more,” followed by a presidential election, “thus bringing the time frame of transition to nearly nine months.” See:

<http://www.sis.gov.eg/En/Templates/Articles/tmpArticleNews.aspx?ArtID=68995>. See also: Mokhtar Awad. Carnegie Endowment. “Egypt's New Road Map.” *Guide to Egypt's Transition*, July 12, 2013. Web. <http://egyptelections.carnegieendowment.org/2013/07/12/egypt%e2%80%99s-new-road-map>.

would not be surprising if the Committee of Fifty also took longer than its allotted time. There is also considerable room for further delays in the indicative electoral timetable outlined above, particularly if the parliamentary elections must be held in phases to enable judicial supervision; the three phases used for the PA elections in 2011-2012 lasted from November 28 to January 3. Similarly, if a run-off election is needed for the presidency as in 2012, which would add a further three weeks to the timetable. In any event, adoption of the expert committee's recommended return to a first-past-the-post electoral system for the PA could result in legal challenges to the constitutionality of PA elections, since the timetable outlined does not allow sufficient time to determine boundaries of single-member districts in a way that satisfies the "fair representation" principle and garners broad political and public support.⁶⁷

7. Conclusions: Egypt's Ongoing Transition to Democracy

Although there have been three elections and two referendums since former President Mubarak's removal from office in February 2011 that were more or less acceptable in the circumstances, Egypt's recent history has yet to inspire confidence that the country is firmly on track to a sustainable and healthy democracy. It was to be expected there would be difficulties in Egypt's road to a more democratic political system, at least in part due to suppressed political forces that would take some time to get used to their new political opportunities and accompanying new power. However, the pace of change and the temptation to adopt a "winner takes all" approach seems to have mitigated a real willingness to embrace the kinds of consultation, compromise and mutual trust that are part of a democratic culture.

Building trust in democratic processes on all sides is likely to be the greatest challenge facing Egypt's nascent democracy. Any confidence that democratic principles and processes can be implemented in Egypt is now likely to be extremely fragile as a result of events since mid-2012, and particularly since July 2013. The road map issued by the SCAF and the Interim President requires a referendum on constitutional amendments to be followed by parliamentary and presidential elections, all within tight and fragile timelines and all of which are likely to be hotly contested. There is little time to promote the consensus that is needed to increase the likelihood of more stable political and electoral processes in the short and medium term.

In addition to key events called for in the road map, a new law on the exercise of political rights will need to be issued before the constitutional referendum, and a new law on the People's Assembly will also need to be issued once a new constitution is approved. The PA law will require decisions to be taken on the allocation of seats to governorates, which must then be followed by the determination of the boundaries of the seats within each governorate. Both these steps vitally affect the interests of political parties. There will need to be decisions on the use of religious slogans and symbols in election campaigns. Although it is not included in the July 2013 constitutional declaration, it can be expected the SCC will again have a role in deciding on challenges to the constitutionality of the electoral laws.

⁶⁷ Annex 2 shows an allocation of a notional 500 seats among governorates, based on a population quota and the highest remainder method, including the number of voters per seat in each governorate.

If the past is any guide, these changes will take place without any meaningful attempt at effective consensus-building or participatory, consultative and transparent processes that can help to promote wider public and political acceptance. The tight deadlines proposed presumably arose out of a commendable wish to return Egypt to real civilian rule in the shortest possible time. If that timetable proves to be too short to allow democratic political processes to begin to work and bear fruit, Egypt's political transformation may be prolonged yet again.

8. Annex 1: Seat allocations for the House of Representatives, Proportional Representation Electoral System

Governorate	Population*	(a) Seat allocation in April 2013 law, 546 seats					(b) Possible alternative seat allocation, 588 seats				
		list seats	individual seats	total seats	population per seat	% deviation	list seats	individual seats	total seats	population per seat	% deviation
Cairo	8,762,503	44	22	66	132,765	-10.94	44	22	66	132,765	-4.09
Giza	6,979,675	28	14	42	166,183	11.48	32	16	48	145,410	5.04
Sharkeya	6,010,430	24	12	36	166,956	11.99	28	14	42	143,105	3.38
Dakahleya	5,559,698	24	12	36	154,436	3.60	24	12	36	154,436	11.56
Beheira	5,327,554	20	10	30	177,585	19.12	24	12	36	147,988	6.91
Qalioubeya	4,754,044	16	8	24	198,085	32.88	20	10	30	158,468	14.48
Minya	4,700,358	16	8	24	195,848	31.37	20	10	30	156,679	13.18
Alexandria	4,508,685	20	10	30	150,290	0.81	20	10	30	150,290	8.57
Gharbeya	4,438,420	20	10	30	147,947	-0.76	20	10	30	147,947	6.88
Sohag	4,210,651	20	10	30	140,355	- 5.85	20	10	30	140,355	1.39
Assiut	3,888,308	16	8	24	162,013	8.68	16	8	24	162,013	17.04
Menoufeya	3,656,839	16	8	24	152,368	2.21	16	8	24	152,368	10.07
Kafr El Sheikh	2,940,030	12	6	18	163,335	9.56	12	6	18	163,335	17.99
Fayoum	2,881,792	12	6	18	160,100	7.39	12	6	18	160,100	15.66
Qena	2,800,373	12	6	18	155,576	4.36	12	6	18	155,576	12.39
Beni Suef	2,596,633	12	6	18	144,257	-3.23	12	6	18	144,257	4.21
Aswan	1,322,315	8	4	12	110,193	-26.08	8	4	12	110,193	-20.40
Demietta	1,240,184	8	4	12	103,349	-30.67	8	4	12	103,349	-25.34
Ismaileya	1,076,586	4	2	6	179,431	20.36	8	4	12	89,716	-35.19
Luxor	1,064,123	4	2	6	177,354	18.97	8	4	12	88,677	-35.94
Port Said	628,440	4	2	6	104,740	-29.74	4	2	6	104,740	-24.34
Suez	576,279	4	2	6	96,047	-35.57	4	2	6	96,047	-30.62
North Sainai	395,271	4	2	6	65,879	-55.81	4	2	6	65,879	-52.41
Matrouh	388,608	4	2	6	64,768	-56.55	4	2	6	64,768	-53.21
Red Sea	320,322	4	2	6	53,387	-64.19	4	2	6	53,387	-61.43
New Valley	208,391	4	2	6	34,732	-76.70	4	2	6	34,732	-74.91
South Sainai	159,029	4	2	6	26,505	-82.22	4	2	6	26,505	-80.85

Governorate	Population*	(a) Seat allocation in April 2013 law, 546 seats				(b) Possible alternative seat allocation, 588 seats			
Totals	81,395,541	364	182	546	149,076	392	196	588	138,428

*Source: CAPMAS Statistical Yearbook, September 2012, Population, p. 8.

http://www.capmas.gov.eg/pdf/Electronic%20Static%20Book_eng/population/untitled1/pop.aspx

9. Annex 2: Indicative Allocation of 500 Seats to Governorates, First-Past-the-Post Electoral System

Governorate	Population*	Total Seats	Average Population Per Seat	% Deviation	% Population	% Seats	Diff	No. Voters [#]	Average no. Voters Per Seat	% Deviation	% Voters	Difference From % Seats
Cairo	8,762,503	54	162,269	- 0.32	10.8	10.8	0.0	6,580,476	121,861	18.7	12.8	-2.1
Giza	6,979,675	43	162,318	- 0.29	8.6	8.6	0.0	4,383,699	101,946	- 0.7	8.5	0.0
Sharkeya	6,010,430	37	162,444	- 0.21	7.4	7.4	0.0	3,565,351	96,361	- 6.1	6.9	0.4
Dakahleya	5,559,698	34	163,521	0.45	6.8	6.8	0.0	3,719,758	109,405	6.6	7.2	-0.4
Beheira	5,327,554	33	161,441	- 0.83	6.5	6.6	-0.1	3,276,930	99,301	- 3.3	6.4	0.2
Qalioubeya	4,754,044	29	163,933	0.70	5.8	5.8	0.0	2,639,808	91,028	- 11.3	5.1	0.7
Minya	4,700,358	29	162,081	- 0.44	5.8	5.8	0.0	2,718,947	93,757	- 8.7	5.3	0.5
Alexandria	4,508,685	28	161,024	- 1.09	5.5	5.6	-0.1	3,347,770	119,563	16.5	6.5	-1.0
Gharbeya	4,438,420	27	164,386	0.98	5.5	5.4	0.1	2,948,656	109,209	6.4	5.7	-0.3
Sohag	4,210,651	26	161,948	- 0.52	5.2	5.2	0.0	2,393,672	92,064	- 10.3	4.7	0.5
Assiut	3,888,308	24	162,013	- 0.48	4.8	4.8	0.0	2,127,688	88,654	- 13.6	4.1	0.6
Menoufeya	3,656,839	22	166,220	2.11	4.5	4.4	0.1	2,236,898	101,677	- 1.0	4.4	0.1
Kafr El Sheikh	2,940,030	18	163,335	0.33	3.6	3.6	0.0	1,886,212	104,790	2.1	3.7	-0.1
Fayoum	2,881,792	18	160,100	- 1.65	3.5	3.6	-0.1	1,579,694	87,761	- 14.5	3.1	0.5
Qena	2,800,373	17	164,728	1.19	3.4	3.4	0.0	1,629,713	95,865	- 6.6	3.2	0.3
Beni Suef	2,596,633	16	162,290	- 0.31	3.2	3.2	0.0	1,454,278	90,892	- 11.5	2.8	0.4
Aswan	1,322,315	8	165,289	1.53	1.6	1.6	0.0	872,740	109,093	6.3	1.7	-0.1
Demietta	1,240,184	8	155,023	- 4.77	1.5	1.6	-0.1	868,773	108,597	5.8	1.7	-0.2
Ismaileya	1,076,586	7	153,798	- 5.52	1.3	1.4	-0.1	713,963	101,995	- 0.7	1.4	-0.1

Luxor	1,064,123	6	177,354	8.95	1.3	1.2	0.1	685,009	114,168	11.2	1.3	0.0
Port Said	628,440	4	157,110	- 3.49	0.8	0.8	0.0	445,322	111,331	8.4	0.9	-0.1
Suez	576,279	4	144,070	- 11.50	0.7	0.8	-0.1	387,522	96,881	- 5.6	0.8	0.0
North Sainai	395,271	2	197,636	21.40	0.5	0.4	0.1	215,618	107,809	5.0	0.4	0.1
Matrouh	388,608	2	194,304	19.36	0.5	0.4	0.1	212,495	106,248	3.5	0.4	0.1
Red Sea	320,322	2	160,161	- 1.62	0.4	0.4	0.0	232,388	116,194	13.2	0.5	-0.1
New Valley	208,391	1	208,391	28.01	0.3	0.2	0.1	143,584	143,584	39.9	0.3	0.0
South Sainai	159,029	1	159,029	- 2.31	0.2	0.2	0.0	65,407	65,407	- 36.3	0.1	0.1
Totals	81,395,541	500	162,791					51,332,371	102,665			

*Source: CAPMAS Statistical Yearbook, September 2012, Population, p. 8.

[http://www.capmas.gov.eg/pdf/Electronic%20Static%20Book_eng/population/untitled1/pop.aspx;](http://www.capmas.gov.eg/pdf/Electronic%20Static%20Book_eng/population/untitled1/pop.aspx)

#Source: Ossama Kamel, "Analysis of House of Representatives & Practice of Political Rights laws in Egypt," IFES paper, May 2013, Table 1.