

The Carter Center Recognizes National Constituent Assembly Progress; Calls for Increased Public Participation, Outreach, and Transparency

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After the fall of the authoritarian regime of President Ben Ali, authorities charged with leading Tunisia through the transition period found the existing legal framework to be inadequate to govern the country in this new phase. On March 3, 2011, Fouad president, suspended the former constitution and announced that a new constitution should be written by a democratically-elected body to reflect the will of the Tunisian people whose revolution had enabled regime change and opened the road towards democratic governance. In a historic election on Oct. 23, 2011, Tunisians elected a National Constituent Assembly (NCA) and entrusted its members with drafting a new constitution.

The elaboration of a constitution represents a unique and important historic opportunity to establish and agree upon the fundamental principles of a society, including the protection of civil and political freedoms, the organization of checks and balances, and the shape and role of democratic institutions. Participation of civil society can positively influence the institutional architecture and increase ownership. The process may be long, complex, and at times tedious. Successful constitution making, however, enhances national cohesion and benefits many generations to come.

institution. If successful, it could serve as an example for other countries in transition in the region. It was with great anticipation efforts over several months The Carter Center congratulates NCA members for the release of the first comprehensive draft document. As NCA members consider the draft constitution in the Plenary Assembly, they will grapple with many significant outstanding questions. In this report, The Carter Center offers an overview of the drafting process, its assessment of these activities and recommendations aimed to support a genuine and credible constitution drafting process.

The Carter Center has observed the work of the NCA since its formation in November 2011 and the subsequent constitution drafting process, meeting on a periodic basis with a broad representation of political and civic stakeholders, attending NCA sessions and following public debate related to its development. The Center assesses the constitution making process and the draft constitution against

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discrimination based on sex, religion, or other statuses at any time.⁶ As a signatory of the International expression, whether through public speeches or other means.⁷

The Carter Center therefore urges NCA commissions, when reviewing their drafts, to ensure that provisions of the future constitution uphold Tunisia's international treaty obligations on human rights and fundamental freedoms including the freedom of opinion and expression, the freedom of religion and equality between men and women.⁸

Timeframe for the adoption of the constitution

The absence of a clear work plan and insufficient outreach efforts by the NCA, which could have helped raise public understanding of the complexity of the process, have resulted in increasing distrust of the drafting process.

The Carter Center reiterates that a definitive and realistic work plan, reflecting a consensus among NCA members, should be officially adopted as soon as possible in order to define clearly the next steps of the constitution drafting process. In addition, NCA members should explain to citizens why investing additional time will be beneficial to the process and the final product: a constitution representing all Tunisians in their diversity, forming the bedrock for a new Tunisian democratic state and written for longevity. Establishing a clear path for the process will facilitate the work of the NCA

Public consultations and citizens involvement

In a May 2012 statement on the constitution making process, The Carter Center highlighted the benefit of a participatory process in terms of increased legitimacy and stronger acceptance of the new constitutional order and urged the NCA to create a more inclusive, transparent process.¹¹ Such a process is one in which citizens are informed about the process and choices at stake, and are given a

The time allocated to public consultations in countries which have conducted similar exercises has varied significantly. But in processes that were considered highly participatory, public meetings have been held countrywide, targeting not only the main cities but also rural areas. Constitution drafting bodies have organized hundreds of meetings and engaged tens of thousands of citizens to better explain the process and issues at stake.¹⁷

As inclusive and participatory processes are more likely to engender consensus around a constitutional framework, The Carter Center urges the NCA to allocate sufficient time for a national debate on the constitution. In addition, to ensure that the voices of the citizens are effectively taken into consideration, the Center encourages the NCA to set up a formal procedure to analyze, process, and record inputs made during all these various consultation mechanisms.¹⁸

While NCA-driven consultations are instrumental to create a sense of ownership and build consensus around the future constitution, initiatives by civil society organizations are also fundamental to mobilize support and lobby constituent assemblies. The Carter Center applauds multiple initiatives by civil society organizations: some have organized town hall meetings and information sessions across the country¹⁹ while others have conducted awareness campaigns²⁰ or established internet sites aimed at informing citizens and gathering their views on the process.²¹ The Carter Center welcomes such initiatives that encourage citizens to play an active role in this historic process.

Referendum

According to the proposed calendars, the NCA will consider the entire final draft of the constitution for adoption on March 1, 2013. If the text is not approved at that time by a two-thirds majority, the assembly will consider the text for a second time on March 27, using the same majority requirement. If the final draft of the constitution is not adopted during that session a referendum would be scheduled for May 1, 2013.²² There are no legal provisions foreseen if a referendum on the draft constitution is not successful.

Following the strong reactions by many Tunisian stakeholders to the first draft of the constitution at its release, many political actors have said publically that passage of the constitution may indeed require a referendum. Given the potential need for a referendum, The Carter Center urges steps to establish a functioning electoral management body as soon as possible to ensure a credible and inclusive democratic process in the case of a constitutional referendum. A credible and inclusive process that can be conducted within the proposed timeframes requires sufficient time for election preparation, starting with voter registration and an update of the voter rolls.

Transparency and accessibility of the process

¹⁷ Processes that are deemed participatory are for instance: Papua New Guinea [1975], Uganda [1995], South Africa [1996], and Kenya [2005]). Public consultation on a draft constitution or concrete proposals has taken from one week in Timor-Leste [2002] to about four months in Eritrea [1997]. The Timor-Leste period was recognized as too short, but that was the result of pressure to complete the process. *Constitution-*

In addition to ensuring broad participation, constitution drafting processes should provide for transparency and accessibility of the drafting process. A transparent constitution drafting process is one where the public is aware of what is occurring at each stage of the process and can access information easily.²³

Outreach and communication

The Carter Center notes that the NCA has failed to conduct sufficient outreach campaigns on its work, task and increase its legitimacy. While the Center welcomes the fact that media representatives are granted unrestricted access to the NCA, communication by senior NCA members with the media, including through the official website, has not always been sufficient and regular.

Some NCA members have attributed this shortcoming to the lack of means and logistical support available to conduct communication campaigns. While The Carter Center acknowledges that effective communication strategies require expertise and means, it notes that many donors, institutions, and experts have offered to support the NCA in this endeavor, both technically and financially, they received only general expressions of interest without concrete follow-up on the part of the NCA. Furthermore, actions such as regular press conferences with the media, during which NCA officials

Accountability

The Carter Center can attest that the majority of NCA members are aware of the historical task with which they have been entrusted, and are committed and hard working.

Conclusion and recommendations