

THE
CARTER CENTER



Carter Center Pre-election Statement on Tunisia's 2019 Electoral Process
Sept. 9, 2019

The Carter Center commends Tunisia's electoral actors for their swift and efficient efforts to prepare for the upcoming presidential and parliamentary elections, especially considering the need to advance the date of the presidential election following the untimely passing of the president.

Given the 90-day deadline for a new president to take office imposed by the constitution, parliament passed several amendments to the electoral law to accommodate the deadline. The new date has increased pressure on all electoral stakeholders to conduct polls within a compressed timeframe and in compliance with international standards for democratic elections and domestic law. Despite the lack of a functioning Constitutional Court, executive powers were transferred smoothly to the interim president, avoiding a potential constitutional crisis.

Before the death of President Caïd Essebsi, parliament passed several amendments that were perceived as targeting specific prospective candidates and would have been a severe restriction on the rights of Tunisian citizens to run for office. They had been sent to the president for signature but were not promulgated before his death.

In late August, authorities detained candidate Nabil Karoui, who was one of the presumed targets of the failed amendments to the electoral law, which would have effectively barred owners of media outlets and charity organizations from running for office. The Appeal Court ordered Karoui detained on charges stemming from an investigation that began in 2017. His appeal for release was denied, as was a request by the Carter Center observation mission to meet with him in prison. Although the High Independent Authority for the Elections (known by its French acronym, the ISIE) has announced that his detention will not endanger his place on the ballot, Karoui is unable to campaign. In addition, it is unclear how his detention will affect the status of his participation in the rest of the electoral process.

Electoral preparations are proceeding efficiently. The vigorous voter-registration campaign undertaken by the ISIE resulted in the registration of 1,455,898 new voters, of which 63 percent are women or young voters. The ISIE and the High Independent Authority for Audiovisual Communications (HAICA) have called on media to be particularly vigilant in covering the activities of candidates who are also government officials or ministers. The ISIE has reinforced its campaign monitoring and warned government officials against using state resources for any campaign activity.

This statement provides an assessment by the Carter Center's international election observation mission of the pre-election period, including the voter-registration process and the candidate nomination process and offers preliminary recommendations to electoral stakeholders.

Death of President Caïd Essebsi and Possible Constitutional Crisis. President Beji Caïd Essebsi's death in office provided a test of Tunisia's political maturity and posed a potential constitutional crisis. Despite the absence of a Constitutional Court, the body with the constitutional mandate to acknowledge the vacancy of the presidency and to oversee the transfer of power to an interim president, a peaceful and orderly transfer of power was accomplished. A constitutional crisis was averted when the Interim Authority on the Constitutionality of Draft Laws stepped in to acknowledge the situation and notified Parliamentary Speaker Mohamed Ennaceur of the permanent vacancy, which resulted in his taking the oath of office as interim president on the same day as the death of Caïd Essebsi. Under the constitution, the interim president's mandate can last no longer than 90 days.

The Carter Center commends the Tunisian people and its institutions for the seamless transition of power to the interim president and the actions of all political parties and state institutions to assure citizens that the death of the president would not cause any disruption to the normal functioning of the state. The smooth transition is a positive sign that democratic institutions are taking root in Tunisia and that despite the lack of a constitutional court, the state and its institutions can work together efficiently.

Although a constitutional crisis was averted, recent events highlight the urgent need for the next parliament to establish a functioning Constitutional Court. The 2014 Constitution mandated that the court be constituted within one year of the date of the first parliamentary elections, held in October 2014. The Center urges lawmakers to move quickly to fully constitute the court once in office.

Electoral amendments on new timeline for presidential elections. The need to elect a new president before the mandate of the interim president expires meant that the ISIE had to bring forward the date for the presidential election from Nov. 17 to Sept. 15. In order to meet the constitutional deadline, the ISIE also requested that parliament pass urgent amendments to the electoral law to shorten the legal timeframe for electoral challenges to the results of the first round of the presidential election. The parliament passed these amendments on Aug. 22. The Carter Center applauds these efforts as well as the steps taken by the ISIE to complete the candidate registration process in a timely fashion. At the same time, The Carter Center notes that the compressed timeframe for electoral challenges could compromise the right to an effective remedy, as potential complainants will have little time to collect the evidence necessary to prove their case, and the court may have to issue rulings without having adequate information to make a definitive ruling.

The amendments to the electoral law also highlight the need for parliament to conduct a thorough review of the electoral legal framework after the 2019 national elections to address gaps and inconsistencies, as recommended in previous Carter Center final election reports. The review should look at the legal framework for holding early elections and collecting endorsements to run for office. There is also a need to review the constitutional provisions relating to the death or incapacity of the president to ensure that the timeframes are reasonable and realistic.

Controversial Electoral Amendments. The death of President Caïd Essebsi also ended the possibility that controversial electoral amendments that were drafted by the government, passed by parliament, and declared constitutional by the interim authority mandated to review the constitutionality of laws, would be enacted in time for the upcoming elections. The president did not promulgate the amendments before his death, and the constitution is unclear about the legal status of amendments that are not signed by a president whose term comes to an unexpected end. The electoral amendments would have introduced a three-percent threshold for entry into parliament and would have effectively prohibited owners of television stations and heads of charitable organizations from running as candidates. In addition, they called for the ISIE to vet all candidates and to prohibit persons who made statements against democratic values or the rule of law or who lauded the former regime from running.

Some political party representatives told the Carter Center's election observation mission that the amendments were intended to assure a level-playing field among party contestants and independents. However, the timing and content of the amendments appeared to target specific prospective candidates and would have severely restricted a core right of political participation, the right of Tunisian citizens to run for office.¹ In addition, they also could have been used to introduce a never-ending set of challenges to successful presidential and legislative candidates.

One of the presumed targets of the proposed amendments, presidential candidate and prominent businessman Nabil Karoui, was detained and jailed on Aug. 23 on a warrant issued by an appeals court. The charges, which are based on corruption and money laundering, originated in 2016 and remain under investigation. Karoui is the owner of Nessma TV station.

The timing of the detention raises questions, given that a lower court had allowed him to remain free while the investigation was ongoing. The original complaint was based on information supplied by I Watch, a domestic civil society organization (CSO), which also provided information targeting presidential candidate and current prime minister, Youssef Chahed, and former Ennahda Shoura Council member and current presidential candidate Hatem Boulabiar. Neither of the latter have been detained. The arrest of Karoui has no bearing on his official candidature. He will remain on the ballot and can be elected, even if he remains imprisoned. But the timing of the arrest raises the perception of political motivations and casts a cloud over the process. His detention also means that, unlike all other candidates, Karoui will be at a disadvantage because he cannot take part in the campaign. In addition, it is unclear how his detention will affect the status of his participation in the rest of the electoral process.

Media and campaign rules regarding government officials and use of status resources. A recently signed memorandum of understanding between the ISIE and the HAICA detailing the rules for media during the campaign is a positive step. It calls on the media to be particularly vigilant in covering the activities of candidates who are also government officials or ministers. The number of government officials running for public office has greatly increased in this electoral cycle, which also increases the risk that state resources could be used in support of campaign activities.

¹ Article 74 of the Tunisian 2014 Constitution., Article 40 of the Electoral Law.

The ISIE also issued a specific regulation on campaigning that details what parties and candidates can and cannot do, which includes a prohibition on the use of state resources for campaigning. The ISIE issued a warning to candidates and strengthened its capacity to monitor the campaign through the hiring and deployment over 1,500 campaign monitors across the country.

Candidate Nomination. The ISIE announced candidate nominations for the presidential election from Aug. 2 to Aug. 9. While there was a lack of detailed information about some of ISIE's decisions, the candidate nomination and registration processes went smoothly. ISIE staff implemented the registration procedures and informed potential candidates of any deficiencies in their application papers in a professional manner. The ISIE received 97 candidate applications for president; 26 were approved and 71 rejected. The ISIE published the final list of 26 candidates on Aug. 31, 2019, just two days before the start of the electoral campaign.

However, the ISIE has not yet provided any public information or detailed justification for rejecting three-quarters of the potential candidates, even those who submitted the required number of endorsements. The ISIE informed The Carter Center that this information could only be obtained from the respective candidates, individually. Eventually, after civil society organizations urged them to do so, the ISIE introduced an SMS service for voters to check whether their names had appeared on any of the lists of voter endorsements. This service resulted in more than 245 complaints from voters who said that their signatures were used without their knowledge.² The failure of the ISIE to fully inform the public of the reasons candidates were rejected led to speculation that they were based on other considerations, rather than a strict application of the law. While the number of complaints filed is quite small compared to the overall number of voter endorsements, the lack of public information could undermine public confidence in the administration of the elections.

Although Administrative Court hearings on challenges to the ISIE's rejection of candidate applications were conducted publicly and candidates were afforded due process. To date, none of the court's decisions have been released publicly. The lack of transparency regarding the issue of candidate nomination fails to engender trust in the judiciary and has fueled speculation about the basis of the court's decisions.

The candidate nomination for the parliamentary election took place separately and was conducted by the Independent Regional Electoral Authority (IRIE) from July 22 to July 29. IRIE staff were well-prepared for this process, and all stakeholders praised their professionalism and hard work. Based on the IRIE-level processes, on Aug. 6 the ISIE published 1,340 accepted candidate lists from across Tunisia's 27 electoral districts in country and 163 lists for the six overseas constituencies.³

² The ISIE announced that it will address these complaints, however it has not taken any action to date. According to media reports, several candidates were called in for questioning by an investigative judge concerning alleged fraudulent endorsements.

³ The appeal circuit of the Administrative Court heard 17 appeals on IRIE rejection of lists. Fourteen were denied and three accepted.

Voter Registration. Articles 34 and 54 of the 2014 Constitution guarantee all Tunisian citizens who are 18 or older the right to vote. Voter registration is an established best practice to help guarantee the right of citizens to participate in the public affairs of their country, and to determine one's eligibility to vote. In the context of voter registration, there is an international obligation of universal suffrage that requires that broad participation be promoted.⁴

The ISIE conducted a vigorous voter registration campaign in the run-up to the 2019 elections that resulted in the registration of 1,455,898 new voters, 63 percent of whom are women or young voters, bringing the total number of registered voters to 7,074,565. The ISIE used a combination of mobile and stationary voter registration centers and made a concerted effort to reach out to marginalized voters. The total number of registered voters is lower than that announced by the ISIE in July 2019, because moving up the presidential election directly impacted the number of eligible voters. The ISIE deleted all voters who would not be 18 years of age before election day. The Center commends the ISIE for its efforts to reach out to voters, including sectors of the population that have been excluded in past polls, and for increasing the inclusivity of the voter registry.

Together with the Tunisian Association for Integrity and Democratic Elections and the League of Tunisian Women Voters, The Carter Center conducted survey research in 2016-2018 that sought to understand the factors responsible for low levels of voter participation among youth and women in prior elections. Since Tunisia's first democratic elections of 2011, significant numbers of youth and women – notably from rural areas and marginalized regions of the country's northwest and southwest – have abstained from voting. The municipal elections held in May 2018 confirmed this trend, reflecting Tunisians' growing disaffection with the country's politics.⁵

The ISIE has made some efforts to address these problems and to increase the registration of youth and women. The Carter Center urges all electoral stakeholders, including political parties, CSOs, and the ISIE, to take further steps to increase the participation of marginalized groups in the 2019 electoral process.

Recommendations. The Carter Center offers the following recommendations in the spirit of cooperation with electoral stakeholders in Tunisia and in the hope that they will provide useful discussion points in advance of the elections and for future action:

- The ISIE should increase the transparency of its work, providing frequent public updates on the elections and posting detailed information on its website to inform the public and other electoral stakeholders about its preparations and any challenges to the overall process.

⁴ ICCPR, General Comment 25, para. 4 and 11.

⁵ The research findings suggest that there are opportunities for electoral stakeholders to increase the participation of women and youth. The study pointed to several steps that can be taken to improve voter turnout, including: the need to reinforce civic- and voter-education campaigns targeting youth and women; clarifying the link between registration and voting; strengthening control and sanction mechanisms against infringements by parties and candidates; promoting a new generation of leaders responsive to youth's expectations; and electoral programs that are workable, practical, and able to meet citizens' aspirations.

- The ISIE, civil society, and political parties should conduct vigorous voter-education campaigns to ensure that voters have the necessary information to make an informed choice on election day. The ISIE should conduct a targeted campaign to encourage newly registered voters to vote, especially women and youth, and should facilitate the active involvement of appropriate CSOs to help voter education efforts.
- Political parties should take steps to address the electorate, especially marginalized groups, directly on those issues of most importance to the everyday lives of Tunisians.
- The Administrative Court and other judicial bodies should be forthcoming with information on any electoral challenges so that the public can assess their judicial deliberations and to avoid any hint of political influence in their work.

Background: The Carter Center in Tunisia. The Carter Center has maintained an office in Tunisia since 2011. The Center observed the 2011 National Constituent Assembly elections, the constitution-making process from 2012-2014, and the 2014 presidential and parliamentary polls.

For the 2019 elections, The Carter Center deployed a core team in May 2019 to launch its mission to observe the electoral process. In mid-July, the Center in collaboration with the Electoral Institute for Sustainable Democracy in Africa deployed 16 long-term observers to monitor in Tunisia's regions. The core team and long-term observers represent 18 different countries. Long-term observers will be reinforced by a larger delegation of short-term observers due to arrive on Sept. 10.

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 and presidential election process. 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. The Carter Center, as an independent observer organization, will immediately inform Tunisia's authorities and the Tunisian people of its findings through the release of a preliminary statement of findings and conclusions shortly after election day, followed by a final comprehensive report in the months following the polls.