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Carter Center Closes Egypt Office; Calls for Stronger Protections for Democratic Rights and Freedoms

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The Carter Center announced today that it has closed its field office in Egypt after nearly three years and that it will not deploy an observation mission to assess Egypt's parliamentary elections anticipated later this year. This decision reflects The Carter Center's assessment that the political environment is deeply polarized and that political space has narrowed for Egyptian political parties, civil society, and the media. As a result, the upcoming elections are unlikely to advance a genuine democratic transition in Egypt. Both Egyptian civil society and international organizations face an increasingly restrictive environment that hinders their ability to conduct credible election observation.

"The current environment in Egypt is not conducive to genuine democratic elections and civic participation," said former U.S. President Jimmy Carter. "I hope that Egyptian authorities will reverse recent steps that limit the rights of association and assembly and restrict operations of Egyptian civil society groups."

As Egypt moves toward parliamentary elections later this year, The Carter Center urges Egyptian authorities to take steps to ensure full protection for Egyptians' core democratic rights, including the right to participate in political affairs and the fundamental freedoms of association, assembly, and expression. Further, the Center recommends the adoption of a new law regulating civil society, which is consistent with the protections enshrined in Egypt's new constitution and its international obligations to ensure freedom of association. Finally, both Egyptian nonpartisan citizen observer groups and interested international organizations should be enabled to conduct operations without restrictions that limit their access, effectiveness, and credibility.

Narrowing political space and polarization

The current political environment in Egypt is marked by a severe narrowing of political space and deep polarization. There has been a crackdown on dissidents, opposition groups, and critical journalists, together with heightened restrictions on core freedoms of expression, assembly, and association. Particularly troubling are the mass arrests of Muslim Brotherhood supporters; the passage in late 2013 of the so-called protest law[1], which places broad restrictions on the freedoms of assembly and expression; and the recent decision to tighten the application of the restrictive Mubarak-era NGO law[2] regulating civil society. Taken together, the restrictions on democratic freedoms mean that citizens and political parties face extreme limitations on debate and participation and that political campaigning could be extremely difficult - and possibly dangerous - for critics of the regime.

The NGO law and restrictions on civil society organizations. Despite recent consultations between civil society groups and the government about reforming the legal framework for civil society, it now appears that the strict law imposed during the Mubarak era (the NGO law) will be enforced more

vigorously than in the past. Until recently, civil society and human rights groups expected that the prevailing NGO law would not be enforced, but would instead be replaced by a new, more progressive law that adheres to the recently adopted constitution. The existing law gives a wide range of powers to the Egyptian government's Ministry of Social Solidarity to regulate the establishment and internal affairs of civil society organizations, while imposing limits on their advocacy activities and access to resources. These restrictions undermine key rights enshrined in the new constitution, approved earlier this year, which grants all citizens the right to form peaceful, nongovernmental associations and the right to pursue their activities free of administrative intervention.[3]

Particularly troubling is the potential impact of the NGO law's renewed imposition on rights-monitoring organizations. In the past, many Egyptian rights organizations have operated as law firms or civil companies because they were unable to obtain registration as NGOs. However, recent announcements by the Ministry of Social Solidarity, which establish a narrow window in which all domestic and international civil society organizations must register, indicate that this critical loophole is being closed. As a result, many respected NGOs working on human rights and legal reform now face closure and possible criminal prosecution of their staff, unless approved for registration. Worse still, the Ministry of Social Solidarity has proposed a new and even more restrictive draft law, which would open the door to additional arbitrary limitations on freedom of association, further inhibiting the operations of important civil society organizations.[4]

The Carter Center in Egypt

The Carter Center opened an office in Egypt in 2011 following a popular uprising that led to the ouster of President Hosni Mubarak. Given the context of the post-Mubarak transition, the Center decided to establish a presence in Egypt to try to support a democratic transition, even though conditions facing observation organizations were unclear. Between late 2011 and early 2014, the Center organized large observation missions for a series of elections (including the three rounds of elections for the People's Assembly in 2011-2012, the two rounds for the Shura Council in 2012, and the presidential election and run-off in 2012), as well as several small expert missions to assess the legal framework and political conditions surrounding other key electoral events (the constitutional referendum in January 2014 and the presidential elections in May 2014). The Carter Center's goals throughout were to demonstrate the interest of the international community and to assess whether the political and electoral processes helped advance a genuine democratic transition with broad political participation.

In the current context, it is unclear whether the Center and other international observation organizations would now be required to register as NGOs in order to conduct operations. Likewise, it is not clear whether electoral authorities would accredit the Center and ensure meaningful access to observe the upcoming elections. In light of these uncertainties, and in the political context of narrowed space and polarization, the Center has decided to close its office and end operations in Egypt.

While The Carter Center will not be present for the coming elections, it hopes that conditions for nonpartisan election observation will improve in the future. During its three years of operations in Egypt, the Center found that the role of election observation, its core objectives and methods, and the conditions required to conduct its work were often misunderstood. The following sections provide an overview of these issues, followed by several recommendations for steps that should be taken to foster more transparent political and electoral processes.

Election observation: objectives, methods, and requisite conditions

Objectives of election observation. Whether conducted by citizen groups or by international organizations, election observation is intended to support efforts to strengthen democratic governance. The main goal of election observation is to provide an independent assessment of the quality and integrity of electoral processes by evaluating whether they are conducted in accordance with the domestic constitutional and legal framework, and consistent with core international obligations outlined in international human rights treaties. To this end, observation missions evaluate the degree to which obligations are met, particularly whether the constitutional and legal framework ensures protections for democratic rights, including the right to vote (with universal and equal suffrage), to participate in political affairs, to be elected, and the fundamental freedoms of assembly, association, expression, and movement. While focusing on these core elements of the electoral process, election observation missions recognize that elections are embedded in broader, ongoing political processes that also must be assessed. Where warranted, election observation missions can reinforce public confidence and lend credibility to the process.

Scope and methods of election observation. The Carter Center is among more than 40 intergovernmental and nongovernmental organizations that have endorsed the 2005 Declaration of Principles for International Election Observation, which provides guidelines for the scope of missions and the conditions necessary to credibly and effectively conduct their work credibly and effectively.[5] As outlined in the Declaration of Principles, international observation missions should seek to evaluate a wide range of issues throughout the entire electoral process. Comprehensive missions normally begin far in advance of elections - generally at least six to nine months before election day - with experts analyzing the constitution, the legal framework, and other election laws and regulations. In addition, teams of long-term observers are deployed to assess voter education, voter registration, campaign finance, political campaigning, and other pre-election processes. On election day, larger teams of short-term observers witness the casting and counting of ballots. In the weeks following the election, observers assess the tabulation process, electoral dispute-resolution processes and the publication of final results. Comprehensive missions produce reports that provide a thorough assessment of the process as a whole.

In addition to outlining the scope of comprehensive missions, the Declaration of Principles also makes clear that smaller, specialized missions that are "limited" in scope, e.g., focusing only on specific parts of the electoral process, may also be employed. However, it is important for such "limited" missions to make clear in public statements that they cannot draw conclusions about the overall election process because of the limited scope of their activities.

Conditions for credible observation. As noted above, the Declaration of Principles summarizes the key conditions that are necessary for observation groups to conduct their work credibly and effectively. Most importantly, these include the ability for observers to be deployed and travel around the country without undue restrictions; the ability to have meaningful access to important electoral information, key personnel, and critical parts of the process (including polling stations and results/tabulation centers, etc.); and the ability to issue public reports on key findings throughout the electoral process.

In most cases, The Carter Center seeks a framework agreement with host country authorities to specify the rights and responsibilities of observers. Often this is in the form of a memorandum of understanding or other documentation provided by host government authorities. The official documentation should delineate the responsibilities of the observation mission, including to respect

national laws and authorities and not to interfere in the process, while affirming the rights of observers and the conditions needed for them to conduct credible observation.

It is important to note that a decision to deploy an observation mission does not mean that the observation organization has a positive assessment of the likelihood of genuine and credible elections. While some international observer groups may decide to deploy missions in contexts where credible elections appear unlikely, other organizations may decide not to deploy in these same contexts, sometimes out of a concern that their presence might be misinterpreted as signaling confidence in the quality and legitimacy of the process.

Regardless of the political context, it is important that observation missions are assured meaningful access to the electoral process. When the conditions necessary for meaningful and credible election observation are not present, the value and likely impact of election observation are reduced, especially if conditions do not improve, or indeed worsen, over time.

Observation conditions in Egypt. In spite of a general welcome from Egyptian officials and assurances that The Carter Center's observation activities could go forward unhindered, written approval proved exceedingly difficult to obtain. The Center filed required documentation for registration with the Ministry of Foreign Affairs but never received formal registration. Indeed, it has been difficult for many international nongovernmental organizations working on issues of democracy and human rights to obtain formal registration in Egypt. The lack of formal registration and the uncertainty about the legal basis for observation missions resulted in serious administrative difficulties, including the inability to obtain anything but short-term tourist visas for its international staff members and observers. It also constrained various other operations, including opening and maintaining a local bank account and employing national staff.

Lacking formal registration, the Center's operational mandate rested on accreditation provided by a series of different election commissions over the course of the last three years.

Instead of a permanent, independent election commission, Egypt's election laws provide for different, temporary election commissions to supervise different elections (e.g., parliamentary, presidential, constitutional referendums). The commissions, which are comprised of senior judges, separately determined their approach to regulating the presence and activities of election observers. Unfortunately, most of the commissions did not take steps to ensure the minimal conditions necessary for effective and credible observation. Instead, observation missions faced serious restrictions that hindered their efforts. Most importantly, these included delayed accreditation,[6] a prohibition on observers' public reports until after the conclusion of the electoral process,[7] restrictions on the amount of time observers could stay inside polling stations, and denial of access to places where the national level aggregation of votes was conducted.

In spite of these constraints, the Center felt it was important to be present in Egypt to try to support its democratic transition. Given the various restrictions, The Carter Center's observation missions in Egypt were organized only as "limited missions" and were described as such in the Center's public statements and reports.

Recommendations

With the parliamentary elections expected late this year, The Carter Center urges Egyptian authorities to take action to ensure protection for core democratic rights enshrined in the new constitution - in

particular, Egyptians' fundamental freedoms of assembly, association, and expression. Although the Center will not be present for the coming elections, it urges election authorities to create an environment that is conducive to nonpartisan election observation, especially for Egyptian citizen observers. In this regard, unimpeded access to all stages of the electoral process should be facilitated for both citizen and international observers.

To the Government of Egypt:

End the crackdown on dissidents, journalists, and opposition groups: The government should end the crackdown on dissident groups, activists, journalists and others opposed to the regime, including the Muslim Brotherhood and its supporters. The protest law should be lifted, and opposition parties should be able to participate openly and peacefully in political affairs.

Ensure freedom of association for Egyptian civil society groups: The Carter Center urges Egyptian authorities to take steps to ensure adequate protection for the right of freedom of association, including citizens' right to form nongovernmental foundations and associations as provided for in the new constitution and as obligated under international treaty commitments. The recently announced deadline for registration should be rescinded, and the Mubarak-era NGO law and the more restrictive recent draft, which violate Egyptian citizens' constitutional right to form associations, should be replaced quickly with a law that is consistent with the constitution.

Facilitate registration of international civil society organizations: The Carter Center recommends that Egyptian authorities clarify the legal basis required for international civil society organizations that wish to conduct election observation. If registration as an NGO is deemed necessary, official registration should be facilitated so that operations can proceed in a timely manner.

To the Election Authorities:

Accredit Egyptian and international election observers well in advance of elections: In order to create an environment in which nonpartisan election observation by both citizen and international civil society organizations can proceed effectively and credibly, Egyptian electoral authorities should ensure that observer groups receive accreditation well in advance of elections, generally at least several months ahead of election day, so that there is adequate time to recruit, train, and deploy election observers, and so observers can assess the entire electoral process.

Encourage and enable Egyptian citizen election observation: Given their special roles and rights as citizens, Egyptian citizen observation groups should be encouraged and enabled to conduct their work. To this end, the electoral authorities should consider the following steps to facilitate their work: (1) allowing individual domestic observers to submit applications for accreditation both online or by paper application to expand accreditation opportunities;^[8] (2) decentralizing the accreditation process for individual observers by allowing interested organizations and individuals to obtain accreditation at the District-General Committee level, or at the governorate level; (3) designating dedicated liaisons for citizen observer groups to ensure accurate understanding of regulations; and (4) re-opening accreditation for the upcoming parliamentary elections to give an opportunity for new groups of observers to participate.^[9]

Guarantee observers meaningful access to all stages of the electoral process: In order to provide a comprehensive assessment, observers should have meaningful access to all stages of the electoral process (including voter registration, the campaign period, post-election counting and tabulation of results, and dispute-resolution processes) and to key electoral personnel, without unreasonable

restrictions. In addition, observers should have the ability to move around the country as required to conduct their work. In recent elections, Egyptian authorities have imposed limitations on how long election observers could stay inside a polling place and have denied access to national level aggregation centers. Such restrictions undermine the principle of transparency and are contrary to the recognized conditions necessary for effective and credible observation. If there are space limitations and concerns about overcrowding during final aggregation, election officials could consider rotating access to the process, or asking observers to appoint a single representative to observe the process.

Ensure freedom to issue public statements throughout the entire electoral process: In recent elections, Egyptian authorities have issued regulations that appeared to prohibit election observers from issuing any public reports or statements prior to the official announcement of results. Such restrictions are contrary to the Declaration of Principles and undermine core activities of election observers. A central aim of election observers is to release public statements highlighting key aspects of the electoral process and, where appropriate, to offer recommendations regarding areas for improvement.

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1. Law No.107/2013 regulating public assembly (the "protest law") places broad restrictions on the freedom of assembly and contains specific limits on election-related meetings that inhibit the freedom of political parties and candidates to organize and campaign freely.
 2. Law No.84/2002 on regulating associations and civil institutions.
 3. Article 75 of the 2014 constitution grants citizens the right to form peaceful, nongovernmental associations whose internal structures are democratic upon notification and the right to pursue their activities free of administrative intervention. Article 75: "Associations or foundations, or their boards of directors, can be dissolved only by court judgment, and only the establishment or continuation of secret, military or paramilitary organizations is prohibited."
 4. The new draft law includes restrictive and ambiguous criteria to define "civil work" and funding. In addition, it imposes strong penalties for violation. Following the release of the draft law, 29 NGOs signed a statement criticizing the draft law and asked for it to be thrown out.
 5. The Declaration of Principles for International Election Observation was endorsed by 20 election observation organizations at a ceremony held at the UN in October 2005. Since that time, more than 20 additional organizations have added their endorsement. See <http://electionstandards.cartercenter.org/concepts/collaborative-efforts-towards-standards/endorsing-organizations/>.
 6. For the 2012 Presidential elections, the Center did not receive accreditation for its observers until after voter registration was complete and most of the campaign period was over.
 7. According to Article 12 of Decree No. 5, issued by the Presidential Election Commission (PEC), it was prohibited to make any comments or reveal any information or statistics regarding the electoral process or announce results before they were officially announced by the PEC.
 8. The introduction of an online application for accreditation in 2013 was a welcome development. However, many individuals and civil society groups lack the technological resources to take advantage of it.
 9. On 26 October 2013, the High Election Commission issued decree 39/2013 accrediting Egyptian and international civil society organizations to observe the electoral events, including the upcoming parliamentary elections. A new accreditation period is needed to allow additional groups to participate.

Translations

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