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“No” to mixed system for People’s Assembly elections
“Yes” to proportional closed lists
CIHRS expresses reservations about the People’s Assembly law

Memo to the Cabinet Legislative Committee

The Cairo Institute for Human Rights Studies (CIHRS) reviewed the proposed amendments to the People’s Assembly law (Law 38/1972), put before public opinion by the Supreme Council of the Armed Forces (SCAF) before their final approval.

CIHRS has strong reservations about the biases and philosophy underlying the amendments, particularly regarding the electoral system they establish. Nevertheless, CIHRS recognizes that there are positive aspects of the proposed amendments that should be preserved, although they are of limited significance when compared to the disadvantages of the electoral system adopted by the amendments, which, if maintained, will be highly detrimental to the democratic transition. This phase requires the construction of an effective, dynamic political system, one that is based on and fosters party pluralism.

Before elaborating on the problems with the proposed electoral system, several preliminary observations about the amendments are as follows:

1. It should be counted in favor of the bill that it largely meets the demand for full judicial supervision over the entire electoral process, transferring the authorities given to the Ministries of Interior and Justice in the current law to the High Elections Commission and its subsidiary judicial committees. However, this laudable move is incompatible with maintaining representatives of the Interior Ministry on the committees charged with reviewing candidacy applications, adjudicating candidates’ status, and ruling on objections about candidates or their status (Articles 8 and 9 in the bill).
2. The bill takes an important step to remedy the legal loopholes used by the Mubarak regime and its security apparatus to prevent the implementation of judicial rulings issued by the State Council in favor of opposition candidates. Article 9 (*bis*) of the amendments gives the Administrative Courts jurisdiction over appeals of judicial committees’ decisions and states that no ruling issued by the

Administrative Court may be suspended except by order of the High Administrative Court on appeal.

3. In keeping with its past stances, CIHRS maintains its reservations on the perpetuation of the worker and farmer quota, despite the fact that it has already been included in the constitutional amendments without any responsible debate about the issue. As a consequence, the quota was enshrined in the constitutional declaration issued by the SCAF without a popular referendum or social debate of any kind. The continued application of the worker and farmer quota maintains the same philosophy adopted by the single-party system for decades, depriving these social groups of their right to independent association to represent their interests while providing formal representation within a purely cosmetic popular framework, through which the authoritarian regime and its party controlled various political and social forces. It is worth noting that the quota has been maintained even as the freedom to form independent trade unions has been delayed and legal obstacles to the formation of new parties have been put in place.

4. CIHRS notes that the amendments abolished the women's quota created by the Mubarak regime shortly before the 2010 elections, which was designed specifically to ensure a virtual total monopoly for the dissolved National Democratic Party over the seats allocated to women. At the same time, however, the proposed amendments do not include alternative mechanisms to foster women's political participation and to end their marginalization.

Problems with the proposed electoral system

The amendments adopt a mixed electoral system that combines conditional proportional lists with an individual candidate system, but in practice it privileges the latter, giving it two-thirds of parliamentary seats, with the remaining one-third elected through party lists or independent lists unaffiliated with any political party.

In this context the CIHRS notes the following:

1. Privileging the individual system is liable to reproduce and cement the flaws of previous elections, which marginalized party action and political programs in favor of narrow personal loyalties and wealth and which permitted electoral favors and bribes, exploitation of religion and religious slogans, and violence and thuggery in electoral battles. It is also likely to produce the same traditional elites that competed for seats in representative institutions in the previous elections under the Mubarak regime; namely representatives of religious movements and the remnants of the dissolved NDP.

Moreover, privileging the individual system will preserve the deformed structure of the Egyptian parliament, in which an MP is not a representative of the nation who uses parliamentary tools to legislate and exercise oversight of government performance, but rather an official whose success is measured by the services s/he offers to residents of his/her district. At best, the parliament will become a body similar to popular and local committees, which would effectively undermine the principal functions of the parliament in advancing the country.

2. The mixed system adopted by the amendments is of dubious constitutionality, particularly considering constitutional requirements of equality and equal opportunity between candidates on party lists and those on independent lists. While the amendments require party lists to receive a minimum number of votes from the national electorate as a whole to qualify for a seat in the parliament, they only require independent lists to win a minimum number of votes from the electorate in their own constituencies.

If the SCAF insists on conducting elections using this mixed system, CIHRS urges it to at least use unconditional proportional lists, with no minimum threshold of votes required, as this condition will in practice make it difficult for nascent parties to compete. These same parties have already suffered a painful setback with the recent amendments to the political parties' law, and they will continue to feel its effects for some time.

3. The allocation of only one-third of seats for party and independent lists does not permit full advantage to be taken of the proportional list system, which, if broadly applied, would allow for better party representation inside parliament. Moreover, apportioning districts in a way that allows lists to contain a large number of candidates would better foster the inclusion and representation of women, minorities, and marginalized groups.

Toward a system of unconditional, closed proportional lists

For the coming elections, CIHRS favors an electoral system of unconditional, closed proportional lists. This system is the most appropriate for emerging democracies and guarantees all political parties and independent blocs a share of parliamentary seats commensurate with the number of votes they receive. As such, the system minimizes the broad invalidation of votes found in the individual candidate system or proportional list systems that make representation conditional on a minimum threshold of votes among the general electorate. CIHRS believes that unconditional proportional lists boost the value of the individual vote and, in turn, help address the lack of voter turnout, which is often linked to the sense among voters that election outcomes are a foregone

conclusion or that their vote will not improve the chances or representation of a particular political party or bloc that does not enjoy a large majority.

In addition, choosing unconditional proportional lists over the individual system will reduce the sizable burdens placed on the state by runoff races, which involve more financial expenditures, overburden the security establishment, and hinder the operation of the justice system due to judges' close involvement with election supervision.

CIHRS notes that if the system of unconditional proportional lists is not adopted, district apportionment must ensure that each list constituency is large enough to support 8-10 parliamentary seats, and thus a reasonable number of candidates. This apportionment will encourage parties and independent blocs to include women and minorities on top slots on their lists.

Finally, CIHRS reiterates that the unconditional proportional list system is the most appropriate for a society that still lacks strong and cohesive political parties. This system will strengthen opportunities to participate in governance by numerous forces that can win a plurality of votes.

CIHRS understands that some criticisms of this system are valid, particularly that it will create a fragmented party system, allowing small parties to force concessions from larger parties when forming a coalition government. However, these fears are not relevant to Egypt, which for at least three decades has had neither large nor small parties, but rather a single-party system, in which all parties but the dominant party were artificial, cardboard entities or suffered crippling handicaps due to the political parties law and its various amendments (Law 40/1970) and thanks to an entire era of emergency law, exceptional measures, and the suppression of political and party life and all forms of social association.