

ELECTION REPORT ☆

The 2014 Constitutional Drafting Assembly Elections in Libya

Final Report

LIBYA

THE
CARTER CENTER



The 2014 Constitutional Drafting Assembly Elections in Libya

Final Report

THE
CARTER CENTER



One Copenhill
453 Freedom Parkway
Atlanta, GA 30307
(404) 420-5100

www.cartercenter.org

Contents

Executive Summary	3	Candidates, Parties, and Campaigns	21
The Carter Center and the		Political Lustration	22
Constitutional Drafting Assembly Elections	3	Campaign Environment	23
Pre-election Developments	4	Campaign Finance	25
Polling and Postelection Developments	6	The Media	26
Security	6	Civil Society	27
Conclusions	7	Participation of Women	27
The Carter Center in Libya	8	Participation of Marginalized Groups	28
Historical and Political Background	9	Electoral Dispute Resolution	29
The Monarchy and the		Election Day	31
<i>Jamahiriyya</i> : 1951–2011	9	Out-of-Country Voting	32
The Democratic Transition: 2011–Present	10	Tabulation	33
Electoral Institutions and the		Postelection Developments	36
Framework for the Constitutional Drafting		Conclusions and Recommendations	37
Assembly Elections	12	Appendix A: Acknowledgments	42
Legal Framework	12	Appendix B: Terms and Abbreviations	43
Electoral System	13	Appendix C: Carter Center Statements	44
Election Management	15	Appendix D: Seat Allocation	48
Pre-election Developments	17	Appendix E: Results	52
Voter Registration	17		
Voter Education	19		

| Executive Summary

The elections for Libya's Constitutional Drafting Assembly (CDA) were soundly administered but failed to achieve the desired inclusiveness to have a truly representative body. Despite the achievements of the High National Election Commission (HNEC) in making the polls accessible to the vast majority of the Libyan population, 13 seats of the 60-member assembly remain unelected, including five of the six seats for Libya's Amazigh, Touareg, and Tebu communities as well as one of the six seats reserved for women. The elections took place amid lingering security concerns as frustrations with the General National Congress (GNC) and the pace of the country's political transition were mounting. Voter registration and subsequent voter turnout for the polls fell short of expectations that had been created following the GNC 2012 election.

Libya's emerging political institutions failed to address the growing apathy of the public, the increasing irrelevance of the institutions themselves within Libya's political life, and the concerns of the Amazigh and Tebu communities prior to election day.

While the Amazigh and Tebu were not formally excluded from participation, the lack of a political agreement regarding what would constitute meaningful participation in the Constitutional Drafting Assembly—and the subsequent boycott of the two communities—currently means that they will be without representation until a political formula is devised that formally brings them into the country's political life.

Although work remains to be done in order to fill the remaining seats in the assembly, the elections clearly identified areas where further political dialogue is needed to ensure that all Libyans are able to participate in the country's political transition, can contribute to the shaping of the future state, and have shared ownership of the fundamental building blocks of the country's emerging state structures. The GNC should urgently engage the affected communities and general public to find an acceptable solution to filling the remaining 13 seats.

The Carter Center and the Constitutional Drafting Assembly Elections

Following an invitation from the High National Election Commission, The Carter Center deployed a team of six experts to Libya to assess the elections for a 60-member constituent assembly, or the Constitutional Drafting Assembly, the body charged with drafting a new Libyan constitution according to Libya's interim constitution. The Carter Center team visited Libya in December to learn about the candidate registration process and other key preparations and returned in mid-January to conduct an expert mission focused on key election administration issues.

In light of security considerations, which restricted the size of the team and prevented deployment outside of Tripoli, the Center's expert mission was limited in nature and did not offer a

comprehensive assessment of the electoral process and election-day proceedings. The focus of the expert assessment was on the legal framework, election administration, technical preparations, general political environment, and resolution of electoral disputes.

Pre-election Developments

The Constitutional Drafting Assembly elections were organized pursuant to the Constitutional Declaration as amended by the General National Congress on April 9, 2013; Law 17 of 2013 (the election law); Law 8 of 2013 (on the establishment of the High National Election Commission); and regulations passed by the HNEC board of commissioners. The commission, which was led by the board, oversaw 17 electoral committee offices throughout the country and administered the elections. Despite a challenging security situation, the commission managed to deliver all election materials on time and to provide thorough training to election committee office and polling-station staff. In terms of the administration of the elections, The Carter Center team found that HNEC staff performed their responsibilities with a high level of professionalism and dedication.

While the legal framework provided an acceptable basis for administering the elections, in some areas it fell short of fully meeting Libya's international obligations for democratic elections. Of particular concern were the lack of equal suffrage due to large differences in population across electoral districts, limitations on candidacy rights, and the voters' right to appeal. In addition, the use of two systems with different stipulations for seat allocation for women and ethnic populations (referred to in the law as "cultural components") created confusion among stakeholders.

In passing new election legislation, the legislature should be sure that essential aspects of the process are clearly and explicitly stated in the law. In particular, the rationale for boundary delimitation and seat allocation should be clarified. While the future electoral system will depend on the decisions of the Constitutional Drafting Assembly, it is recommended that the assembly weigh the political interests of different groups and historical

sensitivities on one hand and uphold Libya's international obligations regarding equal suffrage on the other. Additionally, pre- and postrevolution legislation is not aligned with international obligations for freedom of expression, assembly, and association.

Despite notable efforts on the part of the HNEC, a lack of voter education was evident at every stage of the election process. The Carter Center noted that many Libyans seemed unfamiliar with basic facts about the process, such as the voting procedures for seats reserved for women and the Amazigh, Tuareg, and Tebu communities. To deepen voters' understanding of the electoral process and to encourage increased participation by all eligible voters, the election management body should devote increased resources and efforts to conducting voter information and voter education campaigns well in advance of the elections.

Through a three-stage process Dec. 1, 2013–Jan. 23, 2014, a total of 1,101,541 Libyans registered to vote, of which 449,501 were women. A reliable number of eligible voters was not available, but the number was estimated to fall between 2.8 million and 4.36 million citizens. By any estimate, less than 50 percent of eligible voters registered to participate in the elections, and less than half of the 2.8 million Libyans who registered for the General National Congress elections registered to vote for the Constitutional Drafting Assembly elections.

The first-stage registration, in which voters were required to register via Short Message Service (SMS), was extended twice to allow for greater participation and, ultimately, remained open throughout the entire month of December. Stronger efforts are needed to inform voters of registration requirements and procedures well in advance of the registration period. Additionally, The Carter Center recommends that in-person voter registration be held along with SMS (text messaging) registration to minimize disenfranchisement due to lack of access to a phone or lack of understanding of the SMS registration system.

Candidate registration took place Oct. 6, 2013–Nov. 7, 2013, and resulted in 649 candidates registered. The Constitutional Drafting Assembly election law prohibits the participation of those

with criminal convictions, regardless of the severity of the crime. Members of the General National Congress, the interim government, and the military are also barred from participating. In advance of the elections, the GNC passed the Political and Administrative Isolation Law, which was applied to CDA candidates. Of the 702 originally registered candidates, eight were isolated, six of whom successfully appealed and stood as candidates in the election. International jurisprudence supports narrowly defined restrictions on the right to be elected, and these figures seem to demonstrate the conservative application of the law and the effectiveness of the appeal process.¹ The Political and Administrative Isolation Law is currently under review by the Constitutional Chamber of the Supreme Court. To fully comply with Libya's international obligations, any restrictions on the right to stand for office must be justifiable on objective and reasonable nondiscriminatory criteria.²

Out of 649 registered candidates, 64 were women. Fifty-four of these women contested seats reserved for female candidates, one contested a seat reserved for the Tebu, and the remaining nine competed for open seats. Electoral stakeholders informed The Carter Center that women faced more difficulties than their male counterparts in registering to vote and campaign and that female voters would have benefited from more targeted voter education. The Center encourages the legislature to provide for greater participation of women through the establishment of a more inclusive electoral system, with particular consideration given to positive discriminatory measures to support women's participation in elected bodies.

The legitimacy of Libya's political parties has steadily eroded. The GNC has fallen behind the ambitious timetable set by the Constitutional Declaration. Its purpose as a political institution has been diluted, and its activities have come to be characterized by patronage rather than political decision making on issues of national importance. Political parties can play a vital role in democracy, assisting citizens in organizing, nominating, and supporting candidates; encouraging voters to register; and informing voters about the nature of the elections and the issues at stake. While the

election law did not explicitly ban political parties from participating in the Constitutional Drafting Assembly elections, it was interpreted by party leaders and the general public alike as having done so. This de facto ban fails to fulfill Libya's international commitments to ensure the right to association.³ Future elections should allow citizens the right to participate as representatives and members of political parties.

The campaign period began on Dec. 25, 2013, and ended 24 hours prior to the opening of polls. However, many candidates waited until the official announcement of the election date, only three weeks before the election, to begin campaigning. General insecurity in the pre-election period greatly affected the media and impacted the ability of candidates to campaign, making candidate access to free airtime and print space all the more important for reaching voters. However, neither the election law nor the HNEC regulations explained how the free airtime and print space were allocated to candidates and, therefore, the regulations did not sufficiently ensure free access to public media for candidates. To guarantee the equal treatment of all candidates, public and private media should be required by law to offer paid airtime and space on an equal basis.

Also, candidates were required by law to submit campaign finance reports showing how they complied with campaign regulations and spending limits set by the commission. Failure to comply with campaign finance regulations and submit a financial report within seven days after the election could have resulted in severe punishments, including fines, imprisonment, and future ineligibility to stand for office. While acknowledging the HNEC's efforts to inform the candidates of the requirements, The Carter Center remains concerned and calls on judges to use their discretion to ensure that sentences are proportionate to the offense committed and to the resulting harm.

In an open and inclusive process, the HNEC accredited 2,466 citizen observers and 3,540

1 U.N. Human Rights Committee, General Comment 25, Paragraph 4

2 Ibid.

3 UNHRC, General Comment 31, Paragraph 9

candidates' agents for the Constitutional Drafting Assembly elections. This represented a significant drop in the number of domestic observers from the General National Congress election in 2012 and left some areas, such as Sirte and Sabha, completely unobserved. The accreditation process was kept open by the commission until Feb. 19, 2014, and decentralized to allow for easier accreditation at the local level.

Polling and Postelection Developments

According to High National Election Commission data, 1,496 election centers opened around the country on election day. While no official turnout figures are available, the commission estimated that just under 50 percent of registered voters cast their ballots.⁴ Due to security concerns resulting from attacks on polling stations and resistance in some communities to the elections, 115 polling stations (including 34 planned for the Amazigh community) were unable to open at all, and 34 were forced to close during the day. Polling for these centers was adjourned and rescheduled for Feb. 26, 2014.

After repeated calls to the commission and relevant authorities to provide the necessary security for polling in these areas went unanswered, the HNEC announced that they would proceed with opening the polls. The efforts to reconvene voting resulted in 22 more centers being opened. Additionally, special voting centers were established for internally displaced people, those working at oil installations, and those wounded during the revolution then in rehabilitation. Also, some polling centers provided access for disabled voters.

Few reports of substantial procedural violations were made during polling and counting. Where violations did take place, media reports indicated they were isolated within specific regions in which communities were resistant to the elections: Derna and Kufra in particular. According to the commission, election-day complaints were largely unsubstantiated and, therefore, rejected by the commission.

The right of Libyans to seek effective remedies for violations of their electoral rights was limited because the right to appeal election results was only extended to candidates and there were no provisions to file complaints in individual polling stations. Complaints received were reviewed in a timely manner, and the HNEC provided observers with comprehensive information regarding complaints and their adjudication. To maximize the effectiveness of the dispute resolution mechanism, The Carter Center recommends implementing further efforts to inform voters and candidates of their rights and of specific procedures for exercising those rights.

To tabulate results, the HNEC implemented a double-blind data entry system designed to check the accuracy of the results and flag anomalies for further investigation. While the commission opened the data entry process to observers and candidates and informed them of audits that took place, The Carter Center recommends that future elections include more efforts to increase transparency of the process.

Security

Under international law, the right to security of the person requires that individuals be free from violence at all times.⁵ A stable security climate is essential for the smooth functioning of the electoral process and in the successful execution of candidate and voter registration, campaigning, and election-day activities. Libya's fractious security environment made the conduct of elections particularly challenging. Despite this, the HNEC made a commendable effort to deliver materials and to open polling stations in all areas of the country.

Still, some voters are likely to have been disenfranchised due to concerns about security

4 No official figure on turnout has been published by the HNEC. Based on counts that include all but nine open polling centers across five constituencies, 497,663 voters cast their ballots on Feb. 20, representing approximately 46 percent of registered voters.

5 U.N., ICCPR, Article 9; League of Arab States, Arab Charter on Human Rights (2004), Article 14

and uncertainty over the adjourned polling. The incidents of violence that disrupted polling in some parts of the south and east on election day were characteristic of the low-level violence and instability that has characterized Libya's political transition and has been a deep source of frustration for its people. This lack of stability is a major source of Libyans' disillusionment with the political process and, therefore, their lack of interest in the Constitutional Drafting Assembly elections. It is the Carter Center's firm belief that Libyans must renounce violence, surrender their arms, and participate peacefully in the political process.

The Center recognizes that no one individual or body can guarantee that an election will take place without incident. It appears that incidences of violence directly related to the elections were limited and did not significantly interfere with HNEC operations such as staff training or distribution of materials. However, to ensure citizens have the right to participate without fear—as voters, candidates, and election officials—The Carter Center strongly recommends that relevant Libyan authorities establish a meticulously defined security plan well in advance of election day and that it be communicated to the public and fully implemented so as to provide a safe electoral environment.

Conclusions

The Constitutional Drafting Assembly elections clearly demonstrate a determination to move forward with the country's democratic transition, despite difficult political circumstances and troubling security concerns. While the elections represent a needed institutional step forward for Libya, the procedural difficulties and the low levels of participation underscore the urgent need for further political dialogue to ensure that all Libyans continue to be a part of the transition process and can contribute to the shaping of the future state. This assurance is particularly important in advance of any future electoral processes so that the elected body is able to represent the will of the Libyan people effectively. The low levels of participation and the general fatigue with the country's political road map may well be an indication that Libya's political institutions remain in danger of being hollowed out—valued more by the people for what they can deliver in patronage than as real institutions through which the country's political future can be charted.

The Carter Center's recommendations for strengthening future electoral processes are highlighted in this summary and can be found throughout the report. A comprehensive list of recommendations is provided at the end of this report.

The Carter Center in Libya

The Carter Center's involvement in Libya's transition began at the conclusion of the revolution, during Libya's first nationwide elections in 2012. At the invitation of the High National Election Commission, The Carter Center deployed a limited election observation mission of 45 observers from 21 different countries to assess the General National Congress elections. Due to security conditions in several areas of Libya, most notably in the south and east, the Center deployed a limited mission with several technical experts, 10 medium-term observers, and 14 short-term observers. Over the course of the mission, Carter Center observers visited 12 of Libya's 13 electoral districts. Core team members remained through the end of July 2012 to monitor the complaints process and announcement of final results.

Subsequent to the 2012 observer mission, The Carter Center conducted two assessment missions to evaluate continued political, electoral, and security developments in Libya. The Center determined that the situation was sufficiently stable for a small expert presence in Tripoli. In October 2013, the Center received an official invitation from the HNEC to observe the Constitutional Drafting Assembly elections. The Center re-established a field office in mid-December 2013 when five international experts conducted a two-week trip to Tripoli. The team returned to Tripoli in early January 2014 to provide an assessment of the anticipated elections—which eventually were announced for Feb. 20—and stayed in-country until March 2014.

Historical and Political Background

The Monarchy and the *Jamahiriyya*: 1951–2011

The Feb. 20, 2014, elections of the Constitutional Drafting Assembly represent a needed institutional step forward for Libya. Following historical precedent, this 60-member body, charged with writing a new constitution, will represent the interests of Libya's different regions and peoples. These elections are the second to be held in the sequence envisioned under the National Transitional Council's (NTC) Constitutional Declaration, and they mark a determination to move forward with the country's democratic transition despite difficult political circumstances.

Libya achieved independence from Great Britain, Italy, and France after a protracted struggle among the Great Powers at the United Nations in the wake of World War II. With the help of the United Nations, Libya adopted a constitution in 1951, which was written by a committee of 60 representatives, 20 each from the country's Eastern province (Cyrenaica), Western province (Tripolitania), and Southern province (Fezzan). The federal state created at the time represented a compromise among the three provinces that was accepted due to an overwhelming desire to avoid the return of colonial oversight in the wake of World War II. By the end of the 1950s, it had already become clear that the federal formula contained numerous weaknesses that made it ill-suited to a country experiencing rapid economic growth, as oil was discovered and

then commercialized. In 1963, the government amended the constitution, eliminating the federal formula and placing the king in command of a unified state.

Libya's rapid economic development—as well as the political inexperience of the country's political ruling class during the 1950s and 1960s—led to a gradual evisceration of its already feeble political institutions. By the end of this period, the calls for Arab socialism emanating from Egypt—and the growing social dislocations caused by rapid oil development—added significant strains to what was, by this time, perceived as an anachronistic political system.

In September 1969, Libya's military, the only body possessing national interests, overthrew the monarchy. Colonel Muammar Qadhafi eventually emerged as leader of the coup, slowly consolidated his power over the country, suspended and then suppressed all political parties in the process, and opted instead for a *jamahiriyya*, a political system that, in theory, was governed directly by the Libyan people without the help of state institutions. The result was a highly arbitrary political system that lacked not only political parties or other avenues of citizen participation but also concentrated power around Qadhafi and a small circle of regime confidants. It was with this legacy of institutional neglect, the ensuing lack of both political experience and established political parties, and high levels of interpersonal distrust that the Libyan people embarked upon their revolution in February 2011.

The Democratic Transition: 2011–Present

The military campaign against the old regime was waged by local militias whose ranks swelled as it appeared that the regime was about to fall. Nominally and in part, these militias were coordinated by the National Transitional Council, the country's provisional governing political body during the uprising that owed its loyalties to a diverse array of regional, local, and ideological actors and causes. In the course of the uprising, the council (initially centered in Benghazi) managed to establish itself as the legitimate representative of the Libyan people. Much of the initial legitimacy of the council was predicated on its ability to swiftly rally international support to its side. The General National Congress succeeded the NTC after national elections took place on July 7, 2012, through elections that were deemed democratic and transparent by domestic and international observers alike.

Although the council's original road map had envisioned the selection of the Constitutional Drafting Assembly by the congress, it was announced in a dramatic reversal two days before the 2012 GNC elections that the assembly would be elected by the people rather than selected by the congress. Before the congress could pass an election law, however, the political agenda was overtaken by debates over political lustration and the question of whether Libyans who had worked for the Qadhafi regime would be allowed to participate in the country's political, bureaucratic, and economic institutions. The lustration legislation ultimately adopted by the GNC isolated former members of the Qadhafi regime based on a number of specific, listed positions they held within the regime, but isolation was not determined by their actions taken while serving in those posts. People identified by the relevant commission as holding one of the listed posts were banned from government positions, whether elected or appointed. Militias mobilized for and against the lustration law, ultimately surrounding the GNC and several government ministries to force a vote, resulting in 101 General National Congress members voting in favor of the law's adoption. It was only with

this passage of the Political and Administrative Isolation Law in early May 2013 that attention once again turned toward elections.

Two more months of negotiations over the election law then ensued, and the law was finally passed during Ramadan in July 2013, effectively delaying its implementation until fall 2013. Throughout this period, the militias that had been critical in overthrowing Qadhafi retained their weapons and maneuvered to preserve their status, the tensions between them occasionally erupting into outright conflict. On two occasions, popular demonstrations against their continued presence ended in chaos when the militia in question opened fire on protesters. Meanwhile, assassinations of current and former security officials continued, becoming a near-daily occurrence in the east in particular.

In addition, the General National Congress, much like the previous regime, started to distribute large amounts of revenues to different pressure groups and constituencies to keep the political system quiescent. This kind of political maneuvering demanded the organization's consistent attention, diverting it from advancing the political transition and, in the process, hollowing out the political purpose of the organization itself at the expense of simply becoming a purveyor of patronage. The slow pace of the transition's progress—as well as the GNC's purpose—remains a source of profound frustration for Libyans, leaving the Constitutional Drafting Assembly elections largely overshadowed by a general disenchantment with the political process.

The election law was greeted with skepticism by representatives of Libya's Amazigh, Touareg, and Tebu communities (referred to in the election law as "cultural components"). Six seats were reserved for these groups and divided equally among them, a share the Amazigh, in particular, believe fails to reflect their proportion of the population. After enduring decades of marginalization, discrimination, and repression under Qadhafi, all three communities understandably fear being outnumbered and excluded. The Amazigh proceeded to mount a disciplined boycott of the election at all levels of the process, with some support from the Touareg and Tebu.

Days before the election, the GNC announced that a political solution to some of their grievances had been achieved. As a result, the Amazigh would take part in the assembly elections. The Amazigh, however, rejected the solution and declared that the boycott would continue. The Tebu National Assembly, in consultation with the community's candidates, also announced they would boycott the process. Polling centers did not open in Amazigh and Tebu areas on election day, and barring any future political settlement, the two communities will be without representation in the assembly.

Women's rights advocates were also critical of the election law, which reserved six seats for female candidates. While 33 women were elected to the GNC, only one woman was elected as an individual. Other female representatives were elected via party lists, which were required to alternate between male and female candidates. Advocates argue that the seats reserved for

female candidates in the Constitutional Drafting Assembly elections failed to guarantee them sufficient representation. Nonetheless, women have registered as both candidates and voters in substantial numbers.

To date, Libya's democratic transition has been plagued by intermittent violence and has been subject to delays. The GNC has fallen behind the ambitious timetable set by the Constitutional Declaration. In the process, its legitimacy steadily eroded, and with it that of Libya's political parties, which the public has held responsible for the consistent deadlock within the GNC. By the time the election process began to gain genuine momentum, calls for the dissolution of the General National Congress were being heard from all quarters, and the Constitutional Drafting Assembly elections were subsumed within this debate. Preparations for the elections, however, moved ahead quickly and efficiently, demonstrating the capacity of the HNEC.

Electoral Institutions and the Framework for the Constitutional Drafting Assembly Elections

Legal Framework

A comprehensive legal framework that thoroughly regulates the entire electoral process and guarantees the basic rights of the people is essential to the effective administration of genuine democratic elections. Through this framework, the state must take all necessary steps to safeguard voters' rights to equality, freedoms of expression and peaceful assembly, and access to an effective remedy. As well, the state must meet international obligations regarding civil and political rights.⁶ In Libya, further legal reform is needed to ensure that citizens are free to assemble even in protest against the ideals of the revolution, are allowed to associate with political parties and organizations of their choice, and can express their views without fear of criminal liability.

The elections for the Constitutional Drafting Assembly are regulated by the Constitutional Declaration as amended by the General National Congress on April 9, 2013; Law 17 of 2013 (the election law); Law 8 of 2013 (on the establishment of the High National Election Commission); and regulations passed by the HNEC board of commissioners.⁷ Further, the election law gives the HNEC the authority to pass regulations elaborating the rules and procedures necessary for the organizing of elections.⁸

Initially, the Constitutional Declaration dictated that the GNC itself would appoint a drafting body for the constitution. On July 5, 2012, 48 hours before the national elections, the National Transitional Council amended

the Constitutional Declaration to mandate the creation of a Constitutional Drafting Assembly elected through free and direct elections rather than one appointed by the members of the GNC. On Feb. 28, 2013, the amendment was found unconstitutional by the Supreme Court on the grounds that the NTC lacked the quorum required to pass an amendment to the Constitutional Declaration. On April 9, 2013, the GNC passed its own amendment to the Constitutional Declaration, again providing for the constitutional assembly to be directly elected.

Although enacted on July 20, 2013, the election law was not immediately published. Domestic observers report that as late as Sept. 19, 2013, the law was still not officially available. Its lack of timely publication and dissemination limited the public's opportunity to become acquainted with the law before the beginning of key stages of the election process: in particular, candidate registration.

6 Libya is a signatory to the following international conventions and treaties, among others: the International Covenant on Civil and Political Rights (ICCPR) (ratified 5/15/70); the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) (ratified 7/3/68); the Convention on the Elimination of Discrimination Against Women (CEDAW) (ratified 5/16/89); the Convention on the Rights of People with Disabilities (CPRD) (signed 5/1/08); International Covenant on Economic, Social, and Cultural Rights (ICESCR) (5/15/70); Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT) (5/16/89); and the Universal Declaration of Human Rights.

7 Other applicable laws are amendments to the Constitutional Declaration, the Political and Administrative Isolation Law (Law 13 of 2013), the Law on the Right to Organize a Peaceful Public Gathering (Law 65 of 2012), and the relevant provisions of the criminal and civil codes.

8 Articles 7, 11, 13, and 21 of Law 17 of 2013 and Law 8 of 2013

The election law was amended on Nov. 17, 2013, a) to address the lack of clarity on the electoral system to be used in multiseat districts and b) to remove residency requirements for voter registration. While these amendments clarified two key aspects of the electoral process, the election law still did not sufficiently detail the allocation of seats. In particular, it failed to clarify the allocation of reserved seats for women and for cultural components or to explain the basis for the delimitation of constituencies.

The election law and Law 8 of 2013 grant the HNEC the authority to pass regulations elaborating on the rules and procedures necessary for the organizing of elections. The commission adopted regulations on candidate registration, voter registration, observers and candidate representatives, media, the campaign, out-of-country voting, polling and counting, and complaints and appeals procedures. Adopted regulations were available on the commission's website. However, The Carter Center noted that the HNEC only issued the regulations for tabulation on Feb. 20—on election day itself—and never elaborated on polling and counting procedures specific to out-of-country voting.⁹

The Constitutional Declaration and election law provide for a 60-member Constitutional Drafting Assembly, with 20 seats allocated to each of the three regions (Western, Eastern, and Southern). Further, the election law set aside six seats for women and another six seats for Libya's Amazigh, Touareg, and Tebu populations.

Signatories to the International Covenant on Civil and Political Rights are obligated to ensure equal suffrage for their citizens. This obligation has been further elaborated to mean that the weight of each individual's vote shall be equal.¹⁰ Though the process should be guided by the principle of equality, it is acceptable that delimitation of constituencies takes into account pre-existing conditions such as a community of interest, convenience, natural boundaries, and administrative boundaries.

For the CDA elections, the allocation of 20 seats to each geographical region—due to historical sensitivities and regardless of the population—means that the weight of each vote

varies drastically by region and thus deviates from the obligation to ensure equal suffrage. The seat allocation for the elections mirrors that used for the constitution-drafting committee in 1951, when it was considered essential that the three geographical regions be equally represented so as to agree to a lasting compromise. Today, the same administrative boundaries exist, as does the generally accepted notion that all three regions must be equally represented in the Constitutional Drafting Assembly.

In the Western region (Tripolitania), there are 636,459 registered voters, while in the Eastern region (Cyrenaica) there are 352,370 voters, and in the Southern region (Fezzan) there are 112,712 registered voters. This means that each seat in the Western region represents approximately 31,823 voters and each seat in the Eastern region represents approximately 17,619 voters, while each seat in the Southern region only represents 5,636 voters. The figures clearly show the significant variation in representation and the weight of each vote among the three regions.

Electoral System

While international law and good practice do not encourage one particular electoral system, the system adopted must not constrain voting rights or equal representation and must also reflect the free expression of the voters' will.¹¹ According to the election law, members of the CDA were elected through two majoritarian systems. The two electoral systems were the single-nontransferable-vote system for multiseat constituencies and the first-past-the-post system for single-seat constituencies.¹²

Boundary delimitation and seat allocation processes were vaguely defined in the election law, which left their implementation to the HNEC.¹³ Libya's three regions, according to the

9 HNEC Board of Commissioners Decision 24 of 2014, on "Polling Results, Tabulation and Announcement" issued on Feb. 20, 2014

10 U.N., ICCPR, Article 25; UNHRC General Comment 25, Paragraph 21

11 UNHRC, General Comment 25, Paragraph 21

12 Law 17 of 2013, as amended on Nov. 17, 2013

13 The table of constituencies annexed to Law 17 of 2013

law, were divided into constituencies that were further divided into subconstituencies, some of which were then further divided into wards. This arrangement divides the country into a total of 11 main constituencies and 36 subconstituencies.¹⁴ Some contests took place on the constituency level, while others occurred on the subconstituency level and yet others on the ward level. Six subconstituencies were run by the single-nontransferable-vote system, while the rest of the contests were run by the first-past-the-post system.

In the Western region, elections for the two seats reserved for women took place in the first and third subconstituencies of the main constituency of Tripoli. A seat is reserved for women in each of these multiseat subconstituencies and is awarded to the female candidate with the highest number of votes. In the Eastern region, two special races for women were held: one in the main constituencies of Al-Batnan and Al-Jabal Al-Akhdar and another in the main constituencies of Benghazi and Ajdabiya. The female candidate with the highest number of votes in each of these two contests wins the seat that is allocated to the subconstituency in which she registered as a candidate and replaces the winner of the general contest in this subconstituency. This occurs even if the winner in this subconstituency was a woman, irrespective of the number of votes the winner of that subconstituency received. In the event that this subconstituency has two or three seats, then the female candidate running in the special election for women replaces the candidate who received the second or third highest number of votes, respectively.

In the Southern region, two special contests for women took place in the main constituency of Sabha: one in the subconstituency of Sabha and the other in the subconstituency of Al-Shatie. In each contest, the female candidate with the highest number of votes won the seat allocated to the ward in which she registered as a candidate, replacing the winner of the general contest in this ward. Similar to the Eastern region, this occurs even if the winner of the general contest in this ward was a woman, regardless of the number of votes received by the winner of that ward.

Regarding the six seats allocated to the three

cultural components, the two allocated to the Amazigh (who boycotted these elections) are in the main constituency of Al-Zawiya, located in the Western region: one in the subconstituency for Zuwara and the other in the subconstituency for Al-Jabal. For the first seat in Zuwara, only a special contest would have taken place, for which only Amazigh candidates would have been eligible, and voters would have received only one ballot with the names of Amazigh candidates on it. Al-Jabal was allocated three seats, for which there would have been two contests: one general contest for two seats open to all candidates and another for which only Amazigh candidates would have been eligible. However, it is noteworthy that voters in Al-Jabal would have received one consolidated ballot—divided into two sections listing all candidates from both contests—but would be able to vote in only one of these contests.

The two seats allocated to the Tebu were in two different regions. One was allocated to a subconstituency of the main constituency of Ajdabiya in the Eastern region. The other seat was allocated to a subconstituency of the main constituency of Awbari in the Southern region.¹⁵ For both seats, two contests took place: one general contest that was open to all candidates and another one for which only Tebu candidates were eligible. Voters received one consolidated ballot with the names of candidates of both contests but could only vote for one candidate in either contest. The candidate with the highest number of votes in each contest won the seat.

Two seats for Touareg were allocated in the Southern region: one in a subconstituency of the main constituency of Awbari and the other in a subconstituency of the main constituency of Ghadames. In both cases, there are two separate contests: one general contest open to all

14 HNEC merged two subconstituencies in Awbari so that the Tebu candidate with the highest number of votes would have been awarded the seat without replacing the candidate in the general race who registered in the same ward.

15 The law initially had divided this main constituency into four subconstituencies, but HNEC Regulation 4/2014 merged the third and fourth subconstituencies into one subconstituency (the third), giving it the number 31.

candidates and another in which only Touareg candidates were eligible. In both cases, voters received one consolidated ballot and could only vote for one candidate from either contest. The candidate with the highest number of votes in contest races wins the seat.

In principle, the allocation of seats to cultural components was intended to enhance the inclusivity of the process and to ensure adequate representation. In practice, however, the electoral and seat allocation systems rendered the election process more complicated for different stakeholders and undermined this goal. Voters in the subconstituencies in which seats were allocated to Tebu and Touareg could only vote for a candidate from either the general contest or a candidate from the special election for cultural components. Although voting happened on one consolidated ballot, in reality there were two different contests. These voters were confronted with a choice between their national identity in the “general contest” and their cultural identity in the “special contest.”

The seats reserved for women posed even greater complications. Female candidates running for some of the reserved seats would replace the winner of the seat in the general contest in the area in which the female candidate was registered. The Carter Center noted a general lack of awareness of the functioning of this system among some candidates, voters, and other stakeholders, including some GNC members. In addition, this replacement takes place regardless of the number of votes received by the female winner of the reserved seat or the replaced winner of the open seat.

The Carter Center encourages Libyan lawmakers to consider implementing a less complicated electoral system that is easier for voters, candidates, and other stakeholders to understand, particularly with regard to seat allocation. A chart detailing seat allocation information can be found in Appendix D of this report.

Election Management

An independent and impartial election management body that functions transparently and professionally is internationally recognized as

an effective means of ensuring that citizens are able to participate in a genuinely democratic electoral process.¹⁶ Despite political tensions and security challenges that existed in some regions, the HNEC completed technical preparations for the elections within the necessary time and in an impartial manner. The commission should also be commended for addressing some of the needs of internally displaced people, oil-field workers, and voters with disabilities. The overall performance of the commission, however, could be further enhanced by exerting more effort in voter education, issuing and publishing regulations in a timely manner, and making the sessions of its board of commissioners and the minutes of those sessions accessible to the general public.

Libya’s Constitutional Drafting Assembly elections were administered under the authority of a nonpermanent HNEC that was established according to Law 8 of 2013 in March 2013. The commission is composed of a board that consists of six commissioners and a chairman, all of whom were appointed by the General National Congress.¹⁷ The appointment gave the HNEC more than nine months to perform its tasks before election day. However, the election day itself was only announced by the GNC on Jan. 30, 2013, leaving less than 21 days for the commission to finalize its preparations and for candidates to carry out their campaigns. One of the six commissioners resigned and was never replaced, despite the fact that the law stipulates that in case of a vacancy, the GNC must issue a decision appointing a replacement within 15 days of the vacancy.¹⁸

According to law, the board must hold regular meetings, with a legal quorum consisting of more than half of its members. Decisions of the board are to be taken by the majority of votes of its members; in the event of a tie, the chairman has the deciding vote. The law does not stipulate whether meetings of the board are open to the public or where information about meetings is

¹⁶ UNHRC, General Comment 25, Paragraph 20

¹⁷ GNC Decision 40/2013, issued on April 23, 2013

¹⁸ Law 8 of 2013, Article 10, Paragraph 2

disseminated. The Carter Center inquired about the possibility of attending these sessions but did not receive a clear answer, and no observation was facilitated.

The HNEC is supported by an executive body, a central administration office, and 17 local electoral committee offices that are responsible for implementing the electoral process in their respective areas.¹⁹ These 17 offices report directly to the central administration office. On election day, approximately 23,000 polling staff implemented

the elections in 3,700 polling stations located in 1,496 election centers. Most polling staff was trained through four-tier cascade training, the first three levels of which The Carter Center observed in Tripoli. In a commendable effort to address the needs of Libya's displaced and disabled voters, the commission prepared 16 centers for internally displaced people as well as 19 for oil workers and made approximately 10 percent of election centers accessible to disabled voters.

¹⁹ The law defines 11 main responsibilities for the HNEC. These responsibilities address all aspects and phases of the electoral process and could be summarized as follows: issuing regulations in conformity with the election law, voter education, setting the timeline for implementing the process, voter and candidate registration, preparing and implementing polling, counting and tabulation of results, putting in place the appropriate mechanisms for electoral dispute resolution, setting the needed budget, announcing and crediting results, forming relevant committees if deemed necessary, and accrediting domestic and international media representatives and civil society observers as well as candidate agents.

Pre-election Developments

Voter Registration

A comprehensive and inclusive voter registration process is a key part of ensuring universal suffrage and the enjoyment of the fundamental right to vote and the right to be elected.²⁰

Less than half of the 2.8 million Libyans who registered for the GNC elections registered to vote for the Constitutional Drafting Assembly election. While there were many reasons for the low rate of voter registration, widespread disillusionment with the political process and calls for boycotting the election were certainly the primary causes. During the GNC election of 2012, the voter registration period lasted only three weeks, and voters had to register in person. In these elections, although the registration period was extended and voters had the option to register either through the SMS procedure or in person, voter registration remained low. Technically, the SMS procedure could have taken up to 300,000 registration applications per day; however, it remained largely unused due to the low interest of Libyan citizens in the elections.²¹

After repeated extensions of the voter registration period, the HNEC registered 1.1 million voters for the Constitutional Drafting Assembly elections. Prospective voters could register via SMS and in person, as long as they had a national identification number. The commission also conducted out-of-country voting.

The HNEC should intensify voter education and public outreach efforts to increase the number of registered voters. Particular attention

should be paid to women, who registered for the Constitutional Drafting Assembly elections at a lower rate than during the 2012 national elections. The Carter Center encourages an independent audit of the national identification number data to have a more comprehensive, accurate, and transparent voter list and recommends more cooperation between the HNEC and Civil Registration Authority (CRA) in order to obtain the necessary information. The Center also encourages the HNEC to exert further effort to ensure that voters are well-informed of the need to register and of the required procedures well in advance of the actual registration period.

To be eligible to vote, one must be a Libyan citizen with legal capacity, be 18 years of age on the day of registration, possess a national identification number, and be registered. The election law requires voters to register by SMS: Voters send a message with their identification number and the number of the election center where they would like to vote. Under this system, voters who did not possess national identification numbers were disenfranchised. The Carter Center was unable to clarify the number of eligible voters who lack a national identification number or the reasons they were unable to obtain one.

20 U.N., ICCPR, Article 25(b); UNHRC General Comment 25, Paragraph 11

21 According to the NDI Public Opinion Survey, "Seeking Security," (section 6 page 19), 26 percent of respondents would not vote in September 2013 as opposed to only 15 percent of respondents who would not vote in March 2013.

The Civil Registration Authority is the government body that records births, deaths, and marriages in Libya. This data is registered in “family books,” which are usually in the hands of the head of the household, each with its own reference number. The authority is also responsible for sharing the data with government bodies in charge of distributing social security funds. By providing the family book reference number, each citizen is issued a national identification number.

According to CRA officials, out of a total estimated population of 6.3 million, 4,360,000 Libyans over 18 years of age were issued an identification number. However, there is no official data about the number of people without a national identification number or on the number of members of Libya’s cultural components who have not been able to obtain a number. National identification numbers are issued on the basis of the authority’s records and are not authenticated in person. No official census has been completed in Libya since 2006.

Multiple interlocutors noted difficulties in obtaining information from the CRA. They raised concerns about the lack of publicly available information or any audit of its database in recent years and questioned the reliability of the authority’s data. In the absence of such information, estimating the number of eligible voters in Libya is highly difficult, and estimates vary widely.²² The Carter Center encourages the government to facilitate the HNEC’s access to the Civil Registration Authority and to provide for an independent audit of its data.

Voter registration was conducted in three phases. The first SMS phase initially lasted Dec. 1–14, 2013, but was extended twice—first to Dec. 21, 2013, and then again to Dec. 31, 2013. This was followed by a second phase, the addition and amendment period, which was conducted in person Jan. 11–16, 2014. To register during this phase, voters were required to bring their national identification number and photo identification to the election center where they wished to be registered. (These same centers were used as polling centers on election day.) Upon the conclusion of the first phase, the rate of voter registration was low. In response, the HNEC decided to reopen

SMS registration at the same time as the in-person registration period.

The final number of registered voters during these two phases combined was 1,101,541, out of which 15,432 voters registered in person. There were 652,040 male voters and 449,501 female voters. (Women were 41 percent of those registered, a 5 percent drop from the GNC elections.) In comparison with the 2.8 million voters who registered for the 2012 General National Congress elections, voter registration for the Constitutional Drafting Assembly elections was low. According to the majority of the Carter Center’s interlocutors, this seemed to be largely a result of dissatisfaction with the work of the GNC²³ as well as the scarcity of information about the need and procedures for registration. Safety issues and the lack of visibility of election centers may have also contributed to this issue.

For the majority of eligible voters, a primary advantage of the SMS voter registration process was its simplicity. The system also had the capacity to process large number of voters in a single day. However, the system had disadvantages as well: namely, the lack of access to mobile phones and network coverage as well as (for senior citizens) the complicated nature of the registration procedures.

The third phase of the registration process, the exhibition and challenge period, was conducted Jan. 21–23, 2014. This period was short and inadequately publicized by HNEC, thus preventing many voters from reviewing the preliminary lists. During this stage, the preliminary voter lists were displayed at election centers. Lists included only those voters registered at the center where they were posted. Voters were able to examine the preliminary list, to request amendments to their entries on the voter list, or to challenge a person’s eligibility to vote. However, due to lack

22 Some estimates put the number of eligible voters in the country as low as 2.8 million. The current Civil Registration Authority estimate of 4.36 million is an increase of roughly 400,000 over the previous CRA estimate made in 2013.

23 According to the last NDI Public Opinion Survey, “Seeking Security,” (section 5 page 12), 60 percent of Libyans viewed the work of GNC as poor or very poor in September 2013 as opposed to the poll in May 2013, where only 37 percent evaluated as poor or very poor.

of processing time, the names of some voters who registered during the in-person period were not included in the preliminary voter list used for the exhibition period.

Under the election law, all Libyan citizens have the right to challenge another's eligibility to vote by submitting a complaint to the courts. However, because an individual can register to vote in any election center throughout the country, a potential challenger may not be able to ascertain where another person may have registered, making it nearly impossible to exercise this right.

For future elections, The Carter Center recommends that the HNEC should ensure that the preliminary lists are complete prior to exhibition, extend the exhibition period, and increase public outreach while explaining the process to enable voters to check their data on the list. Additionally, while protecting personal data, the commission should consider making the entire list available for public scrutiny so that citizens can exercise their right to challenge a person's eligibility to vote. Given the capacity of the SMS system, which allows for a large number of voters to be processed over a short period of time and which is a simple procedure for the majority of users, this system should be used again in future elections. However, a further expansion of network coverage and a more robust voter education campaign, particularly for elderly voters, should be carried out during the registration drive. If the SMS system is used again, the commission should conduct both SMS and traditional voter registration in parallel to make sure the largest pool of eligible voters is able to register and participate in the polls.

During the General National Congress elections of 2012, military personnel were not allowed to vote. In a positive step, on Dec. 30, 2013, the General Authority for the Judiciary determined that, based on Articles 6 and 7 of the Constitutional Declaration, military personnel would be allowed to cast their ballot. Therefore, military personnel could vote in the Constitutional Drafting Assembly election if they had registered during the registration period and had photo identification. Military personnel assigned to oil fields could vote at polling stations for oil workers. However, this was only announced

after the conclusion of the first phase of voter registration and may not have been communicated in a timely fashion to all military personnel. This delay might have led to the disenfranchisement of some military personnel during the elections. There is no data available on the number of military personnel who registered as voters.

Voter Education

Voter education efforts are necessary to ensure an informed electorate is able to effectively exercise their right to vote.²⁴ Although the HNEC has the responsibility to educate and raise citizens' awareness by disseminating information on the electoral process, few efforts were observed in this regard. The public media (TV and radio) were largely uninterested in covering these elections, few civil society organizations participated in the dissemination of voter education materials, and most government bodies remained uninvolved. In particular, the late announcement of the election date prevented a widespread voter education campaign from taking full effect throughout Libya. In future elections, the commission should undertake more extensive and more timely efforts to ensure the involvement and coordination of other institutions in voter education to guarantee that all voters are fully informed about the process.

As part of its wider education campaign, the HNEC planned to air television and radio spots in addition to publishing newspapers ads, posters, and leaflets. The Carter Center was unable to ascertain the extent to which this plan was realized, but many voters seemed to be ignorant of basic information about the elections. Few civil society organizations were involved in the commission's efforts, and those that were had a more limited role than in the previous elections. A notable exception was the Public Scout and Girl Guide movement, which played a proactive role in dispatching voter education fliers throughout the country.

A lack of awareness of shifting deadlines for voter registration may have led to lower

²⁴ UNHRC, General Comment 25, Paragraph 11

registration at the beginning of the registration period, particularly for in-person registration. It is possible that voter education efforts needed more time to impact the rate of registration, as demonstrated by increased registration prior to each deadline. There were no challenges about voter eligibility, most likely due to a lack of information about the timing and duration of the exhibition period.

The general feeling of apathy and dissatisfaction with the General National Congress seemed to

have had some impact on the process as well. The HNEC has pointed out that more support from relevant ministries and other government agencies was needed in order to reach voters. The commission and relevant government ministries should cultivate more productive and effective relationships with other interested stakeholders in those efforts and devote additional resources to voter education and public outreach efforts to ensure those efforts are more successful and widespread.

Candidates, Parties, and Campaigns

While the right to be elected is a widely recognized principle in both regional and international treaties, it is not an absolute right and may be limited on the basis of objective and reasonable criteria established by law.²⁵ Unreasonable restrictions to the right to be elected include those based on political affiliation, past or present. In addition, good practice says that the loss of this right should be imposed only after adjudication by a court of law.²⁶ The Carter Center noted that there were some undue restrictions on candidacy rights, including the prohibition of political parties to nominate candidates and unreasonable restrictions on criminal convictions. The Center recommends that the legislature reconsider candidacy requirements to uphold Libya's international obligations and that the HNEC conduct voter registration prior to candidate registration to avoid confusion regarding eligibility.

The right to stand for office in the Constitutional Drafting Assembly elections was granted to every Libyan at least 25 years of age who completed secondary education or its equivalent; who was not a member of the General National Congress, of the interim government, of official security or military authorities, or of the High National Election Commission; who was endorsed by a notarized list of signatures by 100 voters registered in the same constituency; who had not been convicted of a criminal felony or an honor-related misdemeanor, even if expunged; who submitted a nonrefundable application fee of 500 Libyan dinar; and who signed a copy of the code of conduct. It is noteworthy that there was

no legal obligation that required candidates who wished to run for the “special race for cultural components” to present proof that they belong to this cultural group.

Any restrictions on the free participation of citizens in public life or on the right to stand for election must be reasonable and justifiable. Citizens who are otherwise eligible to enjoy this right must not be disenfranchised by unreasonable requirements such as political affiliation.²⁷ Although the election law stopped short of an outright ban on political parties, it was interpreted as barring candidates from being in any way affiliated with them and did not provide any avenue by which parties might nominate candidates. Such a ban, whether *de facto* or *de jure*, fails to meet Libya's international obligations and should be repealed.

Denying the right to participate to citizens who had been previously convicted of a crime, even if their conviction had been expunged, is also an unreasonable restriction on the right to participation.²⁸ Furthermore, the law lacks clarity on whether General National Congress members could resign from their legislative positions to run for the Constitutional Drafting Assembly elections or whether their past membership, even if terminated, denies them this right.

25 U.N., ICCPR, Article 25; African Union, African Charter on Human and Peoples' Rights, Article 13; Arab Charter on Human Rights, Article 24

26 OSCE/ODIHR, Existing Commitments, Page 59

27 UNHRC, General Comment 25, Paragraph 15

28 UNHRC, General Comment 25, Paragraph 4

It is also noteworthy that under the law, the list of signatures required during the candidate registration process is to include only registered voters, despite the fact that the candidate registration process preceded voter registration. The HNEC announced that the deadline for submitting these lists was on Dec. 19, 2013, after the deadline for candidate registration but before the end of the voter registration period. If applying a similar condition in future elections, The Carter Center recommends consideration of endorsing lists after the publishing of final voter lists. The Center also recommends that the voter registration process precede candidate registration to ensure that the candidates—as well as their supporting signatories—are registered voters.

Candidate registration took place Oct. 6, 2013–Nov. 7, 2013, during which time 702 candidates applied.²⁹ The preliminary list of candidates was issued by the HNEC on Dec. 7, 2013. The final list was issued on Dec. 23, 2013, and included 649 candidates.^{30 31} Several female candidates reported to The Carter Center that it was difficult to reach the Tripoli electoral committee office in Tajoura, where they were required to register. Otherwise, candidates with whom the Center spoke reported no serious difficulties with the registration process. There was a large variation in the numbers of registered candidates in the three regions, as 281, 219, and 148 candidates registered in the Western, Eastern, and Southern regions, respectively.³²

Political Lustration

International jurisprudence supports narrowly defined restrictions on the right to be elected. In cases before the European Court for Human Rights, the court has found that restrictions may be permissible under certain conditions: namely, that such restrictions must pursue a legitimate aim, must be proportionate, and must not be arbitrary.³³ Under U.N. General Comment 25, the interpretive document for Article 25 of the ICCPR, any restrictions must be objective, reasonable, and nondiscriminatory. Political affiliation is expressly rejected as an acceptable restriction. For its part, the African Commission has expressly endorsed General Comment 25 in its decisions regarding

violations of the African Charter.³⁴ An additional condition is that the broader the categories of people to be excluded, the greater the requirement for an approach that takes into account individual actions and circumstances. The need for individualization becomes even more important with the passage of time.³⁵

Finally, these conditions are subject to the overriding principle that restrictions on the right to be elected must be necessary to protect the newly emerged democracy: They can never be a means of revenge or punishment or of obtaining political advantage. The widespread violation of human rights under the former regime is widely acknowledged. As a young democracy, Libya has a prerogative to defend itself against those who are deemed to pose a threat to the consolidation of that democracy.

When applying to register as candidates, applicants needed to be cleared by the commission for the Application of Standards for Assuming Public Office, as required by the highly controversial Political and Administrative Isolation Law.³⁶ The commission is comprised of 11 members with legal backgrounds who are appointed by the General National Congress and approved by the Supreme Court.

The Political and Administrative Isolation Law, adopted on May 5, 2013, was preceded by a GNC

29 The initial deadline for candidate registration was Oct. 22, 2013, but the HNEC extended it to Oct. 31, 2013, and then to Nov. 7, 2013.

30 <http://hneclj/assets/uploads/2013/12/CanFinal.pdf>. Last accessed Feb. 28, 2014

31 From the preliminary list, two candidates were excluded for not submitting the requested political-isolation clearance documents, eight candidates were excluded by the Commission for the Application of Standards for Assuming Public Office (six of whom were reinstated again), 21 candidates were rejected by the HNEC for not submitting the notarized list of 100 signatures, and 28 candidates withdrew.

32 The numbers on the official final list as published on the HNEC's website add up to 648 candidates, but in several meetings the HNEC confirmed the number was 649.

33 Judgment in the case of *Adamsons v. Latvia*, Application no. 3669/03, June 24, 2008, Paragraphs 111, 117–121

34 See decision 241/01, *Purohit and Moore/The Gambia*, May 29, 2003, Paragraph 76.

35 *Ibid.* Paragraph 125

36 Law 13 of 2013

amendment to the Constitutional Declaration that both lowered the necessary number of votes required in the GNC to pass such legislation from a two-thirds majority to a simple majority and protected the future law from constitutional challenge. The law and the related amendment to the Constitutional Declaration are currently being challenged by a total of seven appeals before the constitutional chamber of the Supreme Court. A joint hearing on the appeals submitted to the Supreme Court was held on Feb. 24, 2014.

According to the Supreme Court, the seven appeals were filed by five individuals, one group of lawyers and judges, and the National Council for Civil Liberties and Human Rights. The law is being challenged regarding a) the way it is applied to the judiciary, b) conditions under which it was adopted, c) the procedures followed, d) whether it is discriminatory in nature. Furthermore, the law is criticized for being too broad—requiring isolation based on position rather than on concrete actions—and for being retaliatory in nature. On Feb. 24, 2014, the Supreme Court adjourned hearings on the Political and Administrative Isolation Law and announced they would resume on April 18, 2014.

The HNEC submitted 700 candidate applications for review with the commission, of which eight were isolated. Six of the eight isolated candidates appealed, and all successfully had their decisions overturned and were able to run in the elections. Two remained ineligible, though The Carter Center was unable to determine the reason for their ineligibility. Further, the commission informed the Center that there was one additional candidate that they decided should be isolated, but due to a delay in communicating the decision to the HNEC, he remained on the final list of candidates.

While the Supreme Court is still considering the constitutionality of the Political and Administrative Isolation Law, its application for the Constitutional Drafting Assembly elections was limited to a small number of candidates, and the right to appeal was in line with international standards for effective remedy. This suggests that although the law itself provides grounds for isolation that appear unnecessarily broad, its

implementation, in practice, did not have significant impacts on candidates. The right to appeal the decisions of the commission before a court of law meets Libya's international obligations concerning access to effective and timely remedy.³⁷

In October 2013, the Political and Administrative Isolation Law was amended to provide an expedited review of candidate applications for the Constitutional Drafting Assembly elections.³⁸ Under the amendment, appeals of commission decisions for CDA candidates are submitted to the primary court in the area of the candidate's registration and are appealed to the respective court of appeals. The timeline for review by the courts is also shorter in the case of CDA candidates: The primary courts have three days for review, and the court of appeals has five days.

Campaign Environment

Equitable treatment of candidates during an election—as well as the maintenance of an open and transparent campaign environment—is important to protecting the integrity of the democratic election process.³⁹ Campaign activity during the Constitutional Drafting Assembly elections was limited due to ongoing insecurity (not immediately related to the elections), widespread disillusionment with the political process, and the late announcement of the election date. Infringements by the government on freedom of association and freedom of speech also raised serious concerns.

Six hundred forty-nine (649) candidates stood for office in the elections. Over the course of its assessment, The Carter Center interviewed both male and female candidates campaigning for seats in the Western and Southern regions as well as for seats reserved for women and cultural components. The campaign period began on Dec. 25, 2013, and ended 24 hours prior to the opening of polls. During this time, Libyan society continued to be

37 U.N., ICCPR, Article 2(3)

38 Law 28 of 2013, amending Law 13 of 2013 (the Political and Administrative Isolation Law)

39 AfCHPR, Articles 2 and 13(1); U.N., ICCPR, Article 25(b)

subject to lingering insecurity, particularly in the Eastern and Southern regions. Some candidates running for seats in the Southern region said that they had been unable to campaign due to armed clashes there. Civil society representatives in the Eastern region reported that candidates were subject to intimidation.

Libyan civil society organizations and domestic observers, international nongovernmental organizations, and candidates themselves all reported that campaigning was subdued and often carried out on a small scale. Turnout at two debates attended by Carter Center representatives was low, and voter awareness of particular candidates and constitutional issues was highly limited. In general, candidates appeared to rely on billboards, posters, fliers, text messages and, particularly, social media to publicize their candidacies. Candidates and civil society organizations reported minor campaign violations such as campaigning prior to the official beginning of the campaign period and the defacement of campaign posters. The candidates who met with Carter Center analysts did not feel these violations merited official complaints.

The role of security forces leading up to and during election day is critical to the proper functioning of the electoral process. Attacks on soldiers and assassination attempts continued throughout the campaign period, primarily in the east. One candidate appeared to be the target of a possible assassination attempt on Jan. 19, 2014. Carter Center representatives attempted to verify this incident but were unable to do so. The city of Derna presented a particular concern. A civil society representative reported that candidates were unable to campaign openly, fearing they would be targeted by militias. On Feb. 11, 2014, domestic media reported that, according to a source close to the city's local council, the city would be unable to hold elections barring serious improvements in security. In the early hours of the morning on election day, five polling centers in Derna were bombed.

Libya's election law was commonly interpreted to prevent candidates from being affiliated with or supported by political parties, and it provided no means by which parties could nominate

candidates. Nonetheless, The Carter Center received many reports that some political parties were supporting candidates. No particular party was singled out as more responsible than any other. Driving parties underground as the law has done only weakens transparency and accountability while further delaying the maturation of Libya's political parties.

Political parties can play a vital role in democracy. They can assist citizens in organizing, nominating, and supporting candidates who would be otherwise unable to stand for office; register voters; drive turnout; and help build a sense of collective identity. Political parties also can play an invaluable role in voter education, informing voters about the nature of the elections and the issues at stake while relieving voters from familiarizing themselves with dozens of candidates. The Carter Center recommends that future election laws enable those Libyans who desire to do so to stand for office as representatives of political parties.

Interlocutors informed Carter Center representatives that due to limited funds, many candidates had been waiting for the official announcement of the election date to begin a full-fledged campaign. The date was finally determined on Jan. 30, 2014, leaving candidates with only 20 days to campaign. It is worth noting that the campaign period for the GNC elections was equally brief, which drastically limited voters' exposure to candidates. For electoral democracy to be meaningful, voters must have the opportunity to familiarize themselves with the candidates they are to elect.⁴⁰

The Carter Center notes with serious concern a law adopted by the GNC on Feb. 11, 2014, which criminalizes actions against the Feb. 17 revolution. Actions deemed criminal include insults to the legislative, executive, and judicial branches and their members in the fulfillment of their official duties as well as the defamation of the revolutionary flag or of the state emblem.⁴¹

40 U.N., ICCPR, Article 25

41 Law 5 of 2013, amending Article 195 of the Criminal Code

Campaign Finance

While there are no binding obligations in international law regarding campaign finance, good practice calls for its regulation to ensure transparency and accountability.⁴² Balanced and transparent systems for candidates are important in the prevention of corruption.⁴³ It is also sometimes necessary to impose such limitation to ensure that disproportionate expenditures by candidates do not affect the free choice of voters.⁴⁴ The Carter Center noted that the measures to ensure transparency for campaign finance during the elections were insufficient. The Center recommends that the HNEC be obliged to publish candidates' financial reports and that the government strengthen the commission's capacity to monitor the campaign.

The election law delegates this power and responsibility—as well as the task of setting the ceilings for campaign expenditures—to the HNEC. The commission set maximum expenditures for candidates in each electoral district. These ranged from 6,000 Libyan dinar (approximately \$4,700) to 94,000 Libyan dinar (approximately \$74,000).⁴⁵ These ceilings were decided according to a formula primarily determined by the number of registered voters during the General National Congress elections.⁴⁶ None of the candidates who met with The Carter Center complained about these ceilings being insufficient. Furthermore, in Libya there is no provision for state funding of campaigns.

The law requires all candidates, regardless of the results, to submit a report on campaign finances within seven days of polling.⁴⁷ In these reports, all candidates are required to identify the sources of funding and the amounts they spent during their campaigns. The Center notes that the election law and HNEC regulations did not provide a mechanism for candidates to withdraw after the final candidate list had been published. This means that candidates on the final list who no longer wished to participate in the election would still have to report their campaign expenditures, regardless of their spending, or be subject to severe penalties. Two candidates on the final list reported to The Carter Center that they would

have withdrawn if the HNEC had allowed for such procedure.

The law gives the HNEC the right to publish the reports submitted by candidates. However, there is no legal obligation for the commission to do so. In the interest of transparency, these reports should be made available to the general public.

The High National Election Commission has made a noticeable effort in raising candidate awareness of the reporting obligations and spending limits as well as the severity of punishments for noncompliance. In most press conferences, commission officials reiterated the importance of submitting the reports by all candidates, including those who did not win as well as those who boycotted after the final list of candidates was published. According to a commission official, all candidates were contacted during the campaign period to stress the importance of submitting these reports. This was confirmed by some candidates who met with Carter Center staff.

The HNEC has the right to revoke the candidacy of any candidate (or annul the results) if it becomes evident that the candidate violated the provisions of the legal framework. Potential punishments also include fines, a prohibition from standing in future elections for a period of up to five years, and imprisonment. These punishments are unreasonable if applied to minor violations.

Despite having the legal authority, the commission did not have the capacity to monitor expenditures by candidates during campaigning. Rather, the commission primarily depended on the reports submitted by candidates themselves. As a result, it might only be able to hold accountable those

42 The United Nations Convention Against Corruption, Article 7 (3) states that "Each state party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties."

43 UNCAC, Article 7

44 UNHRC, General Comment 25, Paragraph 19

45 HNEC Regulation 80/2013

46 The formula was multiplying the number of registered voters during the GNC elections by 0.5 Libyan dinar (approx. \$0.4).

47 Law 17 of 2013, Article 20

candidates who failed to submit reports. The reliance on self-reporting hampers the commission's capacity to determine if candidates have complied with the regulations. While good efforts have been made to increase the commission's capacity in this area, further efforts are needed to enable the commission to monitor campaign finances sufficiently, an issue that has previously been highlighted by The Carter Center.⁴⁸

The Media

Although the state must respect the media's right to free expression, this right is balanced by obligations to regulate the media so that all candidates have an equal opportunity to express their views to the electorate. When providing access to public media, best practice suggests that it should be provided on a nondiscriminatory basis and that airtime should be fairly distributed.⁴⁹ Here, equality refers not only to the amount of space provided but also to the timing and use of such space.

The election law and the regulations issued by the HNEC for campaigning in the media require the commission to work with public media to ensure that all registered candidates are given free airtime and print space on an equal basis.⁵⁰ However, neither the election law nor the commission's regulations explain how this time and space will be allocated to candidates and, therefore, they did not sufficiently ensure free access to public media for candidates.

While candidates are entitled to free airtime on TV and radio under the campaign regulations propagated by the HNEC, none of the candidates the Center interviewed had been able to take advantage of this provision. Some were unaware of its existence; others said they had attempted to obtain access but were told they had to pay. Additionally, there are no legal requirements for private media to provide paid airtime or print space on an equal basis to all candidates. The election law further prohibits candidates from campaigning through foreign media. In the absence of a clear purpose to protect national security or public order, this measure violates Libya's

international obligation under the International Covenant on Civil Isolation and Political Rights.⁵¹

Due to the limited nature of its mission, The Carter Center was unable to engage in systematic media-monitoring during the election. The Center received complaints from candidates that some TV and radio hosts who were running for election to the Constitutional Drafting Assembly used their privileged access to the media as a platform to promote their candidacies and views.

Throughout the election period, media were subject to a series of seemingly politically motivated attacks. More than 20 attacks on media institutions were documented by international advocacy organizations during the campaign period. These included incidents of serious intimidation, kidnappings, assassinations, arson, and rocket-propelled grenade attacks.⁵² In addition to the violence targeting journalists, a series of legal cases and legislation threatened freedom of expression. On Jan. 22, 2014, the GNC passed a decree that prohibits broadcasting any satellite TV station whose programs criticize the Feb. 17 revolution, destabilize the country, or promote internal dissent.⁵³

On Feb. 11, the commission also passed the law banning insulting the government. Separately, there are three ongoing prosecutions in which individual Libyans are being tried for insulting official figures and Islam.⁵⁴ This hostility toward

48 The Carter Center preliminary report on the Libyan General National Congress elections, July 2012, Page 12

49 African Union, Declaration on the Principles Governing Democratic Elections in Africa, Article 3(a)

50 Law 17 of 2013, Article 14; HNEC Regulation of the Electoral Campaign for CDA Elections in the Public and Private Media, Attached to the Commission's Board Decision No. 63 (2013)

51 U.N., ICCPR, Article 19

52 The vast majority of these incidents occurred in Tripoli and Benghazi. See, for example, "More Than 20 Attacks on Media and Journalists Since Start of Year," Reporters Without Borders, Feb. 24, 2014. <http://en.rsf.org/libya-more-than-20-attacks-on-media-and-24-02-2014,45923.html>. Accessed Feb. 28, 2014

53 General National Congress, Decree 5 of 2014

54 "Libya: Drop Charges Against Politicians, Editor," Human Rights Watch, Dec. 14, 2013. <http://www.hrw.org/news/2013/12/13/libya-drop-charges-against-politicians-editor>. Accessed Feb. 28, 2014; "Libya: Drop Case for Defaming Public Officials," Human Rights Watch, Jan. 23, 2014. <http://www.hrw.org/news/2014/01/22/libya-drop-case-defaming-public-officials>. Accessed Feb. 28, 2014

freedom of expression threatens the ability of the media to cover political developments and threatens the right of all Libyans to engage in public discourse.

Civil Society

Impartial citizen observation monitoring is a way for citizens to participate in and promote the integrity of democratic processes. Some citizen observation groups participated in election observation, either as individual organizations or as part of a bigger network. The HNEC should be commended for its efforts to facilitate the full participation of citizen observers in the election process. The commission has been open to receiving and accrediting observers, and the process went smoothly. The process was kept open until Feb. 19, 2014, and decentralized, through the 17 election committee offices, to allow for easier accreditation at the local level.

In an open and inclusive process, 2,562 citizen observers and 3,973 candidates' agents were accredited for the Constitutional Drafting Assembly elections. The most visible group of domestic observers, the Libyan Network to Promote Democracy (LNPD), a coalition of domestic civil society organizations, deployed around 500 observers, 22 percent of whom were women, in 450 polling centers within eight main constituencies. This constitutes a significant decrease in number from the General National Congress elections in 2012, when the HNEC accredited 11,344 citizen observers. When compared to the national elections of 2012, the significant decrease in citizen observers for the Constitutional Drafting Assembly elections left some areas, such as Sirte and Sabha, without observers.⁵⁵ According to an LNPD representative, this decrease is related to a number of factors such as the general political apathy regarding the CDA elections, political boycotts, and the deteriorating security situation, particularly in the Eastern and Southern regions.

Participation of Women

Women should enjoy the same fundamental rights as men to participate in public affairs, including voting in elections and participating in other aspects of the electoral process.⁵⁶ Participation of Libyan women in these elections was lower than in previous elections. During the GNC election, in addition to the female candidates placed on party lists, another 85 women ran as individual candidates. The CDA elections saw only 64 women register as candidates. Out of 1.1 million registered voters, 449,501 were women. As of the publication of this report, no reliable data is available regarding the number of women who voted on election day. The Carter Center encourages the HNEC to focus greater efforts, resources, and voter outreach campaigns to encourage women to register and vote and to ensure their representation in the constitution-drafting process.

The rate of women's registration for these elections (41 percent) was lower than the previous elections (46 percent). This may have been related to the nature and requirements of the new voter registration system used for these elections. Women reportedly found it more difficult to register via SMS, as the family book was usually in the possession of their husband or father, limiting their access to the information required to register. Fewer women possess mobile phones than men, leaving some women dependent on men to register. Women's participation also may have been diminished by the general lack of information about the process.

The HNEC estimates there were approximately 5,500 Libyan women, married to foreigners, who did not possess a national identification number. This technical issue was resolved in cooperation with the Civil Registration Authority. However, the format of the numbers subsequently issued to these women differed slightly from the standard

55 Official HNEC statistics, published at: <http://hnecl.ly/assets/uploads/2014/01/%D8%B9%D8%B1%D8%A8%D9%89-11.pdf>. Accessed Feb. 21, 2014

56 U.N., ICCPR, Article 25(b); African Charter on Human and Peoples' Rights, Article 13 (1)

format. Libyan observers report that as a result, these women were then reluctant to register.

In the Constitutional Drafting Assembly elections, 64 out of the 649 registered candidates were women. Fifty-four of these women contested the seats reserved for female candidates, while another contested one of the seats reserved for the Tebu and the remaining nine women competed for open seats. According to the findings of a focus group published in January 2014 by Danish Church Aid, men and women generally supported the idea of women as candidates, but few of those surveyed said they would actually vote for a woman at this stage.⁵⁷

HNEC has regulated campaign finance by setting a maximum expenditure for each candidate depending on the subconstituency in which the candidate registered. However, in the case of the seats reserved for women, female candidates competed in larger areas of the south and east, while still being subject to the limit for the area in which they were registered. Should the electoral system again provide for women's lists in the future, efforts should be made to account for these differences.

As in the General National Congress elections, Libyan civil society organizations reported that women's campaign posters were more likely to be defaced and destroyed than those of male candidates. Female candidates were also more vulnerable to security concerns while campaigning and had less access to financial resources than their male counterparts. The results of the GNC election suggest women are less likely to be elected when running for open seats.

Given that women represent half the population of Libya but were assigned only six seats in the Constitutional Drafting Assembly, The Carter Center is concerned that women will be seriously underrepresented in the constitution-drafting process. Public opinion surveys suggest there is broad support for quotas to ensure female representation in Libya's next parliamentary elections.⁵⁸ The Center recommends that authorities establish a more inclusive electoral system and find ways to engage women and their viewpoints in the constitution-drafting process to ensure their representation.

Participation of Marginalized Groups

Under international law, states must ensure the ability of all citizens to participate in public affairs and should take positive measures to end discrimination or lack of opportunity.⁵⁹ Both the Constitutional Declaration and the election law recognized the need to establish an inclusive process, particularly regarding the participation of the Tebu, Touareg, and Amazigh minority communities in the democratic process. Also of concern was the participation of Libya's internally displaced people, the majority of whom were forced to abandon their homes during the revolution. While the HNEC made substantial efforts to ensure internationally displaced people would be able to cast their ballots, negotiations have failed thus far to achieve an agreement acceptable to the Amazigh, Touareg, and Tebu communities that would include them in the process.

The HNEC worked diligently to open special electoral centers to ensure voters displaced from their constituencies of origin were able to vote. Although internationally displaced people could register at the center of their choosing, the commission allocated 16 election centers specifically for such people, distributed over a larger area than during the GNC elections. Of an estimated 59,425 internationally displaced people in Libya,⁶⁰ only 4,040 registered to vote at these centers.

The most contentious issue with regard to the participation of marginalized groups in these elections remained the inclusion of groups referred to as "cultural components" in the election law. Libya's Amazigh, Touareg, and Tebu communities raised serious objections to the legal framework of the Constitutional Drafting Assembly elections.

57 *Building a Better Libya Together? Perspectives of Men and Women on the Political Engagement of Women*. U.K. Embassy/DCA/1Libya. Page 158, finding 14

58 University of Benghazi Survey, February–March 2013, Pages 41 and 42; NDI Public Opinion Poll, November 2013, Page 34

59 UNHRC, General Comment 18, Paragraph 10

60 As of mid-2013, according to UNHCR

All three communities were subject to marginalization, discrimination, and repression throughout the Qadhafi period. In particular, the Amazigh objected to the election law during its drafting and subsequent to its passage. They demanded that Constitutional Drafting Assembly decisions on certain issues be reached by consensus as opposed to being decided by a two-thirds majority of the body. Amazigh representatives identified the following critical issues for which consensus should be necessary: the name of the state, the identity of the state, the state flag, the national anthem, and language rights.

The Amazigh called for an amendment of the Constitutional Declaration to require consensus on these issues. Tebu and Touareg representatives offered support for this call. Although days before the election General National Congress statements suggested the issue had been resolved, the GNC did not pass an amendment. On the day before election day, the Supreme Amazigh Council announced the boycott would proceed.

In the past, representatives of all three communities and rights advocacy groups have also raised concerns over discrimination in the distribution of national numbers and, therefore, in the ability of members of these communities to register to vote. This was a particular concern for the Tebu, whose citizenship has frequently been contested. For example, fighting in the south prior to the election saw much talk on social media of alleged participation by “Chadian Tebu.” In the absence of a census, the size of these communities is difficult to determine. The Carter Center’s discussions with members of the Tebu community suggested that efforts had been made to include the Tebu in the civil registry and that this was no longer as serious a concern as it once was. Nonetheless, Tebu protesters in Awbari forced the suspension of polling on election day. Given the lack of transparency of the civil registry and the absence of a reliable census, any assessment of the participation of these communities was necessarily limited.

Electoral Dispute Resolution

Libya has an international obligation to provide effective remedies for violations of rights and to ensure there are adequate venues for addressing election complaints.⁶¹ Effective, clear, and fair procedures for electoral dispute resolution are an essential part of a well-functioning electoral process. If that process is to retain credibility, voters and other electoral stakeholders must be given—and must perceive they possess—a voice in the quality of the electoral process.⁶² The election law fails to guarantee the right to effective remedy for everyone whose electoral rights have been affected by limiting the right to appeal election results and by not allowing for the filing of official complaints in polling stations. To maximize the effectiveness of the dispute resolution mechanism, further efforts are needed to inform the voters and candidates of their rights and procedures for exercising this right.

The right to appeal voter or candidate eligibility is extended to any citizen, while the right to appeal preliminary results is restricted to candidates who were on the final candidate list.⁶³ Restrictions on the right to appeal results should be lessened to better meet Libya’s international obligations in this regard; at a minimum, voters should be given the right to appeal the results of the polling station where they voted.

Appellants have three days from the time the decision, inaction, or action was taken to submit their appeal. The courts then have three days in which to consider the matter and to issue a decision. Appeals are filed with the district court (the lowest-level court in Libya’s four-tier court system) that enjoys geographical jurisdiction over the electoral office that made the decision. Final appeals are heard by the primary courts. The timeline for review of complaints and appeals is in line with international standards and good practice that call for expedited review of election matters.

61 U.N., ICCPR, Article 2(3); UNHRC General Comment 25, Paragraph 20

62 UNHRC, General Comment 32 on the ICCPR, Paragraph 25: “The notion of fair trial includes the guarantee of a fair and public hearing.”

63 There were no challenges to the eligibility of voters or candidates.

With the support of the International Foundation for Electoral Systems, and in cooperation with the High Judicial Institute, a reported 130 judges from district and primary courts were trained on complaints and appeals procedures. While this training enhances communication between the courts and the election offices, there is no official mechanism for the communication of court decisions. The Carter Center encourages the election management body and the judiciary to continue their current cooperation and consider developing a formal mechanism for sharing court decisions and making those decisions available to the public.

Election dispute resolution is one of the main responsibilities of an election commission. For these elections, the HNEC passed a regulation on complaints that outlined the procedures for the review of complaints by the 17 electoral committee offices as well as by the commission itself. The regulation also established committees to review complaints at each level. All complaints were submitted to one of the 17 electoral committee offices in person, using an official complaint form. There were no provisions for voters who are located far away from their electoral committee office or for those who, for one reason or another, could not travel to the office, thereby discouraging potential complainants from seeking recourse.

In the pre-election period, one complaint was submitted to an electoral committee office and one election-related case filed with a district court. The complaint was filed by one candidate regarding another candidate campaigning outside his constituency and was promptly resolved by the electoral committee office. The court case was brought by a citizen who appealed the use of the SMS system for voter registration. The

appellant did not file the case as an election case and, therefore, it is still under review as a normal administrative appeal, not subject to the expedited timeline for review.

For transgressions that take place on election day, minor grievances and requests can be verbally lodged with the chair of the polling station. The chair of the polling station has full discretion to resolve the issue, and there is no requirement for recording the verbal grievance. Furthermore, there are no provisions for filing written complaints in the polling station: All serious complaints must be filed on the official complaint form at the electoral committee office. For future elections, the Center recommends that electoral authorities provide voters greater facility to lodge complaints to maximize the effectiveness of dispute resolution mechanisms.

The election law defines election offenses, both minor and serious, and the punishments they carry. Interlocutors have raised concerns over the severity of the punishments, which in most incidents involve a prison sentence plus a fine as well as severe consequences for candidates who are found to have violated the campaign finance rules.⁶⁴ The Carter Center joins in this concern and recommends allowing judges to use their discretion to ensure that sentences are proportionate to the offense committed and to the resulting harm.

For an electoral dispute resolution mechanism to be effective, voters and candidates must be aware of the procedures, and the process must be clear and understandable to all stakeholders. The Center noted a lack of effort by the HNEC to inform voters and candidates about their rights to file complaints and appeal decisions and to make the process accessible to all.

⁶⁴ For example, Chapter 7 of the election law, which details election offenses, includes a fine and prison sentence for those who fail to appear for work at the polling station and candidates who exceed campaign spending limits regardless of the amount.

| Election Day

The voting process is the cornerstone of the obligation to enable the free expression of the will of the people through genuine, periodic elections. For the voting process to reflect the will of the people, certain participatory rights must be fulfilled. Foremost among these are the right to vote, to participate in public affairs, and to enjoy personal security.⁶⁵ The HNEC should be commended for training polling staff and distributing all polling materials in a timely manner.

However, election day was marred by security incidents and boycotts in the Southern and Eastern regions. Due to the limited nature of its mission in Libya, The Carter Center did not conduct observation of polling procedures on election day and cannot comment on their success or quality.

Polling was held on Feb. 20, 2014. The HNEC made serious efforts to conduct polling in all locations, despite security incidents in the weeks immediately preceding the election and on election day. Polling materials were delivered in a timely manner by military planes and/or trucks. On election day, 1,496 election centers were opened around the country, and close to 50 percent of registered voters cast their ballots.⁶⁶ Turnout was largely affected by the security situation, particularly in the east and south, as well as by bad weather in the Tripoli area and a general lack of interest in these elections.

Local observers reported that some voters were denied the right to cast their ballots despite receiving an SMS stating that they had successfully registered. The HNEC explained that this

was a technical mistake and that these voters were allowed to cast their ballots after polling staff confirmed with the commission's operations room that they were indeed registered.⁶⁷

Out of 1,611 polling centers planned for the Constitutional Drafting Assembly elections, 34 were never established due to the Amazigh boycott. On election day, an additional 81 polling centers either did not open or were closed due to security concerns and Tebu protests. (Forty-seven never opened; 34 were opened but voting was suspended.) These centers were located in Awbari, Derna, Sabha, Kufra, Ajdabiya, and Benghazi.⁶⁸ The HNEC, in accordance with the election law, declared within 24 hours that new elections would be conducted for these seats on Feb. 26, 2014, and it attempted to reconvene voting for the 81 affected polling centers on the designated day.⁶⁹ However, polling could only be completed in 22 centers, 21 in Awbari and one in Sabha. Of the remaining 59 centers, 39 were located in Awbari, 13 in Derna, three in Benghazi, three in Kufra, and one in Sabha.⁷⁰ Following the reruns, 14 out

65 U.N., ICCPR, Articles 2, 25(a), and 9

66 No official figure has been published by the HNEC. Based on counts that include all but nine open polling centers across five constituencies, 497,663 voters cast their ballots on Feb. 20, representing approximately 45 percent of registered voters.

67 The same information was given to The Carter Center by the HNEC and officials of the United Nations Support Mission in Libya.

68 Twelve regular seats, three women, and three cultural components: 13 in the Southern region, four in the Eastern region, and one in the Western region

69 <http://hnecl.ly/?p=2615>

70 <http://hnecl.ly/?p=2841>

of 60 seats could not be declared.

As in the pre-election period, election day complaints had to be submitted to the respective electoral committee office and reviewed by the complaints committee. The complaints committee took a decision on the complaint, and complainants had the right to appeal that decision to the district court. Complaints regarding the disqualification of a candidate or the annulling of results in a specific polling station were referred to the HNEC complaints committee for consideration.⁷¹

According to the commission, a total of 27 complaints were submitted to the electoral committee offices around the country regarding incidents occurring on election day and in the 24 hours immediately preceding voting.⁷² The complaints were primarily made by candidates and were based on alleged violations of the campaign silence period, tampering of campaign materials, attempts to influence voters in the polling station, campaign posters in the vicinity of polling stations, and procedures followed by polling station staff.

Complaints were reviewed in a timely fashion, and all but one were rejected by the election commission for lack of sufficient evidence, on legal grounds, or for failing to identify the subject of the complaint. Complainants who alleged insult or libel were advised to take their case to court as a civil matter. Four complaints regarding the violent disruption of voting in Kufra were referred to the prosecutor for further investigation. One of the five complaints requesting recounts in polling stations in Benghazi was accepted and the recount ordered by the HNEC. Finally, one complaint rejected by the HNEC regarding a candidate agent being asked to leave a polling station for women was appealed to the Ajdabiya district court.

Out-of-Country Voting

The election law gives the High National Election Committee the authority to regulate elections for Libyans living abroad. This includes determining the number of days, the dates, polling procedures, and the countries in which elections shall take place outside Libya.⁷³ The Carter Center observed a significant drop in the number of registered

out-of-country voters compared to the General National Congress elections, which were already low. The Center also noticed a lack of cooperation between government entities and the HNEC regarding providing data as well as the late or lack of issuance of detailed polling, counting, and tabulation of results for out-of-country voting. This was evident in the statement issued by the commission in December 2013 clarifying that they did not receive enough information and data from relevant ministries such as the Ministry of Foreign Affairs. The Carter Center encourages increased cooperation between the government and the coming election management body, greater training for out-of-country polling staff well in advance of election day, and the issuance and publication of related procedures in a timely manner.

The HNEC should be commended for increasing the number of countries in which elections took place—from six during the GNC elections to 13 during the Constitutional Drafting Assembly elections. According to the commission, these countries were selected based on available statistics on the number of Libyans abroad, the approval of host countries, and the logistical capacity of the International Organization for Migration (IOM), which provided technical assistance, to conduct elections in these countries.

The commission signed an agreement with the IOM by which the organization became an implementing partner in the conduct of out-of-country voting in all 19 polling centers located in 13 countries.⁷⁴ These 13 countries are Canada, Egypt, Germany, Ireland, Italy, Jordan, Malaysia, Qatar, Tunisia, Turkey, the United Arab Emirates, the United Kingdom, and the United States.

Regrettably, only 6,997 voters (of which approximately 31 percent were women) registered

71 HNEC Regulation on Electoral Dispute Resolution, Article 4, from BOC Decision 47 of 2013

72 All information regarding complaints and appeals was provided to Carter Center staff by the legal department of the HNEC.

73 Law 17 of 2013, Article 24

74 The agreement entered into force retroactively on Oct. 1, 2013. To access the agreement visit: <http://hnec.ly/assets/uploads/2013/11/hnec-agreement-IOM.pdf>. Last accessed Feb. 27, 2014

for out-of-country voting. The registration process took place electronically through a dedicated website on which voters could enter their details to register in one of the 13 countries.⁷⁵ The voter registration process for Libyans abroad ended on Feb. 10, 2014. Out-of-country voting was conducted Feb. 15–17, 2014, and 2,747 registered voters cast a ballot, of which 28 percent were women. While there is no official data available on the number of Libyans abroad, these figures are moderately lower than the 8,043 Libyans who cast a ballot during the GNC elections, held in only six countries. The commission stated that the Libyan Ministry of Foreign Affairs did not respond to its request regarding the provision of data on the number of Libyans abroad. The Carter Center recommends that government institutions work to further enhance cooperation in this matter and to provide the next election management body with the appropriate data needed to reach Libyans abroad.

Detailed regulations for out-of-country polling, counting, and tabulation—as well as the training manual for out-of-country polling staff—were not published until after the completion of the voting process. The Center recommends that the next election management body address this issue by drafting and publishing these documents in a timely manner well in advance of the election day.

Despite having conducted voter registration in the lead-up to the polls, according to official HNEC statistics, turnout in out-of-country voting countries was low. According to an official presentation by the commission, the turnout rate was between 30 and 40 percent in seven countries, between 40 and 50 percent in four countries, and more than 50 percent in only two countries, Ireland and Qatar.⁷⁶ Commission officials confirmed that counting for out-of-country voting took place on Feb. 20, 2014, simultaneously with the counting of ballots in-country; results forms were sent electronically to the HNEC.

The HNEC accredited 26 observers, including 16 internationals, for out-of-country voting elections. The Carter Center deployed international observers in Egypt and Tunisia, where they observed some aspects of the process. Due to the limited nature of its observations, the Center

cannot fully assess the conduct of polling outside Libya. However, Center observers noted some confusion and a need for on-the-spot training on procedures in the observed polling stations. The Center urges future election management bodies to exert more effort in training polling officials abroad.

Tabulation

Tabulating results, a crucial step in the electoral process, requires extensive efforts to ensure transparency and accuracy and to minimize any opportunities for fraud so that the results of elections accurately represent the will of the voters.⁷⁷ To ensure public confidence, tabulation procedures should follow five fundamental principles: transparency, security, accuracy, timeliness, and accountability. In a commendable step by the HNEC, The Carter Center noticed an improvement in employing additional quarantine triggers detecting discrepancies in the reconciliation of ballots during the tabulation process, compared to those employed during the GNC elections.

Due to the limited nature of its mission, The Carter Center did not fully observe the tabulation process but was present in some of its stages. The tabulation regulation was issued by the HNEC on Feb. 20, 2014. According to the regulations, results of each polling station were filed in three different forms: One was posted at the polling station, one remained with the head of the polling station for future reference, and the third one was delivered in a tamper-evident envelope to the central National Data Entry Center at the HNEC, where tallying and tabulation of results took place. The tabulation process was centralized and computerized.

Although not detailed in the regulation, the tabulation procedures provided for a double-blind data entry system for the forms, which were then scrutinized. Procedures dictated that in the event of any discrepancy in numbers, missing data, or

⁷⁵ <http://voteabroad.ly>

⁷⁶ <http://hnec.ly/?p=2156>

⁷⁷ U.N., ICCPR, Article 25 (b)

any other problem on the reconciliation and results forms, these forms be referred to further scrutiny, with the board of commissioners to decide on the necessary action to be taken. While the HNEC opened the data entry process to observers and candidates and informed them of audits that took place, The Carter Center recommends that future elections include more efforts to increase the transparency of the process.

An official at the tally center explained that the tabulation process took place continuously from the arrival of forms on Feb. 21 until the arrival of the last set of forms on Feb. 28. During this period, 6,494 forms were entered and archived, out of a total of 6,704 originally planned before election day. Results and reconciliation forms for oil-field polling stations, which were counted centrally in Tripoli on Feb. 23, were sent to the central data entry center on Feb. 24, while those for out-of-country polling stations were sent electronically. Aggregation of results for all polling stations across the country was done electronically, and the HNEC announced partial preliminary results on a rolling basis as of Feb. 22, 2014.⁷⁸ Preliminary results for the 46 seats for which polling was completed were announced in a press conference on March 1, 2014.⁷⁹

Triggers for quarantining questionable results have shown an improvement since the General National Congress elections, but they are still insufficient. According to HNEC officials, the database was programmed with three triggers to quarantine results. The first trigger in the quality-control process would detect any inconsistency or discrepancy in the data entered through the double-blind system. The second trigger would flag any form in which the turnout was 3 percent higher than the number of registered voters. An HNEC official explained that they left this 3 percent margin to allow for additional voters on supplementary lists in a given polling station being able to vote without quarantining that polling station.⁸⁰ The third trigger could detect and flag any form in which the number of reconciled ballots for any of the contests was not equal to 600 ballots, the standard number of ballots per contest for all polling stations across the country.⁸¹

With the current triggers, as explained by

the HNEC officials, the database would not be triggered if the turnout was 103 percent or if one candidate received up to 100 percent of the votes. The Carter Center reiterates its recommendation from the GNC elections that the next election management body should employ additional and more stringent triggers to detect, for instance, certain polling stations at which the turnout was exceptionally high and to detect over 95 percent votes for one candidate.

In a very commendable step, the HNEC ordered the auditing of 61 polling stations from throughout the country in which there were discrepancies. Forty-nine of these forms were detected by the triggers, while the remaining 22 were either incomplete or unclear. The commission announced this action in advance and invited Libyan and international observers—as well as candidate agents—to observe the opening of the ballot boxes for recounting and reconciliation. The audit took place at the respective warehouse of each election committee office, where all sensitive election materials were kept until after the announcement of final results.

Recounting is an inevitable process in most elections and requires clear procedures to ensure accuracy and transparency. The Carter Center visited the warehouse in Tripoli where audits of 13 polling stations took place as those recounts were being conducted. This process seemed transparent and was attended by a number of Libyan observers, though no candidate agents were present. However, these procedures were not detailed in the tabulation regulation, which merely mentioned that the HNEC has the right to order a recount. The regulation did not detail

78 Partial results were announced for contests in which at least 70 percent of their respective polling stations were aggregated. When asked, the HNEC said that the remaining 30 percent could indeed affect the results, but they preferred to reveal these partial results as soon as possible.

79 <http://hnecl.ly/?p=2933>

80 Supplementary lists included polling staff and on-duty security personnel who were not registered at the polling station where they worked as well as voters whose gender was miscategorized and were referred to the nearest polling station of their correct gender. These supplementary lists were stipulated in the training manual for the polling procedures.

81 The maximum number of registered voters at any polling station was 550.

the procedures, timeline, or the location of the recount. The Carter Center recommends that the coming election management body issue a more detailed tabulation regulation and publish it in a timely manner before the election day.

The HNEC officials at the data entry center welcomed observers and candidate agents to the center, where cell phones, computers, memory sticks, and other electronic devices were prohibited to protect the data. However, the layout of the data entry center—and designating a special area for observers and candidates' agents as well as the computerized aggregation of results—did not permit a thorough or continuous observation of the process.

Restating its recommendation from the General National Congress elections, the Center recommends the facilitation of the aggregation process.

One option could be to project results forms on a screen that is easily visible to observers, candidates' agents, and political entities or to post results forms as they are entered in the database. Furthermore, the Center recommends the decentralization of the tabulation process to facilitate its observation by observers, candidates, political parties, and their agents who reside outside Tripoli.

The HNEC should be commended for the way it handled any delay in the tabulation process by holding frequent press conferences to reassure candidates and voters and by announcing partial results on rolling basis. These measures helped to increase transparency and the trust of the tabulation process and reassure voters that the process was not subject to undue delays.

Postelection Developments

On election day, the Nalut local council (an Amazigh council), denounced the elections and declared their intent to challenge the constitutionality of the election. This call was followed by protests of Amazigh community members outside the Supreme Court in the days following election day. Amazigh community leaders informed The Carter Center that they intended to file an appeal with the Constitutional Chamber of the Supreme Court, asking the court to find the Constitutional Drafting Assembly elections unconstitutional for failing to comply with Constitutional Declaration Article 30 that requires the election of a 60-member Constitutional Drafting Assembly.

Following election day and prior to the announcement of preliminary results, complaints were filed in the district courts of Jebel 1 and Al Bayda, asking the court to cancel results of specific

polling stations. The court in Jebel 1 found in favor of the complainant and canceled the results in three of the four requested polling stations. This decision was successfully appealed to the primary court on the behalf of HNEC. In Derna, the complaints to cancel results in one polling center was granted, and the court ordered repolling for all polling stations in that center.

The HNEC announcement of final results covered 47 of the 60 CDA seats. One additional seat could still be affected upon determination of the winner of one special race for women.⁸² On March 25, 2014, the GNC decided to hold repolling in the constituencies in which polling was disrupted on Feb. 20 and 26 and made another decision calling for elections for the two reserved seats for the Amazigh.

⁸² The woman who wins each of these two seats replaces the winner of the general contest at the subconstituency at which the female candidate has registered.

Conclusions and Recommendations

Three years after its revolution started, Libya remains a fragile state, with multiple political, economic, and security challenges. The hopes of local policymakers and the international community alike that the country will prove capable of institutionalizing itself as a modern state remain alive, but it is clear that the process of doing so will be more arduous and time-consuming than anticipated during the country's civil war. Particularly, the lingering power of different militias has cast a pall over the pace and possible outcomes of the country's political progress.

As the ongoing debates about federalism, decentralization, and the incorporation of Tebu and Amazigh into the political process testify, some basic issues of state- and nation-building remain unresolved in Libya. It is clear that until an agreement on those issues is finally reached, state authorities in Libya will continue to face obstructions and challenges from groups whose interests are antithetical to those pursuing a unified, institutionalized, open, and accountable form of government for the country. Until the Libyan government obtains sufficient coercive power to impose solutions, the country's political life will be kept hostage to this variety of actors whose interests do not coincide with those of Libya as a unitary political community and who demand political and economic payoffs from the central government.

It is within this more general context that the future of Libya's political institutions must be judged. It is important to point out that despite ongoing difficulties, the political process

in Libya, formed originally during the revolution and pursued admirably through the 2012 General National Congress elections and the Constitutional Drafting Assembly elections of 2013, continues to move forward. So far, both sets of elections have represented needed institutional steps for Libya. Despite an understandable amount of popular unease and exhaustion with the country's emerging political rules and institutions, the institutionalization of Libya's political life remains a *sine qua non* for the consolidation of the country as a state and as a nation after decades of neglect of popular participation and of outright destruction of state institutions.

It is also important that the country's ongoing process of political institutionalization adhere to the highest international standards. It should not simply represent a rush toward the establishment of political institutions and political guidelines for the country but, more importantly, must ensure that in the process these institutions and rules continue to be perceived as relevant, legitimate, fair, and accessible to everyone.

It is based on this conviction, in light of the Constitutional Drafting Assembly elections, that The Carter Center offers the following recommendations to the different stakeholders in Libya's unfolding political life.

To the Government of Libya:

Comply with international law.

- The General National Congress and future legislative bodies in Libya should undertake

a thorough review of pre- and postrevolution legislation for compliance with international obligations for freedom of expression, assembly, and association. The legislature should refrain from passing any new legislation that further restricts these basic freedoms.

Develop a clear security plan in advance of any future elections.

- Libya's fractious security environment makes the conduct of elections particularly challenging. Citizens must have the right to participate without fear as voters, candidates, and election officials. A meticulously defined security plan must be established well in advance, with particular attention given to known hot spots. Insofar as is possible, this plan must be communicated to the public so they can feel safe participating in elections. Clear roles must be established for the ministries of Defense and Interior, along with coordination with local governance authorities, to ensure the right to participate is respected.

Strengthen legal mechanisms that guarantee women's equal participation.

- To fulfill Libya's international obligations to ensure that women are able to participate fully in the political process, The Carter Center encourages the authorities to strengthen the legal framework to provide for greater participation of women through the establishment of a more inclusive electoral system. The Constitutional Drafting Assembly is encouraged to find ways to engage women and incorporate their viewpoints in the constitution-drafting process.

Ensure clarity in the election law, particularly with regard to boundary delimitation and seat allocation.

- The use of two systems, with different stipulations for seat allocation for women and cultural components, created confusion among stakeholders and increased the complexity of the counting and tabulation processes. In passing new election legislation, the legislature should be sure that essential aspects of the process are clearly and explicitly stated in the law. In particular, the rationale for boundary delimitation and the seat allocation system should be clearly defined in the law and not left to the election

management body to elaborate. Regulation by the HNEC should be limited to technical details of election preparations and to elaboration of key provisions covered in the law. Libya should also consider a less complicated electoral system that makes it easier for voters and candidates to understand the process, especially the seat-allocation mechanism.

Reconsider boundary divisions that compromise equality of the vote.

- The Carter Center encourages the Libyan authorities to carefully consider issues of equality of the vote, including considering steps that would create greater equality of the vote across regions. While it is understood that there are historical and geographical regions, greater efforts should be made to ensure more equitable representation of voters in all regions.

Amend the election law to allow the High National Election Committee to run SMS-based voter registration and in-person voter registration in parallel.

- The SMS voter registration system boasts several advantages, including its simplicity for the majority of eligible voters and its capability of processing large numbers of voters at a time. However, the system has disadvantages as well and may have disenfranchised voters who lacked access to mobile phones and network coverage as well as senior citizens who may be less familiar with mobile technology. The Carter Center encourages the HNEC to hold SMS-based registration in tandem with in-person registration to ensure that the largest possible number of citizens are able to register to vote successfully.

Establish continuity in the election commission.

- While the legislature will need to determine the character, functions, and composition of the future elections management body, it should consider retaining the HNEC's core administrative staff to enhance accumulated institutional memory and maintain operational continuity.

Reconsider candidate eligibility requirements.

- To ensure an inclusive electoral process in line with international good practices and Libya's

international obligations, the next election law should reconsider the requirements for candidate registration to remove any undue limitations on candidacy rights. In particular, limits to candidacy rights should be restricted to those convicted of a serious crime who have not been exonerated. As well, members of current government institutions should be allowed to stand for office upon resignation of their current post.

Allow participation of political parties.

- While the election law did not explicitly ban political parties from participating, it was interpreted as doing so. This seems to have had the opposite effect than the one intended, breeding suspicion of candidates among voters and undermining trust in the system. This de facto ban fails to fulfill Libya's international commitments to ensure the right to association. To meet Libya's obligation under the International Covenant on Civil and Political Rights and encourage greater political participation, future election laws must allow citizens the right to participate as members of political parties if they so choose.

To the Constitutional Drafting Committee:

Develop mechanisms to ensure minority communities' representation in the drafting of Libya's constitution.

- Both Libya's Constitutional Declaration and the electoral law for the Constitutional Drafting Assembly recognize the need to include Libya's cultural components: the Amazigh, Touareg, and Tebu. While the Amazigh and Tebu were not formally excluded from participation, the lack of a political agreement regarding what would constitute meaningful participation in the election—and the subsequent boycott of the two communities—currently means they will be without representation. An inclusive constitution-drafting process must involve all Libya's people. All parties must redouble their efforts to find a political settlement that allows for the representation of the Amazigh and Tebu in the assembly.

To the Election Management Body:

Encourage transparency in HNEC affairs.

- For the electoral process to be perceived more credibly by the public, the law should stipulate that the meetings of the next elections management body should become public, and it should grant Libyans access to the minutes of such meetings.

Expand and strengthen voter and civic education efforts.

- Effective voter education campaigns are crucial to ensuring that an informed electorate can properly exercise its right to vote. The election management body should devote increased resources and efforts to conduct voter information and voter education campaigns well in advance of the elections to deepen voters' understanding of the electoral process and to encourage increased participation by all eligible voters. In future elections, the election management body should also undertake to coordinate wider voter and civic education activities that go beyond simple voting mechanics and the marking of paper ballots to allow a more conscious choice of elected representatives. Additionally, further efforts are needed to inform voters of the need to register and the required procedures well in advance of the registration period. While protecting personal data, The Carter Center also encourages making the entire final voter list available for public scrutiny in a timely manner so that citizens can exercise their right to challenge a person's eligibility to vote.

Audit the national identification number database.

- In the interest of a more accurate, transparent, and comprehensive voter list, The Carter Center encourages an independent audit of the national identification number database as well as increased cooperation between the election management body and the Civil Registration Authority in sharing information and granting increased access to the database.

Ensure timely announcement of an electoral calendar with key electoral dates.

- While the overall campaign period was of sufficient length, the late announcement of the date for elections led some candidates to delay launching their campaigns. This left some candidates with insufficient time to make their case to the voters—and voters with insufficient time to familiarize themselves with candidates. In future elections, the polling date must be determined by HNEC and publicly announced by the relevant authorities well in advance to allow for a robust campaign season and sufficient outreach to voters. Only in this way can voters' ability to make an informed choice be ensured.

Publish candidates' financial reports.

- To further enhance the transparency of coming elections, The Carter Center recommends that the HNEC be obliged to publish candidates' financial reports and that the government strengthen the commission's capacity to monitor the campaign. Furthermore, to ensure that campaign spending limits guarantee equal opportunity for all candidates, limits for women and cultural components running in larger geographical areas should be adjusted accordingly.

Ensure equal opportunities for media representation.

- To ensure voters have access to information on election contestants, a detailed mechanism for the equal allocation of airtime and print space should be elaborated in the regulations and strictly followed by the election management body and public media. To guarantee the equal treatment of all candidates, public and private media should be required by law to offer paid airtime and space on an equal basis.

Develop a more accessible process for filing complaints.

- To ensure all citizens access to an effective remedy, the complaint process should be made accessible to all, both in law and in the implementation of procedures. Arrangements for filing complaints in polling stations or accepting electronic complaint forms should be considered. The election management body should undertake an aggressive information campaign

on the right by individuals to seek remedy with the commission and the courts. In future election legislation, the right to appeal election results should not be limited to candidates but, rather, should be open to all whose electoral rights have been affected.

To the International Community:

Continue to support Libyan civil society initiatives.

- Libya's civil society groups have been valuable, if often marginalized, segments of Libya's emerging political life. The international community should continue to support a wide panoply of domestic civil society organizations and observers, particularly through capacity-building, training, and funding. This support should be a continuous process not simply limited to election cycles. In the long run, however, only a vibrant civil society can act as both a catalyst for sustained change and as a mechanism for greater accountability.

Continue to provide international expertise on political systems.

- After a long period of disenfranchisement, it is clear that both the expectations of many Libyans—as well as their limited understanding of how representative political systems work—influence how political institutions are perceived within the country and how effectively they can ultimately function under those circumstances. It is important for the international community to continue to provide expertise and extensively disseminate such knowledge, which increases the understanding, limits, and opportunities that various modern representative systems could offer to Libyan citizens.

Convey the importance of an open and accountable political system.

- Libya currently faces several opposing visions of how the state—and the interaction between the state and its citizens—should be managed. It is important for the international community to continue to support settings and forums within Libya that, beyond the importance of regularized

elections, emphasize the values of an open, representative, and accountable political system, without respect to the way Islam is incorporated within that political system. Understanding

and tolerance of diverse opinions are crucial building blocks of vibrant political systems and are particularly important in Libya after decades of the political exclusion of citizens.

Appendix A

Acknowledgments

The Carter Center is grateful for the support of a number of individuals and organizations that helped make its international election observation mission in Libya possible. Above all, the Center thanks the High National Elections Commission for inviting the Center to observe the elections and for welcoming its staff and observers in Libya.

The Carter Center's mission in Libya would not have been possible without the generous support of the Swedish International Development Agency, the government of Denmark, and the government of Norway.

The Carter Center would like to recognize the invaluable contributions made by the expert team in Tripoli, including Diederik Vandewalle,

Meaghan Fitzgerald, Sasha Pajevic, Sherif Alaa, Nicholas Jahr, Francis Talbot, and Davor Corluka. The Center's work in Libya was also made possible through the unwavering commitment and support of its national staff, including Samira Mahdi, Rafeeq Al-Breaky, Ahmed Saber, Abir Chniti, and Marwan al-Wahshi.

The Center's Democracy Program staff in Atlanta had overall responsibility for the mission. The Libya project was managed by Sarah Johnson with assistance from Aliya Naim. Essential support was provided by David Carroll, Lance Alloway, Ramiro Martinez, Traci Boyd, and Tynesha Green.

Appendix B

Terms and Abbreviations

CDA	Constitutional Drafting Assembly	IOM	International Organization for Migration
CRA	Civil Registration Authority	LNPd	Libyan Network to Promote Democracy
GNC	General National Congress	NTC	National Transitional Council
HNEC	High National Election Commission	SMS	Short Message Service
ICCPR	International Covenant on Civil and Political Rights		

Appendix C

Carter Center Statements



**February 16, 2014
FOR IMMEDIATE RELEASE**

Carter Center Urges Intensified Voter Education and Security Coordination Ahead of Libya's Elections

The Carter Center is conducting a small expert mission in Libya to assess the legal framework, key issues related to the administration and preparation of elections, and the overall political environment ahead of Feb. 20 elections for the Constitutional Drafting Assembly. These elections represent an important stage in the country's transition to democracy. In advance of the elections, the Center encourages Libyan authorities to intensify voter information efforts and to strengthen security coordination in the final days leading to the polls to support peaceful and inclusive polls.

This will be the second election in the sequence established under the constitutional declaration issued by the National Transitional Council. The first election, which established the General National Congress, was recognized by domestic and international observers as democratic and transparent. Pressures on the congress, however, led to changes in the original timeline for the transition process set by the constitutional declaration. The Constitution Drafting Assembly elections offer an opportunity to imbue the transition with new momentum.

Following an invitation from the High National Elections Commission (HNEC), The Carter Center has deployed a team of six experts to Libya to assess the elections. The Carter Center team visited Libya in December to learn about the candidate registration process and other key preparations, and returned in mid-January to assess political conditions and key election administration issues.

In light of security considerations, which restrict the size of the team and prevent deployment outside of Tripoli, the Center's expert mission is limited in nature and will not offer a comprehensive assessment of the electoral process and election day proceedings. The focus of the expert assessment is on the legal framework, election administration, technical preparations, the general political environment, and the resolution of any electoral disputes.

Legal and Electoral Framework

A sound legal and electoral framework, including domestic laws that regulate the electoral process, is essential to the effective administration of genuine democratic elections.

The Constitution Drafting Assembly elections are being organized pursuant to the Interim Constitutional Declaration as amended by the General National Congress on April 9, 2013, Law 17 of 2013 (the election law), Law 8 of 2013 (on the establishment of the HNEC), and regulations passed by the HNEC Board of Commissioners. On Jan. 30, 2014, the General National Congress announced that elections for the 60-member assembly will be held on Feb. 20, the date set by the HNEC. Out-of-country voting will take place Feb. 15-17.

The final version of the election law set aside six seats for women and another six seats for Libya's Amazigh, Touareg, and Tebu populations, referred to under Libyan law as cultural components. Many Libyan women's advocates and representatives of the cultural components have been critical of these provisions, which they say do not confer sufficient representation. It is with serious concern that the Center notes the lack of an agreement to resolve a boycott undertaken by the Amazigh. The Center encourages all parties to continue efforts to include all of Libya's people in the constitutional process.

An independent and impartial election management body that functions transparently is recognized internationally as an effective means of ensuring a genuinely democratic electoral process.¹ These elections are being administered by the HNEC, an independent body that is based in Tripoli, consisting of a board of commissioners, a central administration office, and 17 electoral committee offices covering all regions in Libya. Polling and counting will be conducted in more than 1,500 election centers across the country, while tabulation and announcement of the results will take place at the central HNEC office in Tripoli.

The HNEC conducted voter registration in two separate phases between Dec. 1, 2013 and Jan. 16, 2014. The commission extended the voter registration period several times in an effort to increase participation. According to the HNEC, 1,101,541 Libyans have registered to vote in the upcoming polls. Although data on the number of eligible voters is not available, registration for the General National Congress elections, although acknowledged by the HNEC as having been inflated by duplicate registrations, stood at 2,865,937 voters.

For election day, polling officials are being trained through a four-tier cascade training managed by HNEC. The first three stages, observed by The Carter Center, were comprehensive and interactive, giving the trainers and election officials the opportunity to address practical issues that may arise on election day. Despite political tensions and the security challenges in some regions, the HNEC has completed technical preparations for the elections within the necessary time and in an impartial manner.

Security

Libya's transition to democracy has been marred by sporadic low-level violence and instability. Given the tensions in Libya's political process and the localized violence that occurred in the east just prior to the General National Congress elections, a comprehensive plan for security on polling day is a necessity. The Ministry of the Interior has primary responsibility for providing election security. The ministry plans to deploy 25 police officers to each election center. As the Libyan police force suffers from a widely acknowledged lack of capacity, the Center encourages the government to coordinate security efforts and to emphasize the need for all Libyans to support the democratic process and observe polling day peacefully.

¹ United Nations Human Rights Council General Comment No. 25, para. 20.

Campaigning

Although the Center's expert mission is too limited in size to assess the campaign process around the country, the mission is analyzing the legal framework for campaigning, and is monitoring reports from various Libyan interlocutors regarding campaign issues. The campaign period began on Dec. 25, 2013, following the publication of the final list of candidates, and ends 24 hours prior to the opening of polls.

Key stakeholders have reported to Carter Center representatives that campaigning has been subdued. With the notable exception of a possible assassination attempt targeting a prominent lawyer and candidate in Tripoli, the campaign period has proceeded largely without incident. Ongoing insecurity, particularly in the East and the South, however, may have prevented candidates from campaigning. Interlocutors informed The Carter Center that due to limited funds, many candidates were waiting for the official announcement of the election date to begin a full-fledged campaign, which occurred on Jan. 30, 2014.

The election law and the regulations issued by the HNEC for campaigning in the media require the HNEC to work with public media to ensure all registered candidates are given free airtime and print space on an equal basis. However neither the election law nor the HNEC regulations explain how this time and space will be allocated to candidates. To date candidates do not appear to be taking advantage of this provision.

Candidates still have a limited period of time in which to reach voters and communicate their positions on key constitutional issues. Given the importance for voters of the opportunity to make an informed choice, The Carter Center encourages candidates to make full use of the resources available to them to get their message out, and the HNEC and public media outlets to facilitate candidates' access to media.

While there are no binding obligations in international law regarding campaign finance, good practice calls for its regulation to ensure transparency and accountability. In Libya, HNEC regulations have set spending limits and all candidates, regardless of the results, are required by law to submit a report on campaign finances within seven days of polling.² The HNEC has made a concerted effort to raise candidate awareness of the reporting obligations and spending limits, as well as the severity of punishments for non-compliance. These punishments include the revoking of a candidate's registration, imprisonment, fines, and a prohibition from standing in future elections for a period of five years. The Carter Center therefore encourages the HNEC to continue its efforts to inform candidates of these requirements and all candidates to familiarize themselves with their obligations under the law.

Voter Information and Education

An effective voter education campaign is crucial to ensuring that an informed electorate can properly exercise their right to vote.³ According to the Center's initial assessment of voter education, the absence of a visible voter education campaign has been a significant concern in the period leading up to the elections, and may have had a negative impact on voter registration.

The Center's initial assessment, based reports from interlocutors, suggests that the general public's knowledge of the Constitution Drafting Assembly elections is quite limited. Many Libyans seem unfamiliar with basic facts about the process, such as the voting procedures for the seats reserved for women, Amazigh, Tuareg, and Tebu. This is a particular concern for the four seats for which the winner of the general race will be replaced by the winner of the special race for women in that area. In the interest of reducing post-election disputes, the HNEC should clarify to candidates and the public how these seats will be filled.

² Law 17 of 2013, Article 20.

³ UNHRC, General Comment No. 25, para. 11.

The HNEC is responsible for educating and raising citizens' awareness about the electoral process. As part of its wider education campaign, the HNEC plans to air television and radio spots in addition to publishing newspapers ads, posters, and leaflets. The Carter Center encourages the HNEC to fully implement this plan and intensify its voter education efforts in the time remaining to provide voters with the necessary information, including the election date, polling hours and locations, and in particular detailed voting procedures and ballot design. Only such an intensified effort will enable voters' full participation.

Voter education also plays a critical role in ensuring access to an effective remedy for all election stakeholders. In order for an electoral dispute resolution mechanism to be effective, voters and candidates must be aware of the procedures, and the process must be clear and understandable to all stakeholders. The Carter Center therefore urges the HNEC to use the time remaining before election day to inform both voters and candidates of their rights to file complaints and appeal decisions and make the process accessible to all.

The Carter Center in Libya

The Carter Center is nonpartisan and conducts its assessments against the interim constitutional declaration, Libya's national election laws and regulations, and the country's international commitments regarding democratic elections and political participation. In the context of the expert mission, the Carter Center team is meeting with officials from the HNEC; political entities and candidates; members of the General National Congress and the judiciary; representatives of Libyan civil society, including domestic observers; members of the international community; and voters. The team's findings and analysis will be shared with HNEC and the public in a spirit of cooperation to enhance the quality of future elections. The Carter Center intends to release a preliminary statement of findings and conclusions following the announcement of preliminary results by the HNEC.

####

Appendix D

Seat Allocation

Western Region

Main Constituency Number	Constituency Name	Subconstituency	Number of Seats	Electoral System	Seat Type	Contest Level
1	Sirte	First	1	FPTP*	General	Subconstituency
		Second	1	FPTP	General	Subconstituency
		Third	1	FPTP	General	Subconstituency
2	Misrata	First	1	FPTP	General	Subconstituency
		Second	1	FPTP	General	Subconstituency
		Third	1	FPTP	General	Subconstituency
		Fourth	1	FPTP	General	Subconstituency
3	Tripoli	First	1	FPTP	General	Subconstituency
			1	FPTP	Women	Subconstituency
		Second	1	FPTP	General	Subconstituency
			1	FPTP	General	Subconstituency
		Fourth	1	FPTP	General	Subconstituency
			1	FPTP	General	Subconstituency
4	Zawiyah	First	1	FPTP	General	Subconstituency
			1	FPTP	General	Subconstituency
		Second	1	FPTP	General	Subconstituency
		Third	1	FPTP	Amazigh	Subconstituency
		Fourth	1	FPTP	General	Subconstituency
		Fifth	2	SNTV**	General	Subconstituency
			1	FPTP	Amazigh	Subconstituency

*FPTP: First-Past-The-Post

**SNTV: Single Nontransferable Vote

Remarks: The winners of the women's seats in the Western region shall win the seat without replacement, as these two seats are designated for women. Where there is a contest for women candidates, voters receive two separate ballots: one that has the names of candidates for the general contest in a subconstituency, and another that has the names of candidates running for the women seat in the same subconstituency.

In the fifth subconstituency in the main constituency of Zawiyah, voters receive one consolidated ballot that includes two sections: one for candidates running on the general contest and another for candidates running for the special contest for Amazigh in that area. Voters can only choose one candidate from either section.

Eastern Region

Main Constituency Number	Constituency Name	Subconstituency	Number of Seats	Electoral System	Seat Type	Contest Level
1	Al-Batnan	First	2	SNTV	General	Subconstituency
		Second	1	FPTP	General	Subconstituency
		Third	2	SNTV	General	Subconstituency
2	Al-Jabal Al-Akhdar	First	1	FPTP	General	Subconstituency
		Second	2	SNTV	General	Subconstituency
		Third	1	FPTP	General	Subconstituency
		Fourth	1	FPTP	General	Subconstituency
3	Greater Benghazi	First	3	SNTV	General	Subconstituency
		Second	1	FPTP	General	Subconstituency
		Third	1	FPTP	General	Subconstituency
4	Ajdabiya	First	2	SNTV	General	Subconstituency
		Second	1	FPTP	General	Subconstituency
		Third	1	FPTP	General	Subconstituency
			1	FPTP	Tebu	Subconstituency

Remark: In the third subconstituency in Ajdabiya, where there is a contest for Tebu candidates, voters should receive one consolidated ballot that includes two sections: one for candidates running

on the general contest and another for candidates running for the special contest for Tebu in that area. Voters can only choose one candidate from either section.

Women's Seats in the Eastern Region

Main Constituency Number	Name of Main Constituencies	Number of Seats	Electoral System	Contest Level
1 & 2	Al-Batnan & Al-Jabal Al-Akhdar	1	FPTP	Two main constituencies
3 & 4	Greater Benghazi & Ajdabiya	1	FPTP	Two main constituencies

Remark: The woman who wins each of these two seats replaces the winner of the general contest at the subconstituency at which the female candidate has registered. In case the subconstituency at which the female candidate has registered had two or three seats, then the female candidate replaces the second or third winner, respectively. In all cases, this replacement takes place even if

the winner in the general contest was a woman herself. Where there is a contest for women candidates, voters receive two separate ballots: one that has the names of candidates for the general contest and another that has the names of candidates running for the women seat; each in their respective areas as shown in the table.

General Seats for the Southern Region

Main Constituency Number	Constituency Name	Subconstituency	Ward Number	Number of Seats	Electoral System	Seat Type	Contest Level
1	Sabha	First	1	1	FPTP	General	Ward
			2	1	FPTP	General	Ward
			3	1	FPTP	General	Ward
			4	1	FPTP	General	Ward
			5	1	FPTP	General	Ward
		Second	1	1	FPTP	General	Ward
			2	1	FPTP	General	Ward
			3	1	FPTP	General	Ward
			4	1	FPTP	General	Ward
2	Awbari	First	1	1	FPTP	General	Ward
			2	1	FPTP	General	Ward
			3	1	FPTP	General	Ward
		Second	1	1	FPTP	General	Ward
			2	1	FPTP	General	Ward
			3	1	FPTP	General	Ward
		Third	—	1	FPTP	General	Subconstituency
3	Ghadamess	First	—	1	FPTP	General	Subconstituency

Seats for Cultural Components in the Southern Region

Main Constituency Number	Constituency Name	Subconstituency	Ward Number	Number of Seats	Electoral System	Seat Type	Contest Level
2	Awbari	First	—	1	FPTP	Touareg	Subconstituency
2	Awbari	Second	3	1	FPTP	Tebu	Ward
3	Ghadamess	Second	—	1	FPTP	Touareg	Subconstituency

Remark: For the areas where there is a contest for cultural components, voters receive one consolidated ballot that includes two sections: one for candidates running on the general contest and

another for candidates who belong to a cultural component group running for the special contest in that area. Voters can only choose one candidate from either section.

Women's Seats in the Southern Region

Main Constituency Number	Constituency Name	Subconstituency	Number of Seats	Electoral System	Contest Level
1	Sabha	1	1	FPTP	Subconstituency
1	Sabha	2	1	FPTP	Subconstituency

Remark: The woman who wins each of these two seats replaces the winner of the general contest at the ward at which the female candidate has registered. In all cases, this replacement takes place even if the winner at the general contest was a woman herself. Where there is a contest for

women candidates, voters receive two separate ballots: one that has the names of candidates for the general contest and another that has the names of candidates running for the women seat; each in their respective areas as shown in the table.

Appendix E

Results

Western Region

Main Constituency Number	Constituency Name	Subconstituency	Seat Type	Candidate Name	Number of Votes
1	Sirte	First	General	Al-Hadi Ali Yousef Abu Hamra	1,169
		Second	General	Saleh Mohamed Shaker Ibrahim	1,033
		Third	General	Jamal Mohamed Abdulmawla al-Ghazal	992
2	Misrata	First	General	Mohammed Abdulrahman Othman Balwin	21,752
		Second	General	Mohammed al-Hadi Ahmed al-Sari	3,933
		Third	General	Mohammed Faraj Mohammed al-Zaidi	4,891
		Fourth	General	Mohamed Ahmed Daw Abdullah	3,175
3	Tripoli	First	General	Salem Mohamed Salem Kashlaf	15,031
			Women	Itimad Omar Ahmed Al-Maslati	16,305
		Second	General	Al-Badri Mohamed Abdullah al-Sharif	5,836
			General	Mohamed Abdulqader Mansour al-Tumi	17,996
		Fourth	General	Zainab Ali Sulaiman al-Zaidi	18,906
			General	Daw Al-Mansouri Masoud Aoun	4,361
4	Zawiyah	First	General	Abdulbasit al-Hadi Ahmed al-Naas	8,359
		Second	General	Al-Arbi al-Shareef al-Shaarif Swaisi	4,816
		Third	Amazigh	UNKNOWN	—
		Fourth	General	Ramadan Abdulsalaam al-Ajmi al-Twaijer	1,360
		Fifth	General	Mohamed al-Jilani Ahmed al-Badawi	6,277
			General	Mohamed Khalifa Ali al-Huwasi	3,787
			Amazigh	UNKNOWN	—

Southern Region

Main Constituency Number	Constituency Name	Subconstituency	Seat Type	Candidate Name	Number of Votes
1	Sebha	First	General	Al-Qaddafi Ibrahim al-Taher Ibraideh	496
			General	Ahmed Ali Abubaker Ali Mahjoub	1,067
			Women	Nadia Mohamed Muftah Omran	2,933
			General	Mohamed Mohamed Abdulqader Habib	2,403
			General	Ahmed Ali Othman Mohamed Ghouni	579
		Second	Women	Rania Abdulsalam Mohamed Othman al-Sayd	3,516
			General	Salah-Eddin Othman Imhmed Abubaker Abukhzam	359
			General	Ubaid al-Zarooq Salem Abu al-Asaad	448
			General	Irhouma Omar Jibril Irhouma	579
2	Obari	First	Tuareg	UNKNOWN	—
			General	Omar Abdulrahman Abubaker Ibrahim Yousef	605
			General	Al-Jilani Abdulsalam Irhouma Irhouma	920
			General	UNKNOWN	—
		Second	General	UNKNOWN	—
			General	UNKNOWN	—
			General	UNKNOWN	—
			Tebu	UNKNOWN	—
		Third	General	Khaled Abdulqader Abdullah al-Twati	609
3	Ghadames	First	General	Abu Qasem Bashir Qasem Youshea	1,643
		Second	Tuareg	Ibrahim Ahmaido Allaq Allafi	245

Eastern Region

Main Constituency Number	Constituency Name	Subconstituency	Seat Type	Candidate Name	Number of Votes
1	Bitnan	First	General	Maraj Ali Nouh Qasem	3,345
			General	Hamza Abdurabah Hammad Sulaiman*	1,935
		Second	General	Sulaiman Mohamoud Abdulhamid al-Fadeel*	1,218
		Third	General	UNKNOWN	—
			General	UNKNOWN	—
2	Jebel Akhdar	First	General	Abdulhamid Jibril Hussain Adam	1,442
		Second	General	Mustafa Abdulhamid Mohamed Dalaf	4,715
			General	Al-Twati Mohamed Hassan Abu Shah*	1,621
		Third	General	Saad Salem al-Taleb Hamd*	2,531
		Fourth	General	Al-Sadiq al-Mabrouk Omran Saad	1,390
3	Benghazi	First	General	Ali Abdulsalam Abdulhadi al-Tarhouni	20,835
			General	Abdulqader Abdullah Ibrahim Aqdura	8,501
			Women	Ibtisam Ahmed Othman Ibhaih	21,426
		Second	General	UNKNOWN	—
		Third	General	Monem Mohamed Al-Sharif Abdurabah	1,650
4	Ajdabiya	First	General	Nouh Abdulsalam Abdullah Younis	2,038
			General	Omar al-Naas Mohamed Ali	1,633
		Second	General	Hussain Sakran al-Hussain Sakran	1,545
		Third	General	UNKNOWN	—
			Tebu	UNKNOWN	—

*This candidate may be replaced with the winning candidate from the women's race if the winning candidate is from the same subconstituency.

■ The Carter Center at a Glance

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in

80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. Please visit www.cartercenter.org to learn more about The Carter Center.



Martin Frank

THE
CARTER CENTER



One Copenhill
453 Freedom Parkway
Atlanta, GA 30307
(404) 420-5100

www.cartercenter.org