



Strasbourg, 27 February 2012

**CDL(2012)004**  
Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**CONSTITUTIONAL DEVELOPMENTS  
IN EGYPT IN 2011**

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**Excellencies,**

**Ladies and Gentlemen,**

**Let me extend** a warm welcome to all of you who are attending this Session. It gives me a great pleasure to attend such a wonderful constitutional forum in Venice, especially after I had been elected as a Secretary General of the Union of Arab Constitutional Courts and Councils in its General Assembly in Beirut, Lebanon, held on 24 -26 October 2011.

**In order to** enhance the role played by UACCC in the field of constitutionality control; it undertakes to activate its aims by several practical steps as follows:

- Publishing periodical magazine that include researches, legal constitutional studies and the important judgments and decisions issued by the members of the constitutional courts and councils.
- Exchanging judgments and decisions rendered by the institutions assuming the constitutionality control.
- Convening conferences and seminars to discuss researches and constitutional studies.
- Extending co-operation with similar institutions throughout the world especially with Venice Commission according to the Co-operation Agreement signed between Venice Commission and the (UACCC) in Cairo on 24th of June 2008. In this regard, the Union has endeavored to do its best to:
  - Activate contributions to the CODICES database.
  - Develop, modernize and update the site of UACCC ( [www.uaccc.org](http://www.uaccc.org) ), in order to contain all the necessary and useful information needed either by the members of the Union or by other organizations and researchers as decided on the last abovementioned session of the General Assembly of the UACCC.
  - Exchange ideas, experiences and information in the field of constitutionality control.
  - Encourage researches and legal studies concerning the constitutionality control.
  - Organize and develop co-operation between UACCC and similar organizations of the other states.

**In general,** the arabic current constitutions provide for the duty of the state to protect all human rights and freedoms that prevail in the modern world. No one can deny that protection of human rights and freedoms presents the subject of today and the future.

**One can notice** that all of the arabic constitutions-without any exception thereof-give a paramount attention to protecting the exercise of democracy as a natural and direct way to bring about achievement and protection of all human rights and freedoms.

**The common aspects** of such exercise include the main features of modern democracy mentioned in the arabic constitutions as follows:

- The right of every individual to express his opinion and to publicize it verbally or in writing or by other means.
- The freedom of belief and the freedom of practice of religious rites.
- The freedom of criticism.
- The freedom of the press, printing, publication and mass media.
- The freedom of scientific research and literary, artistic and cultural invention.

- The right of citizens to peaceable and unarmed private assembly without the need for prior notice.
- The right of public meetings, processions and gatherings within the limits of law.
- The right of citizens to form societies within the limits prescribed by both the constitution and law, taking into consideration that forming political parties falls within such right, as the political system of many arab states is a multi-party one.
- The right to create syndicates and unions on a democratic basis.
- The rights of citizens to vote, nominate and express their opinion in referendums.
- The right of individuals to address public authorities in writing.

**Violations of human rights** every where will never come to an end, nor do they ever stop the struggle which aims at protecting these rights. Constitutional provisions have nothing to do in this concern unless there is an effective system of constitutionality control over laws, decree-laws and regulations, in order to give the human rights and freedoms, by exercising strict scrutiny, real effect.

**In fact**, each of the constitutional court and councils; members of the Arab Union (UACCC) which have the exclusive right of constitutionality review plays the major role in this arena, consequently; presents an effective guarantee of constitutionalism which is deemed the safe heaven of the protection of human rights and the rule of law.

**Nevertheless**, in all other arab states; either members of the Union of the Arab Constitutional Courts and Councils or otherwise, their constitutions as abovementioned contain and admit the protection of human rights and freedoms, which is the leading way to achieve democracy and to highlight the rule of law.

**Accordingly**, the Constitutional Courts and Councils; members of the Union, endeavored to preserve the effective protection of unalienable human rights.

#### **Concerning the current conditions and events in Egypt:**

**As you all know**, radical changes have been experienced by the Arab world in some countries as a result of revolts by the people who aspire to freedom, better living conditions and equality. Among those countries it was Egypt. Therefore, I would like to talk about the current constitutional situation in my country Egypt, being a vice president of the Supreme Constitutional Court of Egypt.

**In early 2011**, following the Tunisian Revolution, there was a revolution in Egypt starting on 25th January 2011. Mass protest compelled the president of the Republic, the leader of the National Democratic Party, to resign on 11<sup>th</sup> February 2011, ending his fifth term in office. For 18 days, a popular peaceful uprising spread across Egypt and ultimately forced Mubarak to cede power to the military. In the wake of Mubarak's resignation, the Supreme Council of the Armed Forces ( SCAF ) made up entirely of military officers who enjoyed leading positions under Mubarak has exercised executive authority directly and via an interim cabinet. The ( SCAF ) dissolved the Parliament , suspended the Constitution of Egypt, and promised free, open parliamentary and presidential elections before the end of June 2012.

**On 19th of March 2011**, the SCAF oversaw referendum that approved amendments to Egypt's constitution, issued a constitutional declaration, and has also issued new laws on the formation of political parties and conduct of upcoming parliamentary elections. The amended constitution lays out a transition framework in which the elected People's

Assembly and Shura Council will, in conjunction with the SCAF, select members for a 100-person constituent assembly to draft a new constitution.

**Over the long term**, most experts believe that Egypt should succeed in moving toward a peaceful and orderly transition in the short term. Since fairly early in the so-called Arab Spring, Egypt's transition is a daunting challenge that presents few good options. But if over time, the most powerful political force in Egypt remains a roomful of unelected officials, they will have planted the seeds for future unrest, and Egyptians will have missed a historic opportunity.

**On November 2011**, Dr. Kamal Elganzouri was appointed as a prime minister following the return of demonstrations all over Egypt and especially in Tahrir Square demanding National Salvation Government.

**Concerning the elections** of members of People's Assembly, the first round of new elections started on 28<sup>th</sup> of November 2011 and had been already finished, the second round has been held on 14<sup>th</sup> of December 2011, the third shall be started on 3<sup>rd</sup> of January 2012, and the new assembly shall convene on 17<sup>th</sup> of March 2012.

**Now**, we are about to complete the parliamentary elections followed by presidential elections to be held on June 2012, and before the end of the same month, Egypt shall have a new president in order to reach a new system protects the rights and freedoms we looking for.

**Egypt now** is committed to achieve human rights and democracy that I think was hoped for in all cities and Tahrir Square, which means that all people of different views will be respected. So, all countries will have to work with the new Egypt which has a real commitment to what an Egyptian democracy should look like.

**We do think**, from long experience around the world, there are certain pillars to democracy: free press, free speech, independent judiciary, protection of minority rights, and protection of human rights. All that was in the air in Tahrir Square. So, we hope that any one who runs for elections, and certainly anyone who's elected and joins the parliament or joins the government, will be committed to making Egypt work and be open to all Egyptians no matter who it might be.

**In the absence** of an elected president, the SCAF had exercised executive power in the fluid and chaotic post-revolutionary environment that has characterized Egypt since February 2011.

**Moreover**, many analysts note that throughout this delicate period, events and dead lines are subject to change. This process has really been fraught with uncertainty from the very beginning and decisions are often made on a day-to-day basis.

**The elections are staggered**, in part, to allow judges to supervise polling stations nationwide. The management of the elections is supervised by the Higher Electoral Committee led by the president of the Court of Appeal. The status of foreign election observers is unclear, though the SCAF invited the Carter Center to observe the elections.

**Altogether**, 6591 candidates are vying for individual seats and 590 for the party list seats in the People's Assembly (Deputies). In the Shura Council (Senators), there are 2036 candidates for the individual seats and 272 candidates for the party list seats. Party lists shall have two third of the seats and the individual candidates shall have one third and the total seats are required to have 50% workers and farmers.

**Significant questions** remain about how authorities will allocate seats based on the results. It is unclear if and on what basis seats may be allocated to parties that receive votes but fail to reach the vote quota determined for each constituency. A new law is expected to be issued in order to solve this problem.

**Specifically**, authorities must decide how seats will be allocated among parties that do not reach the quota relative to those that reach the quota and receive a seat, and have so called "remainder" votes. The method used can have powerful implications for the performance of smaller parties in the election. As illustrated recently in Tunisia where in some districts, smaller parties received seats even though their vote totals were well below the quota.

**Egypt's Transition Timeline**

<b>Egypt's Transition Timeline from Military to Civilian Rule</b>					
<b>Phases</b>	<b>Type</b>	<b>stages</b>	<b>from</b>	<b>to</b>	<b>governorate</b>
Phase (1)	People's Assembly Elections (Deputies)	First stage	28 <sup>th</sup> Nov. 2011	5 <sup>th</sup> Dec. 2011	9
		Second stage	14 <sup>th</sup> Dec. 2011	21 <sup>st</sup> Dec. 2011	9
		Third stage	3 <sup>rd</sup> Jan. 2012	10 <sup>th</sup> Jan. 2012	9
Phase (2)	Shura Council (Senators)	First stage	29 <sup>th</sup> Jan. 2012	5 <sup>th</sup> Feb. 2012	9
		Second stage	14 <sup>th</sup> Feb. 2012	21 <sup>st</sup> Feb. 2012	9
		Third stage	4 <sup>th</sup> Mar. 2012	11 <sup>th</sup> Mar. 2012	9
Phase (3)	Presidential Elections	By the end of June 2012			

**In the summer of 2011**, amidst a new round of street protests by revolutionary activities, the SCAF granted some concessions to secular liberal groups. It reshuffled the cabinet and asked experts to draft a set of constitutional principles to serve as guidelines before a constitution is actually drafted. Negotiations between different parties aimed at reaching an agreement on a set of core principles before the process begins in order to ensure compatibility in opinion between the spectra of the various parties.

**In early November**, Deputy Prime Minister Ali Alselmi presented a new draft of principles which would, if adopted and adhered to, vastly increase the power of the military at the expense of political parties. The draft included:

- No parliamentary oversights of military's defense budget. Article 9 of the draft states that the military's budget will appear as a single number in the state's budget;
- A provision that would require parliamentarians to obtain the military's approval prior to issuing any laws affecting the military;
- Authority for the military to refer the new constitution to the Supreme Constitutional Court if it is thought to violate any of the constitutional declarations issued by the military;
- A provision that would allow the military to appoint 80 of the 100 members of the planned constitutional assembly;

- Authority to appoint a new constitutional assembly if the first one could not agree on a constitution within six months;

**Many groups** have strongly objected to this draft document and have threatened to launch mass protests if it is not withdrawn. Deputy Prime Minister Alsalmi was in consultation with political representatives from a number of groups, some of whom signaled provisional support if agreed amendments were issued.

**On Friday, 18<sup>th</sup>** of November 2011, thousands of protesters gathered in Tahrir Square in a protest dubbed the "Friday of One Demand" to rally against the military's interference in the constitutional-writing process. Consequently, the government has resigned and the recent cabinet has been nominated.

#### **The main party coalitions are as follows:**

- **The Democratic Alliance** consists of the FJP ( Fair and Justice Party), the political arm of Muslims Brotherhood led by president Muhammad Mursy; the Karama Party ( socialist), led by president candidate Hamdeen Sabahi; and the New Ghad(Tomorrow) Party, led by former presidential candidate Ayman Nour. This Alliance expected to lead the result of elections.
- **The Islamic Alliance** consists of the Nour Party (the political arm of Salafists, Classic Muslims), the Asala Party. The Islamic Alliance is expected to win the second most seats available on the party list system.
- **The Egyptian Bloc** consists of liberal and leftist parties by the Free Egyptians Party, led by Naguib Sawiris. It also includes the Egyptian Social Democratic Party (Liberal), and the Tagammu Party (socialist).
- **The Revolution Continues** consists of Socialist Popular Alliance Party, the Egyptian Social Party, Egypt Freedom, Equality and Development, the Egyptian Current and the Revolution Youth Coalition. Some of these parties were originally a part of the Egyptian bloc but they separated to form their own list.
- **The New Wafd;** Egypt's oldest political party and is led by businessman Sayyid Albadawi.

#### **Constitution-making**

**Constitution-making**, at its best, is a process of national dialogue and self-reflection, one that results not only in a ratified document, but a constitution that is nationally owned and enjoys the support and legitimacy of the people. International experience over the past 25 years demonstrates that for this to happen, three principles of constitution-making should be observed:

**1. Inclusivity:** All components of society should be included in the constitutional discussion. Representatives of the various stakeholders should, wherever possible, have a seat at the table so that each can say it had a hand in the negotiation and drafting of the document and each can feel safe and secure that it is a valued component of the new nation.

**2. Participation:** The people should be given an opportunity to directly express their needs and aspirations in a forum that is conducive to civil discourse, and which is overseen by officials genuinely committed to incorporating those views into the final document. Direct public

participation, in particular civic education combined with public consultations, ensures that the constitution comes from the people, and that it more closely reflects their will.

**3. Transparency:** The constitution-making process should be conducted in an open and transparent manner so that the people are free from the fears of hidden political agendas and confident that their voices will be heard.

**Egyptians** are anxiously waiting to see how their aspirations will be realized in the weeks after the historic popular uprisings. While no component of Egyptian society – governance, politics, security, civil society, and economy -- is likely to be spared scrutiny, special attention will necessarily be paid to the constitution.

**Calls for a new constitution** can already be heard from all quarters. A modest constitutional review (to revise the electoral process and decrease the powers of the president) is already underway in Egypt, with more substantive reforms of Egypt's system of governance expected after the elections.

**A truly transformative constitution-making** process, however, can do much more than change the system of government. Egypt has an opportunity to not only rebuild its states, but to reach national consensus on the core values and fundamental principles that will strengthen its nation.

**The 63-article provisional constitution** was proclaimed to operate as a working constitution in the current political transitional period following the revolution, until a new one is drafted and approved.

**The new provisional constitution** have included the most recent amendments publicly approved in a referendum, provisional articles defining the powers of the executive and judicial branches as well as institute laws to govern the presidential and parliamentary election processes.

**It has paved** the way for parliamentary and presidential elections. It directly stipulated that the newly elected parliament shall form a new constitutional drafting committee to write a new constitution.

**The provisional constitution establishes** Egypt as a "Democratic State", deriving its sovereignty from the people, and as part of the Arab World. It proclaims the system of government as a multi-party semi-presidential system within the framework of the basic principles and components of the Egyptian society.

**The Constitution** establishes party plurality as the foundation of the political system, and so allows the formation of different political parties, however political parties are not allowed to be established based on any discriminatory basis such as religion, race or sex.

**According to the said constitution;** the individual freedom is a natural right and regards all citizens as equals. It guarantees a set of freedoms including: The "right to protect the private life of citizens, freedom of belief and the freedom of practicing religious rights, freedom of expression, freedom of Press and other publications, freedom of peaceful and unarmed private assembly, without the need for prior notice and universal suffrage, as well as the right to form civil societies.

**The executive branch** is made up of the President, the Prime Minister, the Cabinet of Ministers and the Local Administration. The President appoints the Prime Minister from the party winning the majority of seats in parliament. However the President has the power to relieve the Prime Minister from office without the parliament's approval and may also remove the cabinet of ministers but after the consultations of the prime minister. The President serves for a four years term with a limit of two terms.

**A candidate is eligible** for office after meeting the following qualifications:

- The nominee must be an Egyptian citizen of at least 40 years of age;
- Have never held another citizenship, and must not be married to a foreigner. Both of the nominee's parents must be Egyptian citizens, and have never held foreign citizenship.
- The nominee must not be under a suspension of political and civic rights. (Article 26);
- Article 27 defines the different tracks for nomination which candidates may choose in presidential elections:
  - Nominees must win the endorsement of 30 elected members of Parliament or;
  - Nominees must win the endorsement of 30,000 registered voters from 15 governorates with at least 1000 endorsements from each of those governorates;
  - Parties with at least one elected seat in parliament may nominate one of their members in presidential elections.

**As for legislative branch**, according to the constitution, the parliament is made up of two chambers: The People's Assembly (Deputies), and the Shura Council (Senators). The parliament will assume its legislative powers from the military council after its elections.

**Regarding judicial branch**, according to the constitution, the Judiciary is an independent body and is vested with powers to oversee the practices of both the executive and legislative branches. Judges are independent and can not be taken out of office.

**Last but not least**, it is very important to refer to an important fact; democracy needs a sound framework, this is the country's constitution, which provides for human rights, the state's democratic institutions and their interrelation. Constitutional review varies from one country to another and this is a positive element, each country has historic and cultural background and deals with its own problems accordingly.