



## **Carter Center Statement on Tunisia’s Electoral Legislation and Municipal and Regional Elections**

Tunisia’s new constitution, ratified in 2014, elevated local democracy to a prominent position. Chapter VII of the constitution, which addresses local government, provides for elected municipal institutions with administrative authority and encourages the participation of civil society and citizens in governance. Given their importance in establishing a link between Tunisian citizens and their elected officials and the importance of developing the regions to meet citizens’ expectations, municipal and regional elections should be held at the earliest opportunity. However, there seems to be a glaring lack of attention to the organization of regional elections.

The legal framework needs amending in order for municipal and regional elections to be held, because the existing law only addresses national elections.<sup>1</sup> Unfortunately, the process of amending the electoral law in the Assembly of the Representatives of the People (ARP) has been slow and disappointing. After the government presented its draft law to amend Organic Law 2014-16 to the ARP on Jan. 11, 2016, there was three months of discussion (Feb. 3 – May 3) in the Rules of Procedure, Immunity, and Parliamentary and Electoral Laws Commission before it was introduced to the plenary on June 1, 2016. More than 100 days have passed since then, but the law has yet to be adopted.<sup>2</sup>

These legislative delays have resulted in repeated postponement of Tunisia’s municipal polls. Two dates on which there was political consensus for holding elections (Oct. 30, 2016, and March 26, 2017) had to be discarded along with the corresponding electoral calendars developed by the Independent High Authority for Elections (*Instance Supérieure Indépendante pour les Élections*, or its French acronym, *ISIE*).

Despite the prolonged review of the electoral law, the proposed amendments currently under consideration in the ARP will introduce substantive improvements that will increase the inclusivity of the elections and bolster the right of traditionally marginalized groups to participate as candidates.

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<sup>1</sup> Organic Law No. 2014-16 on Elections and Referendum.

<sup>2</sup> A general discussion regarding the legislation took place in plenary on June 1; however, the ARP’s work was suspended before any votes were considered. During a very short plenary on June 2, progress was hampered by the lack of agreement among the parliamentary blocs on the dissolution of special delegations (provisional municipal councils), which was seen by some as a prerequisite. On June 14, agreement was reached on their dissolution, allowing for consideration of several articles of the draft law. However, before the law’s overall adoption, the June 15 plenary session was suspended indefinitely due to a disagreement as to whether the law should grant the military and the internal security forces the right to vote.

The draft bill provides greater opportunities for youth to participate in the polls by lowering the minimum age of candidacy in municipal and regional elections from 20 to 18 years of age. In addition, the draft requires regional and municipal electoral lists to include a candidate under the age of 35 among the first three names, and to add another after every sixth name on the list — steps that should increase the participation of younger candidates.

The draft law also eliminates discrimination in candidate nomination requirements for municipal and regional elections between holders of Tunisian nationality at birth and naturalized citizens. This is a substantial improvement over the five-year waiting period that had been proposed by the government. This modification also ensures compliance with relevant provisions of the constitution and the United Nations International Covenant on Civil and Political Rights.

In line with the constitution's aspirational goals for gender equality in elected offices, the draft law strengthens the concept of parity between men and women. Municipal and regional candidate lists are required to respect not only vertical parity (where the gender of each candidate alternates) but also horizontal parity (where an equal number of candidates' lists of the same party or coalition are headed by men and women). The ARP'S draft also allows for the relative inclusion of people with disabilities.<sup>3</sup>

According to the draft law, municipal and regional councils will elect mayors and regional council presidents from among their members. This is an improvement over the government's proposed language, which awarded the leadership position to the head of the list receiving the highest number of votes. The latter had the dual disadvantage of promoting the hegemony of major political parties and entrusting the management of local authorities to candidates who may not have garnered broad-based support within the council.

While the positive elements enumerated above represent clear improvements, the legal framework for elections as outlined in the draft law does not address all of the shortcomings of the 2014 electoral law, and its new provisions introduce other weaknesses.

One key shortcoming relates to the powers vested in the ISIE that allow it to modify preliminary election results due to alleged violations of campaign-finance regulations before a final judgment has been rendered by a court competent in electoral disputes.<sup>4</sup>

Another key weakness is the continued restriction on the right to vote for military and internal security forces, which include approximately 100,000 citizens. This restriction is inconsistent with Articles 21 and 34 of the constitution as well as Tunisia's international

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<sup>3</sup> The draft law requires lists to include a physically disabled candidate among the top five names on the list, which would not guarantee them a high probability of winning a seat.

<sup>4</sup> While the ISIE should have the authority to correct errors in the tabulation process, Article 143 of Organic Law 2014-16 on Elections and Referendum stipulates that "the Authority has to ensure the adherence of the winners to the provisions on the period of elections and campaign funding. The Authority may decide to cancel the results of the winners, if it finds that their violation of these provisions has affected the results of the elections in a fundamental and decisive way..."

obligations under the United Nations International Covenant on Civil and Political Rights.<sup>5</sup> In addition, the right to participate is further undermined by the absence of any measures to promote the exercise of the voting rights of vulnerable groups, in particular those in the hospital or in custody.

Other weaknesses in the draft law relate to the method of implementing horizontal parity of candidates' lists and the sanctions for failure to respect it. The requirement to respect horizontal parity at the national level, rather than the regional level, will likely reduce the number of elected women. This means that political parties can place men at the top of the lists in the constituencies where they have the greatest chances of winning, while putting women on the top of lists in their weakest regions. Another concern is that the selection criteria for invalidating candidates' lists that do not respect horizontal parity is random and liable to reduce the number of lists headed by women even further.<sup>6</sup>

Another weakness in the draft law concerns campaign finance. Notwithstanding the need for effective measures to recover funds from recipients who do not garner the minimum threshold of electoral support, the current provisions may prejudice independent candidates and small political parties who do not otherwise have the necessary funds to conduct a meaningful campaign.

An additional concern relates to the draft law's definition of the "actual address" of the voter, which may have negative repercussions on the participation of certain professions that are prone to seasonal migrations. The "actual address," which includes the professional affiliation of a voter, could be manipulated by employers to ensure that employees register and vote in their place of work, making them susceptible to pressure to vote a certain way.

With a view toward highlighting potential shortcomings, and in a spirit of respect and support, The Carter Center makes the following recommendations to the ARP to improve the draft electoral law and advance broader participation in the electoral process:

- Adopt the draft organic law on the amendment of the Organic Law 2014-16 as soon as possible, to enable the development of a new electoral calendar and roadmap, and the holding of municipal and regional elections at the earliest opportunity.
- Recognize the right to vote for the military and the internal security forces.
- Ensure that horizontal parity between men and women in the candidates' lists for municipal elections is adopted at the regional level.
- Adopt criteria for invalidating candidates' lists that do not comply with horizontal parity requirements that will not further reduce the number of lists headed by women.
- Adopt a definition of the "actual address" of the voter that facilitates the

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<sup>5</sup> Article 25 of the UNICCPR: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without *unreasonable* restrictions:

(b) To vote and to be elected at genuine periodic elections ..."

*For the military, a reasonable restriction would be to deprive them of the right to be elected, not of the right to vote.*

<sup>6</sup> The assembly's proposed method penalizes parties by invalidating the last lists submitted, rather than taking gender parity into account. The provisions should give consideration to respecting horizontal gender parity.

participation of professional categories subject to seasonal migrations and does not permit the possible manipulation of masses of voters through their professional affiliation.

- Facilitate the implementation of voting rights to vulnerable voters, especially those hospitalized or in custody.
- Enhance the participation of independent candidates and small political parties by adopting campaign-finance regulations that include effective mechanisms for the recovery of funds from recipients who do not garner the minimum threshold of electoral support.
- Allow a change in preliminary election results only after final judgment has been rendered by a court competent in electoral disputes.

### *The Carter Center in Tunisia*

*The Carter Center established a field office in Tunis in July 2011 to observe the first democratic elections following the Arab Spring, monitor the constitution-drafting process and the establishment of the electoral framework, and promote the inclusion of international standards for elections, democracy, and human rights in the new constitution. In 2012 and 2013, the Center conducted training for civil society partners engaged in election observation, and in 2014 it observed the legislative and presidential elections, providing Tunisian authorities, electoral stakeholders, and international actors with recommendations to improve election administration and the legal framework.*

*Since then the Center has continued to support progress in Tunisia's legislative framework by monitoring the work of the parliament, holding meetings with key decision-makers to engage and advise on issues, and publishing public statements with recommendations on key legislative issues. The Center has also used its convening authority to organize regular meetings with the civil society organizations in support of joint advocacy campaigns on developing legislative issues. The Center regularly provides technical assistance on election standards and supports Tunisian CSO partners in identifying areas of agreement and forming joint recommendations regarding key legislation governing elections and democratic governance in Tunisia.*