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Carter Center Urges Tunisia to Continue Work toward Democratic Goals

The Carter Center encourages Tunisia's National Constituent Assembly and new electoral management body, the High Authority for the Elections (ISIE), to carefully consider next steps as they work toward democratic goals.

"Scheduling polls at an early date is important, so elected political leaders can form a government and give full attention to Tunisia's economic, social, and security concerns," former U.S. President Jimmy Carter said. "It also is critical for the Tunisian authorities to provide the new electoral commission with resources and legislation necessary to conduct credible elections."

To this end, the Center encourages the National Constituent Assembly to focus its immediate efforts on consideration and passage of a new electoral law. In parallel, the Center urges Tunisian authorities to allow the ISIE adequate time and resources to establish itself as a permanent, impartial, and independent institution before undertaking electoral preparations.

The organization of successful elections will be a shared responsibility. The ISIE will have the central role in the process, but the assembly has a crucial role to play in ensuring the success of the elections, notably in adopting a comprehensive election law. It therefore should endeavor to learn from recent experiences and ensure there is sufficient time and appropriate consultative mechanisms with experts and civil society representatives to prepare a legally sound and clear electoral law.

The electoral process also will require logistical, material, and technical support from ministries and other government institutions. Depending on the electoral system, legal framework, and efforts to renew the voter register, it may not be realistic to expect that credible elections – particularly parliamentary elections – could be conducted in fewer than four to six months after the entry into force of the electoral law.

The 2011 elections were organized under considerable time pressure. The realization of those elections was a genuine achievement, however observers noted some problems. All stakeholders have recognized that improvements could be made to the process, and voters, political parties, civil society, and media will hold the next electoral process to a higher standard. The constituent assembly should learn from these lessons so as to ensure that this standard can be reached. It is incumbent on all stakeholders to assist the ISIE in building

public confidence as a competent and independent body capable of regulating and implementing elections.

In support of these objectives, The Carter Center makes the following recommendations to National Constituent Assembly members, the ISIE, stakeholders involved in the national dialogue, the government, and political parties:

- To build and consolidate the confidence of political parties and other stakeholders in the electoral process, the ISIE should be given time and appropriate resources to establish itself as a permanent institution. It should not be asked to organize elections before having had the opportunity to establish its structures and subsidiary bodies.
- The National Constituent Assembly should begin drafting a new electoral law as a first priority, devoting sufficient time and expertise to the drafting of the law, so as to guarantee that the legal framework is clear, unambiguous, and addresses all components necessary to ensure democratic elections in accordance with Tunisia's national and international obligations and the new constitution.
- The assembly's General Legislation Commission, responsible for producing the first draft of the law for consideration by the plenary, should use the 2011 electoral law and recommendations from civil society and others as a basis for the new text.
- The constituent assembly should clarify the relationship between the ISIE and other public administration bodies in the 2014 electoral law to ensure that the election commission has full authority over the election process.
- The assembly should allow the ISIE the opportunity to develop a comprehensive electoral calendar that takes into account the sequence of electoral operations, the timeframes established by the electoral law, and the sensitive task of conducting simultaneous elections for new political institutions before setting a date for the elections.
- The new government should support the ISIE in its mission, providing it with all necessary support to carry out the next elections effectively and allocating appropriate budget resources.
- For its part, the ISIE should build public confidence in its independence and impartiality by ensuring transparency in its work, allowing Tunisian and international observers unfettered access to meetings and public documents. One alternative is to publish electoral regulations and other relevant documents on the ISIE website.
- To ensure thorough understanding of its work by all stakeholders, the ISIE should establish a communications strategy early in the electoral process and hold regular press briefings. To the extent possible, the ISIE should endeavor to take decisions by consensus.
- The ISIE should endeavor to establish its executive and administrative bodies as soon as possible, and make decisions regarding its regional structures.

- The ISIE should devote adequate resources and planning to trainings, incorporating lessons-learned activities, for all election officials and staff, especially at the regional and local level.

The Center reiterates its congratulations on the election of the members of the ISIE, the adoption of the new constitution, and the appointment of the new government.

Following its observation of the October 2011 National Constituent Assembly elections, The Carter Center has monitored the constitution-making process and developments related to the establishment of institutional and legal frameworks for subsequent elections. The Center assesses these processes against Tunisia's constitution, national laws, and international treaty obligations.

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Carter Center Urges Tunisia to Continue Work toward Democratic Goals

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The Carter Center reiterates its congratulations on the election of the members of the Independent High Authority for the Elections (ISIE), the adoption of the new constitution, and the appointment of the new government.¹ The Center encourages the National Constituent Assembly (NCA) and the new electoral management body to carefully consider next steps to continue making progress toward democratic goals.

To this end, it is essential that Tunisian authorities – and the Tunisian people – acknowledge that the development of institutional structures takes time. The Carter Center encourages the ISIE to solidify its internal administrative structures as soon as possible so that electoral preparations can move forward, taking into the consideration the deadlines fixed in the new constitution.²

Despite considerable pressure to move forward rapidly, The Carter Center encourages the NCA to dedicate the appropriate time and resources to prepare a comprehensive electoral framework. The NCA should consult legal and electoral experts, as well as civil society organizations working in the field of elections, in the elaboration of the electoral law, to ensure that the law is clear, unambiguous, and addresses all components necessary to ensure democratic elections in accordance with Tunisia's newly adopted constitution and other national and international obligations.

Composition of the ISIE

After a long, complex, and sometimes controversial process marked by legal challenges, the NCA plenary elected nine ISIE commissioners on January 8, 2014, voting on each of nine categories in accordance with ISIE law. The new ISIE members, three of whom are women, each received over a two-thirds majority in a first round of voting, indicating a wide consensus within the assembly. The NCA selected Chafik Sarsar as ISIE president the following day. The new election commissioners bring substantial professional experience and qualifications to their positions. Three commissioners served in the former election commission, providing continuity and institutional knowledge of the 2011 polls.

¹ The Carter Center Commends Tunisian Assembly on Historic Achievement, Jan. 29, 2014 <http://www.cartercenter.org/news/pr/tunisia-01292014.html> and The Carter Center Commends Milestone in Establishing Tunisian Election Commission, Jan. 10, 2014, <http://www.cartercenter.org/news/pr/tunisia-011014.htm>

² Article 148, paragraph 3 of the new constitution presidential and legislative elections are organized at the earliest four months after the creation of Independent High Authority for the Elections. In any event, the elections will be organized before the end of 2014.

Structures and Organization of the ISIE

Almost a month after the election of the nine members of the ISIE, the effective implementation of the new body remains dependent on several factors and stakeholders. The consensus of the vote on the constitution and the broad majority obtained for the vote for the new interim government in the NCA may help to build public confidence around the upcoming electoral process. The new government should prioritize collaboration between the ISIE and the different public administrations that are related directly to the organization of elections.

By law, the ISIE is an independent and permanent authority.³ The independence of the new body depends on several criteria, including its financial autonomy. The government should allow the ISIE commissioners to establish an administrative structure independently of external pressures by providing financial resources that allow them to manage their activities, both in Tunis and the regions. Pending the ISIE's work to elaborate a comprehensive budget for the electoral cycle, the Center encourages the government to provide financial resources to the ISIE for its initial operations.

The new ISIE members will have to work quickly to establish the body as a permanent, independent, and properly functioning institution before they can begin election preparations. In accordance with the law, the former electoral commission has remained in place to conduct a handover of facilities, equipment, records, and documents. The Carter Center urges these authorities to take all necessary measures to conduct a handover as soon as possible to facilitate the ISIE's task.⁴ The Center also urges the new government to support the ISIE to identify suitable premises for its headquarters as well as its branches.

Following its establishment, the new ISIE will have to undertake a number of important organizational tasks requiring time and appropriate resources. The ISIE law provides for an administrative body, which will conduct the day-to-day work of the election commission, implementing the decisions of the ISIE Council.⁵

The ISIE's first critical task is to hire an executive director who will be responsible for managing the work of the administrative body and ensuring that the polls are conducted with the utmost impartiality, transparency, and efficiency, in order to strengthen the confidence of stakeholders, including voters, in the electoral process and its outcomes. Following his or her appointment, the executive director must prepare plans for the administrative, financial, and technical structure of the ISIE; the rules of procedure; human resources; and a budget.⁶ Each of these plans must be approved by the ISIE Council.⁷ Only once these plans are in place can the ISIE initiate staff hiring, which in itself is a major undertaking. Legal complaints in this phase as well cannot be ruled out. The ISIE should therefore ensure that there are clear and transparent procedures in place for the recruitment process and that the process adheres closely to those procedures.⁸

In addition to developing its internal structures and procedures, the ISIE also should develop a comprehensive electoral calendar taking into account the deadlines set into the constitution and the appropriate sequence of electoral operations and the timeframes established by the

³ The Organic Law Number 23 of the year 2012 dated December 20, 2012 related to the Independent High Authority for Elections" (hereafter referenced as "ISIE law"), article 1.

⁴ ISIE Law article 21.

⁵ ISIE law, Chapter II.

⁶ ISIE law, article 27.

⁷ The budget must also be approved by the NCA, after the opinion of the government is obtained.

⁸ ISIE law, articles 31 and 29.

electoral law to conduct the critical task of eventual simultaneous national elections. Before setting a date for the next elections, the NCA should allow the ISIE an opportunity to develop an appropriate electoral calendar to identify a realistic timeframe for the elections and help inform the NCA's decision-making.

The ISIE law did not intend that individual commission members, while experts in their various professional fields, have a direct management role over the area of their respective competencies within the election commission. Although members may be the focal points in the commission for their areas of expertise, the commission as a whole should be responsible for oversight of all aspects of the ISIE's work, and the administrative body should be responsible for implementation of the commission decisions and the daily management of activities. To the extent possible, the ISIE should endeavor to take decisions by consensus.

In accordance with the ISIE law, the ISIE has the ability to establish regional bodies, commonly known as IRIEs (*Instance Régionales Indépendantes pour les Elections*), to carry out substantive duties in the conduct of the election. The ISIE should carefully consider whether to create IRIEs or rely on the local administration. Should the ISIE decide to establish IRIEs, it may require several months work. In accordance with the first recommendation of the Audit Court in its report on the financial management of the former ISIE, The Carter Center underscores the importance of preparing the administrative, financial, and technical structure of the ISIE before starting the electoral process.⁹

During the 2011 elections, The Carter Center observed considerable differences in the work of individual IRIEs as a result of late appointments, a lack of training, and insufficient planning and communication between the ISIE and IRIEs. The Center recommended in its final report on the 2011 NCA election that "detailed planning, adherence to agreed policies, and the development of targeted communication strategies should be given priority attention so that officials understand their role to help ensure consistent administration at the local level."¹⁰

In its report, the Center also recommended that the electoral management body "improve communication with civil society, political parties, and voters regarding key decisions."¹¹ These recommendations are still relevant and important. It is important for the ISIE to conduct thorough training of election officials and staff in order to ensure a uniform application of the eventual electoral law and electoral regulations. The Carter Center strongly calls on the ISIE to taken into account lessons learned from the 2011 electoral cycle and give training for all election officials and staff primary consideration in their planning and budget. In addition, to ensure good understanding of its work by all stakeholders, the ISIE should establish a communications strategy early in the electoral process and hold regular press briefings about its activities and the process. In all these areas, the ISIE could take advantage of technical assistance offered by the international community to strengthen its activities.

Legal Framework

In 2011 the ISIE was able to conduct elections in a compressed timeframe in part because much of the legal framework was already in place at the time of its creation, even if some elements of the law were subsequently modified.¹² At present, the legal framework for the

⁹ Audit Court, "Report on the Control of the Financial Operations of the ISIE", May 2013, p. 68 (in Arabic).

¹⁰ The Carter Center, [National Constituent Assembly Elections in Tunisia, October 23, 2011](#), p.58.

http://cartercenter.org/resources/pdfs/news/peace_publications/election_reports/tunisia-final-Oct2011.pdf

¹¹ The Carter Center, [National Constituent Assembly Elections in Tunisia, October 23, 2011](#), p.58.

¹² Decree 72 (Aug. 3, 2011)

organization of elections remains incomplete. Although the NCA passed a law to create the ISIE and elaborated various constitutional provisions related to elections, the assembly has not yet adopted an electoral law that provides the legal framework for the upcoming elections. As stipulated in Article 65 of the new constitution, the electoral law must take the form of an organic law.¹³ Without electoral legislation in place, the ISIE has a very limited ability to implement elections, apart from the preparation of draft regulations and provisional calendars.

Following the adoption of the constitution, the NCA should now concentrate its efforts on passing an appropriate electoral law. Several Tunisian civil society organizations have worked on draft proposals for this law, which the NCA's General Legislation Commission should consider as a starting point.¹⁴ In any event, the NCA should consult with legal and electoral experts and other professionals involved in the electoral process, as well as representatives of civil society organizations working in the field of elections, as it prepares the electoral law. The Carter Center also encourages the NCA to take into consideration recommendations made by national and international observers after the NCA elections so that the new election law addresses certain inadequacies and gaps in the 2011 legal framework.¹⁵ While the 2011 elections were a historic achievement, all stakeholders have recognized that improvements could be made to the process, and voters, political parties, civil society, and the media are likely to hold the upcoming elections to a higher standard.¹⁶

The Carter Center encourages the NCA to take the time and care needed to ensure that Tunisia's new election law is clear and comprehensive to ensure democratic elections in accordance with Tunisia's national and international obligations and good practice.¹⁷ Investing time into drafting the law, including appropriate consultative mechanisms with experts and civil society representatives, would contribute to ensuring a smooth electoral pathway and reduce the potential for significant delays at later points in the process, as experienced recently with the ISIE law.

Lawmakers also should ensure that the legal framework for the elections addresses important related issues including campaign finance, media regulation, and the complaints and appeals mechanisms. The NCA should also carefully consider voter registration options to address the significant difficulties encountered during the 2011 elections.

¹³ Article 65 of the new constitution: "Laws relating to the following areas are deemed organic laws: (...) Election law".

¹⁴ For instance, the civil society groups Citizenship Center (*Centre de Citoyenneté*) and Youth without Borders (*Jeunesse sans frontières*) have prepared a comprehensive draft electoral law, after consultation with a board range of electoral actors and submitted to the NCA. Another draft law prepared by *Chahed* related to voter registration was submitted to the NCA.

¹⁵ The Carter Center, National Constituent Assembly Elections in Tunisia, Oct. 23, 2011, p.56:

http://cartercenter.org/resources/pdfs/news/peace_publications/election_reports/tunisia-final-Oct2011.pdf. See also the joint recommendations of 24 election observation groups that were active during the 2011 Tunisian elections, which were prepared during a workshop organized in February 2012 by The Carter Center in collaboration with the electoral assistance team of the European Union and the International Foundation for Electoral Systems (IFES). More recently, a group composed of the eight most important Tunisian observer organizations published a document containing 75 recommendations for the next election cycle.

¹⁶ IFES, *Analyse du cadre juridique, Election du 23 octobre 2011 de l'assemblée nationale constituante - République tunisienne*, février 2012, in French p.12 « Il est crucial que la loi électorale soit à la fois précise, sans ambiguïté, claire et facilement compréhensible aussi bien par le personnel chargé des élections que par les candidats et par les électeurs. Un pan de la réforme doit être consacré à la simplification des textes. Doit rester présent tout au long des discussions le souci de simplicité, de cohérence et de lisibilité. Simplifier les dispositions complexes devrait être un leitmotiv de la discussion de façon à ce que le texte soit, autant que possible, compréhensible pour le plus grand nombre. »

¹⁷ The Human Rights Council, A/HRC/RES/19/36, 2012, p.16 "The HRC calls upon States to make continuous efforts to strengthen the rule of law and promote democracy by: ensuring that a sufficient degree of legal certainty and predictability is provided in the application of the law, in order to avoid any arbitrariness." See also: The Venice Commission, *Code of Good Practice in Electoral Matters* (CDL-AD (2002) 023rev), p. 26.

The Organization of Elections

The work of the election commission is complex and requires several sequential steps. After election legislation is in place, the ISIE will have to finalize an electoral calendar enumerating the various technical steps in the process and the time needed for each. Depending on the sequencing of the parliamentary and presidential elections, the electoral calendar will take on increased importance, due to the complexity of differing legal deadlines, rules, training needs and voter education requirements.

The electoral calendar should take into account the extensive efforts needed to conduct voter registration and publish voter lists, design and implement voter education programs, develop training programs and train election officials. In addition the ISIE should leave adequate time to plan for the identification of polling stations and staff, procurement and distribution of materials, voting, counting, and tabulation, and the reporting of results. Only after these considerations have been taken into account should the NCA set a date for the elections.¹⁸

The ISIE also will have to develop regulations governing all aspects of the election process, including the registration of candidates (potentially with collection of voter signatures in advance), campaign rules, campaign finance, observer accreditation, and election Day and post-election day procedures. Depending on the choice of electoral system, the legal provisions concerning timeframes for accomplishing various stages of the election process are interdependent (e.g., candidate registration followed by ballot paper printing), and depend also on the state of the voter register. Electoral preparations may require several months. It is not unreasonable to expect substantial time for preparations, particularly for parliamentary elections, after the entry into force of an electoral law. Special attention should also be given to the monitoring of the security and the media environment, as these aspects are essential elements of a genuine election process.

Finally, Article 22 of the ISIE law does not clearly provide for the ISIE's authority over the election process with respect to its relations with government ministries and other public institutions, as these bodies are required to cooperate with the ISIE in organizing elections "to the extent possible" (Article 22). This opens the door to potential disputes between the ISIE and other governmental bodies, without clear timelines for resolution, which could cause unnecessary delays or problems in the election process. This issue was raised during the national dialogue and a proposition to amend Article 22 was presented to the NCA during the revision of some of the provisions of the ISIE law.¹⁹ Some NCA members suggested deleting the expression "to the extent possible," so that public administration would have to cooperate with the ISIE and provide it with the requested support. This proposition was however rejected by the General Legislation Commission and in the NCA plenary session. The Carter Center recommends to the NCA that a clear designation of authority to the ISIE in its relationship with public administrations is included in the new electoral law. The Carter Center calls on the new government to support the ISIE in its mission by providing the ISIE with all necessary support to carry out the next election effectively.

Conclusions and Recommendations

The NCA should aim to schedule elections within a reasonable timeframe in order to continue the transition process and develop the democratic institutions outlined in the new constitution.

¹⁸ Article 33 of the ISIE law requires the NCA to set a date for the elections and the ISIE to propose a timeline accordingly

¹⁹ This draft law was prepared by the sub-commission of the national dialogue in charge of dealing with ISIE related issues, and was submitted to the NCA on Oct. 17, 2013.

Just as importantly, however, the elections must be -- and must be perceived to be -- genuinely democratic and represent the will of the Tunisian people. It is incumbent on all stakeholders to assist the ISIE in building public confidence as a competent and independent organizer of elections. In support of these objectives, The Carter Center makes the following recommendations to NCA members, the ISIE, the new government, stakeholders involved in the national dialogue, and the political parties:

- To build and consolidate the confidence of political parties and other stakeholders in the electoral process, the ISIE should be given the time and appropriate resources to establish itself as a permanent institution. It should not be asked to organize elections before having had the opportunity to establish its structures and subsidiary bodies.
- The NCA should begin drafting a new electoral law as a first priority, devoting sufficient time and expertise to the drafting of the law, to guarantee that the legal framework is clear, unambiguous, and addresses all components necessary to ensure democratic elections in accordance with Tunisia's national and international obligations and the new constitution.
- The NCA's General Legislation Commission, responsible for producing the first draft of the law for consideration by the plenary, should use the 2011 electoral law and recommendations from civil society and others as a basis for the new text.
- The NCA should clarify the relationship between the ISIE and other public administration bodies in the 2014 electoral law to ensure that the election commission has full authority over the election process.
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- The new government should support the ISIE in its mission, providing the ISIE with all necessary support to carry out the next election effectively and allocating appropriate budget resources.
- For its part, the ISIE should build public confidence in its independence and impartiality by ensuring transparency in its work, allowing Tunisian and international observers unfettered access to its meetings and public documents. One alternative is to publish electoral regulations and other relevant documents on the ISIE website.
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- The ISIE should endeavor to establish its executive and administrative bodies as soon as possible, and make decisions regarding its regional structures.
- The ISIE should devote adequate resources and planning to trainings, incorporating lessons-learned activities, for all election officials and staff, especially at the regional and local level.

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