

**Carter Center Preliminary Statement
Tunisian National Constituent Assembly Elections**

**Carter Center Reports Peaceful and Enthusiastic Participation in
Tunisia's Landmark Elections**

electoral process, promote an inclusive process for all Tunisians, and demonstrate international support for this ambitious democratic transition. The electoral process is assessed against the Tunisian legal framework, as well as Tunisia's international obligations for genuine democratic elections.

The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct that was adopted at the United Nations in 2005 and has been endorsed by 37 election observation groups. The

Carter Center Preliminary Statement on Tunisia's National Constituent Assembly Elections

Oct. 25, 2011

This statement is preliminary; a final report will be published four months after the end of the electoral process.

Statement of Preliminary Findings and Conclusions

POLITICAL BACKGROUND

The elections on Oct. 23, 2011, provided millions of Tunisians with their first opportunity to vote freely in genuinely competitive elections following more than 50 years of authoritarian rule. Since independence, Tunisia has had only two presidents, Habib Bourguiba, the father of independence, and Zine El Abidine Ben Ali, who ousted Bourguiba in a “medical coup” in 1987.

The popular revolution that forced Ben Ali to flee Tunisia in January 2011 came after a long period of socio-economic unrest, and was sparked by the self-immolation of a young street vendor, Mohamed Bouazizi, in the central city of Sidi Bouzid on Dec. 17, 2010. The political revolt that followed spread quickly across Tunisia and catalyzed “Arab Spring” movements throughout the region. The Tunisian revolution was a movement of citizens fighting against poverty and marginalization, without any political or ideological leaders. The army did not directly take part in the revolution, but remained its guarantor. Unlike other countries in the region, Tunisia experienced a largely peaceful revolution, with relatively few victims and with little disruption of infrastructure and state administration.

The suddenness of the regime change required Tunisians to move rapidly to manage the political transition. Under the terms of the Constitution, the parliamentary speaker, Foued Mebazaa, became interim president and Prime Minister Mohamed Ghannouchi formed a new government. In addition, a political reform commission known as the Ben Achour Commission was appointed to draft an electoral code to elect a new president.

In the weeks following the fall of the regime, however, many opposition leaders refused to support the transitional government because it included many members of the former ruling party (

On Feb. 21,

limited on the basis of objective and reasonable criteria established by law.¹⁵ Unreasonable restrictions to the right to be elected include those based on political affiliation, be it past or present.¹⁶ In addition, good practice sources suggest that the loss of this right should only be imposed after adjudication by a court of law.¹⁷

Article 15 of the electoral law stipulated that three categories of persons were not eligible to stand for the elections. The first two categories were in regards to persons who held government responsibilities under former President Ben Ali and those who held responsibilities within the presidential party, RCD, all the way down to local level.¹⁸ The third category disqualified individuals who signed a petition in August 2010, requesting that Ben Ali to run for president in 2014.¹⁹

Based on Decree 1089 that defines the level of responsibility of persons excluded to run as candidates, the ISIE was tasked with drafting a list for the first two categories of ineligible persons. To establish the list, the ISIE relied on press clippings retrieved from the National Archives Office and the Official Gazette. By not following a more rigorous process, the ISIE risked ex-RCD officials falling through the cracks during the nomination process, seeking seats in the NCA and possibly being elected.

The HARO compiled the list for the third category of ineligible persons without establishing a clear procedure to provide concerned individuals with the due opportunity to clear their names. However, the HARO considered ad hoc requests from a few individuals who were able to demonstrate that they

An independent election management body was established by Decree-Law 27 on April 18, 2011, supporting the desired principles of legal, financial and administrative autonomy. The ISIE is mandated to prepare, supervise and monitor the NCA elections, and ensure that elections are democratic, pluralistic, fair and transparent. It has been established that its mission shall end with the announcement of the results of the elections.²² The ISIE enjoys broad powers, duties and responsibilities for all aspects the electoral process.²³

The ISIE is composed of a central commission based in Tunis, and 33 Regional Independent Commissions for Elections (IRIE) covering 27 constituencies in Tunisia and six constituencies abroad.²⁴ Shortly before the start of the campaign period, Local Commissions for Elections (ILE) were also established at delegation level.²⁵ The ISIE Decision on Rules and Procedures provides for ILEs, but gives no specific instruction regarding their role and responsibilities.²⁶

The ISIE has 16 members drawn from the judiciary, academia, and civil society, and also includes a representative for expatriates, a notary, a bailiff, an accountant, an IT expert and a journalist.²⁷ These individuals were selected by the HARO, following a set of criteria including political independence and impartiality, and ensured that members had no previous responsibilities within former RCD party.²⁸ The ISIE was appointed by decree on May 20²⁹ and shortly afterward elected Kamel Jendoubi as president, Ms. Souad Triki as vice-president and Mr. Boubaker Bethabet as secretary general.

Each IRIE is composed of 14 members at the governorate level. IRIEs that are based abroad in Tunisian diplomatic missions are composed of between eight and 14 members. All IRIE members were selected by the ISIE and appointed on July 6, 2011.

Overall, Carter Center observers have reported that election authorities carried out their responsibilities with a high level of dedication. In a relatively short timeframe, and without previous experience, election authorities drafted regulations and procedures, prepared for and carried out electoral operations and built confidence among stakeholders. IRIE members were appointed just a few days before the start of the voter registration period, thus facing the challenge of establishing their structure while simultaneously supervising registration operations. Although shortcomings were visible at times, The Carter Center acknowledges the sustained efforts by the ISIE to ensure democratic elections.

In spite of these achievements, noticeable internal divisions and tensions within the ISIE often hindered the efficiency of the election administration and slowed decision-making processes. While the legal framework provided for additional technical, administrative and financial bodies to support election authorities, these structures appeared insufficiently staffed at the central level and non-existent at the regional level.

²² DL 27, articles 1 and 2

²³ DL 27, article 4

²⁴ DL 27, article 5

²⁵

A timely adoption and dissemination of procedures and decisions is an important aspect of election administration, and is essential for ensuring transparency and access to information. Official documents by the election authorities should be widely accessible.³⁰ The adoption of essential procedures was often delayed by the ISIE until the period immediately

In most polling centers staff were effective in moving voters through the process once entering the polling station. Observers reported many instances in which elderly or illiterate voters struggled to fill out the ballot, an issue that should be addressed in future elections, but other voters received their ballots, marked them and deposited them relatively quickly. In spite of this efficiency within polling stations, however, there were several issues that contributed to long lines at the polling stations throughout the day.

Voters who did not participate in the active registration process were confused as to where they should cast their ballots. The ISIE created specialized polling centers for voters who did not participate in the active registration process, but who were eligible based on the civil registry. Many voters were confused or unaware of need to report to specialized polling centers, and instead frequently has to be redirected from regular polling centers.

A system of text messaging was put into place by the ISIE for all voters, whether they had actively registered or not, to check which polling center they were assigned. The texting system was operational on election day, but was flooded with texts just after the opening of the polls. This created a backlog of voters who were waiting to receive a response from the ISIE regarding their correct polling station. Many voters did not receive a text response for two to three hours to confirm their correct polling center and therefore went to the nearest polling center and waited in line, only to be told upon reaching the head of the line that they were not assigned to that center. Following good practice to meet its obligation for universal suffrage, The Carter Center urges the ISIE to consider carefully the appropriate number and location of specialized polling centers.³⁴

This problem could have been mitigated to a certain extent had voter lists been consistently posted at polling centers as foreseen in the Voting and Counting Procedure Manual,³⁵ but Carter Center observers noted that voter lists were frequently not posted at polling centers.

Another problem reported by Carter Center observers was that polling stations within a given polling center had an uneven distribution of voters. The first polling station frequently had more voters assigned than the second, third or fourth polling station within the center, which resulted in long line at the first station and often none at the fourth.

Carter Center observers reported a large domestic observer and list representative presence at polling centers throughout the country. Domestic observers and list representatives appeared well organized and often stayed at a given polling station to observe the entire process. Although Carter Center observers did not directly witness violations of the campaign ban within the polling centers, domestic observers and list representatives approached Carter Center observers to report alleged instances of vote buying, influencing and campaigning occurring within polling centers.

COUNTING

³⁴ ICCPR, article 25 (b): “

In general, polling center staff was very deliberate and conscientious in observing closing and

Nominations. The nomination period was Sept. 1-7. Parties and independent candidates were allowed to present one list per constituency, and candidates were not allowed to be registered on more than one list. The number of candidates on the list had to equal the number of seats for the constituency. In add

The Carter Center's observers attending campaign events throughout Tunisia assessed the campaign environment as generally positive and peaceful. Freedom of assembly was generally upheld, as candidates and audiences were able to gather freely. Some campaign events that were not notified to the IRIEs 72 hours in advance, as required by the regulations, were not allowed to take place.⁴⁵ When security forces were present at campaign sites, they acted appropriately without interfering in the campaign. A few incidents were reported by observers, such as the robbing of Ettakatol party office in Ben Arous.

Carter Center observers reported that candidates were generally not using inflammatory language during rallies. The campaign messages went beyond issues strictly related to governance and the new constitution, to encompass economic programs, commitments to overcome unemployment and fight corruption, promises to develop the regions,

Media Environment. Media outlets during Ben Ali's era faced a total blackout. In 2010, press freedom in the country was on the "Worst 15 List" established by Reporters Without Borders. The freedom enjoyed since January 2011 represents a dramatic change, but has also sheds light on the need to build the capacity of journalists to uphold professional standards.

The election law and related decisions by the ISIE regulating the media environment during the campaign period reflect efforts to ensure that all candidate lists were provided with equal opportunities to compete. Each list was granted three minutes of free airtime on public TV and radio, following an order of appearance determined by lottery on Sept. 13 in a live broadcast.⁴⁶ Public and private media were to abide by the principles of neutrality and impartiality, while private media were allowed to broadcast electoral programs in a non-discriminatory basis at their own costs and in close coordination with the public media and the ISIE.⁴⁷

The ISIE was tasked with ensuring equal treatment for all candidates' lists and established a media-monitoring unit. The ISIE monitoring reports covering audio-visual media and newspapers showed that media generally complied with principles of neutrality and impartiality, except for some private media outlets. The Association of Democratic Women

they were considering other options for registering voters. After lengthy deliberations, the ISIE finally opted for a “passive” registration system, with prospective voters being encouraged, instead of required, to register and given the opportunity to select a polling station.

Voter registration started on July 11 for an initial period of three weeks and was later extended through Aug. 14 to increase participation. Approximately 1,000 registration centers, including mobile teams, operated under the supervision of the ISIE and its branches in the 27 electoral districts. Tunisians residing abroad had the opportunity to register at consular and diplomatic missions until Aug. 28.

The Carter Center found that the registration process was conducted peacefully, however, there were numerous problems. This included initial technical glitches with the online registration system, late designation of the IRIEs members and start of outreach campaign, and lack of clear information to explain the voter registration process. There were also inconsistencies in the implementation of procedures, in particular regarding the requirement that individuals personally register.⁵¹ Nevertheless, the Carter Center found in its Sept. 1

disenfranchisement of all persons deprived of liberty. The Carter Center notes in this regard that Tunisia did not uphold its obligation to guarantee universal suffrage and the right to vote.⁵³

Exhibition of the provisional voter list. The exhibition of the provisional voter list provided an opportunity for the public to inspect the list and challenge mistakes such as the omission of eligible voters or the inclusion of ineligible voters.

consequence, five candidate lists lost one of only three weeks campaign. Good electoral best practice suggests that parties should be given equal opportunities, including campaign time.⁶⁰

During the campaign period, the ISIE was in charge of monitoring violations and receiving complaints related to the electoral campaign and issuing “sanctions,” with a possibility to appeal its decisions before the Administrative Tribunal. However, the ISIE did not issue regulations on the procedures to submit a complaint, leaving list representatives and the media with no clear information regarding on how to file a claim.⁶¹ Despite reported violations, no complaints were filed with the ISIE or the Administrative Tribunal during the campaign period.

While there were very few complaints during the display of the preliminary voter list and the campaign period, due in part to late dissemination or absence of procedures, during the nomination process more than 50 percent of the candidates whose lists had been rejected filed an appeal before the Tribunals of First Instance.⁶² There were 90 cases filed before the Administrative Tribunal, with the IRIEs appealing the decision in 35 cases. In order to deal with this caseload during the legal deadline, five chambers were set up address electoral disputes during the legally mandated period.

Since the revolution, there have been very few changes in the judicial system, which has been marred by a lack of independence and impartiality. The public has little confidence in the judicial system as a mechanism of justice. However, during the pre-election period, the adjudication process was generally undertaken in a transparent manner, including through public hearings and the publication of decisions in most cases.

According to article 72 of the electoral law, the preliminary results of the elections can be appealed by the head of the list or his representative before the plenary session of the Administrative Tribunal within 48 hours following their announcement. The Administrative Tribunal has to schedule a hearing session within a maximum period of seven days from the submission of the appeal. During that time the parties to the conflict can present their remarks to the court. Once the case has been heard, the plenary session has a maximum of three days to announce its verdict

According to the electoral law, all complaints related to the preliminary results should be decided upon at the latest 12 days following their announcement. The verdict administrative

P

The ISIE also proved receptive to concerns expressed by domestic observer groups regarding the shortened deadline for accreditation.⁶⁹ The Carter Center urged the ISIE to show flexibility in this regard, and welcomed its decision to grant an additional week for domestic observer groups to complete their applications through

In the lead-up to polling day, voter education was similarly concentrated on basic information, delivered through mass media. The national radio and TV broadcasted spots to explain which documents were required to cast the ballot, and how, when and where to vote on polling day. A SMS service was also intended to allow prospective voters to identify their respective polling station.

Civil society organizations, often supported by international partners, undertook several initiatives to reach the public and explain the significance of the process. While valuable, these initiatives alone could not fill the gap left by the election authorities. Regrettably, there was also a notable lack of voter education activities conducted by political parties vis-à-vis their potential supporters.

Background: The Carter Center received a letter of invitation from the ISIE to observe the electoral process in mid-July, followed by official accreditation on Aug. 4. The Center observed the NCA elections, deploying nearly 70 observers who visited 272 polling stations in all of the state's governorates. The mission was led by former President of Mauri

