



إئتلاف أوفياء للديمقراطية
ونزاهة الانتخابات



Recommendations Issued by a Collaborative Group of Tunisian Civil Society Associations Regarding the 2019 Electoral Process

We, the civil society associations – the Tunisian Mediterranean Center (TuMed), the Ofiyya Coalition for Democracy and Integrity of the Elections, IWatch, Youth without Borders (JSF), Mourakiboun, and the Chahed Observatory – have continued our efforts to support the electoral process and every election organized in Tunisia since 2011. Collectively, and with technical support from the National Democratic Institute for International Affairs (NDI), we monitored the 2019 snap presidential elections and legislative elections.

We are committed to conducting integrated and inclusive efforts in order to provide a comprehensive coverage of the elections and assess the extent to which legal norms and international standards relating to democratic and free elections are met. In this spirit, each association focused on different aspects of the electoral process. We recruited, trained and deployed accredited observers throughout the territory to country each stage of the election process, from voter registration through appeals:

- TuMed conducted campaign monitoring and observed election day processes, from a gender perspective – 175 observers.
- Ofiyya conducted media monitoring.
- IWatch monitored the campaign process – 138 observers.
- JSF observed election day processes, applying a dual observation methodology: fixed observation to monitor the voting process inside polling stations and mobile observation to monitor polling centers' surroundings – 3000 observers.
- Chahed observatory monitored both the voter registration and appeals processes – 320 observers.

Based on the analysis of the observations and conclusions made during the monitoring process, and with the aim of contributing to an in-depth review of the electoral system, we offer the following common set of recommendations relating to the electoral process in general and to the relevant electoral laws. We will meet with various stakeholders to further elaborate these ideas and make adjustments as necessary.

Furthermore, we are currently working on a series of proposals to amend certain articles of the organic law n° 2014-16 dated 26 May 2014, relating to the elections and referendums, as amended and completed by organic law n° 2017-7 dated 14 February 2017 and organic law n° 2019-76 dated 30 August 2019. We will be presenting our proposed amendments in timely manner to both the legislative and executive authorities.

General recommendations relating to the electoral process in general
<u>The Assembly of the Representatives of the People (ARP)</u>
1. Meet the time limits set by law for the High Independent Authority for Elections (ISIE) members' renewals, in accordance with the provisions set out in article 126 (2) of the Tunisian Constitution and article 9 of law n° 2012-23 on the ISIE.
2. Reform the electoral law in advance of the next elections to address any gaps, flaws or other weaknesses, and discuss possible solutions in the post-election period, and before the start of the year preceding the election cycle. The reform should take place by means of a legislative participatory process involving all election stakeholders, including independent institutions, civil society organizations (CSOs), election experts and political parties.
3. Enable the High Authority for Audiovisual Communication (HAICA) to fulfill its role as set out in article 127 of the Tunisian Constitution, and assume its responsibilities in regulating and developing the audiovisual communication sector, including monitoring and sanctioning in case of violations before, during and after elections. That would prevent interferences between the powers of the ISIE and the HAICA, which in some instances impaired oversight in that area and caused disputes between both parties.
4. Issue an organic law to regulate and monitor the role of political parties, including but not limited to the following: <ul style="list-style-type: none"> • The authority to register political parties should be assigned to an independent body, such as the ISIE. This would guarantee that this sensitive task does not end up in the hands of a political authority (the Prime Minister) and would avoid any arbitrariness that may result. This is especially true with permit applications presented by political parties with opposing views, the disruption they might face in the run-up to the election, and the uncertainty regarding the degree to which the Head of Government would carry out oversight mechanisms over his own party... • Ensure full respect of democratic principles and values within political parties through the adoption of mechanisms that would guarantee a free choice of rules for the party president, the main body responsible for policymaking inside the party and regional party branches. Democratic mechanisms should also be applied when selecting candidates for elections and their positions on candidate lists. • Set out clear oversight mechanisms that could be conducted by the independent body charged with supervising political party registration, including the oversight agents' prerogatives and the authority of their reports...

- Establish well-defined sanctions for political party law violations and depart from the usual procedures laid out in decree-law number 2011-87.

5. Organize the opinion poll process and ensure all duties, tasks and responsibilities are clearly established in law to enable the institutions to work freely and to help citizens understand the political reality. This should be ensured through the respect of law without any influence, discrimination, or manipulation especially during the election period. Adequate sanctions should be developed for potential violations.

ISIE

6. Recruit for vacant positions: vacant positions within the ISIE (starting from senior-level positions, especially the main department heads, such as the legal department head and media and communication head -among others) reduced the capacity of the commission to adequately plan the elections, raise the public's awareness and guarantee the provision of necessary materials.

7. Improve the quality of the trainings provided for the ISIE staff and strengthen the role of coordinators to ensure effective oversight over the work of voter registration agents, campaign monitors and polling center officials. Special attention must be paid to the training of the ISIE staff overseas.

8. Adopt a long-term awareness-raising strategy that would be applied before, during and after elections, with the aim of raising awareness among the public, especially among youth, about the voter registration process, and promoting public confidence in the electoral process. Such a strategy should particularly target illiterate women in rural and border areas.

9. Establish new mechanisms for regular engagement with civil society organizations, through periodic consultations and coordination meetings held at various stages of the electoral process. For example, an online application could be established to ensure remote communication and interaction between the ISIE and the civil society.

10. Guarantee observers' access to all stages of the electoral process. The ISIE could take steps to fill these gaps and promote universal access for civil society. In accordance with Articles 4 and 134 of the 2014 electoral law, the ISIE should guarantee sufficient physical proximity for observers to the candidate registration process. In tabulation centers, the ISIE should guarantee observers' sufficient physical proximity to observe the process in detail.

Political Parties

11. Promote the participation of youth and women in the electoral process. Efforts should be made on the party level as comparative experience has shown that steps could be taken to ensure the following:
- Give special attention to youth and women, through the establishment of special separate units within each party to deal with youth and women issues,
 - Apply a minimum quota for youth, respect the principle of gender parity, guarantee a minimum quota for women in senior decision-making bodies of no less than 30% representation, and adopt the principle of gender parity in the membership of these bodies.

<u>Political Parties and Civil Society</u>
12. Raise awareness among the public about the importance of positive participation in the electoral process.
Voter Registration
<u>ARP</u>
13. Set out well-defined sanctions in the electoral law against voter registration agents (like the sanctions imposed against other agents) in the case of automatic voter registration or registration in favor of third parties, except for what is authorized by law.
<u>ISIE</u>
14. Expand the awareness-raising campaign on voter registration to outside the electoral period to encourage voters to register or verify their registered information and amend it if need be.
15. Launch an effective awareness-raising campaign for overseas voters.
16. Avoid all technical difficulties faced during past elections, in terms of voter registration through the online system. The commission could consider organizing mock voter registration processes to monitor any technical flaws ahead of time. Such a process could benefit from involving the associations working on the elections.
17. Any reported violations related to overseas voter registration must be investigated, and necessary measures must be taken to audit and update the voter register abroad.
18. The ISIE should publish the results of its three internal audits of the voter register, to increase the transparency of the registration process.
19. The ISIE should perform audits to make sure the information listed in the voter register is correct, and not limit the auditing process to the technical audit of the IT system. We call on the ISIE to engage CSOs in this process.
20. The ISIE should publish the voter register in an exploitable format, such as a CSV file. Such a step needs not necessarily compromise citizens' personal information; the published register could be modified, for example, to only include the last four digits of each citizens' National Identity Card (CIN) numbers.
21. The ISIE should engage civil society representatives in the entire voter registration process.
22. Promote further coordination efforts with the CSOs throughout the electoral process, especially during voter registration, as part of the intensified efforts to target women in rural and border areas.
<u>Ministry of Interior</u>
23. Resolve the problem of voters who do not have CINs and thus find themselves deprived of their rights as citizens. The ISIE should coordinate with the relevant ministries to adopt possible identifiers for those voters.

Candidate Registration Period

ARP

24. Review the electoral law to ensure that the candidacy requirements in terms of horizontal parity and representation of youth and Persons with Disabilities (PWD) that were applied during municipal and regional elections are also applicable for legislative elections.

ISIE

25. Amend the endorsement mechanisms to reduce violations and fraudulent practices, like those that took place in 2014 and 2019. To that end, a media system could be used to enable voters to endorse candidates through the ISIE or the Independent Regional Election Authorities (IRIEs), or via an online application for endorsement, which could facilitate the timely verification of information relating to citizen endorsers.

Electoral Campaign

ARP

26. Consolidate the legal framework that enables oversight over social media, and incorporate social networks under the definition of forms of political propaganda, thereby creating a valid legal basis for the ISIE to exert oversight. The ARP should require that candidate lists confirm their official pages on social networks and forbid candidate lists from using multiple official pages, considering the active role of social media networks and their capacity to influence voters.

27. Address the legal loophole that encourages pre-campaign activities. The restrictive rules that govern the electoral campaign encourage candidate lists to organize more visible and widespread activities in the pre-campaign period. Unbound by restrictions that mark the campaign period, the media also refrain from respecting the principles of equity and parity. The ARP can address this gap by extending to the pre-campaign period the rules and media regulations that govern the formal campaign period.

28. Clarify campaign regulations. The current prohibitions related to electoral campaigns are extremely tight, preventing clear strategies to target voters before elections. The ARP should reduce the confusion between the activities that fall within the framework of electoral propaganda and political publicity. For example, it is not clear whether activities such as fixing banners, decorating cars, or using sponsored videos on Facebook are legal. Clarifying these rules would also lighten the burden on the ISIE and its campaign monitors, who could in turn concentrate on violations that are more serious (such as hate speech, violence, abuse of state resources, and campaigning in places of worship).

29. Establish a semi-judicial independent committee dedicated to overseeing political finance and financing of electoral campaigns. Given the importance of political party finance and its direct effect on the electoral process, the establishment of such a committee specialized in monitoring the transparency of political finance is necessary to reinforce the transparency of the electoral process.

30. Modify the electoral law to include a precise definition of vote buying.
31. We call on the ARP to give the status of judicial control officers to ISIE agents mentioned in article 72 of the electoral law.
32. Provide a clear definition of the duties and responsibilities of both the HAICA and the ISIE in terms of the role assigned to each.
33. Replace the current system of media penalties with one based on proportionality. The fourth chapter of this ISIE decision outlines a system of penalties for media during the electoral campaign by establishing a minimum and maximum penalty amount for a range of specific violations. Looking at the reality of the media landscape, we note a profound disparity in the revenues of different media outlets. We recommend that the ISIE replace the current system of minimum and maximum sanctions with a system that sets penalties in proportion to the declared revenue reported by the concerned media outlet to fiscal authorities.
34. During past legislative, presidential and municipal elections in 2014, 2018, and 2019, we documented a large number of serious violations (such as conducting campaign activities on the campaign silence day) committed by certain newspapers and digital news sites. The printing press sector could benefit from better regulation through the establishment of a body tasked with campaign monitoring.
<u>ISIE</u>
35. We call upon the ISIE to ensure an effective implementation of the law throughout the electoral process, and to enhance the level of confidence. This would also prevent duplicating efforts in sanctioning violations.
36. Improve the quality of trainings provided for campaign monitors.
37. Adopt a clear and effective channel to receive reports, complaints, and violations from civil society, and have them verified by the IRIEs during the electoral period.
38. Ensure that civil society observers and journalists are able to perform their duties freely. We call on the ISIE to prevent any future attempts by political parties and campaign agents to restrict their access to any stage of the electoral process.
39. Establish a permanent committee dedicated to monitoring electoral campaigns. Such a committee could strengthen the work of the ISIE in that area and collaborate with the Courts of Accounts in terms of campaign financing. It could also follow up on the cases referred to the Public Prosecution and overcome the shortcomings that were first identified during the National Constitutional Assembly elections in 2011, and repeated in the following elections in 2014, 2018 and 2019.
40. Concentrate efforts on combating the exploitation of religious and hate speech, and limit violence in the upcoming elections, because of the serious implications of such practices on the electoral process and on widening the gap between political leaders and voters.
41. Increase the transparency of the campaign monitoring efforts and publish detailed information in that regard. The ISIE should also publish its decisions regarding any reported violations and the sanctions it applied against perpetrators, together with the justifications.
42. Guarantee effective coordination between the ISIE and the HAICA to ensure that media respect the law, especially during the electoral campaign and campaign silence, and impose relevant sanctions to the candidates if found guilty of committing such violations. In that respect, we call on the establishment of clear mechanisms that would allow for assigning the committed violations to the responsible

candidates or candidate lists, and ensuring the implementation of the HAICA decisions, especially those relating to banning any television or radio outlets that breach the decree number 2011-116.

43. Increase the transparency of the campaign violations adjudication process. To that end, civil society observers could attend these sessions before the announcement of results. The electoral law should be amended in such terms that the process does not remain subject to the will of the board members.

Court of Accounts

44. Provide training to ISIE monitors on campaign finance. Given the ISIE and the Court of Accounts' shared responsibility for monitoring electoral campaigns, the Court could contribute to the ISIE's training of campaign monitors by organizing sessions on campaign finance regulations. This could help to strengthen the relationship between the ISIE and the Court of Accounts during the electoral period and to make trainings for agents more precise. The Court of Accounts could also develop booklets and manuals, targeted to campaign monitors and candidate lists alike, which simplify the financial and accounting rules that apply to electoral campaigns.

HAICA

45. Promote transparency of media financing. The HAICA should ensure effective oversight of media financing during and after the electoral period, as outlined in Articles 27, 29 and 46 of decree-law n°116 dated November 2, 2011. In particular, Article 46 authorizes the HAICA to utilize "all means necessary" to ensure that candidates and media respect the law.

46. Ensure full compliance with the law, especially among dissenting media outlets that do not respect the requirements of impartiality, objectivity and integrity.

47. Develop the effective oversight and rebroadcast of media talk shows through the implementation of the enacted rules for media coverage.

48. All media outlets should be required to ensure an objective and impartial coverage of the campaign period, and meet all relevant legal requirements, to enable civil society organizations to carry out effective campaign monitoring.

Political Parties and Candidates

49. Political contestants should comply with measures established to enforce the legal framework around elections, and with ISIE decisions in terms of adopting a clear calendar for electoral campaigns for the upcoming elections.

50. Ensure more cooperation with CSOs and establish a regular communication channel during the election period, to facilitate tasks and provide a clearer picture of political parties' work.

Candidates

51. Respect the efforts of civil society in monitoring the electoral process, protect the gains achieved, and abstain from any forms of violence in the future.

52. Take into consideration the right of voters in rural and border areas to follow electoral campaigns. They could consider organizing a number of events and activities in those regions.

53. Promote women's participation in the electoral process, particularly in rural areas where women participation is low. Electoral events should be held in open areas that are accessible to everyone while avoiding places usually frequented by men only (like the meetings held in popular cafés)

Election day

ISIE

54. Raise awareness to target registered young voters, and set out joint programs in collaboration with the relevant ministries and CSOs to ensure that young voters participate in the next elections.

55. Take effective measures to ensure that the registered voters exercise their right to vote. Voters in Tunisia and overseas must be informed of any changes in the location of polling centers.

56. Establish oversight mechanisms to ensure that polling center staff behave impartially and to retain all workers who proved their commitment to the smooth and effective conduct of the vote, without making mistakes.

57. Undertake efforts to guarantee that polling centers and polling stations are clearly identified and accessible to persons with disabilities. The ISIE should coordinate with the relevant ministries and the associations dealing with PWDs in order to identify the number of voters with mobility challenges, and to ensure that polling stations are accessible to persons with reduced mobility and elderly voters.

58. Guarantee that polling station agents in border areas remain present at their posts throughout the entirety of election day.

59. Polling center officials and other ISIE workers should wear distinctive badges and vests to differentiate them from other people present in the immediate surroundings of the polling centers and inside polling stations.

60. Increase the number of election observers present in the immediate surroundings of polling centers and inside polling stations to prevent violations against voters, especially women.

61. Ensure that the presidents of polling centers and polling stations respect the rights of observers, and differentiate between observers and party agents. Observers' work should be facilitated and a minimum number of seats should be available for them inside polling stations.

62. Special attention should be given to the voting process overseas to ensure it is carried out properly and all violations are monitored and reported.

Appeals (candidacies and election results)

Administrative Court

63. The Administrative Court should share information on judicial rulings and show more openness and cooperation with CSOs working on elections to increase the transparency of the appeals process.

64. Judicial bodies competent to deal with electoral disputes should make copies of their rulings easily accessible.