

TUNISIA

INTRODUCTION

From its independence in 1956 until 2011, Tunisia held legislative and presidential elections at relatively regular intervals.²³⁴ Despite their democratic trappings, the exercises were generally fraught with irregularities and served to maintain the rule of the incumbent party and serving president. In elections run by the Ministry of Interior (MOI), first President Habib Bourguiba and then President Zine El Abidine Ben Ali ran unopposed, or virtually unopposed, and were routinely reelected with over 90 percent of the vote. The ruling party similarly dominated elections for the Chamber of Deputies, with the activities of genuine opposition parties severely restrained.

The flawed system and the questionable results undermined citizens' trust in the reliability of the electoral process in Tunisia and its legal and institutional framework, even before the Arab Spring of 2011. In January 2011, massive citizen protests—which in turn inspired uprisings across the Middle East—forced Ben Ali from office and threw political space open. In the transition that followed, the country voted in October 2011 to elect a National Constituent Assembly (NCA) charged with formulating a new constitution. As a result, new election laws were passed between 2011 and 2014 that significantly transformed the electoral process.

INTERNATIONAL AND REGIONAL AGREEMENTS

Tunisia has ratified the major international and regional conventions related to elections, voting, and the right to equal participation. These include the International Covenant for Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Political Rights of Women, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the African Charter on Human and Peoples' Rights.

LEGAL FRAMEWORK

In January 2014, Tunisia adopted a new constitution, viewed as relatively progressive for its stances on gender equality, freedom of expression, and the right to information. Article 34 states that, “The rights to election, voting, and candidacy are guaranteed, in accordance with the law. The state seeks to guarantee women’s representation in elected bodies.” The language here is not quite as strong as it is in other constitutions that provide an absolute right to vote as a constitutional matter, with eligibility conditioned on the laws.

²³⁴ Presidential elections ceased between 1975, when President Habib Bourguiba acquired the title “president for life,” and 1987, when he was deposed in a bloodless coup by his prime minister, Zine El Abidine Ben Ali.

Ahead of the NCA elections, the interim government passed a new election law in 2011, affecting the authority over the election process as well as specific election procedures, and subsequently passed additional laws between 2012 and 2014 updating and clarifying a number of matters in anticipation of the 2014 elections.

Authority over Elections

Under the original electoral law from 1969, the MOI was given complete authority to administer elections. The register of voters was prepared by the municipalities, which were run under the MOI's authority, and voters obtained elector cards from these same authorities. Given the autocratic nature of the regime, many voters questioned the impartiality of the MOI.

As the country adjusted to the post-revolution opportunity for freer elections, the 2011 electoral law laid the groundwork for independently administered elections. The first transitional government empowered a High Commission for the Fulfillment of Revolutionary Goals, Political Reform, and Democratic Transition—comprised of a 150-member political committee and a 16-member technical commission and led by one of the country's most respected legal scholars, Yadh Ben Achour—to oversee the election process. This Commission drafted several election-related decree laws that were approved by the interim government and signed into law by the interim president. One such decree law established an independent election body called the High Independent Authority for Elections (*Instance Supérieure Indépendante pour les Elections* or ISIE), comprised of 16 members appointed by the High Commission.²³⁵

After the election of the NCA in October 2011 and the dissolution of the original ISIE, the Assembly passed laws in 2012 and 2013 changing the selection process for members of the ISIE to a vote of the NCA. The legal revisions also changed the composition of the ISIE, which is now composed of nine members representing particular specialties:

1. A legal judge (a judge who rules on privately brought cases);
2. An administrative judge (a judge who rules on cases involving a public authority);
3. A lawyer;
4. A notary or a bailiff (a notary may witness the signature of documents; a bailiff in this context may also be someone with authority to enforce the implementation of certain rulings);
5. A university professor;
6. An engineer specialized in the field of systems and computer security;
7. A specialist in communication;
8. A specialist in public finance; and
9. A member representing Tunisians residing abroad.

This process was not without some controversy. Judicial challenges to the ISIE selection procedures—centering on the NCA's system for reviewing and evaluating candidacies—and political stalemate resulted in a number of halts in the process. Some organizations alleged partisanship in the candidacy process, as opposition parties were boycotting the NCA during part of the proceedings. The nine members of the

235 *Final Report on the Tunisia National Constituent Assembly Elections*, National Democratic Institute, 2012, https://www.ndi.org/files/tunisia-final-election-report-021712_v2.pdf, 12; *Elections in Tunisia: The 23 October Constituent Assembly – Frequently Asked Questions*, International Foundation for Electoral Studies, 2011, 1.

new ISIE were ultimately elected by the NCA in January 2014. The ISIE was also made a permanent body under the 2014 law, with members serving for fixed terms of six years. In addition to the ISIE, 33 sub-national Regional Independent Election Commissions (*Instances Régionales Indépendantes pour les Elections* or IRIEs) supervise the electoral process at the constituency level.

Voter Eligibility

Under the 2014 law, a voter must be a Tunisian citizen, 18 years old, and have full civil and political rights. Among groups excluded from registering and voting are certain prisoners incarcerated under Section 5 of the penal code,²³⁶ military personnel and national security forces agents, and persons under supervision for dementia.

Establishment of the Voters Registry

The 2014 law creates an active voter registration process. It dictates that the ISIE establishes the voters lists, according to a calendar of deadlines “set by the Commission,” and continuously maintains and updates them. The new electoral law also allows for registration online and via SMS message.

The 2011 law, by contrast, combined active and passive voter registration. Article 6 required the ISIE to conduct automatic registration of voters using the national identity card database. At the same time, Article 3 allowed for active registration, primarily to update information. In 2011, the ISIE also used the national ID database to allow voters to register and vote on election day at special voting centers, an option that was not made available to voters in the 2014 elections.

Posting of Electoral Lists

The 2014 law mandates that “the lists shall be made available to the public in the headquarters of the Commission, municipalities, delegations, sectors, and the headquarters of diplomatic or consular missions abroad. These lists shall be published on the website of the Commission, or other means of guaranteeing the information is shared with the public.” Unlike the 2011 law, which stipulated that voters be allowed to access lists at least 30 days before the vote, the new law does not establish specific deadlines or timeframes for posting the lists, leaving that calendar to the discretion of the ISIE.

The requirement that voters lists be published online, as well as made available in hard copy in a broader set of locations, represents an improvement upon the 2011 law, which required only that printed copies be displayed at the locations of the regional sub-commissions, delegations, municipalities and diplomatic posts under the control of the ISIE. In 2014, citizens could also register and verify their assigned polling center on the ISIE’s website or via SMS, an option of which many new registrants took advantage (see below).

²³⁶ Individuals sentenced to more than six months of imprisonment for committing honor-related felonies or misdemeanors. See Final Report: Observing the October 23, 2011, National Constituent Assembly Elections in Tunisia, The Carter Center, 2012, https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/tunisia-final-Oct2011.pdf.

Complaints Process

The 2014 law gives jurisdiction over objections to the voters list to the ISIE. A decision of the ISIE can be appealed to the Court of First Instance responsible for the relevant geographic area. Appeals to those decisions can be made to the appellate court with territorial responsibility.

VOTER REGISTRATION IN THE 2014 ELECTIONS

With the completion of the constitutional process in early 2014, a series of elections was eventually set for later in the year, with legislative polls scheduled for October 26, a presidential vote on November 23, and a presidential run-off that took place on December 21. Although there were a number of problems with voter registration ahead of the 2014 elections, international observers determined that these stemmed primarily from administrative shortcomings rather than systematic attempts to disenfranchise voters. Observers generally considered the ISIE's overall efforts to have been competent and transparent.²³⁷

Establishment of Voters Lists

In 2014, Tunisians who had actively registered to vote in 2011 were automatically maintained on the registration list and needed to take no further action. Citizens who registered at special centers on election day in 2011 and all new registrants needed to undertake active registration during the designated registration period. As mentioned above, election day registration was not available in 2014.²³⁸

The original registration period took place in June and July 2014, but political leaders requested that the ISIE add a second period in August due to low participation earlier in the summer.²³⁹ In addition to 33 voter registration centers, the ISIE established 597 fixed registration offices throughout the country in municipality offices, IRIE offices and other public locations, supplemented by 275 mobile registration offices.²⁴⁰ Observers witnessed some administrative inconsistencies in these offices, including with respect to voters' presentation of proper identification, but no systemic problems and no deliberate attempts to disenfranchise voters.²⁴¹ According to figures released by the ISIE, about 57 percent of new voters registered via SMS message, 39 percent at voter registration offices, and four percent on the ISIE website.²⁴²

The efforts of the ISIE resulted in nearly one million voters added to the list, bringing the total number

237 *Preliminary Statement of the NDI Observer Delegation to Tunisia's 2014 Legislative Elections*, National Democratic Institute, October 27, 2014, [https://www.ndi.org/files/NDI%20Tunisia%202014%20Legislative%20Elections%20Preliminary%20Statement%20\[EN\]%20\(2\)_0.pdf](https://www.ndi.org/files/NDI%20Tunisia%202014%20Legislative%20Elections%20Preliminary%20Statement%20[EN]%20(2)_0.pdf), 4.

238 National Democratic Institute, *Preliminary Statement*, p. 4

239 "The Carter Center Commends Tunisia's Electoral Authorities for Successful Voter and Candidate Registration and Encourages Increased Communication," The Carter Center, September 19, 2014, <http://www.cartercenter.org/news/pr/tunisia-091914.html>, 2.

240 The Carter Center, "Commends Electoral Authorities," 2.

241 "Long-Term Election Observer Summary of Findings," National Democratic Institute, June 19-August 22, 2014.

242 "Tunisia Elections Dispatch No. 2: Voter Registration," International Republican Institute, 2014.

of registered voters to 5.3 million, about two-thirds of the eligible electorate.²⁴³ Approximately 45 percent of newly registered voters were between the ages of 18 and 30 and 50.5 percent were women. While the ISIE's efforts to register new voters were commendable, there was significant criticism both locally and by international observers that the ISIE had not done enough to educate the public about who needed to register and how, especially given that the option of registering on election day was no longer available.²⁴⁴ On election day, the most significant issues with the voters registry arose in overseas constituencies (see below).

Posting of Voters Lists

After the second voter registration process closed in August, citizens had a three-day window in September in which to submit appeals regarding the voters registry. Despite the legal requirement, preliminary voters lists were only sporadically publicly posted in the districts,²⁴⁵ and a final list was never published.²⁴⁶ This prevented political parties, observers and citizens from verifying the lists to be used on election day.²⁴⁷ Moreover, observers found that the ISIE undertook insufficient efforts to educate voters about the process for checking the lists. Despite this shortcoming, approximately 3.3 million voters—more than 60 percent of the electorate—confirmed their data on the ISIE's website.²⁴⁸

Observer groups raised concerns about the accuracy of the voter registration lists in some overseas districts, where some voters found that they were absent from the registry or assigned to the wrong polling station.²⁴⁹ Attempting to address this issue and improve the voter registry after legislative elections, the ISIE opened a week-long period in November during which voters who were unable to find their names on voters lists at polling centers, but held receipts from registration in 2011 or 2014, were permitted to add their names to the registry or to change their polling station. This initiative resulted in 1,618 additions and changes to the registry.

VOTER REGISTRATION IN THE 2011 ELECTIONS

Establishment of Voters Lists

With NCA elections set for October 23, low turnout rates for voter registration during the initial registration period in July 2011 led to an extension of the registration timeframe. Even with this extended period for active registration, only slightly more than half of eligible voters had registered by mid-August. As a result, the ISIE announced that it would use the country's national identity card database to allow unregistered citizens to vote on election day.²⁵⁰

This announcement created a certain amount of confusion. Many voters were unsure whether they

243 National Democratic Institute, *Preliminary Statement*, 5.

244 National Democratic Institute, *Preliminary Statement*, 5.

245 The Carter Center, "Commends Electoral Authorities," 3.

246 *Final Report on the 2014 Legislative and Presidential Elections in Tunisia*, National Democratic Institute, 2015, 26.

247 National Democratic Institute, *Preliminary Statement*, 5.

248 The Carter Center, "Commends Electoral Authorities," 1.

249 National Democratic Institute, *Preliminary Statement*, 8.

250 National Democratic Institute, *Final Report on Constituent Assembly Elections*, 13.

needed to take any affirmative action to register and vote. On election day, some voters found themselves registered not at the closest polling station but, instead, at a polling station in accordance with the existing—and in some cases outdated—national identity card database. Other voters were absent from the list entirely. To mitigate this problem, voters could send an SMS message to an ISIE-sponsored service to confirm their polling station details, though the system crashed due to volume on election day. Voters who had not registered and thus did not have an assigned polling station, or who were unable to confirm their polling station via SMS, were able to vote at special centers.

For the active registration exercise, the ISIE set up 901 registration centers, in addition to operating mobile registration offices that moved into rural areas and weekly markets.²⁵¹ In the end, 84.1 percent of actively registered voters took part in the vote,²⁵² while the participation rate for those passively registered was only 12.8 percent.²⁵³

The ISIE's own report after the 2011 elections identified problems with the registration system, including challenges in coordinating databases and relaying information among agencies, as well as duplication of identity cards.

Posting of Electoral Lists

The registration list was made available to citizens from August 20 to 26 in a variety of locations. The lists were also published on the website of the ISIE. Few Tunisians, however, actually inspected the lists.²⁵⁴ The ISIE did not sufficiently educate the public about the necessity of or process for doing so, and the timeframe for reviewing the lists was very limited.²⁵⁵

Documentation Issues

NDI heard anecdotally that some citizens who received national identity cards in the months leading up to the NCA elections were not included in the voters registry when they went to vote on election day. According to NDI's final report on the elections, "such exclusions likely affected the youngest eligible voters, as well as those whose national ID cards were replaced after being confiscated by security forces in protests during the revolution, though the extent to which this affected potential voters is unclear."²⁵⁶

251 *Rapport relatif au déroulement des élections de L'Assemblée Nationale Constituante*, Instance Supérieure Indépendante Pour Les Elections, February 12, 2012, <http://aceproject.org/ero-en/regions/africa/TN/tunisie-rapport-relatif-au-deroulement-des>, 102.

252 Instance Supérieure Indépendante Pour Les Elections, *Rapport*, 176.

253 Instance Supérieure Indépendante Pour Les Elections, *Rapport*, 176. NDI reported a rate of 86 percent of registered voters and 16 percent of voters added to the list by the ISIE. National Democratic Institute, *Final Report on Constituent Assembly Elections*, 15.

254 "The Carter Center noted with concern that the low turnout in the initial phase of the voter registration was even more discernable during the exhibition and challenges period, when few voters inspected the provisional list. Voter information by the ISIE was barely visible and the lists showing unregistered voters were displayed with one or two days delay. Exhibition venues were officially open the same hours as the Baladiyas, only from 8:30 a.m. to 2:30 p.m. and often closed on Sunday, thus leaving little time to the public to inspect the list." The Carter Center, Final Report, 31.

255 The Carter Center, Final Report, 31.

256 National Democratic Institute, *Final Report on Constituent Assembly Elections*, 16.

ISSUES UNDER INTERNATIONAL LAW

Improvements to Tunisia's election law after the 2011 elections resulted in a more effective and inclusive voter registration process in 2014. Drawing on an improved legal framework, the ISIE worked effectively in collaboration with other actors to conduct a comprehensive voter registration process for the 2014 elections, resulting in one of the most inclusive and transparent processes in the region. Nevertheless, there remains room for improvement to bring Tunisia's voter registration processes in line with international standards.

A number of issues arose with respect to the conduct of the 2011 voter registration process. One concern under the 2011 law and, to a lesser extent, under the 2014 law, is the exclusion of several groups from eligibility. It is positive that the 2014 law omits exclusion of persons who have had property confiscated and clarifies the disenfranchisement of voters who have been sentenced to a crime. The law nevertheless still excludes the military and police; though common practice in the region, this provision is increasingly considered incompatible with universal suffrage under the ICCPR and other treaties.

In both the 2011 elections and pursuant to legal decrees implemented afterward, the voter registration process is undertaken by an independent election commission that is elected by a supermajority of the legislative body and is composed of representatives from a variety of communities. This is very much in accordance with international principles, and the method of appointment and composition of Tunisia's independent election commission might even be considered for some countries an exemplary model. General Comment 25 regarding the ICCPR indicates a preference for independence in the administration of elections, and the ISIE would seem to provide that.

The confusion in 2011 and in the 2011 law itself regarding whether the registration system was active or passive was problematic for ensuring enfranchisement, as all parties have acknowledged. There were questions about whether voters were sufficiently apprised of the new registration rules in 2014 as well, especially the change in the ability to register on election day. The failure of the ISIE to provide necessary guidance and to properly educate voters about how to register, or whether they even needed to actively register, was in conflict with its obligation under the ICCPR to provide voter education about the registration process. As General Comment 25 makes clear, "Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community." Despite concerns that insufficient communication regarding this change to the registration process would result in unregistered voters mistakenly thinking they were registered, NDI observers noted few such incidents, and poll workers were generally able to redirect voters to the correct polling station or center.²⁵⁷

Posting of the voters lists presented issues in both elections as well. On both occasions, the ISIE did not adequately educate citizens about the need to check their information. Moreover, the timeframe for the public posting in 2011 was short, which may have prevented improvements to the list's accuracy and inclusivity; a final list was never posted in public places in 2014. The new law's elimination of a deadline by which the ISIE must publicly post the voters lists could be problematic. The public availability of final voters lists is essential to ensure the registry is accurate and does not leave out eligible voters. The posting of the registration list in due time is also a necessary condition for the type of transparency that international principles ICCPR articles 19 and 25 demand.

257 National Democratic Institute, *Final Report on 2014 Elections*, 45-46.

In 2011, the use of the national identity databases from the Ben Ali era may have led to inaccuracies in the voters list. Particularly concerning was that many voters were listed according to old addresses and assigned to polling places on the basis of those inaccurate locations. Despite concerns that those voters would be disenfranchised as a result, observers noted that many such voters visited special centers where they were, in fact, able to cast their ballots.²⁵⁸ Moreover, it is estimated that several hundred thousand citizens were not included in the database to begin with, leading to the possibility that voters were disenfranchised in contradiction to international obligations of suffrage.

The new law clarifies that the registration process is an active one. Where there are reliable and complete government databases, a passive system can be more inclusive. However, given that the Tunisian national identity card database seems to be incomplete and possibly inaccurate, an active registration process is likely preferable under international obligations for an inclusive, equal electorate—but only if the ISIE and its partners engage in outreach and education to ensure that the entire populace has full access to the voter registration system, has the documents needed to register, and understands the need and process for registration. These caveats apply to all sectors of the population, including groups that may be more marginalized or remote.

258 National Democratic Institute, *Final Report on Constituent Assembly Elections*, 7, 16.