

Carter Center Preliminary Statement on Tunisia’s Parliamentary Elections

Oct. 8, 2019

This statement is preliminary and covers only aspects of the electoral process through Oct. 7. It does not cover the final tabulation of election results, nor the period for filing challenges. AS A RESULT, THIS STATEMENT DOES NOT REPRESENT THE CENTER’S ASSESSMENT OF THE ELECTORAL PROCESS AS A WHOLE, BUT RATHER A PARTIAL PRELIMINARY ASSESSMENT. The Carter Center will release additional assessments throughout the electoral process and at its conclusion. This statement should also be read in conjunction with the preliminary statement released by The Carter Center on Sept. 17 after the first round of the presidential election. In addition, a comprehensive final report with recommendations will be published in the months following the end of the electoral process.

Statement of Preliminary Findings and Conclusions

Political Background

The results of the early presidential elections held on Sept. 15 – two months earlier than originally scheduled following the death of President Beji Caïd Essebsi – had a profound effect on the Oct. 6 parliamentary elections. Independent candidates hoped to capitalize on the anti-establishment sentiment that attracted voters in the first round of the presidential election, while parties struggled to reenergize their supporters and encourage participation. Both felt compelled to change their campaign strategy in light of the electorate’s rejection of the political establishment and the first-place finish of Kais Saïed, an independent who announced he would refuse public funding and ran an unorthodox campaign focused on speaking to voters one-on-one.

The results of the presidential poll, like those of the 2018 municipal elections, demonstrated the dynamic nature of Tunisia’s political landscape. The 2011 National Constituent Assembly elections were marked by a large victory for Ennahda and parties that were historically opposed to the Ben Ali regime. These were followed by the 2014 elections, which were characterized by a struggle between Islamists and secularists, in which the secular party, Nidaa Tounes managed to emerge victorious in legislative and presidential elections. The 2018 municipal elections marked a key shift and signaled the waning influence of the major political parties and the rise of independent candidates, who collectively received the most votes across the country. Tunisia’s electoral authorities were disheartened by low voter turnout in the municipal elections, which foreshadowed Tunisians’ subdued interest in the country’s 2019 political contests.

The High Independent Authority for Elections, known as the ISIE, announced that turnout in the parliamentary elections was 41 percent, lower than the 48 percent who voted in the first round of the presidential election and more than 20 percent lower than in the 2014 parliamentary elections. The poor turnout reflects the Tunisian people’s continued dissatisfaction in the parliament as an institution capable of realizing the goals of the revolution and the aspirations of the citizens.

The Oct. 6 parliamentary elections were seen by many as an opportunity for the country to break its political inertia and for the parliament to take the lead in advancing the political and economic reforms that are necessary to realize greater benefit from the country’s democratic gains. The parties and independents who are elected to parliament must now put aside their

differences and move quickly to solidify the country's institutions, improve the economy, and restore Tunisians' faith in their young democracy.

The 2019 elections reflect the disillusionment of the Tunisian people with the current political establishment and their frustration with the slow pace of reform since the 2011 revolution. The continued decline in the economy, the rising cost of living and ongoing corruption has encouraged voters to look for independent candidates whom they hope will bring radical change.

In the leadup to the parliamentary elections, the established political parties were fractured by internal disputes. Nidaa Tounes was crippled by the departure of more than half of its parliamentarians, depriving it of its plurality in the parliament.¹ The Popular Front Coalition, a main actor in the parliament, also split, leading to the creation of two separate political entities – a political party and a separate coalition.² In the immediate pre-election period, Ennahda also suffered from internal disputes over the selection of a presidential candidate and the excessive intervention by its party leader in the placement of candidates perceived to be affiliated closely to him on its lists for the legislative elections.

This disfunction among the parties represented in the parliament undermined the institution's performance, already weakened by its inability to control its legislative agenda. According to the constitution, legal drafts (*projets de loi*) emanating from the executive branch have precedence over those proposed by members of parliament (*propositions de loi*); most bills originated from the executive, and these legislative initiatives dominated the parliament's agenda.

In addition to these factors, the parliament was plagued by the absenteeism of its deputies, party-hopping by parliamentarians, and the informal and largely opaque “consensus committee” formed by the parliamentary bloc leaders who made the most crucial policy decisions. Combined, these factors limited the ability of parliament to exert the full scope of its powers. In addition, it failed to establish the Constitutional Court and other independent constitutional authorities, such as the National Authority on Good Governance and Fight Against Corruption, the Authority for Sustainable Development and the Rights of Future Generations, and the Audiovisual Communication Authority (ICA).

Legal Framework

According to international best practices, an election's legal framework should be transparent and readily accessible to the public. It should also address all the components of an electoral system necessary to ensure democratic elections.³ Tunisia's legal framework for parliamentary elections is generally in alignment with international standards.⁴

The electoral process is governed by the January 2014 constitution, the 2014 electoral law, the law on the ISIE, and the law related to the freedom of audiovisual communication that created the Independent High Authority for Audiovisual Communication (HAICA). Certain areas of

¹ The Nidaa Tounes bloc in parliament went from 86 seats in 2014 to 26 seats in 2019.

² The split emerged in April 2019 principally as a result of the announcement of one of the coalition's members that he would be the coalition's presidential nominee and not the coalition's spokesperson as used to be the case.

³ OSCE/ODIHR, Guidelines for Reviewing a Legal Framework for Elections, page 4.

⁴ These include: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention against Torture, Inhuman or Degrading Treatment (CAT); the Convention on the Rights of Persons with Disabilities, and the African Charter on Human and Peoples' Rights (ACHPR).

the legal framework could be improved, including by establishing definitive and adequate timeframes for the different stages of the electoral process. As in the presidential election, campaign provisions, including those on the use of advertising and posters are restrictive. In addition, campaign-finance ceilings, although higher than in 2014 and intended to level the playing field between big and small parties, remain low and difficult for political-party candidate lists to respect.

The legal framework seeks to ensure equality between candidates during campaigns. Article 52 of the electoral law states that electoral campaigns need to respect the essential principles of equal opportunity for all candidates. Article 3 of the law on the ISIE mandates that the commission guarantee equal treatment of voters, candidates, and all stakeholders. Finally, Article 5 of the decree on the HAICA states that the exercise of the rights and liberties of audiovisual communication need to follow the principle of equality. However, given the high number of candidate lists – more than 1,500 – the ISIE and the HAICA struggled to achieve this principle. In order to address the challenges related to equal opportunities for candidates, the legal framework should be rewritten to provide more detailed guidance on how to ensure protection of the principle of equal opportunity in the current political environment.

Electoral system

The purpose of an electoral system is to translate the will of the people into a representative government. International standards do not prescribe a specific electoral system.⁵ Tunisia's electoral system respects the principles of genuine and periodic elections, and guarantees universal suffrage, the secrecy of the vote, and freedom from intimidation, as well as equality of the vote and fair representation of all citizens. According to the constitution, the parliament is elected for five years, in line with international commitments and best practices.⁶ There are a total of 217 seats in parliament, 199 in the country and 18 out of the country.

Boundary delimitation has not been changed since the 2011 National Constituent Assembly elections when a provision introducing a positive discrimination factor to increase representation in disadvantaged governorates where population density was low, and representation would have been minimal. Parliament introduced legislation in December 2018 to redraw the boundaries for these elections based on the census results of 2014. It was rejected in January 2019 as Article 106 of the electoral law does not allow for redrawing electoral boundaries within one year of an election.

The constitution guarantees the right to vote to all citizens who are 18 or older and who are not subject to any kind of restrictions foreseen under the electoral law. The law was amended in 2017 to allow military and security personnel to vote in the municipal elections, though it still prohibits them from voting in legislative and presidential elections, a restriction not in alignment with international standards.⁷ Citizens in health care facilities, penitentiaries, and detention centers were not able to exercise their right to vote, as no mechanism for doing so exists in the law, contrary to Tunisia's constitution and international commitments.⁸

⁵ U.N., International Covenant on Civil and Political Rights; Article 25(b); United Nations Human Rights Council, General Comment 25, para. 21.

⁶ ICCPR, Article 25(b); General Comment 25, paras. 9 and 19; Universal Declaration of Human Rights, Article 21(3); Council of Europe Code of Good Practice in Electoral Matters, sec. I.1.6.

⁷ See ICCPR, Article 25: "Every citizen shall have the right and the opportunity [...] to vote and to be elected at genuine periodic elections..." Also, General Comment 25, para. 14: "The grounds for denying suffrage rights to citizens have to be objective and reasonable and must be prescribed by law."

⁸ Right to universal suffrage on the basis of equal treatment before the law: ICCPR, Article 25(b); African Charter on Democracy, Elections and Governance, Article 3(3).

Candidate Registration

The right of individuals to participate in public affairs is an obligation under international law.⁹ 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.¹⁰ The Tunisian legal framework allows for an inclusive candidate-registration process and is generally in line with international and regional standards.¹¹ Candidates for parliament must have been Tunisian citizens for at least 10 years and be 23 years old on the day of candidate registration.¹²

Candidate registration for the parliamentary election was conducted by the Independent Regional Electoral Authorities (IRIEs) from July 22 to July 29. IRIE staff were well-prepared for this process, and all stakeholders praised their professionalism and hard work. The IRIEs received 1,581 applications from political parties, coalitions, and independents – 1,405 inside Tunisia and 176 from the six IRIEs abroad. Each list must be composed of the same number of candidates as seats in the constituency and include a supplementary list with a minimum of two members. While the law requires that all lists must alternate male and female candidates, regrettably, women were placed at the top of only 13 percent of the lists. The ordering of the lists on the ballot was determined by the sequence in which the lists were submitted to the respective IRIE.

On Aug. 6, the ISIE published preliminary numbers of 1,340 accepted lists for the 27 constituencies inside Tunisia and 165 lists for the six overseas constituencies.¹³ Seventy-eight lists were rejected (65 in country and 13 abroad). The highest number of rejections was in Sousse, with eight rejected lists; four IRIEs (Zaghuan, Kef, Gafsa, and Tozeur) accepted all the candidates lists. The constituencies with the highest number of lists contesting the elections were in Sidi Bouzid (73 lists), Gafsa (70), and Kasserine (66). The lowest number of lists were registered in Gabes and Tataouine (31 each) and Kebili (34).

The ISIE announced the final number of 1,506 lists on Aug. 31, after legal challenges were resolved. The size of the ballot paper in each constituency was determined by the number of candidate lists. Each ballot contained vertical columns with the names of each party, coalition, or independent list, its logo, and the number corresponding to its placement on the ballot.

The candidate registration process was inclusive and handled in an efficient, professional manner by the IRIEs. However, the ISIE never published the names of all candidates on each list, depriving the voters of crucial information.

Election Administration

An independent and impartial electoral authority, functioning transparently and professionally, is the only effective means of ensuring that citizens can participate in genuine democratic elections.¹⁴ State practice suggests that, when scheduling elections, adequate time should be

⁹ ICCPR, Article 25(a); ICCPR, Article 21; ICCPR General Comment 25, para. 26.

¹⁰ ICCPR, Article 25; AU, ACHPR, Article 13; Arab Charter on Human Rights, Article 24

¹¹ ICCPR, Article 25: “Every citizen shall have the right and the opportunity [...] to vote and to be elected at genuine periodic election.” See also Article 13 of the African Charter of Human and Peoples’ Rights.

¹² Unlike for presidential candidates, parliamentary candidates aren’t required to be Muslim, nor are they required to put down deposits or collect endorsements.

¹³ The appeal circuit of the Administrative Court heard 17 appeals on IRIE rejection of lists. Fourteen were denied and three accepted.

¹⁴ ICCPR, General Comment 25, para. 20.

allowed to successfully administer the electoral process.¹⁵ According to the Tunisian constitution, the ISIE is the body that ensures the regularity, integrity, and transparency of the electoral process and proclaims the results.¹⁶

The ISIE created 33 IRIEs (27 in country and six abroad), one in each electoral constituency made up of a maximum of four people with different professional backgrounds. The ISIE conducted the process of appointing IRIE members transparently and efficiently. For the parliamentary election, the ISIE set up 13,830 polling stations – 13,446 in country and 384 abroad.

Five percent of approximately 55,000 poll workers from the presidential election were changed after IRIEs evaluated staff. Presidents of polling stations and polling centers, along with new poll workers, were trained by the IRIEs on Sept. 28 and 29.

After the presidential election, the ISIE conducted a two-day assessment for presidents, coordinators, legal officers, and administrators of the 33 IRIEs. The ISIE decided to address shortcomings in the training of staff on the use of an application that tallies the results automatically at the tally-center level and in the routes that the military used to collect and deliver election material to the tabulation centers. This improved the tabulation process.

The 1,500 campaign monitors recruited by the ISIE for the presidential election also monitored the parliamentary campaign for adherence to campaign and campaign-finance rules. Carter Center long-term observers reported that these monitors continued to be very active in the field.

Although the ISIE suffered from some internal strife and did not always communicate coherently to the public, it managed to efficiently organize two elections in a short timeframe with only minor flaws that did not impact the electoral process or the results.

Voter registration

Voter registration and the establishment of a complete, current, and accurate voter list are recognized as important means to ensure that each citizen has the right to vote. According to the United Nations Human Rights Committee, "Where registration of voters is required, it should be facilitated, and obstacles to such registration should not be imposed."¹⁷ Tunisia's voter-registration procedures are broadly consistent with international and regional standards.¹⁸

The ISIE opened its voter registration campaign for these elections on April 10 and closed it on June 15. During this period, the ISIE registered 1,455,898 new voters out of a possible 3.5 million potential voters, bringing the total number of registered voters for the parliamentary elections to 7,065,885. Of those, 6,680,339 voters are registered in Tunisia and 385,546 abroad.

No stakeholders raised concerns about the voter register and its accuracy to Carter Center observers.

¹⁵ U.N., Human Rights and Elections, para. 75.

¹⁶ 2014 Tunisian Constitution, Article 126.

¹⁷ ICCPR, General Comment 25, "The right to participate in public affairs, voting rights and the right of equal access to public service," para. 11.

¹⁸ ICCPR, General Comment 25, para. 11.

Voter Education

The fulfillment of the international obligation of universal suffrage is partially dependent on effective voter education.¹⁹ The ISIE continued a limited voter-education campaign from the presidential election to provide basic voter information. Several CSOs informed Carter Center observers that they did not conduct a voter-education campaign for the parliamentary elections because of a lack of funding.

During the presidential and legislative campaigns, the ISIE distributed flyers and stickers in order to keep voters informed about the election dates. In addition, several videos were published on television and social media explaining the polling steps and reminding voters about the opening and closing hours of the polling stations and centers. For the legislative elections, the ISIE conducted a street campaign during which flyers, posters, stickers, bracelets, and key rings were distributed.

There was no concerted voter-education effort made by the ISIE or CSOs except during the voter-registration process. This was partially due to the compressed timeframe for the elections and lack of funding.

Campaign Environment

Political pluralism and an open campaign environment that enables genuine choice for voters are critical aspects of democratic elections. Equitable treatment of candidates and parties during an election is important for ensuring the integrity of the democratic election process. A genuine choice of candidates, a free electoral environment, a level playing field for contestants, and an open, transparent campaign environment are all critical aspects of democracy. The equal treatment of candidates and parties is essential for ensuring the integrity of the democratic election process.²⁰

The campaign for the legislative election began on Sept. 14, the day of silence for the presidential campaign, and lasted for 22 days. The rights of freedom of speech and assembly were respected throughout the country. However, many candidates, both independents and those belonging to political parties, violated the restriction on early campaigning.²¹

In the aftermath of the first round of the presidential election, most established political parties were slow to begin their campaign for the legislative elections as they assessed their campaign strategies, while independent lists were quick to campaign to take advantage of the anti-establishment momentum. Established parties re-evaluated their strategy of big rallies and public events, which did not appear to influence voters in the presidential campaign. The Carter Center's long-term observers reported that most parties decided to run low-key campaigns, handing out leaflets and conducting door-to-door activities for the legislative election.²²

Many parties informed the Carter Center mission that they would focus on reaching out through social media to voters who supported presidential candidate Saïed and that they would step up their traditional campaign activities in the five days preceding the election. In general, independent lists and some parties found it difficult to finance their campaigns given the new campaign-finance laws that operate on the basis of reimbursement rather than advances. Most were using personal funds to finance the campaign.

¹⁹ ICCPR, Article 25.

²⁰ ICCPR, Article 25.

²¹ Article 154 punishes early campaigning with fines of 5,000 to 10,000 TND.

²² Many parties said they lacked financial resources to conduct a large-scale campaign.

Many interlocutors informed Carter Center observers that the parliamentary campaign was overshadowed by the continued detention of presidential candidate Nabil Karoui and the effect it would have on the forthcoming second round of the presidential election. The media focused almost exclusively on this topic and any possible challenge to the results based on the denial of his equal opportunity to campaign, making it difficult for parliamentary candidates to communicate their messages to voters.

Nessma TV, co-owned by Karoui, has been fined four times by the HAICA for broadcasting political advertising in favor of his candidacy and propaganda against Ennahda. The fines have progressively increased for each violation, ranging from 20,000 TND (US\$ 7,000) to 160,000 TND (US\$ 56,000).

As was the case in the presidential election, contestants did not always abide by the rule of notifying electoral authorities of their campaign events 48 hours in advance, and many events that campaigns shared with the IRIE were not carried out. Moreover, candidates provided the name of the venue in which their activities were to take place, but not the address, making it difficult to find the exact location of their activities. As a result, it was difficult for IRIEs, ISIE campaign monitors, and observers to keep track of all campaign events.

The IRIEs and ISIE campaign monitors identified minor violations of campaign rules. These mainly involved early campaigning, undeclared campaign activities, hanging posters outside of designated areas or over the posters of opponents, and using children in campaigns. To date, according to the IRIEs, none of the violations are severe enough to affect the results of the elections. In addition, Carter Center observers have not reported any use of administrative resources during the campaign, probably because of the low-key nature of the campaign activities. Women who headed the Qalb Tounes lists in Sfax 1 and Sidi Bouzid reported that they experienced verbal violence. The candidates in question chose not to lodge any formal complaints.

National television, in conjunction with The Munathara Initiative, organized three debates between candidate lists. The debates took place on Sept. 30, Oct. 1, and Oct. 2. Twenty-seven representatives of the country's 1,340 lists took part.²³ Participants were chosen by lottery from the four categories set by the joint decision between ISIE and HAICA, which were based on the number of constituencies in which parties or coalitions were running lists.²⁴ The debates were more interactive than those for the presidential election, as candidates could ask questions of each other. The three main topics were development, the economy, and social issues.

El Badil, the party of former prime minister Mehdi Jomaa, which was not chosen to participate, challenged the debate process based on the legal requirement that all candidates be treated equally when it comes to media coverage and campaign opportunities. The Court of First Instance in Tunis 1 refused the challenge and allowed the debates to go forward.

Even though the constitution gives parliament more powers and authority, the parliamentary campaign was overshadowed by the results of the first-round presidential election and the continued detention of Karoui. The campaign was low-key and, in some regions, nonexistent,

²³ Nine list representatives participated in each debate.

²⁴The agreement calls for media coverage to be proportionate to the number of lists a given party or independent has across the country. The first category includes those with lists with between 28 and 33 constituencies; this category should receive 30 to 40 percent of the media coverage. The second category includes those with lists in between 12 and 27 constituencies; they should receive 20 to 30 percent of the coverage. The third category includes those with lists in 2 to 11 constituencies; they should get 20 to 30 percent of the coverage. Finally, the fourth category is for the lists running in one constituency; they should get 10 percent of the coverage.

resulting in the lack of a substantive debate on policy or party platforms. Media attention remained focused on the presidential election.

Campaign Finance

Democratic elections cannot be held without equitable rules for the financing of electoral campaigns. According to international good practice, electoral legislation should specifically provide for the transparency of donations to the campaign activities of candidates, standardized presentation of campaign accounts, reasonable limits on campaign expenditure, regular reporting mechanisms, and effective and dissuasive sanctions.²⁵

The electoral law details expenditure and donation limits and allows private and public funding. Public funding is distributed equitably based on the number of voters at the constituency level as well as population density.²⁶ The total ceiling of campaign spending for each list was set at six times the amount of the public funding. The law prohibits contributions from foreign sources or unknown donors, as well as from corporations and legal persons. However, unlike for presidential candidates, political parties can fund the campaign of their parliamentary lists.

Although the campaign-finance ceilings were increased after the 2014 elections, they remain relatively low and ranged from \$11,550 USD in Tozeur to \$34,616 USD in Sousse. Several stakeholders said the ceiling is too low to conduct a meaningful and effective campaign, which encourages candidate lists to exceed the ceiling and to not report fully expenditures.

The 2017 amendment to the electoral law precludes candidate lists from receiving any public funds up front; instead, candidates are reimbursed for expenses after the elections if their list obtains at least three percent of the vote on a constituency level. This raised concerns that the public fund wasn't achieving its goal of effectively guaranteeing equal opportunities for all candidates.

The campaign-finance system suffers from a lack of transparency, as no interim reports are required. There is no real-time assessment of funding and expenditures, which deprives voters of important information. In addition, the legal process is not concluded in a timely manner, as cases from 2014 are still pending.

Social Media Monitoring

International election standards prescribe that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds.²⁷ The Tunisian constitution guarantees the freedom of opinion, thought, and expression and the right of access to information and communication networks.²⁸ To date, Tunisia has no specific legal framework regulating social media.

²⁵ Council of Europe (Committee of Ministers) Recommendations (2003)4, Article 3(b).

²⁶ The ceiling of public funding for each candidate list is calculated based on the number of voters registered in the constituency as follows: 73 dinars for every 1,000 voters up to 50,000; 50 dinars for each 1,000 voters in excess of 50,000 voters up to 100,000 voters; 42 dinars for each 1,000 voters in excess of 100,000 up to 150,000; 39 dinars for each 1,000 voters in excess of 150,000 up to 200,000; 36 dinars for each 1,000 voters in excess of 200,000. The amount of the grant is also increased according to the population density of the constituency.

²⁷ ICCPR, Article 19; in addition, General Comment 25 to the ICCPR specifies that "voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind."

²⁸ Articles 31 and 32.

The Carter Center’s monitoring of the Facebook pages of the 10 parties or independents running in the all 33 constituencies, as well as the supportive pages of those lists, revealed that most of them used social media as a platform to introduce their candidates, announce campaign events, or to call on voters to vote, rather than as a tool to engage with voters on the issues. Most of the monitored lists shared their campaign programs through video, texts, or pictures on national and regional Facebook pages, including pages of their branches located abroad. The majority of the lists monitored by The Carter Center ran paid ads on their Facebook pages during the campaign.²⁹

Carter Center long-term observers reported that because of the results of the presidential election, candidates and parties increased their social-media efforts to target young supporters of Saïed.

Contestants showed varying levels of activity and professionalism in their social media campaigns, depending on strategy, electorate analysis, messages, and financial resources. Ich Tounsi ran a very structured campaign, with postings repeated on the different regional pages of the organization, including paid ads. Other campaigns showed a lower level of coordination between national and regional pages, posting less often or posting less-polished content. Notably, some of the political party ads were run by party pages abroad.

Even before the official start of the campaign for the second round of the presidential election, the number of pages and groups supporting or opposing one of the two presidential candidates increased, as have the number of publications and interactions, taking precedence over the parliamentary campaign. On various occasions, The Carter Center observed party or independent lists promoting their support of the two presidential runoff candidates and using their images to advance their own online campaign.³⁰

Smear campaigns and inflammatory language were observed on several pages supporting both presidential and parliamentary candidates, though the pages’ affiliations weren’t clear.³¹ Some of these posts were widely shared online. The Carter Center is not in a position to assess their impact on the electoral process.

The female candidate Olfa Terras, founder of Ich Tounsi, was the target of repetitive attacks on Facebook questioning her and her husband’s activities.

Another inflammatory piece was a documentary that aired on the Facebook account of the online platform Sawaab Arraii on Sept. 27-29 and was also broadcast on Saudi Arabian TV channel Al-Arabiya. It alleges that Ennahdha was involved in the assassination of the opposition leaders Chokri Belaid and Mohamed Brahmi in 2013 via its “secret services.”³² In total, more than 350,000 people watched the documentary online. It was widely shared on Facebook, including by pages supporting parties running in the elections. Ennahdha's legal

²⁹ Al Badil, Amal Tounes, Democratic Current, Ennahdha, Free Destourian Party, Ich Tounsi, Popular Front Party, Qalb Tounes, Tahya Tounes.

³⁰ Qalb Tounes, Al-Karama, Ennahdha, Tahya Tounes Sousse, List 31 Tunis-1. Following the publication of Al-Karama pictures featuring Kais Saïed and Seifeddine Makhlouf, a communique was published on Kais Saïed’s website on Oct. 2 reminding everyone that Saïed doesn’t support any list and that the ISIE had been informed so that it can take appropriate measures. The ISIE declared it would look into it after the elections.

³¹ Among them, Olfa Terras, Kais Saïed, and the Free Destourain Party were targeted by smear campaign. Some Facebook pages supporting the presidential candidate Kais Saïed repeatedly used inflammatory language calling Nabil Karoui’s supporters’ “infidels,” “homosexuals,” “scumbags,” or “corrupt” people.

³² “The Black Rooms” a documentary in three parts. The first part was released by the TV channel Al-Arabiya. Other TV channels are said to have refused to screen the documentary because of “inappropriate circumstances.” The second and third parts were released on the Internet (Facebook and YouTube) by the platform Sawaab Arraii.

representative announced on Facebook that it initiated legal proceedings against the television station that broadcast the documentary.

Fake opinion polls bearing the logo of existing Tunisian poll companies also circulated on Facebook, potentially misleading voters.

Toward the end of the campaign, unauthenticated documents were published on social media claiming that Nabil Karoui, Olfa Terras, and Ennahdha contracted with lobbying and public relations agencies overseas to consolidate their position on the national political scene and seek support at the international level. After their release, pictures, videos, and comments alleging connections between Nabil Karoui and a former member of Israeli secret services as well as between Ennahdha and Qatar went viral, generating many critical comments on Facebook.

The majority of parties monitored by The Carter Center breached the silence period by running paid ads on party pages or on supportive pages on Saturday and election day. At least two parties, Qalb Tounes and Ennahdha, promoted both the presidential and parliamentary campaigns. Ennahdha released posters online with the picture of Kais Saïed that read "vote for us to fulfill his program," and Qalb Tounes used a picture of Nabil Karoui to promote its candidate lists. In contrast, Ich Tounsi was the only party running lists in all constituencies that took down the paid ads it was running on Facebook and refrained from posting on its national and regional pages during the silence period.

During the presidential campaign, the use of social media was more intense and passionate than during the parliamentary campaign. Social media remained focused on the presidential contest and the continued detention of Karoui. It reinforced the political and social polarization that was evident in the results of the first round of the presidential election.

Citizen and Candidate Observation

Citizen observation is a critical manifestation of the right to participate in public affairs and to hold governments accountable. Sources of public international law recognize the right to take part in citizen observer organizations and to contribute to voter-education efforts.³³

Civil society was active in monitoring various aspects of the electoral process. The Tunisian Mediterranean Center (TU-MED) organization focused its observation on the participation of women in rural areas of seven constituencies. According to its report, there was an absence of women involved in the campaign, even in places where the head of the list was a woman. On election day, TU-MED had 70 observers.

Mourakiboun deployed 4,000 observers on election day for a parallel vote tabulation and created an app where voters could get information that was not available on the ISIE website about the electoral process, including the total number of registered voters, polling stations, seats and lists detailing the candidate's names and their platform running in each constituency.

The Association for Transparency and the Integrity of the Elections (ATIDE) deployed 600 observers around the country on election day and focused on monitoring social media. Chahed Observatory deployed 1,000 observers, three in each municipality.

Both Tunisian civil society and political parties took an active part in observing the parliamentary electoral processes. The ISIE reported accrediting over 97,000 candidate representatives; 17,500 citizen observers; and 700 international observers for these elections.

³³ EISA, Principles for Election Management, Monitoring and Observation in the SADC Region, p.19.

Electoral Dispute Resolution

Appeal procedures, and especially the powers and responsibilities of the various bodies involved in them, should be clearly regulated by law in order to avoid any positive or negative conflicts of jurisdiction. In addition, the right to file such appeals must be granted as widely as possible, open to every elector in the constituency and to every candidate running in the election.³⁴ The guarantee of a timely remedy is integral to the principle of effective means of redress.

Despite the short time limits provided by the law, the administrative tribunal addressed all pre-election complaints and appeals in a timely fashion. The tribunal demonstrated impartiality and respect for due process in its decisions.

Although Article 124 of the electoral law allows representatives of candidates and observers to record remarks about the voting process in the polling-station minutes, the electoral law does not allow voters to file complaints about potential malpractice or irregularities, thus denying their right to an effective remedy.³⁵ Voters are not allowed to challenge the election results in the courts.³⁶

For the legislative elections, only a few candidates lodged complaints in the courts of first instance about decisions rejecting their candidate lists. Most were rejected. Only four resulted in the revocation of IRIE decisions. A total of 18 appeals were lodged with the Appeals Circuit of the Administrative Court. The administrative court upheld the IRIE decisions in the majority of cases and overturned three.³⁷

The Court of First Instance did not allow Carter Center observers to observe fully the election dispute-resolution process in the majority of cases.³⁸ Despite several official written requests, observers were not given information about electoral disputes, allowed to attend public hearings, or given copies of final judgements.³⁹

In the same vein, the ISIE refused to provide the Center's mission with information about electoral disputes or to share detailed information as to why candidates were disqualified from the presidential race. On the other hand, the Administrative Court in Tunis allowed the Center to attend all hearings and occasionally supplied the Center with some decisions, albeit with some delay. Court hearings attended by the Center were orderly, and the parties were given the opportunity to represent their cases.

³⁴ European Commission for Democracy through Law (Venice Commission), Code of Good Practice in Electoral Matters, CDL-AD (2002) 23.

³⁵ ICCPR, General Comment 25, para. 20 and African Union Declaration on the Principles Governing Democratic Elections in Africa, Section IV, Article 7.

³⁶ U.N., ICCPR, Article 2, and African Charter on Democracy, Elections and Governance Article 17 (2).

³⁷ Three overturned decision involved one lists in the USA and rest of Europe constituency, one in Arab world and the rest of the World constituency, and two in Tunis.

³⁸ Pursuant to Article 7 of Regulation 9 of 2014 issued by the ISIE on the conditions and procedures for the accreditation of local and foreign observers for elections and referenda. Local and foreign observers are entitled to "follow the various stages of the electoral process relating to ... candidacies ... and electoral disputes." Article 252 of Civil and Commercial Procedure Code gives the right to copies of court decisions to any person who asks for it.

³⁹ Article 55 of The Administrative Court Law 40 in 1972 gives the right to obtain copies of court decisions to any person ask for it. The Carter Center filled several official requests to the Supreme Judicial Council and the administrative courts.

The ISIE election dispute-resolution process remains opaque. The ISIE did not share information collected by its campaign monitors, nor did it publicly announce how it would resolve election complaints. The courts did not release complaints or decisions in a timely fashion. They did, however, provide litigants with the opportunity to be heard and made decisions within the short timeframe allowed.

Election Day

The voting process is the cornerstone of the obligation to provide the free expression of the will of the people through genuine, periodic elections.⁴⁰ The quality of voting operations on election day is crucial to determining whether an election was held according to democratic obligations. Holding elections by secret ballot is a core obligation under international law, and a recognized means of ensuring that the will of the people is expressed freely.⁴¹

As for the presidential elections, the ISIE announced that 245 polling centers in five constituencies (Kef, Kasserine, Jendouba, Gafsa, and Sidi Bouzid) would operate under shortened hours on election day, 10:00 to 4:00pm instead of 8:00 to 6:00 pm. This change in voting hour affected approximately 112,195 voters.

Opening and Polling

The opening process in all 38 polling stations observed by The Carter Center was described as calm, well-organized and professional, with 100 percent of observer teams evaluating the implementation of procedures and the election environment positively.

Carter Center observers assessed 392 polling stations during election day. The overall election environment and implementation of procedures was assessed as positive in the overwhelming majority. In 11 polling stations, observers noted voters, especially the elderly, had difficulty voting because of the number of lists and the length of the ballot. In 99 percent of polling stations visited, voters were able to vote in secret. Observers reported that 49 polling stations were not accessible to physically-challenged persons.

Eighty-four percent of polling center presidents were men and 16 percent woman. 53 percent of polling station presidents were men and 47 percent were women.

Party agents were present in 373 of the 392 polling stations observed. Agents for Ennahda were present in 33 percent of observed polling stations, Qalb Tounes in 19 percent and Tahya Tounes in 9 percent. There were agents representing independent lists in 20 percent of visited polling stations. Citizen observers were present in 168 of the 392 polling stations observed, the highest number representing the UGTT labor union, present in 135 polling stations and Mourakiboun present in 25.

Closing and Counting

The implementation of procedures and the overall election environment was assessed as very good or reasonable in the 35 polling stations observed for closing. All observers reported that there were no voters waiting in line to vote when the polls closed at 06:00 pm.

⁴⁰ ICCPR, articles 2, 25(a) and 9.

⁴¹ U.N., ICCPR, Article 25; Universal Declaration of Human Rights, Article 23. EISA and Electoral Commission Forum of SADC Countries, Principles for Election Management, Monitoring, and Observation in the SADC Region, p. 24.

During the count, implementation of procedures and the overall environment were assessed positively in all 35 polling stations observed; Observers described the process as calm, professional and detailed.

Tabulation

Tabulation is ongoing. To date, our observers have described the process as efficient, organized and detailed. In some tabulation centers, observers were placed too far away to effectively observe the process and not allowed to interact with the staff. In other centers, observers had access to the entire process and staff were cooperative in answering questions.

Background: The Carter Center was accredited by the ISIE to observe the elections and deployed more than 90 observers who visited 392 unique polling stations as well as the 27 tabulation centers. The mission was co-led by Tana de Zulueta, former Italian parliamentarian, and Karen AbuZayd, a commissioner on the Independent Commission of Inquiry on the Syrian Arab Republic. The delegation included representatives from more than 30 countries.

The Center has had a presence in Tunisia since 2011. It observed the 2011 National Constituent Assembly elections, the 2014 presidential and legislative elections, as well as the constitution-making process that culminated in the adoption of the constitution in January 2014.

For these elections, The Carter Center deployed a core team in May 2019. In mid-July, the Center, in collaboration with the Electoral Institute for Sustainable Democracy in Africa, deployed 16 long-term observers throughout Tunisia. The core team and long-term observers represent 18 countries.

The Center will remain in Tunisia to observe the final tabulation process and resolution of electoral complaints. It also will observe the presidential runoff election on Oct. 13.

The objectives of the Center's observation mission in Tunisia are to provide an impartial assessment of the overall quality of the electoral process, promote an inclusive process for all Tunisians, and demonstrate support for its democratic transition.

The Carter Center assesses Tunisia's electoral process against the Tunisian constitution, the domestic electoral legal framework, and obligations derived from international treaties and international election standards. The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation.⁴²

The Center wishes to thank Tunisian officials, political party members, civil society members, individuals, and representatives of the international community who have generously offered their time and energy to facilitate the Center's efforts to observe the parliamentary election process.

⁴² The Declaration of Principles for International Election Observation was commemorated on Oct. 27, 2005, at the U.N. and is now endorsed by 55 intergovernmental and international organizations, which are engaged in the process of improving international election observation.