



# Final Report



2011-2014

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(404) 420-5100



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# I F

Three years following the fall of the Ben Ali regime and more than two years after the 2011 election of the National Constituent Assembly, Tunisians took a decisive step in their quest to break from the country's authoritarian past, adopting a new constitution on Jan. 27, 2014. Though the road to the constitution was challenging, a spirit of openness to compromise and consensus-building prevailed, ensuring that Tunisia could reach this historic milestone. By engaging in dialogue and compromise, Tunisians made a powerful statement that is reverberating across the region.

Tunisia has an illustrious constitutional tradition that dates back 3,000 years. Carthage, the powerful Phoenician city-state located in the Gulf of Tunis, had its own constitution. Many centuries later, the 1857 Declaration of Rights gave all residents of the kingdom of Tunisia certain rights and freedoms, regardless of religion, language, or color. The constitution of 1861, considered the first written constitution in the Arab world, would soon follow. Nearly a century later, shortly after the country gained its independence from France, Tunisians opted to form a National Constituent Assembly to draft a new constitution, which was adopted on June 1, 1959. In the decades that followed, the constitution was amended several times in order to strengthen presidential powers, first of Habib Bourguiba, who maintained power for 31 years, and then of his successor, Zine El Abidine Ben Ali.

Although the 1959 constitution enshrined certain rights and freedoms, its association with

the Ben Ali regime led Tunisians to opt to suspend the 1959 constitution soon after the revolution and to elect another Constituent Assembly to draft a new constitution with the hope that it would represent all Tunisians and chart a path for the country's transition from authoritarianism to democracy and equality.

The election of the 217-member National Constituent Assembly (NCA) took place on Oct. 23, 2011, and was largely peaceful and credible. Although the NCA faced many challenges, including the tragic assassinations of opposition leader Chokri Belaid in February 2013 and of assembly member Mohamed Brahmi in July of the same year, Tunisia's political actors showed commitment to moving the constitutional process and the country forward. In the fall and winter of 2013, they engaged in a national dialogue that played an important role in resolving the political deadlock and paved the way for the constitution's adoption in January 2014. The new constitution lays a strong foundation for the guarantee of human rights and creates institutions to ensure respect for the rule of the law in the country.

The NCA's work was an achievement marked by dedication, compromise, and democratic engagement. It represents the best of the social movement and goals of Tunisia's revolution and the Arab Spring, providing a concrete path for

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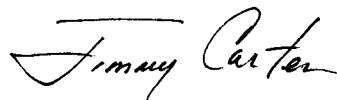
constitution-building projects, especially those experiencing political transitions. But the story is not finished yet.

The constitution's adoption opened the door for the legislative and presidential elections that occurred in 2014, as mandated by the constitution's transitional provisions. Tunisians have grown weary of interim state structures and desire permanent institutions that can tackle the significant economic and security challenges that face their country. With a newly elected assembly and president in office, Tunisians must focus on bringing Tunisia's laws and regulations, most of which date from the prerevolution era, into alignment with the human rights commitments provided by the constitution.

The Carter Center is inspired by the eagerness of Tunisian citizens as they move forward on their path to democracy. We hope to support Tunisia's progress by highlighting the recommendations laid out in this report. Our foremost recommendation is that the government of Tunisia reform the

existing legal framework to ensure that Tunisia's laws are consistent with international commitments to human rights and those rights protected by the new constitution. In addition, we urge the judicial system to protect the freedoms of religion and speech, the Assembly of the Representatives to make information about their work readily available to the public, and civil society to continue to participate actively in the construction of new institutions. A steadfast commitment to the core principles found in the new constitution will ensure that Tunisia's democratic future is protected.

We wish the Tunisian people and its leaders continued success in these endeavors.



Former U.S. President Jimmy Carter  
Founder of The Carter Center

# Executive Summary

Following a popular uprising—dubbed “the Jasmine Revolution”—in December 2010 and January 2011, which ended the 23-year rule of President Zine El Abidine Ben Ali, Foued Mebazaâ, the interim president of the republic, suspended the 1959 constitution, and Tunisia opted to write a new constitution. The first step in the constitution-making process was the election of a 217-member National Constituent Assembly on Oct. 23, 2011, tasked with drafting and adopting the new constitution. The NCA approved the constitution on Jan. 26, 2014. On Jan. 27, the constitution was officially adopted by the president of the republic, the president of the NCA, and the prime minister, following a challenging and complex process that seemed at times on the brink of collapse, notably due to an economic crisis, deteriorating security conditions, and two political assassinations in 2013.

constitution and the rights and freedoms enshrined therein. Throughout this period, the Center issued public reports on the content of the various drafts as well as the drafting process, including its inclusiveness and the extent to which it upheld principles of transparency and participation of citizens in the public affairs of their country.

The main goals of the Carter Center’s work were to help make the constitution-making process more transparent and accessible to the public and to raise awareness among NCA members regarding Tunisia’s international human rights obligations, with a view to ensuring that these commitments were fully reflected in the new constitution. During the period it monitored the work of the NCA, The Carter Center released 17 statements on the situation in Tunisia, out of which nine specifically concerned developments regarding the new constitution. The statements on the constitution recommended improvements to the process and highlighted issues where further work was needed to ensure that constitutional provisions were in line with Tunisia’s international commitments.

The final draft of the constitution, as approved, contained significant changes from the initial versions, which were often consistent with recommendations made by The Carter Center, notably in regard to strengthening women’s rights, improving the guarantees for an independent judiciary, removing excessive restrictions on rights and freedoms from most provisions, and strengthening fundamental political and civil liberties as well as granting the Constitutional Court full power

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The Carter Center monitored the constitution-making process in Tunisia from February 2012, when the NCA first began working on the document, to May 2014, when the assembly launched a countrywide tour to raise awareness of the new



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immediately upon its creation. In line with recommendations made by The Carter Center, the NCA refined its communication with the public and interaction with the media and created a formal method for civil society to attend the article-by-article vote on the final draft of the constitution. The Center commended efforts by the NCA to increase transparency during the months preceding the adoption of the constitution.

Although there remains work to be done, The Carter Center hopes that this final report assessing both the content and constitution-making process will support Tunisia's efforts to strengthen the rights contained in the new constitution.

Tunisia's experience offers rich lessons in constitution-making, particularly for countries undergoing political transitions: It is a stark reminder that process matters as much as outcome. The strength of the Tunisian model lies in the tireless work of the NCA and the political parties to overcome divisions and build consensus, resulting in the adoption of a constitution backed by the vast majority of deputies in an otherwise highly divided assembly.

The assembly's constituent commissions—the cross-party bodies entrusted with drafting various sections of the constitution—followed an approach that included consultation with national and international experts, scholars, and civil society organizations. The fruits of this consultation can be found in the final text of the



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infighting at the assembly, played an important role in the public's loss of trust in the NCA. This feeling peaked with demonstrations in front of the assembly's building, the Bardo, in August 2013, requesting the dissolution of the institution after the assassination of NCA member Mohamed Brahmi. The crisis of confidence was further aggravated by controversies around the issue of compensation of and absenteeism by assembly members.

### Transparency and Accountability

There is no doubt that the long-drawn-out process was more strenuous and stressful than many NCA members imagined it would be when they were elected. In some instances, it required a great degree of personal sacrifice on their part, not to mention on the part of citizens who waited as deadline after deadline was missed while the country sank deeper into an economic crisis. Many deputies remained dedicated to the task, despite the personal cost. However absenteeism, both in commission meetings and during plenary sessions, was a major issue during the entire constitution-making process. It led to considerable delays in the work of the assembly and deeply affected the NCA's credibility. At a crucial time in the transitional period, the NCA failed to enforce its own accountability, while it had the means to do so, to the people that had elected it. Greater efforts in this regard, even later in the process, could have helped restore citizens' trust in the assembly. The NCA as an institution failed to take action against absent members, which was needed to demonstrate that public officials were being held accountable for their actions. Tellingly, in the entire two-year process, only the final vote on the constitution succeeded in drawing all deputies to a session.

Despite an implied commitment to transparency and accessibility in the provisions of the NCA's rules of procedure and by some individual members, many members, including the assembly's leadership, appeared reluctant to release key NCA documents to the public and to allow civil society to play a significant role in the process. For instance, the NCA never revealed how individual assembly members voted, despite having

the means to do so. This lack of transparency was exacerbated by the limited logistical and human resources. Many civil society organizations lobbied for greater transparency, and one in particular, Al Bawsala, played an important role in enhancing transparency by publishing NCA documents and posting on social media the attendance records of deputies and their individual votes during plenary sessions.

### External Engagement in the Process

Civil society organizations also played a role in the constitution-making process by engaging in multiple initiatives: Some organized town hall meetings and information sessions across the country encouraging dialogue between citizens and NCA members, while others conducted awareness campaigns or conferences. Such events contributed to a dynamic public debate around key issues in the constitution and underlined numerous insufficiencies and inconsistencies in the drafts. But, as the political context in Tunisia became more polarized, conferences and other events hosted by civil society organizations tended to draw participants from the same ideological orientation and generally preached to the converted. They were also concentrated mostly in the capital and, therefore, reinforced at times the elite and Tunis-centric nature of the process.

Civil society and other players also shaped the debate around the constitution by engaging in protests and strikes to make their claims heard. For instance, after the release of the first draft, groups defending women's rights organized large protests to demand that the NCA redraft an article that spoke of the "complementary roles of men and women inside the family" without reference to the equality of men and women. In January 2014, during the article-by-article vote, a delegation of imams also tried to exercise pressure on deputies by protesting against provisions enshrining the freedom of conscience and by distributing leaflets inside the NCA building condemning these provisions. On the other hand, direct lobbying activities with NCA members by civil society groups were rare, despite being sorely needed at times, such as during the critical discussions in November 2013

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by the Consensus Commission on the remaining

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Tunisian case. The lack of a fully functional secretariat at the NCA also meant that the assembly's legal counselors were not always used in the most effective manner.

## Key Issues in the Constitution

Over the course of the two-year process, the text of the constitution evolved significantly from the first draft to the adopted text, in many instances toward greater clarity and a higher degree of protection for fundamental freedoms and human rights. The constitution offers many protections for rights and freedoms; guarantees many economic, social, and cultural rights; and puts in place strong guarantees for an independent judiciary, thus breaking away decisively from past practices.

However, some concerns remain. For instance, while the new constitution clearly prohibits discrimination based on disabilities (Article 48) and on gender for Tunisian citizens (Article 21), it fails to prohibit all forms of discrimination, explicitly including such categories as race, color, language, religion, political or other opinion, national or social origin, property, or birth. Further, the protections afforded do not apply to noncitizens.

Many economic, social, and cultural rights in the constitution are not spelled out with further explanation as to how they are to be exercised and achieved. In addition, the constitution does not obligate the state to realize these rights to the maximum of its available resources and in a progressive manner, as stipulated in the International Covenant on Economic, Social, and Cultural Rights to which Tunisia is a party. Moreover, the constitution does not provide for safeguards for fundamental freedoms during a state of emergency. Finally, various provisions in the constitution are broadly worded and risk being interpreted in ways that contradict other provisions of the text.

Furthermore, while the constitution's adoption represents a key step in the country's transition from authoritarianism to deundcin



Thierry Bressillon

Based on the Carter Center’s observation of the constitution-making process as outlined in this report, and in a spirit of respect and support, the Center offers the recommendations below to the NCA, the Assembly of the Representatives of the People, Tunisian civil society, and policymakers and scholars engaged in constitution-making processes elsewhere in the region and beyond.

### Implementation of the Constitution

The Tunisian government and the Assembly of the Representatives of the People should consider the following:

#### Rights

- Review and reform Tunisia’s existing legal framework to ensure that domestic law and regulations reflect and respect the country’s

international commitments on human rights and the rights enshrined in the new constitution.

- Prohibit discrimination on the grounds of race, color, language, religion, political or other opinion, national or social origin, property, birth, and other statuses. Ensure that these rights apply to all people in Tunisia, citizens and foreigners alike, in accordance with international law.
- Commit to fight not only violence against women but all kinds of discrimination against women. To this end, adopt concrete measures within the assembly to protect women’s rights and to advance gender parity in elected assemblies.
- Specify in relevant legislation Tunisia’s obligation to adopt specific mechanisms to guarantee the progressive realization of economic, social, and cultural rights to the maximum of the country’s available resources.



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- Consider putting in place informal, issue-based caucuses. Experiences from other countries suggest that such groups can help to build trust between political groups in the assembly, increase the visibility of certain issues, and contribute to better legislative and policy agendas. The assembly should also consider providing both political blocs and these informal groups with logistical and administrative support to increase their effectiveness.

#### **To the International Community**

- Continue to support the capacity of media, civil society, and constituent and legislative bodies in conducting outreach and communication in a coordinated and responsive manner.
- To avoid duplication, improve coordination among international actors working with constituent bodies and legislative assemblies. Be sensitive to the rhythm of the institution and its priorities and workload.
- Ensure sufficient support to civil society work outside the capital and encourage regionally sensitive projects and initiatives.

#### **To Tunisian Civil Society**

- Build capacity in lobbying and monitoring the work of the Assembly of the Representatives of the People and other state institutions.
- Conduct awareness-raising on the constitution in all parts of the country.

#### **To Constitution-Making Bodies in Other Countries**

- Devote careful thought to the Rules of Procedure and internal decision-making processes.
- Consider putting in place detailed provisions regarding participation of members in assembly work and enforce sanctions fairly, transparently, and consistently.
- Formalize the role of legal and linguistic experts in the Rules of Procedure to ensure greater clarity of their role and maximize their impact.

- At the very beginning of the process, establish a detailed work plan and time table for the adoption of the constitution to ensure realistic planning and progress as well as to provide the public with greater visibility on the way forward.
- Design comprehensive public participation mechanisms in the drafting process and put in place the means necessary for its effective realization.
- Plan and implement awareness-raising and information campaigns on a regular basis using the full range of media and other tools available. Campaigns also should present the limitations of public participation in order to avoid disappointment and frustration.
- Set up a formal procedure to analyze, process, and record inputs made during consultations with civil society and the public.
- Appoint people at the constitution-making body in charge of liaising with civil society, the media, and the international community and prepare strategic plans and budgets to present to potential donors.
- Conduct extensive hearings prior to and while drafting the constitution and integrate consensus-building mechanisms in the process from the outset.
- Open to the public the debates and discussions within the constitution-making body. Establish formal and objective procedures to grant access and observer status to media, civil society organizations, and interested citizens.
- Publish and disseminate all important documentation in a timely manner. This requires devoting thought and resources to logistical and administrative issues.
- Develop outreach activities once the constitution is adopted and use all means available, including in-person meetings, to engage the public in the content of the constitution and to respond to questions.
- Consider putting in place informal, issue-based caucuses. Experiences from other

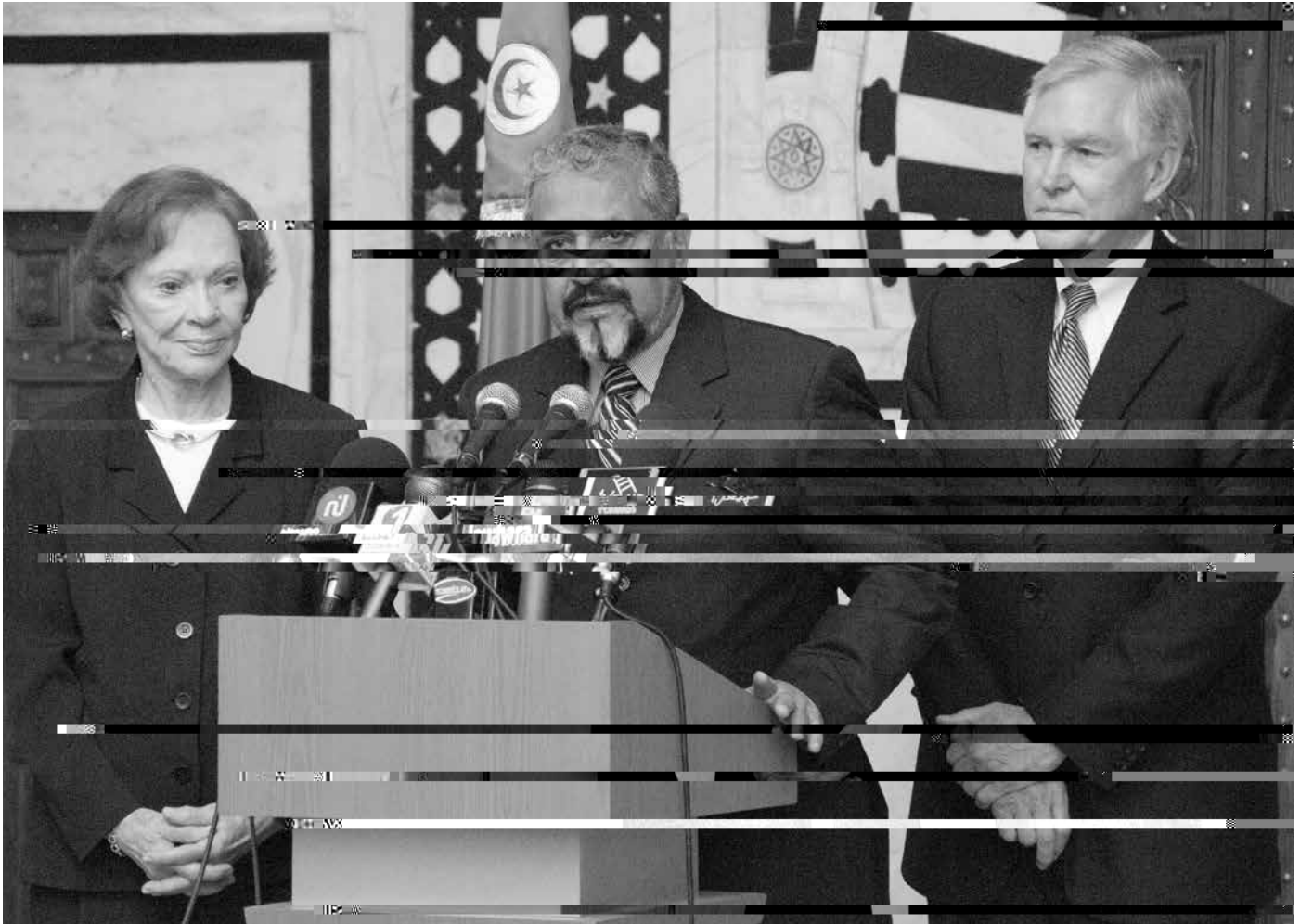


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countries suggest that such groups can help build trust between political groups in the assembly, increase the visibility of certain issues, and contribute to better legislative and policy agendas.

A detailed description of the Carter Center's recommendations to the NCA, the Assembly of the Representatives of the People, and policy-makers engaged in constitution making in other parts of the world can be found in the final section of this report.

The Carter Center opened its offices in Tunisia in July 2011 following an invitation from the elections management body, the Instance Supérieure Indépendante pour les Elections or ISIE, to observe the 2011 National Constituent Assembly elections. The Center's observation mission aimed to provide an impartial assessment of the overall



and recommendations with regard to particular themes, such as the extent to which the public was engaged in the process, communication by the assembly with the media, and the involvement of expert and technical advisers in the process. The report also analyzes the evolution of key substantive issues in the constitution, particularly around human rights, from the first draft to the adopted text, always with Tunisia's international obligations as a frame of reference.

Tunisia has ratified a series of international and regional human rights treaties whose provisions are relevant to the constitution-making process. These treaties include the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms

of Discrimination Against Women (CEDAW), the Convention on the Rights of People With Disabilities, and the African Charter on Human and Peoples' Rights (AfCHPR), among others. Table 1 provides an overview of the international treaties to which Tunisia has acceded, signed, or ratified.<sup>2</sup>

In addition to evaluating the content of the text against the country's international

<sup>2</sup> Signing a treaty does not impose obligations under the treaty on states but obliges them to refrain from acts that would defeat the object and purpose of the treaty. By ratifying a treaty, states establish consent to be bound by the treaty. To accede to a treaty has the same legal effect as ratification but is not preceded by an act of signature.



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obligations, the Center also monitored the process regarding its inclusiveness and the extent to which it upheld principles of transparency and participation of citizens in the public affairs of their country.<sup>5</sup> The Center also assessed the process against best practices as described in various documents such as the “Guidance Note of the Secretary-General on United Nations’ Assistance to Constitution-Making Processes,” the handbook on “Constitution-Making and Reform: Options for the Process” published by Interpeace (2011), and the paper “Lessons Learned From Constitution-Making: Processes With Broad Based Public Participation” released by Democracy Reporting International (2011).

During the two-year process, the Center met regularly with a broad range of Tunisian political

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Tunisia's commitments to international norms, including recognition of the universality of human rights, the inclusion of stronger anti-discrimination provisions in the text, and unequivocal commitment to the principle of equality between men and women in all its facets.<sup>13</sup>

Finally, following the tragic assassinations of Chokri Belaïd in February 2013 and of NCA member Mohamed Brahmi in July 2013, the Center issued statements strongly condemning

these murders, urging restraint and nonviolence and calling on the Tunisian government to condemn all acts of political violence and to investigate and take appropriate measures in response.<sup>14</sup>

Throughout its two-year observation, The Carter Center has greatly appreciated the openness of interlocutors to discussion, dialogue, and information-sharing.

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<sup>13</sup> "Tunisia: Strengthen New Constitution's Rights Protection," July 24, 2013; "Tunisia: Strengthen New Constitution's Human Rights Protection G 7 drmm22s Rights Protect maivProtll: Affirm Inorms,

## Historical and Political Background: Political Context Prior to 2011

Since gaining independence in 1956 and until the January 2011 revolution, Tunisia was a one-party state, with power centered on the person of the president. Tunisians were ruled by only two presidents between 1956 and 2011: Habib Bourguiba, often referred to as the “Father of Independence,” and Zine El Abidine Ben Ali, who served as Bourguiba’s interior minister and then prime minister. Ben Ali removed the former president from power in a bloodless coup d’état in 1987. Political life after Ben

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and large, it was a popular movement of citizens fighting against poverty, marginalization, and inequality and for justice and dignity, without discernible political or ideological leaders. The movement was also notably civilian: The army did not directly participate in the revolution but rather was broadly perceived as one of its key guarantors. Moreover, in comparison with neighboring countries, Tunisia subsequently experienced a largely peaceful transition to democracy, with relatively few victims falling to violence and an institutional infrastructure that continued to function more or less efficiently in the interim period prior to the Constituent Assembly elections.<sup>15</sup>

**While few parties had existed during the Ben Ali era, more than 100 new political parties emerged in the weeks following the revolution.**

### The Immediate Post-revolution Period

The suddenness and speed of the collapse of the Ben Ali regime resulted in a political vacuum, requiring a transition to a new form of governance and the creation of new institutions. In line with Article 57 of the 1959 constitution, which addressed the possibility “of vacancy of the presidency of the Republic due to death, resignation, or absolute incapacity,” Foued Mebazaâ, the speaker and head of the dissolved Parliament, became interim president and tasked Prime Minister Mohamed Ghannouchi with forming a new government. A political reform commission, also known as the Ben Achour Commission, was appointed by the government in January 2011.

While few parties had existed during the Ben Ali era, more than 100 new political parties emerged in the weeks following the revolution. A sizable number of the newly formed parties opposed the interim government on the basis of its inclusion of numerous RCD members. A period of intense political polarization ensued, pitting the transitional government, which saw its main

task as ensuring constitutional continuity, against the opposition, which relied on its “revolutionary legitimacy” to demand a genuine rupture with the past.

This “revolutionary” opposition created the Council for the Protection of the Revolution (Conseil de Sauvegarde de la Révolution or CSR) on Feb. 11, 2011, led by the left-oriented January 14 Front. It was composed of 28 organizations, including political parties, civil society organizations, and unions, among them the powerful national trade union, the Union Générale Tunisienne du Travail (UGTT). During the Kasbah I sit-in — the first of two demonstrations in Tunis challenging the transitional government — protesters demanded that institutions inherited from the old regime be dissolved and that the CSR take on a decision-making role, sharing responsibility for transition with the government.<sup>16</sup>

The Cabinet reshuffle that resulted from the demands of the Kasbah I demonstrations as well as the announcement by the government of the suspension of the RCD’s activities in the lead-up to the party’s full dissolution were, however, not enough to satisfy the protesters.<sup>17</sup> They returned to the streets on Feb. 21 and organized the Kasbah II sit-in, where close to 100,000 demonstrators converged in central Tunis to call for the dismissal of interim Prime Minister Mohamed Ghannouchi and the election of a constituent assembly. Ghannouchi had little choice but to resign, which he did on Feb. 27. Ghannouchi and his Cabinet were replaced by a new government headed by Béji Caïd Essebsi, a former adviser and minister under Bourguiba.

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<sup>15</sup> The national commission in charge of investigating abuses committed since Dec. 17, 2010 (Commission nationale chargée d’enquêter sur les abus commis depuis le 17 décembre 2010), reported in May 2012 that 388 people were killed and more than 2,174 injured. At the time, the commission indicated that the figures were not final, but it has not released another report at the time of writing.

<sup>16</sup> The name of the sit-in comes from the square where it was organized, the Kasbah Square in the old town of Tunis, where numerous ministries, including the Prime Ministry building, are located.

<sup>17</sup> The decision to suspend activities of the RCD was taken by the minister of interior at the time, Farhat Rajhi, on Feb. 10, 2011. It was officially dissolved by a court decision pronounced on March 9, 2011.



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March 23. (This dissolved instructions such as the Parliament and the Constitutional Council.) It was then fully repealed under the constituent law relating to the provisional organization of authorities that was adopted by the NCA on Dec. 23.

While the government remained the sole executive and decision-making power, the High Commission was authorized to submit draft legislation to the Council of Ministers and the Presidency of the Republic for approval by decree, and de facto, acted as a legislative body.<sup>19</sup> One of its main responsibilities was to draft a new electoral law and to set up an independent body in charge of organizing the elections, the Instance Supérieure Indépendante pour les Elections (ISIE).

To meet the opposition's demands, the Ben Achour Commission merged with the CSR to create an expanded transitional institution named the High Authority for the Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition (subsequently referred to as the High Commission). The commission's 72-member composition was contested early on, as it was deemed unrepresentative of youth and political actors from Tunisia's interior regions. As a result, the commission's membership was later expanded to 155 members.<sup>18</sup>

The High Commission outlined several possible postrevolution courses of action: to hold presidential elections (whereby the president dissolves Parliament and calls for legislative elections), to hold presidential and legislative elections simultaneously, or to elect a body to rewrite the constitution.

Interim President Mebazaâ announced on March 3 that a National Constituent Assembly should be elected to draft a constitution, setting in motion a process that entailed elections on July 24 that were later postponed to Oct. 23. The newly elected National Constituent Assembly would elect an interim president and prime minister to govern the country while a new constitution was being drafted. In his speech, Mebazaâ also announced the partial suspension of the 1959 constitution. The 1959 constitution was partially suspended under a decree law adopted on



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year, the second transitional period—including the drafting of Tunisia's new constitution and the holding of general elections—proved lengthy and rife with challenges and pitfalls.<sup>25</sup> Despite these challenges, this phase of the transition largely achieved its objectives.

### The NCA Assumes Power

The NCA's newly elected members were officially sworn in during the inaugural session of the assembly held Nov. 22, 2011. Following its electoral victory, Ennahdha formed a power-sharing agreement with two secular former opposition parties to Ben Ali, the *Congrès pour la République* (CPR) and the *Forum Démocratique pour le Travail et les Libertés* (usually referred to as *Ettakatol*), which had obtained a significant number of seats at the assembly. The governing coalition that resulted became known as the *Troika*. *Ettakatol's* Secretary-General Mustapha Ben Jaâfar was elected president of the assembly during its inaugural session, while CPR's President Mohamed Moncef Marzouki (a former human rights activist exiled under Ben Ali) was chosen by the NCA as interim president of the republic on Dec. 12, 2011.<sup>26</sup> The secretary-general of Ennahdha, Hamadi Jebali, was designated head of the government.

In the absence of a legal framework to regulate the government's functioning, the NCA immediately set about drafting and adopting a law on the Provisional Organization of Public Authorities (known by its French name, *Organisation Provisoire des Pouvoirs Publics* or *OPPP*).<sup>27</sup> This law stipulated that the government must receive a vote of confidence by the NCA before assuming power, which Hamadi Jebali's government did easily on Dec. 23, 2011.<sup>28</sup>

Following its initial sessions, two important aspects of the NCA's work became evident: Assembly members, elected to draft a constitution, felt that it was more appropriate to draft the new document from scratch rather than use language from the 1959 constitution as a base. They also considered that, as the sole elected officials, the NCA should also serve as a legislative body to draft, debate, and pass legislation to govern the country during the interim period.

Together, these decisions had a substantial impact on the constitution-drafting process. NCA members had to address pressing legislative issues, including the annual state budget, a transitional justice law, the legal framework for the formation of a permanent election management body, and subsequent legislative and presidential elections, while drafting the new constitution.

### An Eventful Year Under Jebali's Leadership

The upheaval generated by the revolution had a negative impact on the Tunisian economy, which had previously suffered from corruption and poor management of public funds by political elites. The revolution also coincided with an economic downturn in Europe, Tunisia's largest trade partner. The new government's inability to contain the economic crisis and its failure to

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25 Eleven of the 12 political parties represented on the High Commission signed a "Declaration on the Transitional Process" on Sept. 15, 2011. Although not legally binding, this document aimed to establish a road map to define the operating rules of the NCA and to limit its mandate to no more than one year. (See the section titled "Timing and Sequencing" for more information.) Moreover, the decree 1086 dated Aug. 3, 2011, calling for the elections of the NCA in its Article 6, explicitly gave the NCA a mandate of one year to complete the drafting of the constitution.

26 Mustapha Ben Jaâfar was running against Maya Jribi, secretary-general of the centrist PDP party at this time, and was elected by 145 votes against 68 votes for Maya Jribi. Two ballots were invalid, and there were two absents among the NCA members. Running against nine other candidates, Mohamed Moncef Marzouki obtained the support of 153 NCA members of the 202 voting.

27 Constitutional Act No. 2011-6 dated Dec. 16, 2011, related to the provisional organization of public authorities.

28 Article 15 of the *OPPP* provides that an absolute majority of votes (109) is required for the NCA to grant a government confidence.

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tackle unemployment, the main issues underlying the Tunisian revolution, led to growing public discontent. Though the economy eventually showed signs of a tentative recovery, it was insufficient to compensate for high inflation. Strikes and social unrest, which continued to a lesser extent after the elections—particularly in the marginalized towns of the south and center of the country—did not help assuage the fears of foreign investors regarding the stability of the country.

On the security front, the emergence of extremist armed groups and the trafficking of weapons in the country—tied in part to the porosity of Tunisia's borders with Algeria and Libya—presented a new challenge and compelled the authorities to extend the state of emergency established in the aftermath of the revolution.<sup>29</sup>

The postelection period also saw important shifts in the political landscape. Disappointed by

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## From Belaïd to Brahmi: Tunisia in the Grip of Political Violence

On Dec. 4, 2012, two months after the national dialogue, UGTT members clashed violently with members of the self-titled Leagues for the Protection of the Revolution (Ligues de Protection de la Révolution or LPRs) around the union's headquarters in the capital. What the UGTT considered as "premeditated attacks" from the LPRs reopened an unresolved debate around the entities' dissolution. The LPRs had been created at the neighborhood level during the revolution, mainly to address the security vacuum left by the collapse of the regime's apparatus. Though order was restored in the months following the revolution, the leagues were never dissolved and grew in militancy over time. Though Ennahdha denied the allegations, UGTT and some of the opposition parties claimed that the party aided and abetted the LPRs and used them to intimidate political opponents. The controversy did little to ease pressures on the embattled Jebali government.

On Feb. 6, 2013, the leftist political leader and human rights activist Chokri Belaïd was gunned down by unknown assailants. Months-long negotiations on a Cabinet reshuffle had already eroded the Troika coalition, but the assassination sent shock waves through Tunisian society and the political class. Coming as the culmination of a series of violent, unsanctioned attacks targeting political parties' offices and members,

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brought Ennahdha and Nidaa Tounes around the same table for the first time. Participants tackled contentious issues of the constitution-drafting process (such as the form of the new political system) as well as obstacles to the establishment of a new elections management body and the drafting of the electoral law. Though some opposition parties and the UGTT boycotted the dialogue, the discussions were successful in addressing numerous contentious issues regarding the political regime and the elections. Following the president's efforts, the UGTT launched another dialogue process on May 16, focusing primarily on pressing socio-economic and security issues.<sup>32</sup>

On June 1, 2013, before the conclusion of the dialogue and agreement over all remaining contentious points in the constitution, NCA President Ben Jaâfar released the fourth and final draft of the constitution. This draft stirred controversy. Many NCA members felt that it did not respect the work of the constituent commissions that had debated and developed the various sections.

Meanwhile, the security situation rapidly deteriorated. From May 2013 onward, Tunisian military forces engaged in open armed confrontation with extremist groups. The epicenter of the fight was the region of Mount Chaambi on the Algerian border, which served as a base for terrorist groups.

The removal of Egyptian President Mohamed Morsi by the Egyptian army on July 3, 2013, following mass protests added a regional dimension

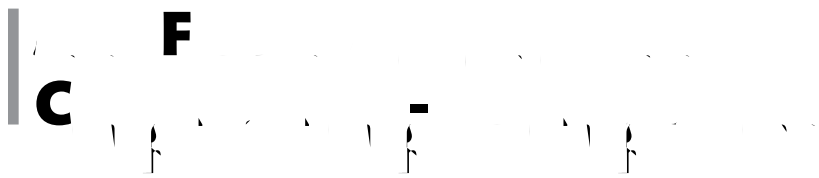
to the Tunisian crisis. The removal of Morsi, a leader of the Muslim Brotherhood, drew sharp denunciations from Ennahdha, which labeled the army takeover a "coup against legitimacy." Segments of the opposition were emboldened by the swift downfall of the Islamists in Egypt—leading some, including Nidaa Tounes and the leftist coalition the Popular Front—to call for dissolving the NCA and replacing it with a committee of experts to finalize the constitution.

Only days later, on July 25, NCA deputy Mohamed Brahmi, the general coordinator of the People's Movement (Movement du Peuple) elected from Sidi Bouzid, was gunned down in front of his home in Tunis. The date appeared to have been chosen for its symbolic value, coinciding with celebrations of the 56<sup>th</sup> anniversary of the proclamation of the Tunisian Republic. Like Belaid, Brahmi was a member of the Front Populaire coalition. Six months after the former's assassination, the government had not shed any light on its circumstances.

After the killing of Brahmi, 42 NCA deputies immediately withdrew from the assembly. They were joined by others in the following days, reaching a total of approximately 65–70 at the peak of the crisis. Nidaa Tounes and the Popular Front coalition, as well as several other parties and civil society groups, came together to form the National Salvation Front (NSF). They strategized to end the Troika's rule and bring an end to the transitional period. The NSF and some of the withdrawn deputies held an open sit-in at Bardo civicD(FIforces engaged in odurlacing iext&T1\_2 an fw -1.171.as irpulsested ext&EFF2009&BDC ( )Tj002E1.125 0 T.(to )TjETD5

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strenuously defended the NCA as the coun-



## The Legal Framework

Two texts governed the constitution-making process: the Provisional Organization of Public Authorities law (commonly referred to using the French acronym OPPP or as the “little constitution”) and the NCA’s Rules of Procedure.<sup>37</sup>

the constitution once again with the required two-thirds majority, the draft constitution would be subject to a referendum requiring an absolute majority to be adopted. The OPPP law was silent on how to deal with a scenario in which a referendum resulted in a negative outcome.

The OPPP law thus set a relatively high threshold of support in order to adopt the constitution. This ultimately proved to be an important factor, as no party or alliance of parties held a

The OPPP law, adopted by the NCA on Dec. 16, 2011, dedicated only one article to the “constituent power.” The article focused solely on requirements for the adoption of the constitution and specified that an absolute majority of NCA members was required to adopt each article and that a two-thirds majority was needed for the adoption of the constitution in its entirety. In addition, Article 3 stipulated that if the NCA failed to reach the required majority during the first reading, the vote would be repeated within one month. Should the plenary fail to adopt



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constitution. They detail, for example, the organization of six permanent constituent commissions, the procedures they should follow, and their relationship to the Joint Coordination and Drafting Committee as well as to the NCA's plenary.<sup>39</sup>

The Rules of Procedure also contained several provisions concerning the voting process. The NCA's voting procedures were regulated by the general section of the Rules of Procedure relative to the plenary (Articles 83–93), a section relative to attaining a quorum in plenary votes (Articles 94–97), and a chapter dedicated entirely to the review and adoption of the constitution (Articles 103–107). Article 107 stated that the adoption of the draft constitution shall be in accordance with Article 3 of the OPPP law.

## The Organizational Structure

Several bodies within the NCA contributed to the constitution-making process. The bureau of the NCA, the plenary of the assembly, and the Conference of the Heads of Blocs all played an important role in the process, although their mandates extended beyond constitution-making to other areas. In contrast, the constituent commissions, the Joint Coordination and Drafting Committee, and the Consensus Commission were formed to work specifically on the constitution. Their roles effectively ended once they completed their tasks. The Special Commission on Rules of Procedure and Immunity also deserves a mention as the lead body charged with negotiating and drafting successive amendments to the Rules of Procedure over the two-year process.

### The NCA Bureau

The NCA bureau was the executive organ of the assembly and made its decisions by an absolute majority of its members. The bureau was headed by NCA President Mustapha Ben Jaâfar (Ettakatol), First Vice President Meherzia Laâbidi (Ennahdha), Second Vice President Arbi Abid (formerly CPR, then Ettakatol), and seven other members who have the rank of deputy to the president. The bureau was responsible for ensuring that NCA members exercise their rights and duties effectively and in accordance with the Rules of

Procedure. It also set the assembly's calendar and

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on its activities, among other things. The NCA president or one of the two vice presidents presided over the sessions. Plenary sessions were held to discuss and debate drafts of the constitution, vote on the final draft article by article, and adopt the final text. Non-NCA members (citizens, civil society members, journalists, and others) were entitled to observe the sessions according to “arrangements set by the NCA bureau.”<sup>43</sup> At the request of the NCA president, one of the heads of blocs, or 10 or more deputies with support of an absolute majority of NCA members, the NCA could also hold closed sessions, with the exception of sessions dedicated to the constitution, which had to remain open to the public.<sup>44</sup>

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**The NCA created six permanent constituent commissions, each responsible for studying a particular theme and drafting articles under specific chapters of the future constitution.**

**The Special Commission on Rules of Procedure and Immunity**

The Special Commission on Rules of Procedure and Immunity, a body composed of 22 members, oversaw the implementation of the NCA’s Rules of Procedure and examined all matters related to the immunity of deputies. It also interpreted the rules for the assembly.<sup>45</sup> The commission played the lead role in the negotiation and drafting of the successive amendments of the Rules of Procedure, which, among other matters, sought to clarify the relationship between the constituent commissions and the Joint Coordination and Drafting Committee to organize and accelerate the adoption process.

**The Permanent Constituent Commissions**

The NCA created six permanent constituent commissions, each responsible for studying a particular theme and drafting articles under specific chapters of the future constitution.<sup>46</sup> The six themes were: 1) the preamble, fundamental principles, constitutional review; 2) rights and

freedoms; 3) legislative and executive powers and the relationship between the two powers; 4) judicial, administrative, financial, and constitutional justice; 5) constitutional bodies; and 6) regional and local public authorities.

Each of the six commissions was composed of 22 members. Seats were proportionally allocated based on the political division of power within the NCA at the time of the commissions’ formation.<sup>47</sup> Commission membership was allocated as follows: nine members from Ennahdha, three from the Democratic bloc, three from CPR, two from Ettakatol, two from the Liberty and Democracy bloc, one from the Liberty and Dignity bloc, one from Al-Aridha, and one nonaffiliated member. Members were not allowed to take part in more than one constituent commission. They were, however, allowed to join other nonconstituent commissions such as legislative or special commissions.<sup>48</sup> Only one of the six commissions, the Rights and Freedoms Commission, was presided over by a woman. Three female deputies were elected as vice presidents and six as rapporteurs. Each commission was also assigned advisers (conseillers) to provide legal counsel on issues under consideration and to draft records of the meetings.

The NCA’s Rules of Procedure stipulated the obligatory attendance of commission members during meetings. Members who were absent without authorization for more than three consecutive sessions could be disqualified from participation.<sup>49</sup> The president of each commission was tasked with facilitating the work of his or her

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43 Rules of Procedure, Article 76. Though the Rules of Procedure referred to procedures for access to the NCA, no such procedures were established by the NCA bureau until late 2013.

44 Rules of Procedure, Article 78

45 Rules of Procedure, Article 71

46 Rules of Procedure, Article 65

47 Rules of Procedure, Article 42

48 Rules of Procedure Article 48 allows NCA members to join more than one commission as long as they do not fall within the same category. The categories are constituent commissions, legislative commissions (for example, the general legislation commission or the finance commission), and specialized commissions (for example, the Rules of Procedure and Immunity commission).

49 Rules of Procedure, Article 53



## The Lead-Up to the First Draft

Members of the NCA began the constitution-drafting process on Feb. 13, 2012. The six constituent commissions conducted several hearings with Tunisian and international experts, representatives of the government, civil society, and academics and studied relevant texts addressing constitutional issues and comparative drafting processes. Some NCA members also undertook study trips to learn more about constitutional law in countries that had experienced similar constitution-making experiences.

The drafting committee's coordination role was noticeably weak from the outset, which greatly affected the work of commissions and the consistency of their output. For example, the committee

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commissions met the deadline. On July 28, the drafting committee authorized the Legislative and Executive Powers Commission to submit multiple versions of articles related to the structure of the political system, since no consensus had been reached on them. Aiming at moving the process forward and avoiding blockage, several other commissions adopted the same approach to difficult issues. As a result, each of the six commissions followed one of two procedures: Some presented multiple formulations of controversial articles, while others presented only articles that had received a majority of votes from commission members.<sup>61</sup> By Aug. 10, 2012, all of the commissions had submitted their drafts to the drafting committee. The compilation of the work — the first draft of the constitution — was released Aug. 14, 2012. Thirty articles included from two to five options.

## The First Draft

The release of the first draft generated a strong reaction from Tunisian civil society organizations, opposition members, constitutional experts, and international actors. They expressed concerns on many issues, including language in the text pertaining to the status of women, inadequate protection of the freedoms of belief and speech, and the structure of the political system. The issue of women's rights in particular — specifically the wording of Article 28, which defined men and women's relationship as "complementary" — provoked a firestorm of criticism from local and international civil society and many in the media. Before the draft was released in Arabic, mistranslations of the wording of the article led

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particular, they felt that the drafting committee had overstepped its mandate in changing the content of some articles already drafted by the commissions (in "draft 2bis") and in adding a chapter on transitional provisions without consulting the commissions. Seventy NCA



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views expressed throughout the process by political representatives, civil society, and citizens.<sup>74</sup> In the report, the Center evaluated the fourth draft and assessed the extent to which it was consistent with the country's obligations under public international law. The Center came to the conclusion that while the draft reflected the authorities' strong commitment to democratic reform, it continued to fall short on critical guarantees of human rights and fundamental freedoms.

On July 9, President Marzouki published his comments on the draft constitution. His observations and recommendations included the need to redraft language in various sections to make it more precise and less likely to be misinterpreted. The report also called for greater social and economic protections, especially the right to health care, and called for more protections for the "weaker" sections of society, such as women and children.<sup>75</sup>

## The Lead-Up to the Constitution's Adoption

On July 1, 2013, the NCA's plenary convened amid fanfare to launch a general discussion about the final draft of the constitution. Some members of Tunisia's first National Constituent Assembly (1956–1959) attended as honored guests. The general discussion was seen by the NCA's leadership as the final step ahead of the article-by-article vote and the vote on the constitution in its entirety.

The opposition, however, felt that the drafting committee, which did not reflect the proportional membership of the commissions, had exceeded its authority and had forced through controversial language not agreed in the commissions. Within minutes of opening the first session, the hall erupted in loud protests from some opposition members, forcing NCA President Ben Jaàfar to suspend the proceedings temporarily. Opposition members stood outside the plenary hall during the break distributing draft 2bis, which they claimed was the legitimate final draft of the constitution since it represented the work of the commissions prior to the intervention of the drafting committee.

Ben Jaàfar's announcement later that day of the formation of an ad hoc Consensus Commission—which would discuss the main contentious issues around the draft—helped ease tensions and allowed the NCA's plenary discussion to resume. The latter lasted for two weeks, July 1–15. It was plagued with low attendance, with at times less than 60 deputies present during the debates, and saw the resignation of an NCA member, Ahmed Khaskhoussi (Mouvement des Démocrates Socialistes or MDS), in protest against what he termed the "falsification" of the draft constitution.

Agreement on the composition of the Consensus Commission required some negotiation, particularly on how best to represent independent and unaffiliated deputies. The commission was in place, however, by the second week of July.<sup>76</sup> Notably, while the composition of other NCA commissions reflected, at least at inception, the proportional representation of each bloc's relative strength in the chamber, the assembly employed a different strategy with regard to the Consensus Commission in order to be as inclusive as possible. For example, the Democratic bloc—the second biggest bloc in the assembly though still much smaller than Ennahdha's—received several seats, in acknowledgment of the bloc's internal heterogeneity.

The commission began by identifying a range of contentious issues in the final draft, touching on nearly every chapter of the constitution in addition to the preamble.<sup>77</sup> This list was narrowed down to key contentious issues.<sup>78</sup> Rights and freedoms were the first set of provisions tackled by the commission, which made rapid progress in that area, reaching key agreements on July 24.

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74 "The Carter Center Congratulates Tunisia's NCA Assembly on Final Draft of Constitution and Urges Safeguards for Human Rights," June 12, 2013

75 The report included five main sections: Tunisia's identity and the identity of the state, the relationship of religion to the state, individual rights and responsibilities, judicial powers, and the executive powers: balance, responsibilities, coordination.

76 See the Organizational Structure section for a description of the composition of the Consensus Commission.

77 The long list of contentious issues was drawn up on July 11, 2013.

78 The short list was agreed on July 16–18, 2013, and became referred to as "the July 18 list."

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In an effort to impact the Consensus Commission's work, The Carter Center released a joint statement with Human Rights Watch, Amnesty International, and AI Bawsala making recommendations for greater compliance with Tunisia's commitments to international norms, including the recognition of the universality of human rights, the inclusion of stronger anti-discrimination provisions in the text, and unequivocal commitment to the principle of equality between men and women in all its facets.<sup>79</sup>

**The assassination of NCA deputy Mohamed Brahmi the next day, on July 25, 2013, as the country celebrated the 56<sup>th</sup> anniversary of the proclamation of the republic, sparked a deep political crisis, as the majority of the opposition suspended their participation in the assembly.**

The assassination of NCA deputy Mohamed Brahmi the next day, on July 25, 2013, as the country celebrated the 56<sup>th</sup> anniversary of the proclamation of the republic, sparked a deep political crisis, as the majority of the opposition suspended their participation in the assembly. The assassination came only six months following that of Chokri Belaid, and in a very similar manner, as both were gunned down by men who fled on motorcycles. Public anger was fueled by the fact that Belaid's murderers had not been brought to justice. Less than two weeks later, President Ben Jaàfar suspended NCA activities, pending the launch of a new national dialogue to resolve the crisis.<sup>80</sup> The Quartet, composed of the UGTT, the UTICA, the LTDH, and the Bar Association, officially launched a third national dialogue process in October 2013, following months of behind-the-scenes negotiations by political parties.<sup>81</sup>

The NCA subsequently resumed its activities in October but suffered renewed crisis shortly thereafter on a smaller scale. On Nov. 4, the assembly convened a plenary amid controversy to amend several articles of the Rules of Procedure

in order to streamline its work. Of the five articles amended that night, there was only consensus on Article 106, which regulated the article-by-article vote on the constitution. The plenary voted to raise the number of deputies required to come together in order to propose an amendment and imposed tighter controls on the proposal process itself, including the presentation of each article and the subsequent debate, stipulating, for example, that each proposal must identify a specific deputy to defend it in the plenary debate.

Unlike Article 106, however, the votes for several other Rules of Procedure articles were controversial. The plenary amended Article 36 to allow the NCA bureau to hold meetings after a one-hour delay if at least half the members were present and to make decisions by majority if the two-thirds quorum (previously required) was not reached. Amended Article 79 extended the right to call for a plenary session, which had been exclusively the prerogative of the NCA's president, to deputies as well, who could schedule a plenary session by petition of 50 percent or more of NCA members. Most controversially, the amendment obligated the NCA president or one of his deputies to chair the session, even if he was opposed to it. This measure was intended to prevent the president or his deputies from blocking plenary sessions through nonparticipation, as had happened previously.

New Article 126 retained the possibility to impose penalties on repeatedly absent deputies by docking their pay but required the NCA bureau to publish the amount docked on the assembly's website. Advocates of this change framed it as an attempt to avoid paralysis of the assembly should some deputies decide to withdraw again, but it was interpreted by some members of the opposition as an act of vengeance for their three-month

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79 "Tunisia: Strengthen New Constitution's Rights Protection," July 24, 2013

80 NCA President Mustapha Ben Jaàfar announced his decision to suspend the NCA's activities in a televised address on Aug. 6, 2013.

81 As discussed in the Historical and Political Background section of this report, the national dialogue was organized into three tracks: (1) the formation of a new government, (2) the adoption of a constitution, and (3) the election of the members of the election management body and the adoption of an electoral law.

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withdrawal from the assembly following Brahmi's assassination. During the vote, a visible divide was evident, for the first time ever perhaps, between many of Ennahdha's deputies, who supported the proposed changes, and their leadership. For example, head of bloc Sahbi Atig urged his deputies to vote against some of the more controversial proposals. Mehrezia Laâbidi, NCA vice president and Ennahdha member, for her part expressed dismay at some of the language "obligating" NCA leadership to chair sessions. Members of the Democratic bloc walked out of the vote in protest early on, along with several independents.

The following day, the Democratic bloc and several other deputies announced their intention to freeze their participation in all commissions







Al Bayraq

for and against the language used were from Ennahdha. A member of the opposition suggested at that point that a new draw be made on the spot whenever this situation arose. His suggestion was accepted, and from that point onward, this procedure was followed.

The rules for speaking for or against a proposed amendment also did not take into consideration a scenario in which a proposed amendment was withdrawn. Assembly members faced this situation frequently during the vote. At first, deputies were not allowed to comment on the withdrawn proposal. They were later permitted to do so after protesting that their position should go on the record, since judges may refer back to the proceedings of the vote to determine intention of the legislator.

An issue also arose in relation to the Rules of Procedure centered on consensual amendments. Amendments from the Consensus Commission were described as “binding” in the revised Rules of Procedure, a word that was understood in various ways. Some NCA members felt that the assembly was bound to vote in accordance with the agreements, while others interpreted it as a “loose guideline.” Most of the commission’s amendments were adopted, and NCA members generally voted in line with the agreements reached.<sup>95</sup> This changed, however, during the vote on the articles

The Nov. 4 amendments to the Rules of Procedure were, to a large extent, successful in streamlining the vote procedures by raising the threshold of deputies required to propose amendments and by imposing tighter controls on the proposal process and debate.<sup>94</sup> While these changes helped, they did not fully address all aspects of the process. On more than one occasion during the article-by-article vote, the Consensus Commission had to define procedures on the spot and make adjustments “on the floor,” in the midst of the debate or vote.

For example, some deputies raised concerns as to whether larger blocs would be overrepresented on the floor in terms of their opportunity to express opinions. The Nov. 4 amendment to Rules of Procedure Article 106 specified that only one deputy would be designated to speak for any specific article and only one deputy against, for an allotted time of three minutes each. The article also noted that if several demands to speak were made ahead of the vote priority would be given to deputies who had not yet had an opportunity to speak. To that end, NCA members gave the assembly’s bureau the prerogative to choose among multiple requests by lottery.

The article was silent, however, on equality of opportunity between blocs (versus between deputies). During the vote on paragraph 3 of the preamble for example, both deputies speaking

94 More specifically, key changes made to Article 106 on Nov. 4, 2013, were: (a) The minimum number of deputies required to propose amendments was increased from five to 15. A proposal to introduce an article could now be made but only by a minimum of 30 deputies. A deputy was allowed to make only one proposal per article, which had to contain all amendments relevant to all the paragraphs of the article. (b) The proposal had to specify the exact wording of the provision as it should appear in the constitution, as well as the deputy (from among the group) who would present the proposal to the plenary. (c) The window for proposing amendments was reduced from four days to one, with proposed amendments published the following day on the NCA’s website and distributed to all NCA members. (d) The window to request the opportunity to address the plenary against proposed amendments, in defense of the original article or against it, was set at one day. (e) For each object of vote, only one deputy was designated to speak for and only one against. The time allowed on the floor for each was specified as not to exceed three minutes. Should several demands to speak for or against be made, priority was given to deputies who had not spoken previously, and the NCA bureau was given the prerogative to choose among multiple requests via lottery.

95 The Consensus Commission continued to meet as needed during the vote, mediating certain issues and proposing amendments: for example, on Article 45 (Article 46 in the final constitution) on the rights of women.

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that defined the conditions of eligibility for the office of president of the republic, a polarizing subject from the outset of the constitution-making process in Tunisia.<sup>96</sup> The language proposed by the Consensus Commission did not pass, and the heads of blocs had to mediate a resolution. This represented a turning point, and from then on, the role of the Consensus Commission diminished significantly. On Jan. 14, 2014, Habib Khedher, the general rapporteur of the constitution, announced an end to the work of the commission.

A key procedural issue according to journalists, civil society groups, and international observers centered on the interpretation of Rules of Procedure Article 93, which allowed the general rapporteur of the constitution (among other designated people) to request that the assembly “reopen the debate on an article already passed . . . if new relevant elements appear before the close of deliberations on the constitution draft.” This clause was applied extensively during the vote.

The general rapporteur proposed an application of these powers during the first day of voting. He suggested reopening the debate on the fourth paragraph of the preamble, and in particular on the notion of Tunisia’s “Mediterranean belonging.” This suggestion was rejected.

Two days into the vote, a major altercation between two NCA members from opposing camps had a drastic impact on the adoption process. Tensions at the NCA escalated when, in declarations to the media, Habib Ellouze, a conservative member of Ennahdha, said that Mongi Rahoui, a leftist member of the Democratic bloc, was “known for his enmity of Islam.” Rahoui and others strongly condemned Ellouze’s words, arguing that the latter’s comments could incite religious extremists. Rahoui reported receiving threats in the 48 hours after the declarations were made.<sup>97</sup> This episode resulted in heated debate about whether to add to Article 6 a ban on allegations of apostasy, since these could expose accused individuals to the risk of physical violence or death. Opposition members argued that the conflict between Ellouze and Rahoui had resulted in “new relevant elements” and requested to amend the relevant article on the basis of Rules of Procedure Article 93 to include an obligation for

the state to ban incitement to hatred and violence as well as *takfir* (labeling another Muslim an unbeliever, or *kafir*).

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# Designing a Constitution

Constitution making in transitional contexts is often a deeply contested process, and Tunisia is no exception. Constitution makers face significant hurdles, many the result of prevailing circumstances and thus beyond the control of the constituent body. The manner in which constitution makers respond to these circumstances and the choices they make regarding the process can either facilitate or hinder the task of arriving at a constitution seen as appropriate and legitimate by citizens.

**The assembly's composition shifted significantly and repeatedly during the constitution-making process as deputies migrated among political parties and political blocs. New parties and blocs emerged regularly, while others were dissolved.**

In Tunisia, some of the NCA's choices created tensions and led to delays and frustrations. At times, these choices threatened to derail the constitution-making project. Chief among them was the failure to put in place a clear road map to chart a course and address timing and sequencing issues. Other challenges included the assembly's sparse and vague Rules of Procedure, the absence of a judicial review mechanism, and an ill-defined role for experts. The process took place in an environment of constantly shifting political alliances

within the assembly without consistent cross-party coalitions on issues. These shifting alliances made fair representation within commissions and other assembly structures a challenge. The problem was compounded by chronic absenteeism on the part of deputies, which was never addressed by the NCA bureau. This dynamic was partly to blame for the Tunisian public's negative perceptions of the assembly's work.

## Representation and the Politics of Shifting Alliances

The Oct. 23, 2011, elections resulted in a high degree of political diversity in the NCA. In addition, the assembly's composition shifted significantly and repeatedly during the constitution-making process, as deputies migrated among political parties and political blocs. New parties and blocs emerged regularly, while others were dissolved. As the NCA bureau and the commissions relied on a proportional representation formula at their inception, the shifts within the assembly over time often resulted in the two structures getting progressively out of sync with the real balance of power in the NCA at any given moment. Constant shifts also made researching agreement on the content of the constitution more difficult. This was mitigated in large part by the stability of the largest bloc in the assembly, Ennahdha.

Beginning in February 2012, most NCA members participated in one of seven political blocs, composed along party lines or political



Table 2: NCA Political Blocs as Initially Composed (February 2012)

Party	Members

affinities.<sup>99</sup> Though the number of blocs remained fairly stable throughout the process—seven blocs in the beginning versus five at the time of the adoption of the constitution—there was intense political maneuvering throughout the two years of the process. An estimated 50 deputies changed parties after joining the NCA, approximately one-quarter of the NCA’s 217 members.<sup>100</sup> Furthermore, while 11 parties were elected to the NCA in 2011, 27 parties were represented in the assembly at the time of the adoption of the constitution, in addition to a much higher number of independent/unaffiliated deputies.

A first change to the NCA’s composition occurred shortly after the deputies took office, with the appointment of several NCA members to positions within the new government of then-interim Prime Minister Hamadi Jebali. Eleven of the 18 appointed members resigned from the NCA, thus ceding their seats to the next candidate on the candidate list.<sup>101</sup> Since the vertical parity principle established in the 2011 electoral law meant that women and men alternated on candidate lists, and since the vast majority of lists put a man in the first position, the resignations resulted in increased women’s representation at the assembly. This dynamic continued throughout the process, as various male members of the NCA resigned or died and were replaced by women. Numbers of women eventually rose from 59 immediately following the 2011 elections to 67 by the time of the adoption of the constitution. Women

thus went from comprising 27 percent of NCA members to almost 31 percent.<sup>102</sup> Ennahdha and CPR’s decision to join Ennahdha’s governing coalition also generated significant change in political party representation. Many members of these two parties were unhappy with their parties’ decisions, leading some to move to other parties or join the independents.<sup>103</sup>

An additional factor in political shifts at the NCA was the emergence of new political parties. The Democratic Alliance was a breakaway splinter of PDP (later Al Joumhouri). Its members remained within the Democratic bloc until the end of the constitution-making process, coordinating closely with their former party and others, and only formed their own political bloc on March 6, 2014, following the constitution’s adoption.<sup>104</sup> The creation of Nidaa Tounes in June 2012 attracted numerous deputies from various other parties.<sup>105</sup> At its peak, Nidaa Tounes counted 12



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NCA members, a notable number for a party that did not exist at the time of the 2011 election. Though the party had the ability to create its own

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and prevented them from being represented in accordance with their numerical strength in both the heads-of-blocs discussions and otherwise.

Though political "nomadism" was a common feature at the NCA, it was heavily criticized at times, most bitterly by Tayyar Al7so78o9

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Although comparative examples suggest that participatory constitution-making processes are typically lengthy processes, varying between 18 and 24 months, most Tunisian political actors, with the exception of CPR, insisted on a one-year time frame to complete the process.<sup>113</sup> The Aug. 3, 2011, decree calling for the NCA elections clearly stipulated a one-year mandate for the assembly.<sup>114</sup> Solidifying this apparent commitment was a declaration signed Sept. 15, 2011, by several political parties represented in the High Authority for the Achievement of Revolutionary Objectives, which limited the time frame of NCA activities to one year.<sup>115</sup> The OPPP law, adopted by the assembly in December 2011, did not, however, mention any deadlines. The OPPP law had primacy over all other laws, acting as a constitution of sorts, and in fact was referred to as “the little constitution.”

The constituent commissions put in place by the NCA began their work in February 2012. Assuming an October deadline, this left the assembly with eight months for the drafting, review, and adoption of the constitution—an ambitious time frame, particularly given the NCA announcement that it would start from a blank slate rather than amend the 1959 constitution. It did not surprise those following the work of the NCA when the NCA’s rapporteur general announced on Aug. 13, 2012, that the constitution’s adoption would be postponed by several months to an undetermined date between February and April 2013. The announcement was, however, a disappointment to many Tunisian citizens who had anticipated a defined end to the transitional period. Those expectations had been nurtured by numerous political actors who repeatedly mentioned Oct. 23, 2012, as a final point for the constitution-making process, despite evident constraints in meeting this deadline.

The spring 2013 deadline came and went, and with the assassination of Chokri Belaïd in February 2013, external factors began to increasingly impact the already beleaguered constitution-making process, making it even more challenging. In the end, it took an initiative external to the NCA, namely the Quartet-mediated national dialogue, to pave the way for a road map leading to the constitution’s successful adoption on Jan. 27, 2014.<sup>116</sup>

Over its two-year observation of the process, The Carter Center repeatedly called on the NCA to put a road map in place to help the assembly structure its work as well as to provide the public with greater transparency on the process and facilitate understanding of its complexity.

The Carter Center recommends that constitution-making bodies establish a detailed work plan and time table for the adoption of the constitution at the very beginning of the process to ensure better planning and progress as well as to provide the public with greater visibility on the way forward.

## Inadequacy of the Rules of Procedure

The NCA’s Rules of Procedure, adopted in January 2012, were ill-defined and sparse. As each new step of the process unfolded, gaps were revealed in the Rules of Procedure that at times threatened to hamper the process.

The NCA amended the Rules of Procedure four times between March 2013 and January 2014, at times in response to the ambiguity of the procedures around key issues, at others in reaction to internal and external tensions or to address new  
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political developments.<sup>117</sup> Some of the assembly's changes were successful in addressing lacunas in the text and clarifying the roles and responsibilities of the NCA's various structures. Others only served to complicate the situation further.<sup>118</sup>

An example of the latter is the controversy that gripped the assembly in 2013 over the prerogatives of the drafting committee in relation to those of the constituent commissions. The Rules of Procedure did not clearly delineate the scope and powers of the drafting committee to redraft the various sections of the draft constitution emanating from the commissions. Article 104 of the Rules of Procedure simply directed the committee to "prepare the final draft of the constitution in accordance with the decisions of the plenary," with no further elaboration. The Rules of Procedure, which assigned each of the six constituent commissions a specific topic, also failed to mention transitional provisions and the procedures that should be followed for drafting them.<sup>119</sup>

In March 2013, during the political crisis following the assassination of Chokri Belaid, the NCA plenary met to amend the Rules of Procedure, in the hope of speeding up the process. The problematic Article 104 concerning the powers of the drafting committee was amended to say that "the [drafting] committee meets to prepare the final version of the draft constitution based on the work of the commissions and with the help of experts." The transitional provisions, however, were not addressed.

The words "based on" were interpreted differ-

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assembly's first set of Rules of Procedure.<sup>123</sup> Giving the IPCCPL this mandate could help guarantee that the exercise of legislative power is in conformity with the prerequisites of the constitution.

never enforced, contributing to a culture in which widespread absenteeism was the norm.<sup>128</sup>

This practice tarnished the already compromised reputation of the assembly, especially since

## Absenteeism and Accountability

Absenteeism, both in commission meetings and during plenary sessions, was a major issue throughout the constitution-making process, which led to considerable delays in the work of the assembly and deeply affected the NCA's credibility among the Tunisian public. In addition to profoundly affecting the NCA's credibility among the Tunisian public, this absenteeism meant that the subgroups responsible for the practical development of constitutional drafts could not complete their work in a timely fashion, and the entire process was delayed.

For example, more often than not the commissions worked with some of their members absent, even during crucial discussions and votes on sensitive articles of the constitution.<sup>124</sup> Absent members often subsequently protested that important decisions had been made without them and requested a re-examination of the issues. In addition, some commission sessions could not occur at all due to a lack of quorum (an absolute majority of members). This phenomenon could be seen equally in plenary sessions.<sup>125</sup> Not only were there considerable delays in order to reach the absolute majority quorum required for debates, but members frequently left the sessions before their conclusion, thus losing the quorum needed to hold votes. Tellingly, in the entire two-year process, only the vote on the constitution in its entirety succeeded in drawing all deputies.

In theory, these absences should have been sanctioned in accordance with the Rules of Procedure, several articles of which directly address unjustified absences in various commission and subcommittee contexts.<sup>126</sup> The Rules of Procedure did not specifically address absences in the plenary session, but its section governing membership did explicitly forbid NCA members to be absent without notice and actually called for a reduction of their salaries in proportion to their attendance.<sup>127</sup> These provisions, however, were





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attendance and participation in detail and that the rules are implemented and enforced in a rigorous and transparent manner.

### **The Role of Experts and the National Constituent Assembly's Legal Advisers**

The NCA's openness to external input and advice was a particular strength of the Tunisian process. However, unlike constitution-making processes in other countries, the NCA never formalized the

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were reduced to a largely secretarial support function. This was partly due to logistical and resource limitations in the assembly as well as a certain administrative disorganization.

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The Carter Center recommends that the legislative assembly strengthen its secretariat and, in particular, extend stronger secretarial support to the commissions. Among other things, this would allow the legal advisers to focus on their primary mandate: namely, research and drafting.

### **Absence of a Judicial Review Mechanism**

The constitutional council that had existed for many years under Ben Ali was disbanded by the OPPP decree law immediately following the revolution due to its notorious reputation as a tool of the president's regime.

During the three tumultuous years following the revolution, no mechanism existed to review the constitutionality of laws or the constituent and legislative processes. The Administrative Tribunal stepped into the void. Under Tunisian law, the tribunal is responsible for reviewing administrative acts and arbitrating any litigious process in which the state is a party. As one of the few institutions that commanded a level of respect at the time of the revolution, the tribunal took an active and at times controversial stance on issues closely tied to the transition.

While the interim president of the republic, Foued Mebazaâ, suspended the 1959 constitution in March 2011, the Judicial Appeal Court issued a decision in 2013 finding that the rights and freedoms guaranteed in the constitution were not abrogated by its suspension (Decision No. 43429 of the Judicial Appeal Court, Feb. 5, 2013). The court later played a role in reviewing the administrative functioning of the NCA, scrapping raises for NCA members and twice halting the selection process of the members of the elections management body.<sup>138</sup> The Administrative Tribunal also refused to quash the unilateral decision of Ben Jaâfar to suspend the activities of the NCA on Aug. 6, 2013, a deeply polarizing issue in the assembly.<sup>139</sup>

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to give the tribunal the power of judicial review. The commission finally reached a compromise to establish a provisional constitutional commission to review draft laws, pending the establishment of the Constitutional Court. The Consensus Commission designated the president of the Administrative Tribunal as one of six members of the future Provisional Commission to Review the Constitutionality of Draft Laws (or the IPCCPL). The provisional commission was also

given a limited mandate to examine laws a priori only. This restricted authority reflects the distrust of the Administrative Tribunal among some assembly members.<sup>141</sup>

In countries undergoing similar processes, The Carter Center recommends that in order to ensure that acts by the interim legislative body do not violate existing domestic law or international obligations, a judicial review mechanism should be defined in advance.

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<sup>141</sup> The president of the Administrative Tribunal was replaced several times, most recently just before the president became a member of the IPCCPL.



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during the adoption process of the constitution, when the organization was systematically consulted by NCA members to know the positions taken by other NCA members during the article-by-article vote.

## Transparency and Accessibility of the Process

Tunisia's authoritarian legacy meant that transparency in government was a new concept at the time of the revolution. The affirmation in the NCA's Rules of Procedure that commission meetings and plenary sessions would be public suggested that NCA members acknowledged transparency as an important principle.<sup>143</sup> Around 30 NCA members also joined the international civil society movement, OpenGov, which holds that citizens have the right to access documents and proceedings of official institutions in order to allow for effective public oversight.<sup>144</sup>

Despite this apparent commitment, several NCA members, including NCA President Ben Jaāfar and other OpenGov members, publically expressed reservations regarding full transparency, arguing that Tunisians were not ready for it.<sup>145</sup> Other members were reluctant to allow civil society to play its monitoring role.<sup>146</sup> This skepticism, coupled with a lack of common and agreed-upon working methodology, meant that the provisions of the Rules of Procedure ensuring access to commission meetings and plenary sessions were interpreted inconsistently in practice—most restrictively when it came to civil society organizations—thus eroding the principle of transparency.

### Access to the Debates of the National Constituent Assembly Commission Meetings and Plenary Sessions

The Rules of Procedure stated that commission meetings were public.<sup>147</sup> Meetings behind closed doors were the exception to the principle and could only be held following the request of the majority of commission members. While access to media representatives was generally granted without restriction, civil society organizations were rarely allowed to attend, thus hindering their

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effective access to the debates. Very early on in the process, this issue created controversy among civil society members and members of the NCA. Some presidents of commissions deemed that the spirit of the Rules of Procedure should always be respected and allowed civil society representatives to attend their sessions. Others refused referring to an internal note produced by the NCA and to a



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debate held during a plenary session of the NCA on Feb. 28, 2012, where the general rapporteur of the constitution explained that the meaning of “public” in Article 54 referred only to the media.<sup>148</sup> Despite several inquiries, The Carter Center could not acquire any written record of this restrictive interpretation of Article 54 and cannot confirm its existence. Meetings of the drafting committee and of the Consensus Commission were always held behind closed doors.

The Rules of Procedures foresaw that NCA plenary sessions were public as well.<sup>149</sup> Even if the implementation of this rule was less restrictive than that for commission meetings, citizens and other interested parties who tried to access plenary sessions also faced repeated impediments. While the Rules of Procedure stipulated that the NCA bureau should establish a procedure regarding public access to plenary sessions, this was only done for the last phase of the process, the article-by-article vote on the constitution. Understanding of the commitment to allow public access to plenary sessions varied according to the interlocutor and from one session to the next. Deputies often expressed fear of receiving too many requests to observe commission and plenary sessions — thereby overwhelming the assembly — to explain the NCA’s failure to establish official procedures granting public access to the proceedings.

This concern should not, however, have been used as a justification for inaction. Had commitment to the principle of transparency and public participation been strong, the NCA would have reflected on the best means to manage and regulate the attendance of civil society organizations. Access to the NCA often depended on whether civil society organizations knew one or more NCA members and on the good will of deputies. This practice made it difficult for some civil society organizations that had criticized the institution to have access to it. Individuals or organizations with no connections at the NCA but with an interest in attending plenary sessions found it difficult to do so.

The NCA eventually became more open, largely as the result of continued efforts by the civil society organization Al Bawsala. Actively

lobbying for increased access to the work of the assembly, Al Bawsala found a loophole in the NCA’s interpretation of the Rules of Procedure, which allowed journalists to attend commission meetings provided they presented a press card. The organization’s staff eventually succeeded in attending commission and plenary sessions by producing press cards. In the sessions they attended, Al Bawsala representatives started “live tweeting” the interventions made by NCA members (translated into French) first from their personal accounts and then from April 2012 on, from the organization’s account.<sup>150</sup> This real-time dissemination of the discussions helped citizens, journalists, and international observers to follow the debates even when not physically present in the assembly. More importantly, Al Bawsala challenged the culture of nontransparency of the NCA and contributed to improve the right of citizens to be informed and for civil society to play a role in holding elected officials accountable.

In contrast to the drafting process, the NCA made significant efforts to facilitate civil society’s access to the vote during the adoption phase. Several weeks before the start of the article-by-article vote, the NCA invited interested civil society observers to apply for accreditation on its website. According to the NCA, a total of 353 organizations registered on the site, and all were accredited. The procedure put in place for the adoption phase was effective and likely could have been implemented much earlier in the process.

Tunisia’s experience and comparative experiences globally suggest that observation of the constitution-making process by civil society organizations can have an impact that goes beyond the right of the public to access information. Direct observation of the constituent body can strengthen

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148 During this plenary session, the general rapporteur recalled the preparatory work for the adoption of the Rules of Procedure. He mentioned that while some deputies advocated for the right of civil society organizations to observe the commissions’ work, most deputies considered that commission sessions would only be “public” for the media. See footage of the plenary session of that day at [www.anc.tn/site/main/AR/docs/vid\\_debat.jsp?id=28022012s&t=s](http://www.anc.tn/site/main/AR/docs/vid_debat.jsp?id=28022012s&t=s) (in Arabic, starting at minute 101).

149 Rules of Procedure, Article 76.2

150 Al Bawsala’s Twitter account: <https://twitter.com/AlBawsalaTN> and Facebook page <https://www.facebook.com/AlBawsala>

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civil society's ability to elaborate informed analysis, positioning itself to contribute more meaningfully to the constitution-making process both through advocacy and awareness-raising.<sup>151</sup>

The Carter Center recommends that in countries undergoing similar processes, debates of the body entrusted with constitution-making should be fully open to the public and that formal and objective procedures be put in place to grant access and observer status to media, civil society organizations, and interested citizens.

Tunisia's legislative body should build upon the positive evolution of the NCA with regard to civil society access to the debates and fully commit itself to the principle of transparency. The Carter Center recommends that the assembly establish an unequivocal right of public access to commission meetings as well as plenary sessions in its Rules of Procedure. The institution should also establish formal and fair criteria and procedures to grant access and observer status to civil society organizations and interested citizens.

### Access to Official Documents and Information

Verbatim records of meetings (*procès verbaux*) and reports about the activities of constituent bodies are a valuable source of information for interested citizens, highlighting issues debated during the sessions. The NCA's initial Rules of Procedure did not require constituent commissions to publish verbatim records of meetings.<sup>152</sup> The Rules of Procedure only instructed commissions to post reports describing their activities on the NCA's website.<sup>153</sup> As no deadline was initially foreseen for the release of such reports, few such documents were made public in practice. However, the assembly did publish some documents—notably the reports prepared by the constituent commissions on their respective chapters and overall methodology—at different moments in spring 2013.<sup>154</sup> The General Report on the Constitution Project, issued by the drafting committee, was released on June 14, 2013.<sup>155</sup>

Starting in spring 2012, some assembly members began publishing meeting notes and official records prepared by the rapporteurs of the constituent commissions on their personal

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Facebook pages or blogs, or they gave them to Al Bawsala to be posted on its website.

Despite this practice, many members were still reluctant to have the assembly publish official minutes of working sessions. Advocating for increased transparency, the organization Al Bawsala issued a petition in June 2012 calling for the publication of all official documents by the NCA. While the petition garnered more than 50 signatures by NCA members and 488 citizens in total, it did not yield any results. On Aug. 29, 2012, Al Bawsala, together with two other activist groups, the Nawaat media association as well as citizens of the Tunisian collective OpenGov TN, lodged a formal complaint at the Administrative Tribunal against the NCA for violating the provisions of the decree law related to access by citizens to the administrative records of public bodies.<sup>156</sup>

The lawsuit specifically charged the assembly with failing to publish the results of votes,



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151 Guidance Note of the Secretary-General, United Nations Assistance to Constitution-Making Processes, para. 4

152 Rules of Procedure, Article 61

153 Rules of Procedure, Article 62

154 The reports (in Arabic) can be found at [http://www.anc.tn/site/main/AR/docs/rapport\\_final/liste\\_rapports.jsp#](http://www.anc.tn/site/main/AR/docs/rapport_final/liste_rapports.jsp#).

155 The report (in Arabic) can be found at [http://www.anc.tn/site/main/AR/docs/rapport\\_general\\_const.pdf](http://www.anc.tn/site/main/AR/docs/rapport_general_const.pdf).

156 Decree Law 41 dated May 26, 2011

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deputies' attendance lists, and the verbatim records of the meetings. As of January 2015, the court had not rendered its decision on the matter. In addition to the legal complaint, the civil society coalition also highlighted during press interviews the need for the NCA to dedicate more staff to ensure that verbatim records be prepared in timely fashion and to improve the release of information to the public.

Following the filing of the complaint, the NCA president announced that the NCA would publish attendance lists as well as verbatim records of the commissions' meetings. The promise remained unfulfilled, even when the Rules of Procedure were amended in March 2013 to stipulate that the NCA had one month to publish commis-



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and the right to access information without any limitation or restriction—other than the general limitations established for almost all the rights and freedoms—and calls upon the government to implement this provision in practice.<sup>164</sup>

The right to access information is a fundamental human right as defined by Article 19 of the Universal Declaration of Human Rights and is a critical link to other rights cited in the constitution. Implementation of the right to access public information requires officials to respond to citizens' requests, compile data from different sources, and redact parts of documents to protect sensitive information. The state should also address legal challenges arising from unfulfilled or denied requests. Comparative experiences from other countries suggests that the implementation of this right can sometimes create considerable financial burdens for citizens. Therefore, in order for the right to be meaningful, this burden should be shared between citizens and the state.

The Center recommends that the legislative assembly as well as constitution-making bodies elsewhere in the world publish and disseminate in a timely manner all official documents—minutes, reports, decisions, submissions, attendance records, and details of the votes—including posting them on the institution's official website.

### **Media Access, Outreach, and Communication**

Outreach and communication campaigns, when well thought-out, can play a role in raising public awareness of the process and understanding of the constitution-making body's mandate, thus increasing the legitimacy of both. Access by the media is equally important to ensure a critical assessment of the institution's work.

### **Media Coverage and Relationship With the National Constituent Assembly**

Media access to and coverage of the NCA's work was one of the more positive aspects of the process and helped ensure that citizens were informed regarding key issues debated at the assembly; as well, the NCA's commission meetings and its plenary sessions were open to the media. The latter were also broadcast live on television.<sup>165</sup>

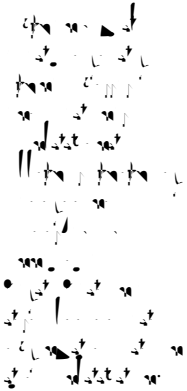
The relationship between the NCA and journalists was often tense. As the NCA lacked a dedicated communications department, deputies initially relied heavily on the media to report on their work. Many NCA members were, however, dissatisfied with media coverage, which they found biased and unbalanced. The media, for its part, considered itself a watchdog, closely monitoring and reporting on the NCA's shortcomings and failures, though it did not always do so accurately or in a balanced manner. In part, this reflected the politicized media landscape in Tunisia, where audiovisual media in particular tend to be affiliated, or are at least perceived to be affiliated, with one political group or another.

Following the revolution, the working conditions of journalists remained difficult, and the freedom afforded them was still limited. Many expressed concerns that the state still limited their freedom of expression. Judicial authorities prosecuted numerous journalists and bloggers, among others, for peaceful expression under penal code provisions on defamation, offenses against state agents, and harming public order, all of which can result in prison terms.<sup>166</sup> Security of journalists was also an issue: Harassment of and attacks on journalists happened at various occasions during the two years of the constitution-making process. The attacks on journalists covering the demonstrations of the Leagues for the Protection of the Revolution in December 2012 and June 2013 in front of the NCA building—and the limited reaction of verbal condemnation it provoked from the NCA—drew protests by journalists working in

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<sup>164</sup> Article 32 of the adopted constitution

<sup>165</sup> This positive initiative was sometimes undermined by practical problems. For instance, live broadcasting was regularly interrupted by news bulletins or redirected to another channel (TTN2, which was not as widely accessible as Wataniya 2 and not accessible at all from abroad). Such interruptions and redirection did not happen during the article-by-article vote.



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the assembly, who felt that they were not provided with sufficient security to do their work.<sup>167</sup>

The NCA's relations with the media somewhat improved over time, with public as well as private media outlets regularly covering commission work and plenary sessions. The NCA improved its communication with the media during the final voting and adoption phase. NCA members readily answered questions from journalists and participated in talk shows and debates on the constitution. The media's work was facilitated through the creation of a dedicated central space at the assembly for use as a studio during the article-by-article vote. The media played an important role in broadcasting the process to the Tunisian public. Public broadcasting channel Wataniya 2, for example, dedicated its

programming throughout the voting process to live broadcast of plenary sessions and related interviews with various deputies and civil society members.

During the first days of the article-by-article vote, journalists had difficulty reaching deputies, as media and civil society members were prevented from accessing the ground floor. Despite the dedicated "studio space" on the first floor, the ground floor was an important space, as it contained the entrance and exit to the plenary hall where deputies tended to congregate. The decision to deny

<sup>167</sup> This was not the first time that journalists had complained about being attacked by LPR members. The same had occurred on Dec. 8, 2012, during a demonstration by LPR members calling for reform of the media and "protection of the revolution." On March 3, 2014, journalists protested the police's harsh treatment of them while covering a rally by supporters of Imed Dghij, an LPR leader.

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access to the floor was made by the NCA's bureau, which hoped to reduce pressure on deputies at a sensitive moment of the process. Journalists protested this and called on the NCA president to lift the restriction.<sup>168</sup> The NCA bureau conceded as far as media were concerned but continued to deny access to the ground floor to civil society organization representatives.

In addition to broadcasting the plenary sessions, national television also broadcast interviews with NCA members that were often followed by debates on public as well as private television and radio channels. This access allowed a wide range of political party members as well as political and legal experts and civil society activists to participate in the discussions. Not every political group in the assembly felt included: NCA members belonging to the former *Al-Aridha Al-Chaâbia*, now *Tayyar Al-Mahaba*, complained that they were not invited to any of those debates, and as they had on many occasions in the two years prior, spoke of a "media blackout" against their party.<sup>169</sup>

### Outreach and Communication

The fact that the media were granted unrestricted access to the NCA was often used as justification by NCA leaders for not conducting its own communications and outreach to the public. This attitude indicates a misunderstanding regarding the function of the media. In a well-functioning democracy, the media does not supplant the state's obligation to guarantee the right of citizens to information. Strong communication and outreach to citizens would have not only contributed to helping the NCA fulfill this obligation but also would have helped allay fears of assembly members regarding the media's role in the process. By and large, NCA members had little trust in the media's portrayal of the assembly's work, and many if not most seemed to feel that media coverage of events and discussions taking place at the assembly was unfair and oftentimes biased.

Unfortunately, the assembly never developed an adequate communication strategy or put in place public outreach campaigns to inform citizens about its work. One of the few steps that the NCA took in this regard was to assign NCA member Karima Souid the role of deputy to the

president of the NCA in charge of information, communication, and relations with the media.<sup>170</sup> Beyond this, however, few means were devoted to communication, and the NCA did not set up a communications department or even establish a team to focus on this aspect. Alone, Souid could not fill the need, and the situation became more dire when she left the *Ettakatol* party and openly, vehemently, and repeatedly criticized the NCA president to the media. Far from improving the image of the NCA, this damaged it even more, since it created confusion as to what represented her personal opinion as opposed to that of the NCA as an institution.

Communication by other members of the NCA with the media, notably senior NCA members, was irregular, informal, uncoordinated, and insufficient. The presidency did not organize regular press conferences and did not often issue press communiqués. Subject matters of central importance, such as delays in the process, were often communicated in passing to the media.

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<sup>168</sup> See the communiqué released by the Tunis Center for Press Freedom on Jan. 4, 2014, "De nouveaux obstacles devant s'identifier de l'Assemblée Nationale Tunisienne," *Libération*, 4 Jan. 2014, <http://www.liberation.fr/info-actualites/70r-karima-souid-teeceozedion-ae-ettakatolt-of-desinzed-the-oppollationpaarty>.

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especially since many Tunisians use this kind of media, especially Facebook, as a primary source of information.<sup>173</sup> While it was created in May 2013, the Facebook page was used as a communication tool by the NCA only from January 2014 onward, starting with the adoption phase of the constitution. The page proved useful since the information published on it could not be found elsewhere and since it dealt with practical aspects of the vote, such as plenary session or Consensus Commission schedules, amendments presented by the Consensus Commission or groups of deputies, and articles voted on during the day's sessions.

From that moment, the Facebook page supplanted the NCA's website as the official source of information on the NCA, since updates on the former were more comprehensive, timely, and up-to-date. The Facebook page also featured many photos illustrating the activity of the assembly and offered an insight into the work of deputies.

The NCA's engagement with social media, though commendable, came very late in the process and exacerbated the impression of "missed communication opportunities." Using social media tools from the outset may have rendered the work of the assembly less opaque and given a better sense of the assembly's progress. Furthermore, social media, if used effectively by the legislative assembly, should not just be a one-way street of information but rather should serve as a place for citizens to be informed as well to express feelings and views, pose questions, and engage in dialogue with the institution.

While The Carter Center acknowledges that effective communication strategies require expertise and means, it notes that the issue was not considered a priority and did not garner the attention it deserved. Actions such as regular press communiqués and press conferences with the media at the assembly, during which NCA officials could answer journalists' questions, do not necessarily require significant resources. In addition, the NCA could have supported the work of credible civil society organizations to conduct outreach to citizens, particularly in regions outside Tunis. Finally, the Center notes that many donors, institutions, and experts offered to support the NCA

in this endeavor, both technically and financially. In several instances, the NCA failed to follow up concretely on these offers.

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post-conflict and otherwise, highlight the benefits of public consultations in terms of increased legitimacy, added relevance, and stronger acceptance of the new constitutional order.<sup>174</sup> International law supports these examples, notably the International Covenant on Civil and Political Rights (ICCPR), which establishes obligations for participation in public affairs and which gives citizens an individual right to participate in public affairs surrounding constitution making. Notably, according to a U.N. General Assembly declaration, participation in the conduct of public affairs includes the right of citizens to submit proposals to state institutions “for improving their functioning and [to] draw attention to any aspect of their work that may hinder or impede the promotion, protection, and realization of human rights and fundamental freedoms.”<sup>175</sup>

In Tunisia, there was a will to involve citizens in the process. However, lack of planning, methodology, and — to a certain extent — understanding of what public participation meant resulted in limited opportunities for citizens’ involvement. Those that did exist were often poorly communicated to the public.

When drafting the Rules of Procedure, the deputies allocated one week per month for NCA members to reach out directly to citizens (Article 79). However, these “outreach weeks” or “week of the regions” never materialized. There was no administrative, financial, or logistical support provided by the NCA for outreach activities, which were left to the initiative and individual commitment of the deputies. In the first months of the constitution-making process, some members appeared very committed to report to their constituencies and were able to mobilize on their own, while others relied on their political party structures to prepare meetings. But without any formal

institutional support, these initiatives remained rare, and citizens began expressing skepticism toward the NCA, whose work was neither well-known nor well-understood. Ironically, instead of addressing complaints by increasing outreach, the week devoted to this task was canceled altogether, partly due to a sense of urgency and partly due to the NCA leadership’s feeling that it could be perceived as the NCA taking time off despite the significant delays.

The Carter Center regrets that the only mechanism foreseen to encourage regular contact and exchange between deputies with their constituencies was not better designed and finally dropped altogether.

Early on, the NCA bureau appointed Baddredine Abdelkafi (Ennahdha) as deputy to the NCA president in charge of the relationship with citizens, civil society, and Tunisians from abroad. Abdelkafi took a positive initiative to set up a working group on this issue with representatives of the different political blocs at the NCA. The working group elaborated several projects to consult citizens by various means but lacked logistical means and support and, to a certain extent, internal backing. Civil society participation in the process never assumed the importance it deserved within the broader NCA. In addition, the few opportunities put in place for citizens’ involvement were not coupled with any information campaigns and thus remained largely unknown to the general public.

For instance, the online consultation on the official NCA website to allow citizens to suggest

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174 Guidance Note of the Secretary-General, United Nations Assistance to Constitution-Making Processes, Lessons Learned From Constitution-Making: Processes With Broad-Based Public Participation, Democracy Reporting International (DRI), 2011

175 The right to take part in the conduct of public affairs is enshrined in Article 25, ICCPR. The Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the U.N. General Assembly on Dec. 9, 1998, states in its Article 8 that participation in the conduct of public affairs includes inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that csFEFF002der426880 -1.286 TD(interna

issues of importance in the constitution, which was launched in September 2012, was not advertised beyond a short press conference. While the initiative itself was positive, the online consultation received only 217 online contributions, in a country in which more than 41 percent of the population has access to the Internet.<sup>176</sup>

The NCA also organized a two-day dialogue session with civil society organizations on the constitution in September 2012. Civil society organizations were requested to register online for the event. The enthusiasm with which civil society organizations responded to the invitation, with more than 300 civil society members taking part, showed the high level of interest of civil society in the constitutional debate.<sup>177</sup> It should be noted that several civil society organizations boycotted the event, because, among other things, at that time no guarantees were put into place to ensure that comments and recommendations made by those organizations during these two days would be considered by the constituent commissions.<sup>178</sup>

The Carter Center regrets that the NCA organized only one such formal consultation with civil society organizations during the two-year process. The NCA could have replicated this initiative at the regional level to afford civil society groups in all parts of the country an opportunity to contribute.

The NCA's main initiative to consult citizens was the national public consultations, which were held from December 2012 to February 2013. Convinced that public participation would empower citizens by acknowledging their sovereignty and increase their knowledge about the process, the interparty working group led by Abdelkafi advocated for extensive national consultation in all of Tunisia's regions. The idea was presented to the NCA's leadership in mid-2012 by the team in charge of building relationships with civil society, but it did not garner wide support. In its September 2012 statement, The Carter Center recommended that such consultation be conducted, arguing that an inclusive and participatory process was more likely to engender consensus around the new constitutional framework. Some assembly members, including the members of the NCA's bureau, feared that such consultations

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would slow down the process, which, at that time, had already suffered delays. Members advocated for and against increased outreach and reached a compromise, with NCA members holding national consultations on weekends in order not to affect the assembly's work.<sup>179</sup>

Public consultations started after the publication of the second draft of the constitution in December 2012 and began with two sessions with students in Tunis and Sfax. They were followed by public sessions held through January 2013 in Tunisia's 24 governorates, at a rate of six governorates each weekend. Meetings with expatriate constituencies in France and Italy were also organized in January and February 2013. The Carter Center observed almost half of the dialogue sessions in Tunisia, in the governorates



<sup>176</sup> Tunisia had the third highest rate of Internet penetration in Africa in 2012. See <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>.

<sup>177</sup> More than 300 civil society organizations indicated their interest in participating, and the NCA limited the number of participants to that number due to logistical constraints.

<sup>178</sup> These organizations included the Tunisian League for Human Rights (LTDH), the International Federation of Human Rights (FIDH), the Association of Tunisian Democratic Women (ATFD), and the Euro-Mediterranean Human Rights Network (EMHRN). <http://www.tap.info.tn/fr/fr/politique/300-politique/33042-des-associations-et-organisations-boycottent-le-dialogue-sur-le-projet-de-constitution.html>

<sup>179</sup> These sessions were held with support from the UNDP and the cooperation of the National Democratic Institute.

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of Tunis, Sfax, Sousse, Monastir, Gabès, Beja, Zaghouan, Nabeul, Ben Arous, Ariana, Medenine, and Tozeur.

Once again, the communication strategy around these consultations was weak, and only well-informed civil society groups and interested citizens knew of the consultations. In total, the consultations involved around 6,000 citizens over the two-month period.<sup>180</sup>

Participation in the first few sessions was low, increasing near the end of the process with turnout generally varying between 150 to 300 people. In the sessions observed, women's participation was generally low (around 10 percent of participants), with the exception of Nabeul governorate, where approximately 30 percent of the participants were women. The Center estimates that the main reasons behind the low participation at the beginning of the process were the lack of public information about the events and the limited initial involvement of some political parties.<sup>181</sup>

As opposition parties became more aware that public comments from the consultation sessions would directly contribute to the constitution-drafting process and to the subsequent mobilization of the electorate, they began to encourage their supporters to attend the sessions. Political mobilization from both religious and secular political groups was evident in most sessions.

Despite the low participation, those who attended the sessions demonstrated knowledge of the draft constitution, raised relevant points, and made constructive recommendations to the NCA members in attendance, among whom a member of the drafting committee was always present. Topics raised during the consultation sessions centered on several main themes, including ways to refer to the universality of human rights in the constitution, the rights and freedoms to be granted by the new constitution, the role of religion and Arab Muslim identity in the state, state powers and security forces, the inclusion of a rejection of Zionism in the preamble, and provisions for amending the constitution. Participants also raised local issues of concern: For example, participants in Tozeur, a governorate in the south of Tunisia

with a very arid climate, highlighted the right to water.

When the Rules of Procedure were initially adopted, the NCA did not foresee any procedures as to how and to what extent the suggestions made by citizens and civil society organizations should be taken into consideration. During the amendment of the Rules of Procedure in March 2013, deputies added language granting the constituent commissions the authority and responsibility to study the comments and suggestions made during the general debate and national consultations (revised Article 104). The Carter Center welcomed this amendment, as it had called for the establishment of a formal procedure to process and record inputs made by citizens during the various consultative mechanisms so that NCA members and the constituent commissions could more effectively take these comments into account. One of the specific positive outcomes of the national consultation process was the inclusion in the draft constitution of the rights of the political opposition, an issue that was raised during the national consultations as well as on other occasions.<sup>182</sup>

The lack of opportunities to participate in the constitution-making process caused citizens, and especially young people, to feel excluded from the process. Many began to see the NCA and the process with growing skepticism. This sense of disenfranchisement was reflected in a survey undertaken by the United Nations Development Program (UNDP) in 2012 among 15- to 29-year-olds. Fifty-six percent indicated that they were completely unaware of the contents of the constitution, and another 30 percent responded they had

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<sup>180</sup> See the ANC's report on these consultations (in Arabic): <http://www>



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only slight knowledge. Not surprisingly, around 45 percent indicated they did not feel involved in the process of elaborating the constitution.<sup>183</sup>

Tunisia's experience offers rich lessons for constitution-making bodies elsewhere in the world and is a reminder that in a transitional context, failure to engage the public in the process can lead to feelings of exclusion. Demonstrations across the country against governors, mayors, and other authorities suggest that these shortcomings also fueled resentment toward state institutions. Enabling citizens to actively participate in public affairs and in the exercise and protection of their rights should be an integral part of the process.<sup>184</sup> Inclusive and participatory processes are more likely to engender consensus around a constitutional framework.

The Carter Center recommends that constitution-making bodies thoughtfully plan and pursue mechanisms to engage the public genuinely in the process. In the early phases of its existence, constitution-making bodies should devote careful thought to the design of public participation mechanisms in the drafting process and the means necessary for their effective realization. Such consultations should be advertised by comprehensive information campaigns using the entire spectrum of the media. Campaigns should focus on the constitution in general, the work of the constitution-making body, and the opportunities for the public and individual citizens to participate directly in the process. Ideally the campaign should also present the limitations of public participation to avoid disappointment and frustration.<sup>185</sup>

The body entrusted with the drafting of the constitution should also build sufficient time into the process for a thorough national debate on the constitution.

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## The Role and Impact of Civil Society

Two key functions of civil society are to provide a check on state institutions and to offer avenues for citizens to engage with the process across a variety of perspectives. Furthermore, civil society can play a key role in helping citizens to understand the issues under debate by publicizing and explaining the issues, providing the public with a range of opinions and perspectives, and facilitating dialogue between the drafters of the constitution and the people. Civil society, which reflects ideas and positions across the political spectrum (from those aligning with government positions to those who challenge its policies), could also directly monitor and comment on the process.

During the constitution-making process in Tunisia, a significant number of civil society organizations engaged in multiple initiatives, including Al Bawsala, ATIDE, Conscience Politique, Free Sight Association, I WATCH, Jeunesse Sans Frontières, Lam Echaml, and the Ofyia Center, which organized forums for the public to interact with NCA members on matters related

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regarding the NCA, including votes made in plenary sessions and the attendance rate of each NCA member. Marsad.tn also offered an interactive platform to comment on each article of the draft constitution and created another platform to give individuals the possibility to address questions directly to specific NCA members and to comment on each article of the draft constitution.

In the first stages of the constitution-making process, a group of interested citizens—including several who had unsuccessfully contested for a seat in the NCA—created a “civil constituent assembly,” mirroring the NCA’s constituent commissions. This initiative was intended to promote the development of political consciousness throughout Tunisia and to yield recommendations regarding the constitution for consideration by the NCA. Some of these recommendations were taken into consideration by the NCA, particularly on issues of local democracy. The group lost some credibility, and its role and impact as a civil society initiative diminished when many prominent members of the civil constituent assembly joined the opposition party Nidaa Tounes.

Other civil society groups organized numerous conferences, roundtables, and workshops on the content of the different drafts.<sup>189</sup> For instance, after each release of a draft of the constitution, the Tunisian Association of Constitutional Law (Association Tunisienne de Droit Constitutionnel known by its French acronym, ATDC) often in partnership with the Association for Research



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NCA members at times did a much better job than their parties in communicating with the public. For example, in the fall of 2013, when the Consensus Commission met in closed sessions to discuss outstanding issues in the draft constitution, several of the commission's members summarized agreements reached within the commission to the public via social media.

For the most part, political parties failed to conduct regular, direct, and countrywide outreach to inform the public about their work within the assembly, their positions on important constitutional issues, and the constitution-making process overall. This may have reflected, in part, a lack of a unified position within the parties themselves on key issues or the failure to elaborate a position beyond that of their NCA members. It also reflects the underdeveloped nature of many political parties in Tunisia, since most were formed in haste following the revolution and have struggled to define their identity, elaborate a vision, and build their structures.

## International Input and the Role of International Organizations

Prior to the revolution, few international organizations operated in Tunisia. Following the revolution, many were eager to play a role in the transition. Tunisia's constitution-making process has been a nationally driven and owned process. However, numerous international actors, including multilateral and regional organizations such as the United Nations and the European Union as well as individual country governments and international nongovernmental organizations, provided expertise and resources to the process and at times advocated around specific issues.<sup>192</sup>

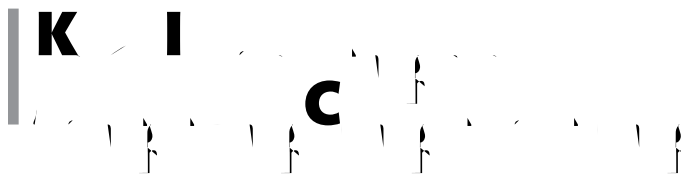
Most Tunisian decision makers and NCA members were interested in the opinion of international actors and were willing to consult with them particularly in regard to international standards and comparative experiences of constitution-making. International involvement, however,

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organizations or embassies also hired constitutional professors to advise national actors.<sup>195</sup>

While some of these experts were involved throughout the entire process and succeeded in developing trust with NCA members, others came just once and tended to push for ideas drawn





The NCA released four drafts of the constitution over the two-year period. There was also a “Draft 2bis,” which refers to the compilation of all the chapters prepared by the constituent commissions after having incorporated comments emanating from various sources on the second draft. On April 10, 2013, this text was submitted to the drafting committee for review, but it was not publicly released though it formed the basis of the third draft released by the NCA on April 22, 2013. The Carter Center assessed a number of key constitutional issues throughout the various drafts.

The text evolved significantly over time, in most instances toward greater clarity and a higher degree of protection for fundamental freedoms and human rights. Throughout the drafts, NCA members strengthened women’s rights, improved the guarantees for an independent judiciary, and removed excessive restrictions on rights and freedoms from most provisions. They also strengthened fundamental political and civil liberties and granted the Constitutional Court full power immediately upon its creation. Nevertheless, concerns remain regarding some provisions where the wording could lead to insufficient protection of internationally recognized fundamental freedoms and rights. These include measures to protect citizens from discrimination, provide security of tenure for judges, and safeguard fundamental freedoms during a state of emergency, all of which should be strengthened.

The adoption of the constitution is a key step in the country’s transition from authoritarianism to democracy, but it is not sufficient on its own to

guarantee a successful transition. Tunisian authorities should take legislative action both to address remaining concerns and to ensure that the existing legal framework is brought into alignment with the new constitution.

## International Law

International law defines the legal responsibilities of states in their conduct with each other as well as their treatment of the people within their boundaries. Its domain encompasses a wide range of issues, including human rights, migration, international trade, and the use of force. States have developed a variety of international instruments by which they establish rights and obligations among themselves, such as treaties, agreements, conventions, charters, protocols, declarations, memoranda of understanding, *modus vivendi*, and exchange of notes.<sup>204</sup> These international documents, once ratified by a state, are binding and supersede domestic law.

The NCA took a conservative approach in the first two drafts of the constitution with regard to the status of international law and its hierarchy vis-à-vis Tunisian law and the constitution. These drafts made Tunisia’s respect of its international commitments conditional upon those commitments’ conformity with domestic law, a position

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204 See the U.N. Web pages on international law at [www.un.org/en/globalissues/internationallaw/](http://www.un.org/en/globalissues/internationallaw/) and [https://treaties.un.org/pages/Overview.aspx?path=overview/definition/page1\\_en.xml](https://treaties.un.org/pages/Overview.aspx?path=overview/definition/page1_en.xml)



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that contradicted Tunisia's obligations under the Vienna Convention on the Law of Treaties, which states that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."<sup>205</sup> The drafting committee specified in the third and fourth drafts that inter-

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inspiration from the civilizational heritage and reform movements based on the elements of the Arab–Muslim identity and the civilizational gains of humanity.”<sup>207</sup>

## Religion in the Constitution

From the outset, the place of religion in the new constitution mobilized political parties and civil society. The heart of the debate was how best to find a balance between the Arab–Muslim identity of the vast majority of the Tunisian people and the desired secularism. (The debate was about how best to balance the Arab–Muslim identity of the vast majority of the Tunisian people and the desired secularism.)

Despite advocacy by various human rights organizations, including The Carter Center, this issue was never seriously considered by the Consensus Commission. The word “supreme” was retained in the final version of the preamble of the constitution, despite the fact that it implies a hierarchy of human rights whereby some may be more important than others. This places a burden on the Tunisian judiciary to interpret the phrase in a way that does not compromise the rights and freedoms enshrined in the constitution and that remains consistent with the Vienna Declaration, which states that “all human rights are universal, indivisible, interdependent, and interrelated.” The declaration further states that regardless of political, economic, and cultural systems, states have an obligation to “treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”<sup>208</sup> Tunisia’s 1959 constitution was more precise than the 2014 constitution in this regard, stating, “The Republic of Tunisia shall guarantee fundamental freedoms and human rights in their universality, comprehensiveness, complementarity, and interdependence.”<sup>209</sup>



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The adopted constitution also forbids amending Article 2, which proclaims “the civil nature of the state.” Some civil society representatives have argued that defining the state as both civil and Islamist in nature is contradictory. For that reason, they fear that prohibiting amendments to both Articles 1 and 2 could create conflict.<sup>211</sup>

The NCA also debated vigorously the concepts of freedom of religion and conscience. Freedom of conscience, included in the fourth and final draft of the constitution, had been absent prior to that. Its inclusion in the fourth draft was the product of months of debate and the result of extended negotiations between political parties and other stakeholders during the national dialogues that took place in spring 2013. The NCA eventually stipulated in Article 6 of the fourth draft that “the state protects religion, guarantees freedom of belief and conscience and religious practices, protects the sacred, and ensures the impartiality of mosques and places of worship away from partisan instrumentalization.” The issue appeared settled,

but the plenary vote on the constitution proved otherwise. Clashes between NCA members of different ideologies and political affiliations around the issue of the status of religion in the constitution resulted in calls to amend the article.<sup>212</sup>

Some NCA members felt that the state should be a protector of religion and of “the sacred.” Others believed that the constitution should leave each person the freedom of religious choice, without intrusion or interference by the state. In the end, the NCA plenary voted on three different

211 Besides Article 1 and 2, the words “cannot be amended” appear in two other instances in the constitution: Article 49 (no amendment of the constitution can undermine human rights and freedoms guaranteed in the constitution) and Article 75 (the number and length of presidential terms).

212 A member of the Ennahdha bloc made a declaration to the media that was interpreted by some as putting into question the faith of another deputy from the Democratic bloc. This resulted in heated debate about the need to add guarantees in the constitution against allegations of takfir that could expose accused individuals to the risk of physical violence. Takfir is labeling another Muslim a nonbeliever or kafir.



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rights and freedoms. Furthermore, the language limited certain rights to various degrees. It was not always clear how the drafters of the constitution had determined the limitations or on what basis. The fourth draft, for example, guaranteed the right of access to information “within limits that do not prejudice national security or the rights that are guaranteed by the constitution.” Freedoms of expression, media, and publication could not be restricted except by virtue of a law protecting “the rights, reputation, safety, and health of others.” The right to peaceful assembly and demonstration was guaranteed but could only be exercised per procedural regulations provided for by the law “without prejudice to the essence of the right.” The right to privacy and freedom of movement

Despite these important gains, The Carter Center remains concerned about potential limitation of rights guaranteed in the new constitution. While Tunisia has observed a moratorium on the death penalty since 1991, the constitution does not ban the death penalty outright, even if the right to life is defined as “sacred” by the constitution (Article 22) and can only be limited by law in extreme situations. It should also be noted that, in addition to the conditions delineated in Article 49 to limit rights, the constitution allows the president to take exceptional measures in times of state emergency, which often results in curtailing individual freedoms.<sup>221</sup> The constitution does not elaborate on the status of rights and freedoms once a state of emergency has been pronounced. The Carter Center recommends that subsequent legal reform restrict limitations to only those necessary for a specific period of time to meet the exigencies of the exceptional situation. Further, rights considered nonderogable in international law should never be limited under emergency powers.<sup>222</sup>

draft, the adopted constitution does not explicitly prohibit other grounds of discrimination as warranted by international law.<sup>223</sup>

Article 21 specifies only that “all citizens, male and female alike, shall have equal rights and duties, and shall be equal before the law with no discrimination.” Not only are grounds for discrimination other than gender not mentioned, but the clause also does not conform to Tunisia’s obligations under the ICCPR, which specifies that equality before the law is a right of the individual and is not limited only to citizens.<sup>224</sup>

The Carter Center recommends that legislators revisit relevant laws, taking into account Tunisia’s international obligations, and incorporate clear prohibitions of discrimination on all grounds, including race, color, language, religion, political or other opinion, national or social origin, property, birth, or other status, toward all people and not only citizens.

It is noteworthy that, while Article 21 does not refer to other grounds of discrimination, its contribution to the protection of Tunisian women’s rights is significant, a central issue during the entire constitution-making process.

The first draft of the constitution ignited a heated debate on women’s rights in Tunisia, as it mentioned the “complementary roles of men and women inside the family” without reference to the equality of men and women.

### Protection of Women’s Rights and Equality

The first draft of the constitution ignited a heated debate on women’s rights in Tunisia, as it mentioned the “complementary roles of men

### The Principle of Nondiscrimination

During the drafting process, debates around the principle of nondiscrimination revolved mainly around gender issues. While Article 48 also prohibits discrimination against people with disabilities, other possible grounds of discrimination—including race, color, language, religion, political or other opinion, and national or social origin—received far less attention. The unofficial version (draft 2bis) of the constitution mentioned “all forms of discrimination.” However, this specification was not incorporated into the third and fourth drafts. As a result, while language regarding gender equality improved in each successive

221 Article 80 of the Tunisian Constitution allows the president to take exceptional measures in the event of an imminent danger threatening the entity, security, and independence of the country, after consultation with the head of government, president of the Assembly of the People’s Deputies, and requires him to give notice to the head of the Constitutional Court. After a lapse of 30 days, the Constitutional Court may examine continued need for the measures, on request from the head of the Assembly of the People’s Deputies or 30 deputies.

222 Article 4 of the ICCPR and Human Rights Committee General Comment No. 29

223 Article 2 (1) of the ICCPR states, “Each state party (...) undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant without any distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.”

224 Article 2 of the ICCPR stipulates that states undertake “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant,” Article 26, ICCPR: “All people are equal before the law and are entitled without any discrimination to the equal protection of the law.”

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and women inside the family” without reference to the equality of men and women. More gener-

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Center encourages Tunisian authorities and political parties to do their utmost to “achieve parity in elected assemblies.” The Center encourages the state to adopt positive measures in all areas in order to achieve the effective and equal empowerment of women and to work to eliminate not only violence against women but, more widely, all forms of discrimination against women.<sup>229</sup>

During the elaboration of the election law, the NCA faced a first test of the principle of gender parity as enshrined in the constitution. The Center welcomes provisions in the electoral law that put in place measures to achieve gender parity in nomination lists by providing that women and men be nominated in alternating positions and encourages the state to tackle all barriers to women’s participation in its implementation of the law.

## **Economic, Social, and Cultural Rights**

The constitution guarantees many economic, social, and cultural rights, including the right to health (Article 38), education (Article 39), culture (Article 42), water (Article 44), and more broadly to a clean environment (Article 45). But the area of economic, social, and cultural rights is one of the few that did not consistently evolve toward stronger protections over successive drafts of the constitution. In some instances, the language in the adopted constitution does not fulfill the vision of the rights and freedoms constituent commission, which worked on these issues.

Further, many economic, social, and cultural rights in the constitution were not spelled out to explain how they are to be exercised and achieved. In addition, the constitution does not obligate the state to realize these rights to the maximum of its



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these resources shall be submitted to the assembly for approval" (Article 13).

The realization of economic, social, and cultural rights often has financial implications and requires the establishment of concrete enforcement mechanisms. The Center encourages Tunisian authorities to devote appropriate resources to the implementation of these rights, in order to meet the new constitution's human rights commitments and the aspirations of the Tunisian people.

## Election Rights

Guarantees for electoral rights evolved significantly from the first draft of the constitution to its adoption. While the right to vote did not appear in the first draft—an unfortunate omission addressed in the second draft—the requirements for genuine elections in the adopted constitution align closely with those elaborated in international law.<sup>232</sup>

The Carter Center commends the NCA for its efforts to protect the electoral process and voting rights, which form the foundation of the modern democratic state. The constitution requires that legislative, presidential, and local elections be universal, free, direct, secret, fair, and transparent.<sup>233</sup> The words "fair and transparent" were added in the fourth draft, a positive step that reinforces the democratic nature of elections. The adopted constitution, however, omits the principle of equality in the articles related to voting rights. Equality is a fundamental element of the right to vote and is directly mentioned in the Universal Declaration of Human Rights as well as the ICCPR. The equality of the vote, or "equal suffrage," refers to the principle of "one person, one vote" so that no citizen's right to vote is greater or less than that of another citizen. It is one of the basic measures to combat election fraud, since such fraud is a violation of equality. Equality of the vote also means that every citizen's vote should have the same value. For example, the number of citizens or voters per elected representative should be generally equal when representatives are elected from different constituencies. This omission is significant, and lawmakers should make every effort to incorporate

the principle when taking decisions regarding the demarcation of Tunisia's future electoral districts.

Concerns remain regarding the restriction of the right to vote. Article 34 on electoral rights is one of the few articles that retained a specific limitation, and thus it may escape the stringent conditions set in the general limitations clause (Article 49). The article gives wide scope to the law to determine the limits that could be placed on electoral rights. While this could be beneficial in certain circumstances, The Carter Center recommends that should any measures be placed to restrict these rights, the restrictions should be reasonable, proportional, and necessary in a democratic society, as per the conditions spelled out in the general limitations clause.

Furthermore, the criteria for candidacy for election to the office of president of the republic were hotly debated during the entire constitution-making process. Discussion centered on the question of whether to place an upper age limit on candidates as well as on the restrictions on dual nationals. Both measures directly affected several potential candidates.

The second and subsequent drafts of the constitution stipulated that candidates for the office of the president of the republic have a minimum age of 40 and a maximum age of 75. Key political stakeholders and members of the Consensus Commission managed to reach an agreement to remove the upper age restrictions on presidential nominees, to lower the minimum age to 35, and to soften the interdiction of candidacy for people holding dual citizenship. During the final plenary vote, these issues remained controversial. The assembly was forced to vote twice on the article (Article 74) but retained the Consensus Commission's format in the end.<sup>234</sup>

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<sup>232</sup> Article 25 of the ICCPR states that "every citizen shall have the right and opportunity... (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors..."

<sup>233</sup> Articles 55 (legislative elections), 75 (presidential elections), and 133 (local elections)

<sup>234</sup> Article 73 of the fourth draft

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The removal of the age ceiling in the constitu-

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the president of the republic and the government, led by a head of government, “hold the executive power.” These changes, emanating to some extent from the national dialogues, were criticized by some NCA members, who considered them insufficient.

In the end, the plenary adopted measures that clarified the competence of the head of government and the president of the republic, but some gray areas remain. In several instances, the constitution foresees that the president of the republic shall take decisions after consultation with the head of government.<sup>238</sup> These provisions may prove complicated to implement, should the executive powers fail to reach agreement. The constitution stipulates in Article 101 that in the case of a dispute arising between the heads of the executive, the “most concerned” of the two parties may refer the matter to the Constitutional Court for a ruling, which must be issued within a week. While the court could, in principle, act

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second drafts, are a key positive outcome of the national consultations held in December 2012 and January 2013.<sup>240</sup> The third draft includes a reference to the opposition as an integral element of the Assembly of the Representatives of the People, and in the fourth draft similar language is used to grant “the opposition the right to create and preside over an inquiry commission every year,” but without giving further information on the status and prerogatives of such a commission.

The final text of the constitution not only retains the explicit recognition that the opposition is an “essential component” of the legislature but also provides for a member of the opposition to head the legislative assembly’s finance committee. Such committees play a key role in controlling the state’s funds and are charged with reviewing the state’s annual budget before it is voted on in Parliament as well as with assessing whether the state’s monies are being used wisely.<sup>241</sup> The constitution also extends the right to refer a draft law to the Constitutional Court not only to the president of the republic and the head of government but also to any 30 members of the assembly.<sup>242</sup> This

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constitution to protect judicial independence. The guarantees of judicial independence in the new constitution can be seen as a key turning point in Tunisian history, in light of past practices of authorities—both prior to the revolution and to a lesser extent since—that made the judiciary vulnerable to the executive power.

The NCA also improved the text as it pertains to the establishment of the High Judicial Council, including its composition. According to the adopted constitution, the council must be established within six months of the upcoming legislative elections and will play an important role, among others, in selecting the members of the Constitutional Court. A key aspect of the council's work will be to deal with all matters relating to the appointment, promotion, dismissal, and career progression of judges. Initially and until the fourth draft, it was foreseen that half the members of the council would be judges, while the other half would not be judges. This measure was amended to increase the percentage of judges to two-thirds. The adopted constitution also strengthened selection measures, requiring the election and not the nomination of most judges and those who are not judges. Article 112 stipulates, moreover, that "the remaining third (those who are not judges) shall be composed of specialized independent individuals" and that "elected members shall undertake their functions for a single six-year term," which are further guarantees of independence.

Although this issue was apparently not discussed prior to the adoption phase of the process, a group of NCA members proposed an amendment to enshrine the profession of lawyers in the constitution for the first time in Tunisian history. The resulting article (Article 105) states: "The profession of lawyer is a free independent profession that contributes to the establishment of justice and to the defense of rights and freedoms. Lawyers are entitled to the legal guarantees that ensure their protection and the fulfillment of their task." This article should be read in the context of Tunisia's authoritarian past, in which lawyers were frequently subjected to harassment by state security. In this sense, the adopted language could play a role in strengthening a lawyer's right to provide

defense and the right of individuals to a fair trial. The right to appeal—an ingredient of the right to a fair trial—first appeared in the second draft (Article 104) but was removed in the fourth, then eventually reintroduced in the final version of the constitution (Article 108).

Despite these strong guarantees, security of tenure requires further elaboration in the law. Article 107 states that no judge may be transferred, dismissed, expelled, or subjected to disciplinary punishment "except in accordance with the guarantees provided for by law." Though the article requires a decision by the High Judicial Council before any of the above actions can be taken, it leaves wide scope to the law to determine the criteria for dismissal. These could be used in future to undermine the judiciary.

The Carter Center recommends that the government, the NCA, and the legislative assembly incorporate stronger provisions on the independence of the judiciary into the legal framework, consistent with international standards. This should include the unambiguous affirmation of security of tenure with regard to appointment, promotion, and discipline, with removal of judges possible only for serious misconduct and only following a fair trial.<sup>245</sup>

The constitution accords the judiciary wide powers to interpret the constitution and, by extension, to enforce the freedoms and rights guaranteed therein. Furthermore, authorities have up to a year following the legislative elections to establish the Constitutional Court. This leaves a void in constitutional oversight that may not be met entirely by the Provisional Commission to Review the Constitutionality of Draft Laws, the IPCCPL, foreseen by the constitution's transitional provisions, which has only a priori oversight of laws (Article 148, paragraph 7).

The Carter Center recommends that judges be required to interpret the law, including the constitution, to favor the enforcement of a right or fundamental freedom. In addition, the interpretation of human rights treaties from

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245 The U.N. Basic Principles on the Independence of the Judiciary and the Principles and Guidelines on the Right to Fair Trial in Africa



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proposal allowing a minimum of 30 assembly members to address the court was adopted in the plenary votes. This measure will allow deputies, particularly the opposition, the power to challenge draft laws before the Constitutional Court while at the same time reducing the risk of blockage by a small number of deputies.

## **Transitional Provisions**

A new chapter was added to the final draft of the constitution, which dealt with the transitional provisions intended to ensure a smooth transition between the former and new constitutional orders. The drafting process was unique with regard to transitional provisions. The constituent commissions did not discuss their content, nor did any of the commissions have a mandate to address these provisions. Instead, the drafting committee adopted the transitional provisions late in the process, leaving little time for members to discuss and reflect on their implications. Stakeholders

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plenary in April 2014. The NCA adopted an organic law to establish the IPCCPL on April 15, 2014, and the commission went on to examine several challenges to the constitutionality of the law.<sup>251</sup>

The Center further recommended that the commission be mandated to review the Assembly of the Representatives of the People Rules of Procedure. Article 120 of the constitution mandates the future Constitutional Court to review the legislative body's Rules of Procedure as presented to it by the president of the assembly. However, there is no mechanism foreseen in the transitional provisions to review the Rules of Procedure that will be put in place by the

Assembly of the Representatives of the People, following the legislative elections. The assembly is expected to be in place for approximately one year before the establishment of the court.

Despite this likely vacuum in oversight of the assembly's Rules of Procedure, the NCA chose to keep the IPCCPL's mandate very narrow, i.e., to limit it to the examination of the constitutionality of draft laws. The Carter Center maintains that enabling the commission to review the future assembly's Rules of Procedure would respect the spirit of Article 120. This review would be critical in guaranteeing that the exercise of legislative power is in conformity with the prerequisites of the constitution.

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<sup>251</sup> See the Immediate Post-adoption Outreach Efforts section of this report for more information about the IPCCPL.



In part due to insufficient outreach during the constitution-making process, the NCA decided to organize regional information sessions following the adoption of the constitution, in order to allow NCA members to make the content of the new constitution, in particular the rights and freedoms contained within it, known to their constituents.

Due to the NCA's hectic schedule in the months following the constitution's adoption, when the assembly debated and voted on two crucial pieces of legislation, the electoral law and



governorate itself, such as in Bizerte, while in others, the deputies came from other constituencies. They were always accompanied by NCA legal advisers and UNDP staff members.

Most of the questions and comments throughout the country focused either on the constitution itself or on the overall political and economic situation. Criticisms were raised by some participants regarding the inability of the NCA to meet the goals of the revolution. Audience members commented on a variety of issues, including unemployment, the political system, the timing of local elections, and whether the constitution sufficiently guarantees the independence of the judiciary. The issue of decentralization and of giving more prerogatives to local authorities was also a recurrent theme of the debate, suggesting

the importance of local governance issues in the daily lives of Tunisians.

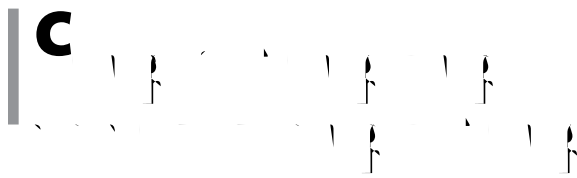
Events observed by The Carter Center suggest that the NCA could have benefited from more direct contact with citizens throughout the process. However, most audience members appeared to appreciate the chance to have a dialogue with the deputies.

The Center encourages the legislative assembly to think not only about the frequency of such events but also about their timing and accessibility, so as to give women and Tunisians of all walks of life a chance to engage with deputies and to learn about the constitution. The Carter Center also encourages the NCA and the assembly to hold regular dialogues with youth, since many seem to feel anger, disdain, or lack of interest in

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political institutions. This should be addressed head-on through more contact and accountability of elected bodies rather than by avoidance.

In addition to NCA-led information sessions, some civil society organizations engaged in awareness-raising activities. The Tunisian Association for Constitutional Law, the ATDC, “translated”



Tunisia's new constitution lays a solid foundation for the establishment of the rule of law and the protection of rights and freedoms in the country. It also puts in place strong guarantees for an independent judiciary, thus breaking away decisively from the 1959 constitution. Some articles are broadly worded, however, and risk being interpreted in ways that contradict other provisions of the constitution. Measures to protect citizens from discrimination, provide security of tenure for judges, and safeguard fundamental freedoms during a state of emergency should be strengthened. Tunisian authorities are encouraged to take legislative action to address these concerns.

The adoption of the constitution is a key step in the country's transition, but on its own it is not sufficient to guarantee a successful transition from authoritarianism to democracy. The implementation phase, specifically the process to bring the country's laws and regulations into alignment with the human rights commitments laid down in the constitution, will be important in securing a strong foundation for the respect of these commitments. This process should be carried out in a way that provides the highest degree of protection of human rights for Tunisians and non-Tunisian residents of the country alike.

The process of constitution making adopted by the NCA was highly sensitive to internal and external political dynamics, in that it allowed for deliberation and extensive consultation and constantly sought consensus within the assembly on contentious issues. This, more than anything, is the strength of the Tunisian model and though

time-consuming, has proved its value. The assembly was successful in producing a text that is not only generally sound on key human rights issues but that is also overwhelmingly backed by deputies from many political ideologies. This was of critical symbolic value during a political transition of this kind. However, the Tunisian model also offers rich lessons regarding what to avoid when engaging in constitution making, from a process standpoint.

Based on the Carter Center's observation of the constitution-making process, and in a spirit of respect and support, the Center offers the recommendations below to the NCA, Assembly of the Representatives of the People, Tunisian civil society, and policymakers and scholars engaged in constitution-making processes elsewhere in the region and beyond.

## Implementation of the Constitution

The Tunisian government and the Assembly of the Representatives of the People should consider the following:

### Rights

- Review and reform Tunisia's existing legal framework to ensure that domestic law and regulations reflect and respect the country's international commitments on human rights and the rights enshrined in the new constitution.
- Prohibit discrimination on the grounds of race, color, language, religion, political or other opinion, national or social origin, property,

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birth, and other status. Ensure that these rights apply to all people in Tunisia, citizens and foreigners alike, in accordance with international law.

- Commit to fight not only violence against women but all kinds of discrimination against women. To this end, adopt concrete measures within the assembly to protect women's rights and to advance gender parity in elected assemblies.
- Specify in relevant legislation Tunisia's obligation to adopt specific mechanisms to guarantee the progressive realization of economic, social, and cultural rights to the maximum of the country's available resources.

#### **Enforcement**

- Judges should interpret the law, including the constitution, to favor the enforcement of a right or fundamental freedom, and to take into account the interpretation of human rights treaties by international or regional courts and commissions, as a minimum standard.
- Judges and legislators should protect the freedom of religion or belief, including the freedom to adopt, change, or renounce a religion or belief,

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international community and prepare strategic plans and budgets to present to potential donors.

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The Carter Center would like to express appreciation to a number of individuals and organizations whose cooperation and efforts contributed to the Center's observation efforts in Tunisia.

The Center thanks first the government of Tunisia and the Independent High Authority for Elections for inviting the Center to observe the 2011 elections. We thank the National Constituent Assembly for their subsequent collaboration and welcome throughout the process.

The Center greatly appreciates the assistance of the U.S. State Department's Middle East Partnership Initiative and the governments of Switzerland and Norway. Together, their support allowed The Carter Center to monitor Tunisia's transition since early 2011, up to and including the adoption of a constitution and the 2014 elections. This support, reinforced by funding from the government of the Netherlands, has also allowed the Center to contribute to the development of capable and enduring civil society organizations in Tunisia.

The Center is grateful to its talented and committed international field office staff over three years and offers its sincere thanks to the



## Appendix B



### In Tunis

Sara Abbas, Constitution-Making Analyst, Acting Field Office Director (2014)

Abdelwaheb Ben Aba, Driver

Don Bisson, Field Office Director (2014)

Nedra Cherif, Political Analyst

Selima Djait, Fellow

Ahlem Eddhif, Constitution-Making Analyst

Meriem Fethi, Fellow

Anouar Gaaloul, Logistician and Driver

Insaf Guerchi, Program Associate

Baya Kara, Deputy Field Office Director (2014) and Operations Manager

Arwa Marzouk, Program Officer

Héla Mathari, Legal Consultant

Rahma Mhadheb, Translator

Marco Nembrini, Fellow

Michel Paternotre, Senior Legal and Electoral Expert

Nadia Samet, Program Associate

Gilles Saphy, Senior Legal and Electoral Expert

Sami Stambouli, Financial Officer

Jonathan Stonestreet, Interim Field Office Director (2013) and Senior Electoral Analyst

Narjess Tahar, Legal Consultant

Sabina Vigani, Field Office Director (2011–2012)

Marion Volkmann, Field Office Director (2012–2014), Electoral and Legal Analyst (2011–2012)

Anne Wolf, Fellow

### In Atlanta

David Carroll, Director, Democracy Program

William Hassall, Program Associate, Democracy Program

Sarah K. Johnson, Associate Director, Democracy Program

Alden Mahler Levine, Program Associate, Democracy Program

Aliya Naim, Assistant Program Coordinator, Democracy Program

Elizabeth Plachta, Senior Program Associate, Democracy Program

Appendix C

**A**

ARTD      Association for Research on  
the Democratic Transition  
(Association pour la Recherche

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PDP	Progressive Democratic Party (Parti Démocrate Progressiste)
POCT	Tunisian Workers' Communist Party (Parti Ouvrier Communiste Tunisien)
Quartet	

## Appendix D

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# D

### Amnesty International

"Tunisia: Submission for Consideration by the National Constituent Assembly on the Guarantee of Civil, Political, Economic, Social, and Cultural Rights in the New Constitution," 2012. "Last opportunity for Tunisian lawmakers to enshrine human rights for all in Tunisia's new Constitution": <http://www.amnesty.org/en/region/tunisia>

### Article 19, Defending Freedom of Expression and Information

"Liberté d'expression et la liberté d'information dans le troisième projet de la nouvelle Constitution," (French only) 2013: <http://www.article19.org/resources.php?tagid=360&lang=fr>

### Council of Europe–Venice Commission

"Observation sur le projet final de la constitution de la République tunisienne," July 2013, Avis 733/2013 (French only): [www.venice.coe.int/webforms/documents/?pdf=CDL\(2013\)034-f](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2013)034-f)

### Democracy Reporting International

"Lessons Learned from Constitution-Making: Processes With Broad-Based Public Participation," 2011; "Lawful Restrictions on Civil and Political Rights," 2012; "The Constitutional Rights of the Opposition," 2013: <http://democracy-reporting.org/what-we-do/constitutions.html>

### International Commission Jurists

"Fact-Finding Reports, Tunisia–The Draft Constitution Should Be Amended To Meet International Standards," February 2013: [www.icj.org/tunisia-the-draft-constitution-should-be-amended-to-meet-international-standards/](http://www.icj.org/tunisia-the-draft-constitution-should-be-amended-to-meet-international-standards/)

### International IDEA

"A Practical Guide to Constitution Building," 2011: [http://www.idea.int/cbp/knowledge\\_resources.cfm#](http://www.idea.int/cbp/knowledge_resources.cfm#)

### International Peace

"Constitution-Making and Reform: Options for the Processes," 2011

### Human Rights Watch

"Tunisia: Solidify Rights Protections in Constitution," 2012; "Tunisia: Fix Serious Flaws in Draft Constitution," 2012; "Tunisia: Draft Constitution Still Slight Rights," 2013; "Tunisia: Revise the Draft Constitution," 2013; "Tunisia: Let Constitution Herald Human Rights Era," 2014: <http://www.hrw.org/middle-eastn-africa/tunisia>

### National Democratic Institute

"Prioritizing Patriotism: Tunisian citizens express their views," 2013: <https://www.ndi.org/node/20397>

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### Reporters Without Borders

"Cautious Welcome for Pledge That Constitution Will Not Mention Blasphemy," 2012: <http://en.rsf.org/tunisia.html>

### United Nations Assistance to Constitution-Making Processes

"Guidance Note of the Secretary-General," 2009

### United Nations Development Program–Tunisia

"Enquête nationale sur les attentes des jeunes à l'égard du processus constitutionnel et de la transition démocratique en Tunisie," (French and Arabic only), 2013; "Projet d'appui au processus constitutionnel, à l'Assemblée parlementaire et au Dialogue national, Mai 2012–Juin 2014, Rapport



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Transparency and accessibility of the process:

7KH & DUWHU & HQWHU ZHOFRPHV WKH 1&\$¶V SRVLWLYH LQLWLDWL

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RECOMMENDATIONS

(VWDEOLVK D GHWDLOHG ZRUN SODQ IRU WKH 1&\$ LQFO  
SODQQLQJ DQG VWUXFWXUHG ZRUN DV ZHOO DV WR SURY  
IRUZDUG DQG SURJUHVVHV DFKLHYHG

(QVXUH WKDW SOHQDU\ VHVVLQRQV RI WKH 1&\$ DQG FRPP  
PDO SURFHGXUH WR JUDQW DFFHVV DQG REVHUYHU VWD  
FLWL]HQV

3XEOLVK DQG GLVVHPLQDWH LQ D WLPHO\ PDQQHU DOO 1  
VLRQV DQG VXEPLVVLRQV ± LQFOXGLQJ E\ SRVWLQJ WKH

3URYLGH VXSSRUW WR 1&\$ PHPEHUV LQ SODQQLQJ DQG L  
YRWHG WR FRQVXOWDWRQV LQ WKH FRQVWLWXHQFLHV  
QL]DWRQV HQJDJHG LQ IDFLOLDWLQJ VXFK FRQVXOWD

(VWDEOLVK D IRUPDO SURFHGXUH WR UHFHLYH DQDO\]H  
FRPPHQWV DQG VXJJHVWLQRQV H[SUHVVHG EXHULQDQGV

(QVXUH SURPSW VXEPLVVLRQ E\



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“Waging Peace. Fighting Disease. Building Hope.”

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosal-

\QQ LQ SDUWQHUVKLS ZLWK (PRU\ 8QLYHUVLW\ WR DGYDQFH SHDI  
nongovernmental organization, the Center has helped to improve life for people in more than 70  
FRXQWULHV E\ UHVROYLQJ FRQÀLFWV DGYDQFLQJ GHPRFUDF\ KXP  
SUHYHQWLQJ GLVHGVHV LPSURYLQJ PHQWDO KHDOWK FDUH DQG V  
tion. Visit [www.cartercenter.org](http://www.cartercenter.org) WR OHDUQ PRUH DERXW 7KH &DUWHU &HQWHU

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The Carter Center Encourages Increased Transparency and Public Participation in Tunisia's

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7KLV VWDWHPHQW RXWOLQHV WKH &DUWHU &HQWHU¶V ¿QGLQJV D  
DQG JHQXLQH FRQVWLWXWLRQDO GUDIWLQJ SURFHVV DQG WKH W

The Constitution drafting process:

#### Constitutional Commissions

7KH 1&\$ KDV FUHDWHG VL[ SHUPDQHQW FRPPLVVLRQV HDFK RI ZKL  
XQGHU VSHFL¿F FKDSWHUV RISWKHFRKHUHQBQFWQWVLSRQLQFLSO  
DO UHYLHZ ULJKWV DQG IUHHGRP V OHJLVODWLYH DQG H[HF  
WKH SRZHUV MXGLFLDO DGPLQLVWUDWLYH ¿QDQFLDO DQG FR  
DQG UHJLRQDO DQG ORFDO SXEOLF DXWKRULWLHV

7KHVH FRPPLVVLRQV DUH HDFK FRPSRVHG RI PHPEHUV SURSRU  
SROLWLFDO UHSUHVHQWDWLRQ LQ WKH 1&\$ OHPEHUV DUH DOORZH  
LQJ WKDW WKH\ DUH QRW RRRWKH VEHFRPHVURQV LV SUHVLGHG  
7KUHH IHPDOH PHPEHUV ZHUH HOHFWHG DV GHSXWLHV DQG VL[ DV  
PHPEHUV GXULQJ PHSP2@ P€`0€pHUV@  
FÀ`@δ 0À WR PLU

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Adoption of the Constitution

2QFH WKH FRPPLVVLRQV KDYH DJUHHG RQ WKH ZRUGLQJ R  
FRPSOHWH GUDIW RI WKH &RQVWLWXWLRQ WRJHWKHU ZLW  
RI WKH FRPPLVVLRQV ZLOO EH WUDQVPLWWHG WR DOO WKH  
PLQLVWHU \$FFRUGLQJ WR WKH 5XOHV RI 3URFHGXUH WKL  
VWLWXWLRQ ZLOO EH GLVFXVVHG E\ WKH SOHQDWRUHV & \$LRO  
ZLOO FRQVLGHU DQG DGRSW WKH GUDIW &RQVWLWXWLRQ D  
WKHQ LQ LWV HQWLUHW\ E\ D WZR WKLUGV PDMRULW\ 6KR  
DQG QRW UHDFK D WZR WKLUGV PDMRULW\ WKH &RQVWLWX  
ODZ LV VLOHQW DV WR WKH SRVVLEOH UHFRXUVH LI WKH G

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KDYH EHHQ KHDUG

Access to the debates of the NCA

7KH 1&\$ 5XOHV RI 3URFHGXUH VXJJHVW WKDW 1&\$ PHPEHUV DFNQR  
SULQFLSOH DV \$UWLFOH VWDWHV WKDW FRPPLVVLRQ PHHWLQJ  
DUH WKH H[FHSWLRQ WR WKH SULQFLSOH DQG FDQ RQO\ EH KHOG  
PLVVLRQ PHPEHUV :KLOH DFFHVV WR PHGLD UHSUHVHQWDWLYHV K  
\$UWLFOH KDV EHHQ LQWHUSUHWHG LQFRQVLVWHQWO\ DQG PRVW  
RUJDQL]DWLRQV WKXV KLQGHULQJ WKHLU HIIHFWLYH DFFHVV WR V  
DPRQJ PHPEHUV RI WKH 1&\$ 6RPH RI WKHP GHHP WKDW WKH VSLU  
EH UHVSHFWHG RWKHUV VXJJHVW WKDW HDFK FRPPLVVLRQ VKRXO  
VHVVLRQV DQG ZKHQ 2WKHUV VWLOO UHIHU WR D GHEDWH KHOG  
ZKHUH WKH JHQHUDO UDSSRUWHXU H[SODLQH WKDW GXULQJ W  
5XOHV RI 3URFHGXUH VRPH GHSXLHV DGYRFDWHG IRU WKH ULJK  
WKH FRPPLVVLRQV ZRUN WKRXJK' HWKSLW B \$VGHYFLDHOGLD QJDXLOV W VW K  
&HQWHU FRXOG QRW DFTXLUH DQ\ ZULWW\$UWLFOH RI WKLV UHV  
1&\$ SOHQDU\ VHVVLRQV DUH DOVR RSHQ WR WKH SXEOLF LQ DFFR  
WKH 1&\$ % ZUKH BK LV FRPSRVHG RI WKH 1&\$ Se Carter Center  
QRWHV WKDW QR VXFK SURFHGXUHV KDYH EHHQ LVVXHG DQG LQIR  
VHVVLRQV YDULHV DFFRUGLQJ WR WKH LQWHUORFXWRU DQG IURP  
1&\$ %XUHDX WR HVWDEOLVK DQG GLVVHPLQDWH SURFHGXUHV WKD  
DOORZ IRU VPRRWK DQG LQGLVFULPLQDWH DFFHVV WR SOHQDU\ VH  
7KH &DUWHU &HQWHU ZHOFRPHV WKH 1&\$ TV SRVLWLYH LQLWLDWLY  
WKHUHE\ LQIRUPLQJ FLWL]HQV RQ LVVXHV G The Carter Cen  
FRXUDJHV PHGLD UHSUHVHQWDWLYHV WR SURYLGH VXEVWDQWLYH  
EULGJH WKH JDS EHWZHHQ HOHFWHG RI FLDOV DQG WKHLU FRQVW  
LPSRUWDQW IRU FLYLO VRFLHW\ RUJDQL]DWLRQV WR EH DEOH WR  
ZLWK D EHWWHU SRVLWLRQ ZLWK ZKLFK WR HODERUDWH LQIRUPH

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1&\$ DQG LWV FRPPLVVLRQV 7R GDWH WKH SHWLWLRQ KDV  
7KH &DUWHU &HQWHU UHFRPPHGGV WKDW WKH 1&\$ DELGHV  
VXUHV WKDW SOHQDU\ VHVVLQRV RI WKH 1&\$ DQG FRPPLV  
SURFHGXUH WR JUDQW DFFHVV DQG RFDWURQV DQGWXWHU

\$FFHVV WR RI FLDO GRFXPHQWV

7KH 5XOHV RI SURFHGXUH DOVR UHTXLUH FRPPLVVLRQV WH  
WHXUV RU WKHLU GHSXWLHV RQ WKH 1&\$ ZHFKLWHHUHDSWHU  
PHDQW WR GHVFULEH DFWLYLWLHV RU VSHFL F WRSLFV RI  
WLRQ 5HIRUP DQG )LJKW DJDLQVW &RUUXSWLRQ DQG ODUW  
SXEOLVKHG VXFU UHSRUWV WKXV IDU 7KH &DUWHU &HQWH  
WR UHOHYDQW LQIRUPDWLRQ E\ LQWHUHVWHG SDUWLHV

7KH 5XOHV RI SURFHGXUH GR QRW UHTXLUH YHUEDWLP UHF  
ZRXOG EH D YDOXDEOH VRXUFH RI LQIRUPDWLRQ IRU LQWH  
WKH VHVVLQRV 6RPH DVVHPEO\ PHPEHUV KDYH WDNHQ WKH  
YHUEDWLP UHFRUGV SUHSDUHG E\ WKH UDSSRUWHXUV RQ  
WKLV SUDFWLFH PDQ\ PHPEHUV DUH UHOXFWDQW WR RI FL  
DYRLG OHDYLQJ WKH SXEOLF ZLWK WKH SHUFHSWLRQ WKDV  
VHYHUDO ORFDO FLYLO VRFLHW\ RUJDQLJDWLRQV DUH DGY  
RQ WKH 1&\$ WR SXEOLVK V\ VWHPDWLFDOO\ DQ\ RI FLDO GR  
GHGLFDWHG WR SXEOLF DOWHUWLDQV HPSKDV LJHV WKDW  
WLRQ LV HVVHQWLDO WR JXDUDQWHH WUDQVSDUHQF\ DQG  
WKH FRQVWLWXWLRQ DQG GULDKWLQJ SURFHV WKDW WKH DXWK  
VLEOH PHDVXUHV WR JXDUDQWHH VLP SOH UDSLQ HIIHFWL  
LQWHUHVW

#### Outreach efforts

7KH &DUWHU &HQWHU QRWHV WKDW WKXV IDU QR RXWUHDF  
SODFH 6XFU FDPSDLJQV ZKHQ ZHOO FRQFHLYHG PD\ UDLV  
DQG WKH LPSRUWDQFH RI WKH SURFHV 7KH &HQWHU WKH  
FRPSUHKHQVLYH LQIRUPDWLRQ FDPSDLJQ XVLQJ DOO IRUP  
RSSRUWXQLWLHV IRU WKH SXEOLF WR SDUWLFLSDWH LQ WK

KWWSV ZZZ FDKQJH RUJ IU SpWLWLRQV

\$UWLFOH 5R3

%XV &LWR\HQ 2SHQJRY 71 0RXZDWLQRXQ \$O %DZVDOD

,&&35 \$UWLFOH

+XPDQ 5LJKWV &RPPLWVHH \*HQHUDO &RPPHQW 1R 3\$UWLFOH

SDUD

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3ROLWLFDO SDUWLHV FRXOG DOVR SOD\ DQ LPSRUWDQW UROH LQ I  
1&\$ WKHLU FRQWULEXWLRQV WR WKH FRQVWLWXWLRQDO GUDIWLQ  
FRQVLGHUDWLRQ WKDW ZLOO VKDSH WKH 6WDWH¶V UHODWLRQVKL  
21DQG 7' 4\_O 64` °•°€` GUDIXO 64@ ð cfG WKDW 4FR p ñ0 ÄÄ, QJ 00WKHLU 4EFHT

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IHHGEDFN RQ 1&\$ ZRUN WKH &HQWHU VXJJHVVV WKH HVV



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WLRQ FDPDLJQ

Preparing for the next election cycle

7KH &RQVWLWXHQW \$VVHPEO\ HOHFWLRQV KDYH-EHHQ ODUJHO  
HUV DQG WKH LQWHUQDWLRQDO FRPPXQLW\ DV D PHDQLQJIXO VWH  
7XQLVLDQ VWDNHKROGHUV FRQFXU WKDW WKH FRXQWU\ VKDOO WD  
E\ EXLOGLQJ XSRQ SRVLWLYH DFKLHYHPHQWV DQG GUDZLQJ OHVV  
HOHFWRU DO SURFHVV

7KH QDO UHSRUW RQ WKH HOHFWRU DO SURFHVV LVVXH RQ )HE  
(OHFWLRQV SURYLGHV NH\ GLUHFV LQVLJKWV WR LQIRUP GLVFXV  
WLRQDO DQG OHJDO IUDPHZRUN IRU WKH HOHFWLRQV ,Q WKH VDP  
JURXS FDPH WRJHWKHU RQ )HE DW WKH LQLWLDWLYH RI 7KH &  
RPPHQGDWLRQV IRU FRQVLGHUDWLRQ E\ GHFLVLRQ PDNHUV \$W RV  
SDUWQHUV 1&\$ PHPEHUV JRYHUQPHQW RI FLDOV DQG UHSUHVHQV  
DQG SURYLGH FRPSDUDWLYH H[SHULHQFH RQ LVVXH VXFK DV H[L  
DQG WKH OHJDO IUDPHZRUN IRU IXWXUH HOHFWLRQV

7KH &DUWHU &HQWHU ZHOFRPHV WKH JRYHUQPHQW SURSRVDO IRU  
:KLOH 3ULPH 0LQLVWHU -HEDOL GHFODUHG RQ \$\$SULO WK  
PDQDJHPHQW ERG\ ZRXOG EH WUDQVPLWWHG WR WKH 1&\$ ZLWKLQ  
DQQRXQFHPHQW KDVQW WDNHQ HIIHFV E\ WKH WLPH RI ZULWLQJ  
OHDNHG EXW KDV QRW EHHQ RI FLDOO\ VXEPLWWHG WR WKH 1&\$  
HQVXUH WKDW LQSXWV IURP UHOHYDQW QDWLRQDO DQG LQWHUQD

7KH &HQWHU DOVR VWUHVHV WKH JRYHUQPHQW DQG WKH 1&\$ LQ  
ZRUN ZLWKRXW XQGXFH GHOD\ IRU WKH HIIHFWLYH SUHSDUDWLRQ F  
OHDUQHG IURP WKH HOHFWLRQV 7KH &DUWHU &HQWHU XQGHUV  
HOHFWLRQ SUHSDUDWLRQ VWDUWLQJ ZLWK YRWHU UHJLVWUDWLRQ  
D UREXVW YRWHU HGXFDWLRQ FDPDLJQ

Conclusion and recommendations

7KH &DUWHU &HQWHU KDV FRQGXFWHG VHYHU DO PHHWLQJV ZLWK U  
RI WKH 1&\$ DQG DVVHV VWUHQJWKV DQG ZHDNQHVVHV RI WKH FR  
&HQWHU DSSUHFLDWHV WKH FRPLWPHQW GHPRQVUDWHG E\ DOO  
FXVVLQJ SRWHQWLDO DUHDV IRU LPSURYHPHQW ,Q D YLHZ WR IXU

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SODQQLQJ DQG VWUXFWXUHG ZRUN DV ZHOO DV WR SURY  
IRUZDUG DQG SURJUHVVHV DFKLHYHG

(QVXUH WKDW SOHQDU\ VHVVLQRQV RI WKH 1&\$ DQG FRPP  
PDO SURFHGXUH WR JUDQW DFFHVV DQG REVHUYHU VWD  
FLWL]HQV

3XEOLVK DQG GLVVHPLQDWH LQ D WLPHO\ PDQQHU DOO 1  
VLRQV DQG VXEPLVVLRQV ± LQFOXGLQJ E\ SRVWLQJ WKH

3URYLGH VXSSRUW WR 1&\$ PHPEHUV LQ SODQQLQJ DQG L  
YRWHG WR FRQVXOWDWLRQV LQ WKH FRQVWLWXHQFLHV  
QL]DWLRQV HQJDJHG LQ IDFLOLWDWLQJ VXFK FRQVXOWD

(VWDEOLVK D IRUPDO SURFHGXUH WR UHFHLYH DQDO\]H  
FRPPHQWV DQG VXJJHVWLQRQV H[SUHVVHG EXHULQDQGV

(QVXUH SURPSW VXEPLVVLRQ E\ WKH JRYHUQPHQW RI WK  
DQG WLPHO\ FRQLGHUDWLQRQ E\ WKH 1&\$ WR DOORZ DG  
WKH QH[W HOHFWLRQV

(QVXUH WKDW UHFRPPHQGDWLQRQV IURP UHOHYDQW VWD  
DFKLHYHPHQWV DUH EXLOW XSRQ ZKLOH FRQLGHULQJ V

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,Q LWV UHSRUW 7KH &DUWHU &HQWHU QRWHV WKDW WKH 1&\$  
RQ LWV ZRUN HYHQ WKRXJK VXFK FDPSDLJQV PD\ UDLVH S  
LQFUHDVH LWV OHJLWLPDF\ 0HGLD FRYHUDJH RI WKH 1&\$  
EDODQFHG SURIHVVLRQDO FRYHUDJH RI WKH SURFHVV FRXC  
WKHLU FRQVWLWXHQWV

7KH &HQWHU ZHOFRPHV UHFHQW LQLWLDWLYHV E\ WKH 1&\$  
RQ WKH 1&\$ ZHEVLWH WKH RUJDQLJDWLRQ RI FLYLO VRFL  
QDWLRQDO GHEDWH RQ WKH &RQVWLWXWLRQ LQ 1&\$ GUDIW  
WKH FDOHQGDU LV LQVXI¿FLHQW WKRXJK WR DOORZ IRU D  
WXWLRQ \$GHTXDWH WLPH VKRXOG EH JLYHQ WR DOORZ IF  
YLHZV DQG WKRURXJK DQDO\VLV DQG GHOLEHUDWLRQ

7KH &DUWHU &HQWHU FRPPHQGV WKDW E\ PLG -XQH DO  
FRPPLVLRQV ZHUH SXEOLVKHG RQ WKH 1&\$ ZHEVLWH DOR  
UHSRUWV IURP RWKHU FRPPLVLRQV 7KH &HQWHU QRWHV  
YRWHV 1&\$ PHPEHU DWWHQGDQFH OLVWV DQG YHUEDWLP  
SXEOLVKHG GHVSLWH WKH IDFW WKDW WKH ULJKW RI DFFHV  
DQG SHUPLW DFWLYH SDUWLFLSDWLRQ DPRQJ DOO VWDNHK

:KLOH WKH 1&\$ 5XOHV RI 3URFHGXUH VXJJHVV WKDW PHPE  
SULQFLSOH DFFHVV IRU FLYLO VRFLHW\ RUJDQLJDWLRQV V  
SOHQDU\ \$VVHPEO\ VHVVRQV KDV EHHQ LQFRQVLVWHQW D  
DFFHVV WR WKH GHEDWHV

7KH &DUWHU &HQWHU FDQ DWWHVV WKDW WKH PDMRULW\  
WKH\ KDYH EHHQ HQWUXVWHG ZLWK DQG DUH FRPPLWWHG  
DEVHGFHV RI VRPH PHPEHUV LQ ZRUNLQJ DQG SOHQDU\ VH  
1&\$ E\ 7RIUHÏRQ P€•À pP0'KÃPD`´€`àÀ p0  
1&PLRñJ KH

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3ODQ IRU VXI¿FLHQW WLPH WR SUHSDUH DQG FRQGXFWD PFK  
WLRQ VLQFH DQ LQFOXVLYH DQG SDUWLFLSDWRU\ SURFHVV LV P  
QHZ FRQVWLWXWLRQDO IUDPHZRUN

(VWDEOLVK D IRUPDO SURFHGXUH WR UHFHLYH DQDO\]H DQG S  
FRPPHQWV DQG VXJJHVWLQJ H[SUHVVLRQV DQG FRQVWLWXWLRQDO  
&UHDWH D IXQFWLRQLQJ HOHFWRUDO PDQDJPHQW ERG\ DV VRR

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“Waging Peace. Fighting Disease. Building Hope.”

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosal-  
\QQ LQ SDUWQHUVKLS ZLWK (PRU\ 8QLYHUVLW\ WR DGYDQ  
nongovernmental organization, the Center has helped to improve life for people in more than 70  
FRXQWULHV E\ UHVROYLQJ FRQÀLFWV DGYDQFLQJ GHPRFU  
SUHYHQWLQJ GLVHVVHV LPSURYLQJ PHQWDO KHDOWK FDU  
tion. Visit [www.cartercenter.org](http://www.cartercenter.org) WR OHDUQ PRUH DERXW 7KH &DUWHU &H

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

Sept. 26, 2012

\$IWHU WKH IDOO RI WKH DXWKRULWDULDQ UHJLPH RI 3UHVLGHQW  
7XQLVLD WKURXJK WKH WUDQVLWLRQ SHULRG IRXQG WKH H[LVWLQJ  
WKH FRXQWU\ LQ WKLV QHZ SKDVH 2Q 0DUFK )RXDG 0HED  
VXVSHQG HG WKH IRUPHU &RQVWLWXWLRQ DQG DQQRXQFHG WKDW  
GHPRFUDWLFDOO\ HOHFWHG ERG\ WR UHÅHFW WKH ZLOO RI WKH 7X  
UHJLPH FKDQJH DQG RSHQHG WKH URDG WRZDUGV GHPRFUDWLF J  
7XQLVLDQV HOHFWHG D 1DWLRQDO &RQVWLWXHQW \$VVHPEO  
GUDIWLQJ D QHZ &RQVWLWXWLRQ

7KH HODERUDWLRQ RI D &RQVWLWXWLRQ UHSUHVHQWV D XQLTXH D  
DQG DJUHH XSRQ WKH IXQGDPHQWDO SULQFLSOHV RI D VRFLHW\ L  
IUHHGRP V WKH RUJDQL]DWLRQ RI FKHFNV DQG EDODQFHV DQG WK  
3DUWLFLSDWLRQ RI FLYLO VRFLHW\ FDQ SRVLWLYHO\ LQÅXHQH  
RZQHUVKLS 7KH SURFHVV PD\ EH ORQJ FRPSOH[ DQG DW WLPHV V  
KRZHYHU HQKDQFHV QDWLRQDO FRKHVLRQ DQG EHQH¿WV PDQ\ JH

7XQLVLDQV &RQVWLWXWLRQ ZLOO EH D FRUQHUVWRQH RI WKH FRXC  
LQVWLWXWLRQ ,I VXFFHVVIXO ,I €•À0E ``€ HH JRY 5pÀDY RSSRT` !  
KL WLRQ RI Up€ ° • RZ ` LQV WDH V € 8V PW „ @DfepW@ PSEfx 5 • 1g€P`UV 8€`

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LQWHUQDWLRQDO REOLJDWLRQV WR XSKROG IXQGDPHQWDO  
WUDQVSDUHQF\ DQG SDUWLFLSDWLRQ LQ SXEOLF DIIDLUV R

The Constitution drafting process

0HPEHUV RI WKH \$VVHPEO\ EHJDQ WKH &RQVWLWXWLRQ G  
FUHDWHG VL[ SHUPDQHQW FRPPLVVLRQV HDFK UHVSQRVLE  
WKH IXWXUH &RQVWLWXWLRQ 7KH FRPPLVVLRQV FRQGXFWH  
H[SHUWV UHSUHVHQWDWLYHV RI WKH JRYHUQPHQW LQVW  
UHOHYDQW WH[WV 6RPH 1&\$ PHPEHUV DOVR XQGHUWRN  
VLPLODU &RQVWLWXWLRQ PDLQJ SURFHVVHV 7KH FRPPLV  
ZLWKRXW D FRPPRQ PHWKRGRORJ\ RU ZRUN SODQ

7KH -XO\ GHGOLQH IRU WKH FRPPLVVLRQV WR VXEPLW  
1&\$ SUHVLGHQW OXVWDSKD %HQ -DKIDU FDPH UHODWLYHO  
PHPEHUV \$V WKH GHGOLQH ERUH GRZQ WKH GUDIWLQJ S  
FDUHIXOO\ ZRUGHG FRQVHQVXV RQ FRQWURYHUVLDO DQG  
'UDIWLQJ DQG &RRUGLQDWLRQ &RPPLWWHH DXWKRULJHG W  
WR VXEPLW PXOWLSOH YHUVLRQV RI DUWLFOHV UHODWHG  
FRQVHQVXV KDG SHUPDQHQW DQGLVWQHWH WKH SURFHVV IRUZDUG  
VHQVLWLYH DVSHFW WKH VDPH PHWKRGRORJ\ ZDV WKHQ D  
GLI¿FXOW LVVXH \$V D UHVXOW WKH VL[ FRPPLVVLRQV IR  
SUHVHQWHG GLIIHUHQW YDULDQWV RI WKHVH DUWLFOHV ZK  
DUWLFOHV WKDW KDG UHFHLYHG D PDMRULW\ RI YRWHV IUF

%\ \$XJ DOO VL[ FRPPLVVLRQV KDG VXEPLWWHG WKHLU  
FRPSLQDWLRQ RI WKH VL[ FRPPLVVLRQV ZRUN ± VRPHWLPH  
± ZDV UHOHDVHG RQ \$XJ \$W WKH WLPH RI ZULWLQJ D  
&RQVWLWXWLRQ DQG GHSXW\ SUHVLGHQW RI WKH FRPPLW  
UHYLHZLQJ WKH FRPPLVVLRQV GUDIWV DQG SURYLGLQJ IH  
RQ WKH VXEPLVVLRQV 7KH &RRUGLQDWLRQ &RPPLVVLRQ L  
VXJJHVVHG WH[W &RPPLVVLRQV ZLOO VXEVTXHQWO\ UHV  
H[SHUW KHDULQJV

7KH &DUWHU &HQWHU QRWHV WKDW WKH UHOHDVH RI WKH  
JHQHUDWHG D VWURQJ UHDFWLRQ E\ 7XQLVLDQ FLYLO VRFL  
H[SHUWV DQG LQWHUQDWLRQDO DFWRUV DPRQJ RWKHUV 6

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6Pf pRP „€P0 & @A xUY† UHDFWOEuP' P ... ð0' `0' RUN' p`0DQG LQE WPH" Wv°`u\*



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WKH ¿QDO WH[W RQ VHYHUDO FRQWURYHUVLDO LVVXHV LQFOXGL  
GHIDPDWLRQ RI WKH VDFUHG DQG WKH VWUXFWXUH RI WKH SROLW

9DJXH ZRUGLQJ RI VRPH DUWLFOHV DQG VRPH EODWDQW RPLVVLR  
ULJKW WR YRWH ± DUH UHJUHHWDEOH DQG VKRXOG EH DGGUHV  
WKDW LQFRKHUHQFLHV LQ WKH GUDIW DUH FRUUHFWHG ,Q WKDV

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RI WKH &RQVWLWXWLRQ ZRXOG EH SRVWSRQHG E\ VHYHU  
)HEUXDU\ DQG \$SULO ZDV QRW VXUSULVLQJ LQ YLHZ RI  
D GLVDSSRLQWPHQW WR PDQ\ 7XQLVLDQ FLWLJHGV ZKR DQ

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'HFODUDWLRQ SDUWLFLSDWLRQ LQ WKH FRQGXFWR RI SXEOLF DIID  
SUSRVDOV WR VWDWH LQVWLWXWLRQV<sup>3</sup>IRU LPSURYLQJ WKHLU IX  
WKHLU ZRUN WKDW PD\ KLQGHU RU LPSHGH WKH SURPRWLRQ SURY  
IXQGDPHQWDO IUHHGRP

7KH &HQWHU WKXV ZHOFRPHV UHFHQW LQLWLDWLYHV E\ WKH 1&\$  
UHODWLRQV ZLWK FLYLO VRFLHW\ RUJDQLJDWLRQV WR FRQVXOW F  
ODXQFKHG D FRQVXOWDWLRQ PHFKDQLVP RQ WKHLU RI FLDO ZHEV  
RQ LVVXHV RI LPSRQVXOWDWLRQV<sup>3</sup>IRU LPSURYLQJ WKHLU IX  
ZLGHVSUHDG DQG ZHOO GHVLJQHG LQIRUPDWLRQ FDPSDLJQ DQG V  
LQWHUQHWW DFFHVV<sup>3</sup>XEOLF DGPLQLVWUDWLRQ ZRUNHUV LQ WKH U  
WR WKH 1&\$ ,Q DGGLWLRQ WKH 1&\$ RUJDQLJHG WZR GD\ RI GHE  
6HSHPEHU 7KH HQWKXVLDVP ZLWK ZKLFK FLYLO VRFLHW\ RUJDQ

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\$V LQFOXVLYH DQG SDUWLFLSDWRU\ SURFHVVHV DUH PRUH  
IUDPHZRUN 7KH &DUWHU &HQWHU XUJHV WKH 1&\$ WR DOC  
WKH &RQVWLWXWLRQ ,Q DGGLWLRQ WR HQVXUH WKDW W  
FRQVLGHUDWLRQ WKH &HQWHU HQFRXUDJHV WKH 1&\$ WR V  
UHFRUG LQSXWV PDGH GXULQJ DOO WKHVH YDULRXV FRQVX

:KLOH 1&\$ GULYHQ FRQVXOWDWLRQV DUH LQVWUXPHQWDO V  
DURXQG WKH IXWXUH &RQVWLWXWLRQ LQLWLDWLYHV E\ F  
PRELOLJH VXSSRUW DQG OREE\ FRQVWLWXHQW DVVHPEOLH  
E\ FLYLO VRFLHW\ RUJDQLJDWLRQV VRPH KDYH RUJDQLJH  
DFURVV WKH &HQWHU WKHUV KDYH FRQGXFWHG VDOHQHG  
DLPHG DW LQIRUPLQJ FLWLJHQV DQG JXW&DUWHUWKHQML  
VXFK LQLWLDWLYHV WKDW HQFRXUDJH FLWLJHQV WR SOD\ I  
Referendum

\$FFRUGLQJ WR WKH SURSRVHG FDOHQGDUV WKH 1&\$ ZLOO  
IRU DGRSWLRQ RQ 0DUFK ,0P\$5@`0, LeP\$5 p0DSSU  
DVVHPEO\ 1)ZLOO 2bFRQVLGHU 2b 2b , 2@• P3... D 2 VHFRQG 4V  
,0Pw\$WKH w(0đ @đ7thGUDIW w(0 •7r5 w' &RQVWLWXWLRQ x Li w#P  
IRU ' @P9€@đ9



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7KH &HQWHU VWURQJO\ UHFRPPHGGV WKDW WKH 1&\$ HVWD  
REXHUYHU VWDWXV WR FLYLO VRFLHW\ RUJDQLJDWLRQV DG  
WKH RSHQ GRRU GD\V ZLWK FLYLO VRFLHW\ LQ 6HSWHPEHU  
IURP WKH 1&\$ ZHEVLWH VKRZV WKDW WKH 1&\$ KDV WKH PH  
RQ REMHFWLYH FULWHULD

\$V LW LV FXUUHQWO\ UHYLHZLQJ LWV 5XOHV RI 3URFHGXUH  
\$UWLFOHV DQG UHODWHG WR WKH DFFHVV WR WKH FRP  
HQVXUH WKDW GHEDWHV DUH RSHQ WR WKH SXEOLF

#### Accountability

7KH &DUWHU &HQWHU FDQ DWWHVW WKDW WKH PDMRULW\ F  
ZKLFK WKH\ KDYH EHHQ HQWUXVWHG DQG DUH FRPPLWWH  
ZKHQ WKH YHU\ VHQVLWLYH TXHVWLRQ RI WKH SROLWLFDO  
([HFXWLYH 3RZHUV &RPPLVVLRQ 2QO\ RI FRPPLVVLR  
ZHUH IURP WKH VDPH SROLWLFDO SDUW\ ,Q RWKHU LQVWD  
WKH IXOO SDUWLFLSDWLRQ RI DOO FRPPLVVLRQ PHPEHUV  
SDUW RI VHYHUDO FRPPLVVLRQV ZKRVH ZRUN VRPHWLPHV  
UHQ HS@ðVHQF€p DDhW0

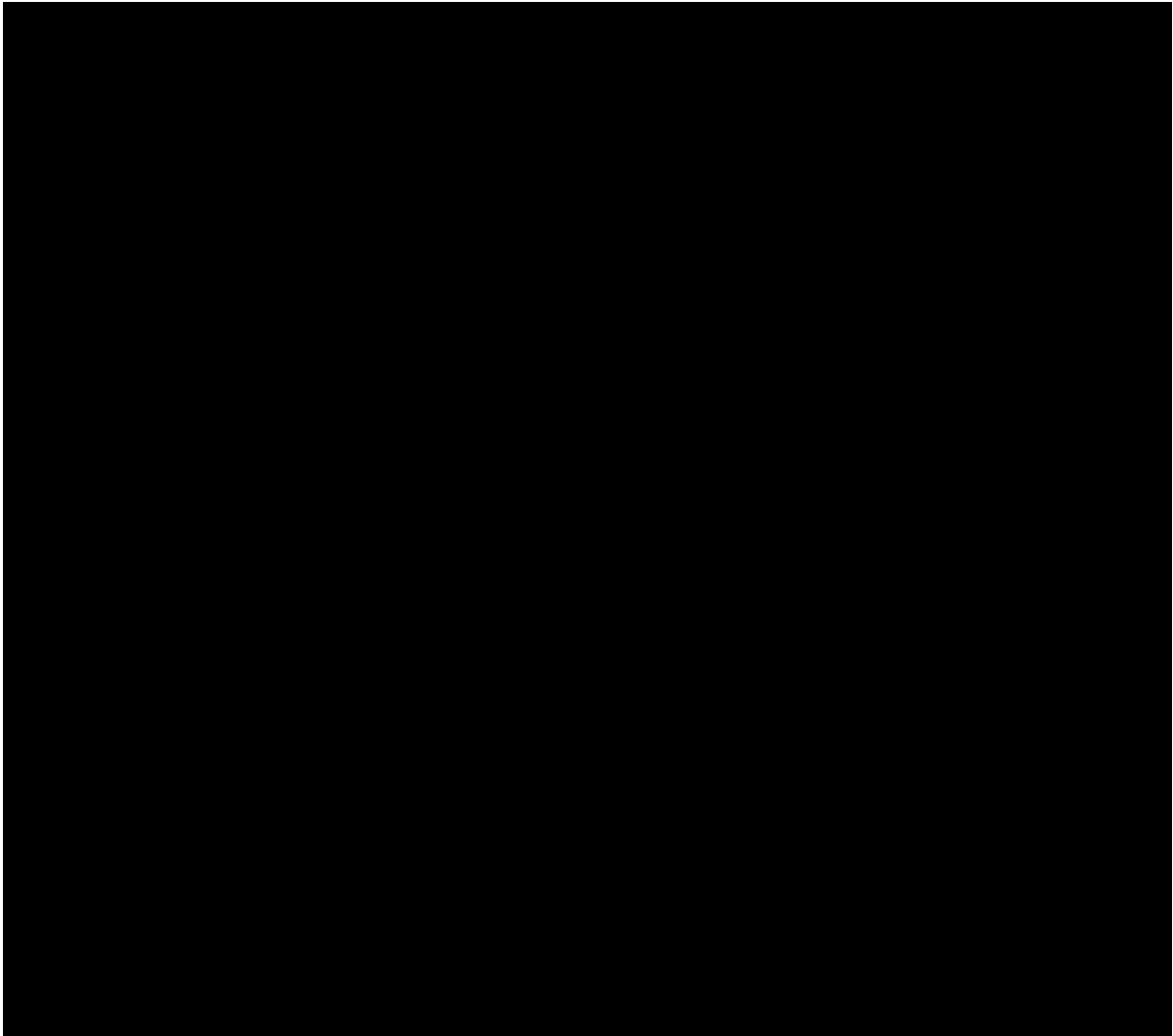
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\$XJ D FRDOLWLRQ RI DFWLYLVW JURXSV ± \$O %DZVDOD WKH 1  
WKH 7XQLVLDQ FROOHFWLYH 2SHQ\*RY 71 ± ORGJHG D IRUPDO FRP

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SURWHFWLRQV IRU WKHVH DQG RWKHU IXQGDPHQWDO OLEHUWLHV  
FRQGLWLRQV XQGHU ZKLFK LQWHUQDWLRQDO ODZ DOORZV VXFK IX  
IXUWKHU XUJHV 1&\$ PHPEHUV WR HQVXUH SURWHFWLRQV IRU WKH

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\*LYH WKH &RQVWLWXWLRQDO &RXUW IXOO SRZHU WR F  
PRPHQW RI LWV FUHDWLRQ XQGHU WKH &RQVWLWXWLRQ

&OHDUO\ VSHFLI\ DOORZDEOH OLPLWDWLRQV RQ ULJKW  
UHVWULFW SRWHQWLDOLPLWDWLRQV E\ WLPH-DQG V  
WKHU WKH &RQVWLWXWLRQ VKRXOG SURWHFW ULJKWV  
ODZ DQG EDQ WKHLU UHVWULFWLRQV XQGHU HPHUJHQ

2SHQ WKH UHTXLUHPHQWV IRU WKH SUHVLGHQF\ WR D  
DI;OLDWLRQ DQG UHFRQVLGHU PD[LXP DJH UHVWULF

,QFOXGH D UHIHUHQFH WR WKH HTXDOLW\ RI WKH YRW

,QFOXGH UHIHUHQFHV WR WKH IXQGDPHQWDO FKDUDFW  
RQ UHIHUHQGD

6HW FOHDU GHGOLQHV IRU WKH HQWU\ LQWR IRUFH R

,Q DGGLWLRQ 7KH &DUWHU &HQWHU

&DOOV XSRQ DOO SROLWLFDO SDUWLHV WR HQVXUH WK  
WLYH 1&\$ PHPEHUV GXULQJ WKH DUWLFOH E\ DUWLFOH  
WR IXO;OO WKH GXWLHV IRU ZKLFK WKH\ ZHUH HOHFW  
VWHSSLQJ GRZQ LQ IDYRU RI WKH QH[W FDQGLGDWH IU  
PHQW WKH SURYLVLRQV RI WKH 5XOHV RI 3URFHGXUH  
FRPSO\ ZLWK WKHVH JXLGHOLQHV

8UJHV WKH 1&\$ WR ODXQFK D FRPSUHKHQVLYH LQIRUP  
GXULQJ WKH DUWLFOH E\ DUWLFOH YRWH RQ WKH GUDI  
WKH ;QDO FRQWHQW RI WKH GUDIW DQG LWV LP-SRUWD  
SOHV RI 7XQLVLDQ VRFLHW\ 7R WKLV HQG WKH 1&\$ VK  
PHGLD DFFHVV WR UHOLDEOH LQIRUPDWLRQ WR SHUIRU

(QFRXUDJHV WKH 1&\$ WR FRQVLGHU DPHQGLQJ WKH 3O  
ZKLFK DQ HYHQWXDO UHIHUHQGXP RQ DGRSWLRQ RI WK

Background: )ROORZLQJ LWV REVHUYDWLRQ RI 1DWLRQDO &RQVW  
7KH &DUWHU &HQWHU PDLQWDLQH D SUHVHQFH LQ 7XQLV  
SURFHVV DQG SUHSDUDWLRQV IRU WKH QH[W HOHFWRUDO  
7XQLVLDQ¶V LQWHUQDWLRQDO WUHDW\ REOLJDWLRQV LQFO  
&LYLO DQG 3ROLWLFDO 5LJKWV

7KLV UHSRUW SUHVHQWV WKH &DUWHU &HQWHU¶V ;QGLQJ  
ZLGH UDQJH RI VWDNHKROGHUV LQFOXGLQJ \$VVHPEO\ PHP  
FLYLO VRFLHW\ RUJDQL]DWLRQV DQG DFDGHPLFV 7KH &H  
SOHQDU\ VHVLRQV RI WKH \$VVHPEO\ DQG WKH &HQWHU L  
LQWHUORFXWRUV LQ VKDULQJ LQIRUPDWLRQ DQG GLVFXVV

7KH &DUWHU &HQWHU¶V IXDD FDUSRHWUFHQWU FRXQG Q

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“Waging Peace. Fighting Disease. Building Hope.”

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The Carter Center Congratulates Tunisia's National Constituent Assembly on Final Draft of  
Constitution and Urges Safeguards for Human Rights

June 12, 2013

\$ \HDU DQG D KDOI DIWHU WKH KLVWRULF HOHFWLRQV RI 2  
&RQVWLWXHQW \$VVHPEO\ 1&\$ 7XQLVLD LV UHDFKLQJ D G  
QHZ &RQVWLWXWLRQ

7KH DUWLFOH E\ DUWLFOH YRWH DQG ¿UVW FRPSOHWH UH  
LQ WKH FRPLQJ ZHHNV FRQVWLWXWH WKH ¿QDO VWDJH RI  
VHQWLDO GHFLVLRQV ZLOO EH WDNHQ WKDW ZLOO VKDSH V  
&RQVWLWXWLRQ VKRXOG HVWDEOLVK D IRXQGDWLRQ IRU E  
ULJKWV DQG IUHHGRP V DQG FRQVROLGDWLQJ WKH JDLQV  
SURFHVV LQ 7XQLVLD ZLOO SURYLGH D PRGHO IRU RWKHU F  
DQ HIIHFWLYH SHDFHIXO WUDQVIHU RI SRZHU IURP DXWKRU

7KH &DUWHU &HQWHU KDV REVHUYHG WKH ZRUN RI WKH 1&3  
VXEVTXHQW &RQVWLWXWLRQ GUDIWLQJ SURFHVV PHHWLQ  
DQG FLYLF VWDNKHROGHUV DWWHQGLQJ 1&\$ VHVVLQJ DQ  
UHODWHG WR WKH GHYHORSFHQW RI WKH &RQVWLWXWLRQ  
VXOWDWLRQV WKDW IROORZHG WKH UHOHDVH RI WKH VHF  
DVVHVHV WKH &RQVWLWXWLRQ GUDIWLQJ SURFHVV DQG V  
REOLJDWLRQV WR XSKROG IRXQGDPHQWDO SROLWLFDO DQG  
DQG SDUWLFLSDWLRQ LQ SXEOLF DIIDLUV RI RQH V FRXQW

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7KH &HQWHU FDOOV XSRQ 1&\$ PHPEHUV WR HQVXUH-WKDW WKH IX  
QDWLRQDO WUHDW\ REOLJDWLRQV RQ KXPDPQ ULJKWV DQG IXQGDP  
UHOLJLRQ WKH SULQFLSOH RI QRQ GLVFULPLQDWLRQ WKH SURWH  
UHVWULFW WKHVH DQG RWKHU IXQGDPHQWDO ULJKWV

### The Constitution drafting process

\$V WKH 1&\$ XQGHUWRRN LWV GXWLHV WR GUDIW D QHZ &RQVWLW  
WKH UHVSQRVLELOLWLHV RI WKHLU UROH DQG WKH XQLTXH RSSRU  
DQG JRYHUQDQFH RI SRVW 5HYROXWLRQ 7XQLVLD \$V WKH\ HPEDU  
SURFHVV LW ZDV QRW ZLWKRXW GLI¿FXOW\ :KLOH WKH 1&\$ VKRXC  
FDUHIXO FRQVLGHUDWLRQ RI D QHZ &RQVWLWXWLRQ WKH DEVHQF  
ZRUN RI WKH 1&\$ WKH DEVHQWHHLVP RI VRPH 1&\$ PHPEHUV DQG D  
SURFHVV KDV KLQGHUHG LWV SURJUHVV

### Timeframe for the adoption of the Constitution

,Q VSLWH RI PDQ\ FDOOV IRU LW WR GR VR WKH 1&\$ QHYHU FRPP  
VWLWXWLRQ GUDIW DQJPSURZRXOG KDYH KHOSHG WKH 1&\$ WR EHW  
ZHOO DV WR SURYLGH WKH SXEOLF ZLWK JUHDWHU YLVLELOLW\ RQ  
XQGHUHVWLPDWHG WKH H[WHQW WR ZKLFK LWV OHJLVODWLYH IXQ  
H[WHQG WKH &RQVWLWXWLRQ GUDIWLQJ SURFHVV 7KH DQQRXQFH  
FRPSOHWLRQ RI WKH &RQVWLWXWLRQ WKURXJKRXW WKH GUDIWLQJ  
± FRQWULEXWHG WR D ODFN RI FODULW\ RQ WKH SURJUHVV RI WKH  
ZLWK WKH SDFH RI WKH GUDIWLQJ SURFHVV

7KH DEVHQFH RI D FOHDU URDGPDS IRU WKH FRPSOHWLRQ RI WKH &  
DV ZHOO DV WR TXHVWLRQLQJ RI WKH FRQLQXHG OHJLVPDF\ RI  
SDUWLHV KDG PRUDOO\ FRPPLWWHG DKHDG RI WKH 1&\$ HOHFWLRQ  
WKH &RQVWLWXWLRQ SURFHVV XQIROGHG KRZHYHU WKH SDUWLHV DJ  
&RQVWLWXWLRQ GUDIWLQJ H[HUFLVH &RPSDUDWLYH H[DPSONV VK  
SURFHVVHV KDYH EHHQ OHQJWK\ SURFHVVHV ZLWK DQ DYHUDJH G  
DQG WKDW DOORZDQFHV DUH QRW XQFRPPRQ LQ RUGHU WR H[WHQ

### Drafting process

0HPEHUV RI WKH 1&\$ EHJDQ WKH &RQVWLWXWLRQ GUDIWLQJ SURFH  
FRQVWLWXWLRQDO FRPPLVVLRQV HDFK UHVSQRVLEOH IRU GUDIWL

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<sup>3</sup>7KH &DUWHU &HQWHU (QFRXUDJHV ,QFUHDVHG 7UDQVSDUHQF\ DQG 3XEOLF  
LQJ 3URFHVV &DOOV IRU 3URJUHVV WRZDUG (VWDEOLVKPHQW RI ,QGHSHQGHQW  
&DUWHU &HQWHU 5HFRJQL]HV 7XQLVLD\ 1DWLRQDO &RQVWLWXHQW \$VVHPEO\ 3U  
UHDFK DQG 7UDQVSDUHQF\ ' 6HSW

<sup>3</sup>'HFODUDWLRQ RQ WKH 7UDQVLWLRQDO 3URFHVV' VLJQH RQ 6HSW  
WLPH LQ WKH <sup>3</sup>7KH +LJK \$XWKRULW\ IRU WKH 5HDOL]DWLRQ RI WKH 2EMHFWLYHV  
7UDQVLWLRQ' +RZHYHU WKH FRQVWLWXWLRQDO DFW RQ WKH SURYLVLQDO RU  
<sup>3</sup>OLWWOH &RQVWLWXWLRQ' ZKLFK KDV SULPDF\ RYHU DOO RWKHU ODZV PDNHV C

6HH H[DPSONV Kinga and Reform: Options for the Process SXEOLVKHG E\ ,QWHUSHDFH  
YHPEHU 3 Rédaction de textes d'amendements constitutionnels autour du cas tunisien  
5HSRUWLQJ ,QWHUQDWLRQDO '5,

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&RQVWLW~~WKH~~WERQPLVVLRQV FRQGXFVHG VHYHUDO KHDULQJV  
UHSUHVHQWDWLYHV RI WKH JRYHUQPHQW LQVWLWXWLRQV  
WH[WV DGGUHVVLQJ FRQVWLWXWLRQDO LVVXH V DQG GUDI  
VWXG\ WULSV WR FRXQWULHV WKDW KDYH H[SHULHQ-FHG VL  
WLRQV WR VWXG\ FRQVWLWXWLRQDO ODZ \$VLGH IURP SHU  
&RQVWLWXWLRQDO 'UDIWLQJ DQG &RRUGLQDWLRQ &RPPLW  
ZLWK FRRUGLQDWLQJ WKH ZRUN RI WKH FRPPLVVLRQV GLG  
3ULRU WR WKLW WLPH WKH FRPPLVVLRQV ZRUNHG LQGHSHQ  
RJ\ RU ZRUN SODQ

,Q \$XJXVW WKH VL[ FRQVWLWXWLRQDO FRPPLVVLRQV V  
LQJ &RPPLWWHH ZKLFK SRLQWHG RXW LQFRQVLVWHQFLHV  
QRW PDNH VXEVWDQWLYH FKDQJHV WR WKH FRQWHQW RI W  
FRPPHQWV RI WKH 'UDIWLQJ &RPPLWWHH DV WKH\ UHYLVH  
UHOHDVHG WKHLU QHZ GUDIWV EHWZHHQ WKH HQG RI 6HSW  
1&\$ RUJDQL]HG D WZR GD\ GLDORJXH VHVVLRQ RQ WKH FRQ  
FLYLO VRFLHW\ RUJDQL]DWLRQV 7KH 1&\$ DOVR ODXQFKHG  
WR DOORZ FLWL]HQV WR PDNH VXJJHVWLRQV RQ FRQVWLWX

\$ VHFRQG FRPSLODWLRQ RI WKH FRPPLVVLRQV ZRUN NQR  
UHOHDVHG RQ 'HF WZR GD\ EHIRUH WKH ODXQFKL  
FRQVXOWDWLRQV VWDUWHG ZLWK WZR VHVVLRQV ZLWK VW  
IROORZHG E\ SXEOLF VHVVLRQV KHOG WKURXJK -DQXDU\  
JRYHUQRUDWHV HDFK ZHHNHQG 0HHWLQJV ZLWK H[SDWUL  
RUJDQL]HG LQ -DQXD\ DQG )HEUXDU\  
</p></div><div data-bbox=

:KLOH QDWLRQDO FRQVXOWDWLRQV WRRN SODFH IURP 'HF  
GHEDWHV LQ SOHQDU\ RQ WKH YDULRXV FKDSWHUV RI WKH  
LQJ WKRVH ZKR GLG QRW SDUWLFLSDWH LQ WKH VL[ FRQV  
YDULRXV DUWLFOHV

1HZ XUJHQF\ ZDV LQMHFVHG LQWR WKH &RQVWLWXWLRQ G  
FHLYHG ODFN RI LPSURYHPHQW LQ WKH HFRQRPL\ DQG LQF  
WKH DVVDVVLQDWLRQ RI SROLWLFDO SDUW\ OHDGHU &KRNU  
FDO FULVLV WKH 1&\$ DFFHOHUDWHG WKH &RQVWLWXWLRQ  
3URFHGXUH 5R3 LQ 0DUFK DIWHU PXFK GHEDWH 7KH  
WLYHV RI WKH 'UDIWLQJ &RPPLVVLRQ DQG WKH FRQVWLWXV



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WKH UHFRPPHQGDWLRQV DQG VXJJHVWLRQV SDGHQGXUGQVFWKH QDV  
VLRRQV WKH VHFRQG GUDIW &RQVWLWXWLRQ 7KH DPHQGPHQWV DO  
E\ OLPLWLQJ WKH QXIDUFR&RQVWLWXWLRQ WKIDQVSRXODGU EH SURS  
VHVVLRQV

,Q OLQH ZLWK WKH UHYLVHG 5R3 WKH VL[ FRQVWLWXWLRQDO FRP  
VXJJHVWLRQV HPDQDWLQJ IURP WKH JHQHUDO GHEDWH LQ SOHQD  
DQG WKH QDWLRQDO FRQVXOWDWLRQV IURP 0DUFK WR \$SULO

2Q \$SULO WKH XSGDWHG GUDIWV IURP HDFK FRPPLVLRQ ZHUH  
QRW SXEOLF\ UHOHDVHG 7KH 'UDIWLQJ &RPPLWWHH UHYLHZHG  
+RZHYHU WKH ZRUGLQJ RI WKH UHYLVHG \$UWLFOH RI WKH 5R3



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ZLWK WKH SXEOLF

)RU LQVWDQFH DOWKRXJK LQ 0DUFK WKH 1&\$ KDG VHW D QRQ  
SOHWLQJ WKH GUDIW WKH SRVWSRQHPHQW RI WKH VWDUW RI WKH  
E\ WKH SOHQDU\ ZDV QRW FRPPXQLFDWHG WR WKH SXEOLF WKURXJ  
,QVWHDG LW ZDV RQO\ GXULQJ WKH FRXUVH RI D YLVLW RI )UHQFK  
%HQ -DKIDU LQIRUPHG MRXUQDOLVWV WKDW WKH\$ZHHN E\ WKH SO  
ODWHU D PHPEHU RI WKH 'UDIWLQJ &RPPLWWHH SRVWHG DQ XSGI  
RQ KLV SULYDWH )DFHERRN SDJH LQGLFDWLQJ WKDW WKH &RPPLV  
3UHVVLGHQW RI WKH 5HSXEOLF RQ 0D\ DQG WKH DUWLFOH E\ DUW  
GHDGOLQH ZDV H[WHQG 1&\$ RI FLDOV DJDLQ GLG QRW RIIHU D  
SRWHQWLDO WLPOLQH WR WKH SXEOLF %\ WKH HQG RI 0D\ 1&\$  
WKH &RQVWLWXWLQJ WR EH UHOHDVHG DW DQ\ PRPHQW DQG FRQI  
PDGH LQ WKH SUHVV DQG RQ VRFLDO QHWZRUNV E\ GLIIHUHQW DFW  
WXDOO\ UHOHDVHG RQ -XQH

5HFHQW VXUYH\V LQGLFDWH WKDW WKHUH LV OLWWOH DZDUHQHV  
WKH GLIIHUHQW GUDIWV RI WKH &RQVWLWXWLQJ DQG WKH DLWLYHW  
VXOW FLWL]HQV E\ YDULRXV PHDQV ZHUH D SRVLWLYH HIIRUW WR  
À`€0&RQVWLWXWL @W GWDQG Å°€0SUROÀZ •0 È`€0 „•  
V,0ÀPÀ0  
V,2 p€0\_2 @

V,04ÀH QWSVR#D,À0

B#LV ÇR04ER`0XVES\@WDÀ@ p p`DGA\ð€À°€0#VÀ0p@ \ð€0aV

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HIIRUWV LQFOXGLQJ E\ WDNLQJ DGYDQWDJH RI H[SHUW DG  
7KH SODQQHG HVWDEOLVKPHQW ZLWKLQ WKH 1&\$ RI-D PHG

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PHPEHUV YDULHV FRQVLGHUDEO\ UDQJLQJ IURP QLQH SHUFHQW W

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RI WKH DUWLFOH GLG QRW GHWHUPLQH WKH SODFH RI LQW  
,Q WKLV UHVSHFW WKH WKLV GUDIW ZDV DQ LPSRUWDQW  
UHSODFHG E\ DQ \$UWLFOH \$UWLFOH LQ WKH IRXUWK G  
WLHV LQ 7XQLVLD ± WKH\ DUH WR EH LQHRJZDHYRQV WIKW X VDLR  
DW WKLV VWDWHPHQW DQG GRHV QRW FOHDUO\ VWDWH WK  
REOLJDWLRQV ZKLFK FRPSULVH DOVR FXVWRPDU\ ODZ )X  
DUH WKRVH DSSURYHG E\ WKH \$VVHPEO\ RI 5HSUHVHQWDWL  
OHJLVODWLYH ERG\ 7KLV FRXOG KDYH DV D FRQVHTXHGFH  
LVODWLYH ERG\ ZRXOG QRW QHFHVVDULO\ KDYH WKH VDPH  
&RPPLWWHH ZKLFK LQWHUSUHWV WKH ,&&35 WKH ULJKWV  
OLYLQJ LQ WKH WHUULWRU\ RI WKH 6WDWH SDUW\ 7KH &RP  
WKH SURWHFWLRQ RI WKH ULJKWV XQGHU WKH &RYHQDQW  
WR EHORQJ WR WKHP QRWZLWKVWDQGLQJ FKDQJH LQ JRYH  
7KH &DUWHU &HQWHU UHFRPPHQGV WKDW WKH &RQVWLWXW  
DQG UHVSHFWV 7XQLVLD V LQWHUQDWLRQDO FRPPLWPHQW  
DQG UDWL;HG´ LQVWHDG RI VSHFLI\LQJ WKDW WKHVH WUHD  
5HSUHVHQWDWLYHV LQ RUGHU WR DYRLG DQ\ GLIIHUHQWLD  
LQ WHUPV RI WKHLU DSSOLFDELOLW\ DV WKLV ZRXOG EH F

#### Universality of human rights

7KHUH KDV EHHQ DQ RQJRLQJ GHEDWH WKURXJKRXW WKH C  
PDQ ULJKWV DIIHFWHG E\ WKH RYHUDOO GLVFXVVLQJ RI W  
WLRQ RI WKH SUHDPEOH LQ WKLV UHVSHFW LV WR VRPH H[W  
FLYLO VRFLHW\ RUJDQL]DWLRQV DQG WKH ZLOOLQJQHVV R  
GUDIW WKH SUHDPEOH PDGH QR PHQWLRQ RI WKH XQLYHU  
KXPdq YDOXH´ ,Q WKH VHFRQG GUDIW WKH SUHDPEOH D  
EXW GLG QRW LQFOXGH WKHLU XQLYHUVDO LW\ 7KH ZRUG 3  
HQFH WR WKH XQLYHUVDO LW\ RI KXPdq ULJKWV ZDV XQGHU  
SKUDVH 3LQVRIDU DV WKH\ DUH LQ KDUPRQ\ ZLWK WKH FXO  
IRXUWK GUDIW WKH XQLYHUVDO LW\ RI KXPdq ULJKWV LV U  
SUHPH QDWXUH WKH VXSUHPH DQG XQLYHUVDO KXPdq ULJ  
PD\ LPSO\ WKDW WKHUH LV D KLHUDUFK\ RI XQLYHUVDO KXP  
:KLOH 7KH &DUWHU &HQWHU ZHOFRPHV WKH SRVLWLYH HYR  
WKH UHFRJQLWLRQ RI KXPdq ULJKWV LQ WKHLU XQLYHUVDO  
KXPdq ULJKWV DUH LQGLYLVLEOH LQWHUGHSHQGHQW DQG  
WKLV SULQFLSOH

#### Rights and freedoms

,QWHUQDWLRQDO ODZ UHJDUGLQJ ULJKWV DQG IUHHGRP V L  
QLVLD VWDUWLQJ ZLWK WKH LQWHUQDWLRQDO &RYHQD



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DQG WR HFRQRPLF VRFLDO DQG FXOWXUDO ULJKWV DV ZHOO DV W  
&KDUWHU RQ +XPDQ DQG 3HRSOHV¶ 5LJKWV WKH &RQYHQWLRQ RQ  
QDWLRQ \$JDLQVW :RPHQ &('\$: DQG WKH &RQYHQWLRQ RQ WKH 5L  
7KH FKDSWHU RQ 5LJKWV DQG )UHHGRP V LV RQH RI WKH FKDSWHUV

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ULJKWV LQFOXGLQJ WKH IUHHGRP WR DGRS WUWK BQJHWRH  
VKRXOG FRQVLGHU LQFRUSRUDWLQJ WKH ODQJXDJH UHJDUC  
LQWR WKH ULJKWV DQG IUHHGRP V FKDSWHU WR HQVXUH W

7KH SULQFLSOH RI QRQ GLVFULPLQDWLRQ

8QGHU LQWHUQDWLRQDO ODZ 7XQLVLD KDV DQ REOLJDWLQ  
RU RWKHU VWDWXV

7KH RQO\ DUWLFOH WKDW GHDOV ZLWK WKH SULQFLSOH RI  
WKH WKLUG GUDIW ZHUH PHUJHG VWDWHV WKDW DOO FLW  
GXWLHV DQG VKDOO EH HTXDO EHIR:UKH OVK W KLDZ ZZLLWGL QJR  
HTXDOLW\ DPRQJ FLWLJHQV DQG VKRXOG EH DSSODXGHG  
FRXOG EH VXEMHFW WR XQIDLU GLVFULPLQDWLRQ ,Q DFFR  
ULJKW RI WKH LQGLYLGXDO DQG DGLWRW OLIPW WHHG RWRWR WL  
JURXQG RI GLVFULPLQDWLRQ LV RQO\ EDVHG RQ JHQGHU

,Q DGGLWLRQ WR WKH VWUHQJWKHQWLQJ RI SURWHFWLRQ I  
WKDW D VHSUDWH SULQFLSOH RI QRQ GLVFULPLQDWLRQ E  
RQ DGLWRW OLIPW WHHG RWRWR WL RQ VKRXOG SURKLELW GL  
ODQJXDJH UHOLJLRQ SROLWLFDO RU RWKHU RSLQLRQ QD  
WRZDUGV DOO SHRSOH DQG QRW RQO\ FLWLJHQV

3URWHFWLRQ RI ZRPHQ V ULJKWV DQG HTXDOLW\

8QGHU LQWHUQDWLRQDO ODZ DQG 7XQLVLDQ REOLJDWLQ  
RI WKH ,&&35 JXDUDQWHHV HTXDOLW\ DQGLWLFDO WUHTXOHLV

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ZRPHQLGHO\ FULWFLJHG WKH QRWLRQ RI <sup>3</sup>FRPSOHPHQWDULW\ ' Z  
ORUH JHQHUDOO\ WKH ULJKWV RI ZRPHQ LQ WKH ¿UVW GUDIW ZHU  
IDPLO,Q WKH WKLUG DQG IRXUWK GUDIW ZRPHQ DUH FRQVLGHUHG  
HTXDOLW\ LV KRZHYHU QRW IXOO\ FRQVHFUDWHG VLQFH \$UWLFOH  
DOLNH DQG QRW PRUH JHQHUDOO\ WR PHQ DQG ZRPHQ

:LWK UHJDUG WR ZRPHQ SURYLGH WKH \$UWLFOH 6WDWH JXDUDQWHHV  
HQV ULJKWV DQG VXSSRUWV WKHLU JDLQV ' 7KH VDPH DUWLFOH  
RSSRUWXQLW\ EHWZHHQ PHQ DQG ZRPHQ WR DVVXPH UHVSRQVLEL  
WLRQ RI DOO IRUPV RI YLROHQFH DJDLQV ZRPHQ ' 7KLV SURYLVI  
RI HTXDOLW\ EHWZHHQ PHQ DQG ZRPHQ ,W UHIHUV WR HTXDO RSS  
ZHOO DV WR <sup>3</sup>WKH HOLPLQDWLRQ RI YLROHQFH ' DQG QRW WR WKH  
HFRQRPLF FXOWXUDO DQG VRFLDO VSKHUHV DQG WR WKH HOLPLQ  
7KH &HQWHU &DUWHU HQFRXUDJHV WKH 1&\$ WR VSHOO RXW WKH S  
DOO LWV IDFHWV ,W ZRXOG DOVR ZHOFRPH D SURYLVLRLQ WKDW U

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,Q DGGLWLRQ WR HQVXUH WKDW ULJKWV DUH WUHDWHG I  
OLPLWLQJ ULJKWV LQ VSHFL;F DUWLFOHV VKRXOG EH UHP  
H[SUHVVLRQ DVVHPEO\ DVVRFLDWLRQ DQG WKH ULJKW RI  
LQ VFRSH ZKLFK PD\ OHDG WR WKH HURVLRQ RI WKHVH UL

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UHSUHVHQWDWLYH 3PXVW EH MXVWL; DEOH & RQ RPHQW WLY B HDQGLUH  
; HV PLQLPXP DJH DV D SRWHQWLDQO\ UH D V R Q D E O H U H V W U L F W L R Q  
LW\

8QGHU WKHVH FRQGLWLRQV FDQGLGDF\ UHTXLUHPHQWV VKRXOG  
WKHVH QDUURZ REMHFWLYHV :KLOH WKH SURYLVLRQV IRU PD[LPXP  
DQG SK\VLFDQ FDSDFLW\ WR KROG SXEOLF RI; FH DJH GRHV QRW  
WKHUHIRUH GLVFULPLQDWH DJDLQVW RWKHUZLVH ; W FDQGLGDWH  
UFRQVLGHU DJH UHVWULFWLRQV IRU WKH RI; FH RI WKH SUHVLG  
FDQGLGDWH; V FDSDFLW\ WR JRYHUQ 7KH &HQWHU QRWHV WKDW F  
DJH UHVWULFWLRQV ZKLOH VLPLODU UHTXLUHPHQWV DUH QRW GH  
RI WKH SULPH PLQLVWHU

)LQDOO\ WKH FKDUDFWHULVWLFV RI GHPRFUDWLF HOHFWLRQV DUH  
UFRPPHQGV WKDW D UHIHUHQFH WR WKH IXQGDPHQWDO FKDUDFW  
SURLVLRQV RQ UHIHUHQGD

#### Transitional provisions

\$ QHZ FKDSWHU ZDV DGGHG WR WKH IRXUWK GUDIW &RQVWLWXWL  
WHQWK FKDSWHU ZDV DEVHQW IURP DOO SUHYLRXV GUDIWV DQG L  
FRPH LQ SULQFLSOH 1HYHUWKHOHVV WKH SURFHVV IROORZHG W  
FKDSWHUV DV QR GLVFXVLRQV ZHUH KHOG LQ WKH FRQVWLWXWL  
'UDIWLQJ &RPPLWWHH DGRSWHG WKH WUDQVLWLRQDO SURFHGXUH  
OLWWOH WLPH IRU PHPEHUV WR GLVFXVV DQG UHÅHFW RQ WKHLU I

7KH WUDQVLWLRQDO SURLVLRQV JURXSHG LQWR WZR DUWLFOHV  
WKH &RQVWLWXWLRQ RQFH DGRSWHG VLQFH D QXPEHU RI DUWLFO  
RU XQWLO DIWHU WKH 1&\$ RU WKH QHZ OHJLVODWLYH \$VVHPEO\ K  
&RQVWLWXWLRQ

7KHUH DUH WZR DSSDUHQW JDSV LQ WKH WUDQVLWLRQDO SURLVL  
DOV WR DGGUHVV WKH MXGLFLDU\ WR HQVXUH UHVSHFW RI WKHLU

\$UWLFOH VWDWHV WKDW WKH &RQVWLWXWLRQDO &RXUW; V SRZ  
LQWR HIIHFW XQWLO WKUHH \HDUV DIWHU WKH IRUPDWLRQ RI WKH

7KH &RXUW; V UROH DV JXDUGLDQ RI WKHVH ULJKWV LV WR FRQVL  
H[FOXVLYH FRPSHWQFH RI WKH &RQVWLWXWLRQDO &RXUW ERWK  
; UVW LV SULRU WR WKH HQWU\ LQWR IRUFH RI WKH ODZ DQG LV F  
ULRUL' FRQWURO LV E\ FRQVHTXHQFH RI D MXGLFLDO WULDO ZKH  
VLRQ LV XQFRQVWLWXWLRQDO 7KH FRXUW LQ TXHVWLRQ PXVW WK  
IRU GHFLVLRQ

8QWLO WKH HVWDEOLVKPHQW RI WKH &RQVWLWXWLRQDO &RXUW  
DXWKRULW\ RI 3D SULRUL' FRQWURO +RZHYHU XQGHU WKH FXUUH  
WKH DXWKRULW\ WR FRQVLGHU WKH FRQVWLWXWLRQDOLW\ RI D O  
WKH &RQVWLWXWLRQDO &RXUW DQG GXULQJ WKH ; UVW WKUHH \HD  
PHDQV WKDW WKHUH LV QR MXGLFLDO PHDQV RI FKDOOHQJLQJ WKH

,ELG SDUD



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RI WKH QH[W FDQGLGDWH IURP WKH OLVW RQ ZKLFK WKH\ ZHU  
,PSOHPHQW WKH SURYLVLQRV RI WKH 5R3 SURYLGLQJ IRU ¿QD  
UHSHDWHG XQMXVWL¿HG DEVHQFHV (QIRUFHPHQW RI WKHVH S  
DFFRXQWDELWLW\ WR WKHLU FRQVWLWXHQWV  
&RQGXFW D WHVW EHIRUH WKH VWDUW RI WKH DUWLFOH E\ D  
WHFKQLFDO SUREOHPV ZLWK WKH HOHFWRQLF-YRWLQJ V\VVH  
EHUV ZLOO EH DEOH WR YRWH

#### Substantive elements of the Constitution

,Q RUGHU WR FRQIRUP IXOO\ ZLWK LQWHUQDWLRQDO ODZ WKH &R

#### Religion

2SHQ WKH UHTXLUHPHQWV IRU WKH SUHVLGHQF\ WR DOO TXDO  
DI¿OLDWLRQ DQG QRW WR GLVFULPLQDWH RQ WKH EDVLV RI U

#### International law

\*XDUDQWHH WKDW GRPHVWLF ODZ UHÀHFV DQG UHVSHFV 7  
WLFOH VKRXOG UHIHU WR WUHDWLHV 3GXO\ DSSURYHG DQG  
WLRQDO WUHDWLHV UDWL¿HG E\ 7XQLVLD

#### Freedom of religion and conscience

(QVXUH WKDW WKH VFRSH RI WKH ULJKW WR IUHHGRP RI UHOL  
WKHVH ULJKWV LQFOXGLQJ WKH IUHHGRP WR DGRSW FKDQJH

#### The principle of non-discrimination (Article 20)

(QVKULQH WKH SULQFLSOH RI QRQ GLVFULPLQDWLRQ LQ RQH V  
3URKLELW GLVFULPLQDWLRQ RQ WKH JURXQGV RI UDFH FROR  
RSLQLRQ QDWLRQDO RU VRFLDO RULJLQ SURSHU\ ELUWK I  
DOO SHRSOH LQ 7XQLVLD FLWL]HQV DQG IRUHLJQHUV DOLNH

#### Women's rights

\$UWLFXODWH WKH SULQFLSOH RI HTXDOLW\ EHWZHHQ PHQ DQ  
ZRXOG DOVR ZHOFRPH D FRQVWLWXWLRQDO SURYLVLQRV WKDW  
PHDVXUHV WR DFKLHYH WKH HIIHFWLYH DQG HTXDO HPSRZHUP

#### Restriction of fundamental rights

5HÀHFV 7XQLVLD V LQWHUQDWLRQDO OHJDO REOLJDWLRQV ZH  
DQG IUHHGRPV VKRXOG DOVR EH OLPLWHG WR WKRVH QHFHV  
PDWH DLP 7KLV ZRXOG UHTXLUH DGGLQJ ODQJXDJH WR WKH \$  
EULQJ WKH FODXVH LQWR FRQIRUPLW\ ZLWK LQWHUQDWLRQDO

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3URYLGH IRU IXOO SURWHFWLRQ IRU IXQGDPHQWDO UL  
H[SUHVVLQR DVVHPEO\ DVVRFLDWLRQ DQG WKH ULJKW  
WLRQV LQ WKHVH DUWLFOHV UHPDLQ YDJXH DQG YDU\  
YLGXDO ULJKWV LQ WKH IXWXUH

6SHFLI\ DOORZDEOH OLPLWDWLRQV RQ ULJKWV GXULQ  
SRWHQWLDO OLPLWDWLRQV E\ WLPH DQG 7KH FXUUHXV  
SRW PÀ0QWDO,,PV HQF\DVLWX@LDO¥P3





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LQ D ZD\ WKDW PRVW IDYRUV WKH HQIRUFHPPHQW RI D U  
VD\ WKDW WKH\ VKRXOG WDNH LQWR DFFRXQW WKH LQ  
RI¿FLDO WUHDW\ ERG\ LQFOXGLQJ FRXUWV DQG FRPPL

*f* 6WUHQJWKHQ WKH JXDUDQWHHV IRU HFRQRPLF VRFLDO

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*f* ,QFRUSRUDWH LQWHUQDWLRQDO VWDQGDUGV RQ LQGSHQG  
XQDPELJRXV DI¿UPDWLRQ RI VHFULW\ RI WHQXUH LQ UHJD  
GLVFLSOLQH ZLWK UHPRYDO RI MXGJHV SRVVLEOH RQO\ IRU V  
JXDUDQWHHV DQG ZKHQ GHFLGHG XSRQ E\ D KLJK MXGLFLDO F

*f* \*UDQW WKH &RQVWLWXWLRQDO &RXUW LPPHGLDWHO\ XSRQ LV  
FRQVWLWXWLRQDOLW\ RI H[LVWLQJ ODZV DQG SURSRVHG ODZ  
RI ODZV WKDW YLRODWH WKH ULJKWV SURYLGHULRQW RI WKH &R  
FRQVWLWXWLRQDOLW\ RI QHZ ODZV ZKLFK LQ WKH FXUUHQW  
5HSXEOLF WR PHPEHUV RI WKH 3HRSOHV \$VVHPEO\ DFFRUGL  
WKH &RQVWLWXWLRQ \$QG

*f* 6HW FOHDU GHDGOLQHV IRU WKH HQWU\ LQWR IRUFH RI WKH Y

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July 26, 2013  
FOR IMMEDIATE RELEASE  
CONTACT: Tunis, Marion Volkmann +216 50 666 649; Atlanta, Deborah Hakes +1 404 420  
5124

Carter Center Statement on the Assassination of NCA Deputy Mohamed Brahmi

7KH &DUWHU &HQWHU VWURQJO\ FRQGHPQV WKH DVVDVVLQ  
HQW \$VVHPEO\ GHSXW\ DQG OHDGHU RI

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For Immediate Release

## Tunisia: Improve Guarantees for Judicial Independence

(QVXUH -XGLFLDU\ +DV 3RZHUV WR 3URWHFW +XPDQ 5LJKWV

7XQLV -DQXDU\ ± \$V 7XQLVLDV 1DWLRQDO &RQVWLW  
GLVFXVVLQJ WKH FKDSWHU RQ WKH \$OXO DZLDDO SRPHQ VWQ D  
,QWHUQDWLRQDO +XPDQ 5LJKWV :DWFK DQG 7KH % ` @ ð @ ð 0 \$

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ZLGHVW UHSUHVHQWDWLRQ RI WKH MXGLFLDU\`

6HFRQG WKH SURSRVHG DPHQGPHQW GRHV QRW LQGLFDWH K  
EH VHOHFWHG ZKHWKHU GLUHFWO\ E\ WKH JRYHUQPHQW DQ  
SURFHGXUH 7KLV OHDYHV H[FHVVLVLYH GLVWUHWLRQ WR JRYH  
SURFHGXUHV IRU WKHLU VHOHFWLRQ DQG GRHV QRW RIIHU V  
WKHLU LQGSHQGHQFH IURP WKH WZR RWKHU EUDQFKHV RI V

\$O %DZVDOD \$PQHVW\ ,QWHUQDWLRQDO +XPDQ 5LJKWV :DWF  
UHFRPPHQG WKDW WKH 1&\$ VWDWH LQ DUWLFOH WKDW DW  
EH FRPSRVHG RI MXGJHV HOHFWHG E\ WKHLU SHUV 7KH\ IX  
VKRXOG VSHFL\ DSSRLQWPHQW SURFHGXUHV WR HQVXUH WK  
FRQ¿GHQFH DQG OHJLWLPDF\ DQG WKDW DQ\ DSSRLQWPHQW  
WKDQ D WZR WKLUGV PDMRULW\

P LQGSHDQGX DQ WKH PÀp0 H +@QG HQ€HQ ÆFR@0  
VKRXOG V W@GrV Q p0Àp0 WE`B%'€P  
GX FÀPp`0 @Đ PÀpÀ€p €°@p Â0

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,Q 7XQLV IRU \$O %DZVDOD \$PLUD <DK\DRXL (QJOLVK  
DPLUD \DK\DRXL#DOEDZVDOD FRP  
,Q 7XQLV IRU \$PQHVW\ ,QWHUQDWLRQDO /RW¿ \$]]RX]  
RU ORW¿D]]RX]#JPDLO FRP  
,Q 7XQLV IRU \$PQHVW\ ,QWHUQDWLRQDO %pQpGLFWH  
  
,Q 7XQLV IRU +XPDQ 5LJKWV :DWFK \$PQD \*XHOODOL  
RU JXHOODD#KUZ RUJ  
,Q 7XQLV IRU WKH &DUWHU &HQWHU 0DULRQ 9RONPDQ  
PDULRQ YRONPDQQ#WXQLVLD FFHRP RUJ

Background

7KH 1&\$ EHJDQ YRWLQJ RQ WKH FRQVWLWXWLRQ LQ SO



Jan. 29, 2014  
FOR IMMEDIATE RELEASE

CONTACT:

In Atlanta, Deborah Hakes +1 404 420 5124; [dhakes@emory.edu](mailto:dhakes@emory.edu)

In Tunis, Marion Volkmann +216 50 666 649; [marion.volkmann@tunisia.cceom.org](mailto:marion.volkmann@tunisia.cceom.org)

The Carter Center Commends Tunisian Assembly on Historic Achievement

7KH &DUWHU &HQWHU FRQJUDWXODWHV 7XQLVLDQ 1DWLRQDO &RQV  
SHRSOH RQ WKH SURPXOJDWLRQ RI LWV QHZ FRQVWLWXWLRQ

7KH DGRSWLRQ RI D QHZ FRQVWLWXWLRQ PDUNV D KLVWRULF PL  
GHPRFUDF\ 7KH &HQWHU FRPPHQQV WKH 7XQLVLDQ SHRSOH ZKR  
WRJHWKHU WR HODERUDWH D FRQVWLWXWLRQ WKDW UHÀHFWV WKH  
SURWHFWV WKHLU GHPRFUDWLF ULJKWV

7KH 7XQLVLDQ H[SHULHQFH QRW RQO\ OD\ WKH IRXQGDWLRQV IRU  
D UHIHUHQFH SRLQW IRU RWKHU FRXQWULHV LQ WUDQVLWLRQ

3%\ DGRSWLQJ D QHZ FRQVWLWXWLRQ WKURXJK D SHDFHIXO DQG FR  
RI KRSH WR RWKHU FRXQWULHV LQ WKH UHJLRQ WKDW DUH VWUX  
IRUPHU 8 6 3UHVLGHQW -LPP\ &DUWHU VDLG

7KH DSSURYDO RI WKH QHZ FRQVWLWXWLRQ LV RQO\ RQH VWHS R  
&HQWHU HQFRXUDJHV DOO 7XQLVLDQ VWDNHKROGHUV WR VXSSRU  
GXULQJ WKH UHPDLQLQJ WUDQVLWLRQDO SHULRG FUHDWH WKH OH  
DQG KROG JHQXLQH HOHFWLRQV LQ WKH FRPLQJ PRQWKV ZKLOH D  
KDV EHHQ FULWLFDO WR WKH VXFFHVV RI WKH FRQVWLWXWLRQDO

)ROORZLQJ LWV REVHUYDWLRQ RI WKH 2FWREHU 1DWLRQDO &R

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&HQWHU LV PRQLWRULQJ WKH FRQVWLWXWLRQ PDNLQJ SUR  
RI LQVWLWXWLRQDO DQG OHJDO IUDPHZRUNV IRU VXEVTX  
DJDLQVW 7XQLVLD¶V QDWLRQDO ODZV DQG LQWHUQDWLRQDO

####

“Waging Peace. Fighting Disease. Building Hope.”

\$ QRW IRU SUR¿W QRQJRYHUQPHQWDO RUJDQLJDWLRQ 7K  
SHRSOH LQ PRUH WKDQ FRXQWULHV E\ UHVROYLQJ FRQÀ  
HFRQRPLF RSSRUWXQLW\ SUHYHQWLQJ GLVHDEVHV DQG LP  
was founded in 1982 by former U.S. President Jimmy Carter and former First Lady Rosalynn Carter,  
in partnership with Emory University, to advance peace and health worldwide.

7R IROORZ WKH QHZV DQG DFWLYLWLHV RI WKH 7XQLVLD & D

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FOR IMMEDIATE RELEASE  
April 10, 2014

CONTACT:

Tunis, Sara Abbas +216 26 986 205, sara.abbas@tunisia.cceom.org

Atlanta, Deborah Hakes +1 404 420 5124, dhakes@emory.edu

The Carter Center Welcomes Human Rights Protections  
in Tunisia's New Constitution; Calls for Immediate Steps  
to Implement

7KH &DUWHU &HQWHU UHOHDVHG WRGD\ D VWDWHPHQW WUDFLQJ V  
VLD¶V FRQVWLWXWLRQ DQG KLJKOLJKWLQJ HOHPHQWV LQFOXGLQ  
QDWLRQ SURYLGH VHFUXLW\ RI WHQXUH IRU MXGJHV DQG VDIHJ  
RI HPHUJHQF\ ZKLFK VKRXOG EH VWUHQJWKHQHG 7XQLVLDQ DXW  
DGGUHVV WKHVH FRQFHUQV

³7XQLVLD¶V QHZ FRQVWLWXWLRQ OD\ D VROLG IRXQGDWLRQ IRU U  
VDLG IRUPHU 8 6 3UHVLGHQW -LPP\ &DUWHU ³:KDW LV FULWLFDO  
WKH OHJDO IUDPHZRUN WR EULQJ LW LQWR DOLJQPHQW ZLWK WKH  
RI WKH ULJKWV HQYLDLGHG LQ WKH SWIRLV  
WLPH WR UHYLHZ WKH FRQVWLWXWLRQDOLW\ RI GUDIW ODZV HVSI  
GLVFXVVLRQ

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The Carter Center Welcomes Strengthened Rights Guarantees in Tunisia's New Constitution;  
Urges Immediate steps for its implementation

April 10, 2014

7KUHH \HDUV IROORZLQJ WKH IDOO RI WKH %HQ \$OL UHJLPI  
RI WKH 1DWLRQDO &RQVWLWXHQW \$VVHPEO\ 1&\$ 7XQLVLD  
DZD\ IURP WKH FRXQWU\¶V DXWKRULWDULDQ SDVW RI¿FLD  
7KRXJK WKH URDG WR WKH FRQVWLWXWLRQ SURYHG ULIH Z  
DQG FRQVHQVXV EXLOGLQJ SUHYDLOHG HQVXULQJ WKDW 7

2YHU WKH FRXUVH RI WKH WZR \HDU SURFHVV WKH WH[W  
JUHDWHU FODULW\ DQG D KLJKHU GHJUHH RI SURWHFWLRQ  
DGRSWLRQ RI WKH FRQVWLWXWLRQ LV D NH\ VWHS LQ WKH  
JXDUDQWHH D VFFHVVIXO WUDQVLWLRQ IURP DXWKRULWD

7KH &DUWHU &HQWHU KDV PRQLWRUHG WKH FRQVWLWXWLF  
ZKHQ WKH 1&\$ EHJDQ ZRUNLQJ RQ WKH FRQVWLWXWLRQ 7  
SROLWLFDO DQG FLYLF VWDNHKROGHUV DWWHQGHG 1&\$ VH  
ZRUNVKRSV UHODWHG WR WKH SURFHVV 7KURXJKRXW WKH  
DJDLQVW 7XQLVLD¶V LQWHUQDWLRQDO REOLJDWLRQV WR X  
FRPPHQWHG RQ WKHLU FRQWHQW DV ZHOO DV WKH SURFH  
DQG WKH H[WHQW WR ZKLFK LW XSKHOG SULQFLSOHV RI WU  
DIIDLUV RI WKHLU FRXQWU\

,Q WKLV VWDWHPHQW 7KH &DUWHU &HQWHU RIIHUV DQ RY  
SURFHVVHV DQG DQ DQDO\VLV RI VHYHUDO NH\ FRQWHQW  
VWDWHPHQW QRWHV WKDW 7XQLVLD¶V QHZ FRQVWLWXWLRQ  
OD\ WKH IRXQGDWLRQ IRU DQ LQGHSHQGHW MXGLFLDU\  
EURDGO\ ZRUGHG DQG ULVN EHLQJ LQWHUSUHWHG LQ ZD\ V  
7KH LPSOHPHQWDWLRQ SKDVH VSHFL¿FDOO\ WKH SURFHV

\$UWLFOH RI WKH ,QWHUQDWLRQDO &RYHQDQW RQ &LYLO DQG 3R  
VWDWHV WKDW ³HYHU\ FLWLJHQ VKDOO KDYH WKH ULJKW DQG WK  
DIIDLUV GLUHFWO\ RU WKURXJK IUHHO\ FKRWHQ UHSUHVHQWDWLYHV«´

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DOLJQPHQW ZLWK WKH KXPDQ ULJKWV FRPPLWPHQWV ODLG GRZQ  
VHFXULQJ D VWURQJ IRXQGDWLRQ IRU WKH UHVSHFW RI WKHVH FR  
RXW LQ D ZD\ WKDW SURYLGHV WKH KLJKHVW GHJUHH RI SURWHFW  
7XQLVLDQ UHVLGHQWV RI WKH FRXQWU\ DOLNH

### The Constitution-Making Process

7KH /HJDO )UDPHZRUN

7ZR OHJDO WH[WV JRYHUQ WKH YRWH RQ WKH FRQVWLWXWLRQ ± WK  
ODZ FRPPRQO\ UHIHUUHG WR XVLQJ WKH )UHFK ~~DGRSWHG~~ 2333' R  
1&\$V 5XOHV RI 3URFHGXUH 5R3 7KH ODWWHU GRHV QRW KDYH W  
WKH DVVHPEO\

\$UWLFOH RI WKH 2333 DGRSWHG E\ WKH 1&\$ RQ 'HF VSH  
RI 1&\$ PHPEHUV LV UHTXLUHG WR DGRSW HDFK DUWLFOH DQG WK  
DGRSWLRQ RI WKH FRQVWLWXWLRQ LQ LWV HQWLUHW\ ,Q DGGLWLF  
WKH UHTXLUHG PDMRULW\ GXULQJ WKH ¿UVW UHDGLQJ WKH YRWH  
WKH SOHQDU\ IDLO WR DGRSW WKH FRQVWLWXWLRQ RQFH DJDLQ Z  
FRQVWLWXWLRQ LV VXEMHFW WR D UHIHUHQXP ZKHUH LWV DGRS

7KH 5XOHV RI 3URFHGXUH XQGHUZHQW IRXU DPHQGPHQWV DIWHU

€05XWHE05X!QWL PHQUH XW@0 @•@€0ÀDãP€€ !Qg•P•€0pÀp€pÀ 0À`0

7KH QL D€`P¥ e 0`Y a !òQY ey5X%'0QWLWXWLRQ LV SH%,U5

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'UDIWLQJ &RPPPLVLRQV EDFN WR WKH FRPPLVLRQV ZKLFK  
VHFRQG FRPSLODWRQ RI WKH FRPPLVLRQV ZRUN NQRZ  
WZR GD\ EHIRUH WKH ODXQFK RI D QDWLRQDO FRQVX

:KLOH QDWLRQDO FRQVXOWDWRQV WRRN SODFH IURP 'HF  
YDULRXV FKDSWHUV RI WKH GUDIW FRQVWLWXWRQ LQ SO  
LQFOXGLQJ WKRVH ZKR GLG QRW SDUWLFLSDWH LQ WKH F  
RQ WKH 'GUDIW' ZLWK WKH QHZO\ UHYLVHG 5R3 WKH FRQ  
UHFRPPHQGDWRQV IURP WKLV JHQHUDO GHEDWH DV ZHOV  
SODFH LQ 6HSWHPEHU DQG LQ DUWLYLQZOSFRMXPWRINRS  
± \$SULO 2Q \$SULO WKH XSGDWHG GUDIWV IU  
WRZ\ ZHUH VHQW WR WKH 'UDIWLQJ &RPPPLVLRQV IRU DGGL

7KH DPHQGHG 5R3 DGGUHVHVG WKH VFRSH RIGG 0IÀx~DCE 0  
0€PVG pQ

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&RPPLWWHH UHVXPHG LWV ZRN VYFRQGHODUHLWKDHOHQGDORJXH DQ  
VRPH RI WKH DJUHHPHQWV UHDFKHG RQ FRQVWLWXWLRQDO LVVXH  
DGGHG D WHQWK FKDSWHU GHDOLQJ ZLWK WUDQVLWLRQDO SURYL  
DQWLFLSDWHG WUDQVLWLRQ IURP WKH SUHYLRXV FRQVWLWXWLRQ  
DQG SUHVLGHQWLDO HOHFWLRQV

7KH 1&\$ UHOHDVHG WKH QDO GUDIW RI WKH FRQVWLWXWLRQ DOV  
FRQVWLWXWLRQ RQ -XQH ,W ZDV LPPHGLDWHO\ PHW ZLWK  
WKDW LW ZDV XQIDLWKIXO WR WKH ZRUN RI WKH VL[ FRQVWLWXWLF  
PHPEHUV DUJXHG WKDW WKH 'UDIWLQJ &RPPLWWHH KDG RYHUVWH  
RI VRPH DUWLFOHV DOUHDG\ GUDZWH\ GDQG WKH OHDFRPLV DLRODSWQU  
WUDQVLWLRQDO SURYLVLQRV ZLWKRXW FRQVXOWLQJ WKH FRPPLV

7R RYHUFRRPH WKH FULVLV WKH 1&\$IV OHDGHUVKLS GHYLVHG D  
WKH UHPDLQLQJ SRLQWV RI FRQWHQWLRQ 1&\$ 3UHVLGHQW 0XVWD  
&RPPLVVLRQ ZKLFK UHSUHVHQWHG WKH YDULRXV SROLWLFDO EOP  
1&\$ PHPEHUV 7KH FRPPLVVLRQ VRXJKW WR LGHQWLI\ FRQWHQWLR  
UHDFK DJUHHPHQW RQ WKHP 7KH DLP ZDV WR IDFLOLWDWH JHQH  
DUWLFOH E\ DUWLFOH YRWH DQG WR DOORZ IRU WKH DGRSWLRQ R  
DV SRVVLEOH

7KH FRQVWLWXWLRQ PDNLQJ SURFHVV PHW LWV PRVW VHULRXV F

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IDYRU ZHUH QHHGHGQR-UDQWV SDVVWKH FRQVWLWXWLRQ ZDV VLJQ  
3UHVVLGHQW RI WKH 5HSXEOLF 0RKDPHG 0RQFHI 0DUJRXNL WKH 1  
DQG WKH KHDG RI JRYHUQPHQW DW WKH WLPH \$OL /DDUD\HGK 7KH  
WKURXJK LWV SXEOLFDWLRQ LQ D VSHFLDO7XQLWLRQ RI WKH 2

7KH 5XOHV RI 3URFHGXUH D ÀH[LEOH LQWHUSUHWDLRQ

7KRXJK JRYHUQHGE\ WKH 1&\$V 5XOHV RI 3URFHGXUH DQG \$UWLF  
YRWH SURFHGXUHV ZHUH QRW VWDWLF WKURXJKRXW WKH SURFHVV  
PDQQHU DW YDULRXV PRPHQWV WR DYRLG SROLWLFDO EORFNDJHV

:KLOH DPHQGPHQWV IURP WKH &RQVHQVXV &RPPLVVLRQ ZHUH GHVF  
WKLW ODQJXDJH ZDV LQWHUSUHWHG LQ YDULRXV ZD\ VRPH GHSX  
DFRUGDQFH ZLWK WKH DJUHHPHQWV ZKLOH RWKHUV FRQVLGHUH  
&RPPLVVLRQV DPHQGPHQWV ZHUH DGRSWHG DQG GHSXWLHV JHQ  
UHDFK7KLV FKDQJHG KRZHYHU GXULZKLVKKBY;QWV ROK \$UWLFOLWL  
HOLJLELW\ IRU WKH RI;FH R7KLVVHVXHQWDRISRQD5HJSXQJOWKUR  
SURFHVV 7KH ODQJXDJH SURSRVHG E\ WKH &RQVHQVXV &RPPLVVLR  
WR PHGLDWH WKH LVVXH )URP WKLW SRLQW RQ WKH UROH RI &RQ  
DQG RQ -DQ +DELE .KHGKHU WKH \*HQHUDO 5DSSRUWHXU R  
WR WKH ZRUN RI WKH FRPPLVVLRQ

7KH ELJJHVW GHEDWH DPRQJ REVHUYHUV RI WKH SURFHVV LQ UHJD  
RI WKH &RQVHQVXV &RPPLVVLRQ EXW RQ WKH LQWHUSUHWDLRQ R  
7KH DUWLFQVWDWHV WKDW WKH \*HQHUDO 5DSSRUWHXU RI WKH  
PD\ UHTXHVW WKDW WKH DVVHPEO\ 3UHRSHQ WKH GHEDWH RQ DG  
HOHPHQWV DSSHU EHIRUH WKH FORVH RI GHOLEHUDWLRQV RQ WK

7KH \*HQHUDO 5DSSRUWHXU SURSRVHG WKH XVH RI 5R3 \$UWLFQV  
VXJJHVWHG UHRSHQLQJ WKH GHEDWH RQ WKH IRXUWK SDUDJUDSK  
QRWLRQ RI 7XQLVLDV 3OHGLWHUUDQHDQ EHORQJLQJ +LV VXJJH  
ZDV VXEVTXHQWO\ DSSOLHG WR UHRSHQ UHYLHZ UHJDUGLQJ \$UW  
UHOLJLRXV IUHHGRP DQG WKH SURWHFWLRQ RI WKH 3VDFUHG DC  
SUHYLRXV VHVVLRQ LQ LWV \$UWLFQV DQW HUFDWLRQ UHWZHHQ WZ  
RSSRVLQJ FDPSPV RSSRVLWLRQ GHSXWLHV FODLPHG WKDW WKH FR  
SgsGHSXWLHV0S0 WLFRQÀLERVDG<JL GRRW €0°€0°Fp •€p0C@ PpÀF€  
WLDG V ÀRQ €€px R^ GP@-W @OU ( @• Ô@đ@† -@pđ FR ÀU @P0P

HDDGDG TÀR HDROW@P €@p@KDI € €FB YHE €G@€ XDGVA 0 U@ IZLÀQJGRISpx@ @P (ep





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ZHHNV EHIRUH WKH VWDUW RI WKH DUWLFOH E\ DUWLFOH YRWH W  
VRFLHW\ REVHUYHUV RQ LWV ZHEVLWH \$FFRUGLQJ WR WKH 1&\$  
RQ WKH VLWH ZLWK VRPH RUJDQLJDWLRQV UHJLVWHULQJ PRUH V



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LQ WKH FRQVWLWXWLRQ 7KH SUHDPEOH RI WKH ¿UVW GUDIW UHIH  
GUDIW WKH SUHDPEOH LQFOXGHG D UHIHUHQFH WR ³SULQFLSOHV  
ZDV DGGHG LQ WKH WKLUG GUDIW WKLV UHIHUHQFH ZDV XQGHUP  
SKUDVH ³LQVRIDU DV WKH\ DUH LQ KDUPRQ\ ZLWK WKH FXOWXUDO  
ZRUGLQJ FDXVHG VLJQL¿FDQW SURWHVWV E\ FLYLO VRFLHW\ DQG V  
DQG ¿QDO GUDIW WKLV OLPLWDWLRQ ZDV UHPRYHG KRZHYHU UHF  
XQLYHUVDO KXPdq ULJKWV The General Report of the Constitution Project VVXHG  
E\ WKH 'UDIWLQJ & RPPLWWHH RQ -XQH UHdGV

³,Q GHVFULELQJ WKH ³KXPdq YDOXHV DQG SULQFLSOHV RI KXPdq UL  
ZDQWHG WR HPSKdVLJH WKH IDFW WKdW ZH VKRXOG EXLOG RQ RQ  
DWWDLQHGX VXSUHPdF\ GXH WR WKHLU QREOH FRQWHQW WKXV HQ  
SUHYLRXV IRUPXODWLRQ >RI WKH WKLUG GUDIW@ ZKLFK UHTXLUH  
³FRQVLVWHQW ZLWK WKH FXOWXUDO FKdUDFWHULVWLFV RI WKH 7XQ  
WdNLQJ LQ FRQVLGHUDWLRQ WKH UHIHUHQFH IROORZLQJ LW >LQ WK  
FLYLOLJdWLRQDO KHULWdJH DQG UHIRUP PRYHPHQWV EDVHG RQ WKH  
WC03w•Q#  
F 0XVO 2'IRUPXO °€0  
F`đ@P0G°€0

R qFCFXODU pWP0  
FR•  
W @H @ @ pÀ0

FR Y•@ 0

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NHHS WKH HPEOHPDWLF ¿UVW \$UWLFOH RI WKH FRQVWL  
DQG VRYHUHLJQ VWDWH ,WV UHOLJLRQ LV ,VODP LWV OD  
5HSXEOLF ´ 7KLV DUWLFOH DI¿UPV 7XQLVLD¶V \$UDE 0XVOLF  
6WDWH UHOLJLRQ

\$ GHEDWH DURVH KRZHYHU ZLWK WKH ZKLFK URQXFWHIDFQRRI  
FHUWDLQ DUWLFOHV FRXOG QRW EH DPHQG HG HQXPHUDWH  
LQFOXGLQJ <sup>3</sup>,VODP DV WKH 6WDWH UHOLJLRQ ´ 7KLV FKDQJ  
DQG DFDGHPLFV VDLG WKDW WKH FRQFHSW RI D 6WDWH UH  
RI \$UWLFOH is Islam 7KH &RQVHQVXV &RPPLVVLRQ DGGUHV  
DJUHHPHQW WR VWDWH FOHDUO\ DW WKH HQG RI \$UWLFOH  
DJUHHPHQW LQ WKH SOHQDU\ YRWH

7KH DGRSWHG FRQVWLWXWLRQ DOVR IRUELGV DPHQGLQJ S  
6WDWH ´ 6RPH FLYLO VRFLHW\ UHSUHVHQWDWLYHV KDYH DU  
LQ QDWXUH LV FRQWUDGLFWRU\ )RU WKDW UHDFRQ WKH\

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LQFLWHPHQW WR YLROHQFH DQG KDWUHG ' .

7KH &HQWHU LV FRQFHUQH G WKDW WKH REOLJDWLRQ IRU WKH 6WDV  
EH XVHG LQ WKH IXWXUH WR FXUE IUHH VSHHFK LI WKDW VSHHFK  
\$FFRUGLQJ WR WKH 8QLWHG 1DWLRQV +XPDQ 5LJKWV &RXQFLO K  
UHOLJLRQ VKRXOG QRW EH XVHG WR OLPLW IUHHGRP RI H[SUHVVL

7KH IUHHGRPV RI UHOLJLRQ DQG FRQVFLHQFH DUH WKH RQO\ ULJ  
FKDSWHU DV RSSRVHG WR WKH ODWHU ULJKWV DQG IUHHGRP FKDS  
EH LQWHUSUHWHG WR PHDQ WKDW WKH\ PHULW OHVV SURWHFWLR  
'HVSLWH WKHLU RPLVVLRQ IURP WKH ODWHU FKDSWHU WKHVH ULJ  
FODXVH \$UWLFOH

7KH MXGLFLDU\ ZLOO OLNHO\ SOD\ DQ LPSRUWDQW UROH LQ LQWH

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Restriction on fundamental rights

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UHVWULFWHG WKURXJK OHJLVODWLRQ UHPRYLQJ DOO PHDQLQJ I  
LQVWUXFWV MXGLFLDO DXWKRULWLHV ZKLFK ZLOO OLNHO\ KDYH Z  
DURXQG ULJKWV DQG IUHHGRP V WR <sup>3</sup>HQVXUH WKDW ULJKWV DQG I

'HVSLWH WKHVH LPSRUWDQW JDLQV 7KH &DUWHU &HQWHU H[SUHV  
WKH QHZ FRQVWLWXWLRQ :KLOH 7XQLVLD KDV REVHUYHG D PRUDV  
FRQVWLWXWLRQ GRHV QRW EDQ WKH GHDWK SHQDOW\ RXWULJKW H  
FRQVWLWXWLRQ \$UWLFOH DQG FDQ RQO\ EH OLPLWHG LQ H[WU  
WKDW LQ DGGLWLRQ WR WKH FRQGLWLRQV GHOLQHDWHG LQ \$UWL  
SUHVLGHQW WR WDNH H[FHSWLRQDO PHDVXUHV LQ WLPHV RI VWDW  
LQGLYLGXDO7KHFRQVWLWXWLRQ GRHV QRW HODERUDWH RQ WKH V  
D VWDWH RI HPHUJHQF\ KDV EHHQ SURQRXQFHG 7KH &DUWHU &H  
UHIRUP UHVWULFW OLPLWDWLRQV WR RQO\ WKRVH QHFHVVDU\ IRU  
RI WKH HPHUJHQF\ VLWXDWLRQ )XUWKHU ULJKWV FRQVLGHUHG  
QHYHU EH OLPLWHG XQGHU HPHUJHQF\ SRZHUV

The principle of non-discrimination

'XULQJ WKH GUDIWLQJ SURFHVV GHEDWHV DURXQG WKH SULQFLS  
DURXQG JHQGHU LVVXHV 2WKHU SRVVLEOH JURXQGV RI GLVFULPL  
UHOLJLRQ SROLWLFDO RU RWKHU RSLQLRQ DQG QDWLRQDO RU V  
XQRI¿FLDO YHVWRQDWLQJFRUSRUDWHG WKH FRPPHQWV RI WKH FR  
WKH 'UDIWLQJ &RPPLWWHH PHQWLRQHG <sup>3</sup>DOO IRUPV RI GLVFULPLQD  
LQFRUSRUDWHG LQWR WKH WKLUG DQG IRXUWK GUDIWV \$V D UHV  
LPSURYHG LQ HDFK VXFFHVVLYH GUDIW WKH DGRSWHG FRQVWLWX  
GLVFULPLQDWLRQ DV ZDUUDQWHG E\ LQWHUQDWLRQDO ODZ

\$UWLFOH VSHFL¿HV RQO\ WKDW <sup>3</sup>DOO FLWLJHQV PDOH DQG IHPD  
DQG VKDOO EH HTXDO EHIRUH WKH ODZ ZLWK QR GLVFULPLQDWLR  
RWKHU WKDQ JHQGHU QRW PHQWLRQHG EXW WKH FODXVH GRHV Q  
,&&35 ZKLFK G P0 °ì O\ "QHU HTXDp€pđ0EH\$WHG @đ °ìDO X\$W €P°DH

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,W LV QRWHZRUK\ WKDW ZKLOH \$UWLFOH GRHV QRW UH  
WR WKH SURWHFWLRQ RI 7XQLVLDQ ZRPHQ¶V ULJKWV DQG  
WKH HQWLUH FRQVWLWXWLRQ PDNLQJ SURFHVV

Protection of women's rights and equality

7KH ¿UVW GUDIW RI WKH FRQVWLWXWLRQ LJQLWHG D KHDW  
WKH ³FRPSOHPHQW DU\ UROHV RI PHQ DQG ZRPHQ LQVLGH W  
PHQ DQG ZRPHQ 0RUH JHQHUDOO\ WKH ULJKWV RI ZRPHQ  
WKH FRQWH[W RI ~~THE~~ ~~CONSTITUTION~~ FL]HG WKH QRWLRQ RI ³FRPS  
DEDQGRQH 7KH VHFRQG DQG VXFFHVVLYH GUDIWV FRQVL  
FRQFHSW RI WKH 6WDWH DV D JXDUDQWRU IRU HTXDOLW\ R  
YDULRXV UHVSQRVLELOLWLHV ´ DV RSSRVHG WR LQ DOO DU  
)XUWKHUPRUH LQ UHODWLRQ WR YLROHQFH DJDLQVW ZRP  
guaranteesWKH HOLPLQDWLRQ RI DOO IRUPV RI YLROHQFH DJDLQ  
ZLWK GUDIWLQJ VSHFL¿F FKDSWHUV ODWHU HGLWHG WKLV



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WKH VWDWH WR VHHN WKH DFKLHYHPHQW RI SDULW\ LQ DOO HOHF  
PDQGDWH JHQGHU SDULW\ LV QRWDEOH IRU LWV DVSLUDWLRQ

7KH FRQVWLWXWLRQ DOVR LQWURGXFHG JHQGHU VHQVLWLYH ZRUG  
WR ZRUN DQG WKH ULJKW WR GHFHQW ZRUNLQJ FRQGLWLRQV \$UV  
\$UWLFOHV DQG \$QG ZKLOH 7XQLVLD¶V FRQVWLWXWLRQ  
5HSXEOLF PXVW EH ~~QPD~~ ~~SUBV~~ ~~WGH~~ ~~HWKDW~~ <sup>3</sup>HYHU\ PDOH DQG IHPDO  
WR VWDQG IRU HOHFWLRQ IRU WKH SRVLWLRQ RI SUHVLGHQW 7KH  
LQ WKH DGYDQFHPHQW DQG SURWHFWLRQ RI ZRPHQ¶V ULJKWV LQ  
SUHFHGHQFH 6P À 0DUTE@UHFg 0

€ 0

0 TRQVWLWXWLRQ W WpH`

€ 0

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RU SURWHFW D JLYHQ ULJKW 7KLV LV LOOXVWUDWHG IRU  
\$UWLFOH ,Q WKH GUDIW VXEPLWWHG E\ WKH FRQVWLWX  
2bis EHIRUH WKH UHOHDVH RIRWKH ZDWHU HUG ZDWDJXDWDWDQHW HJJK  
EHLQJ REOLJDWHG WR SURWHFW ZDWHU UHVRXUFHV XVH V  
7KH WKLUG GUDIW UHDG PHUHO\ 3WKH ULJKW WR ZDWHU  
REOLJDWLRQ WR SURWHFW ZDWHU UHVRXUFHV DQG XVH WK  
REOLJDWHG WR GRKWRLEO WJDLWLYHQWLRQV RIRWKH RI ZDWH  
HOLPLQDWHG 7KH SOHQDU\ HYHQWXDOO\ DGRSWHG WKLW  
7KH FRQVHUJDWLRQ DQG WKH UDWLRQDO XVH RI ZDWHU VK

7KH &DUWHU &HQWHU ZHOFRPHV WKH DGGLWLRQ RI D QHZ  
YRWH VWLSXODWLQJ WKDW 3QDWXUDO UHVRXUFHV DUH WKH  
VRYHUHLJQW\ RYHU WKHP RQ WKH SHRSOH\V EHKDOI ,QYH  
VXEPLWWHG WR WKH FRPSHWHQW FRPPLWWHH RI WKH \$VWH  
UDWL¿HG LQ UHODWLRQ WR WKH \$MVHPEXURH VDSIDQO DEH Y

7KH UHDOLJDWLRQ RI HFRQRPLF VRFLDO DQG FXOWXUDO U  
WKH HVWDEOLVKPHQW RI FRQFUHWH HQIRUFHPHQW PHFKDQ  
WR GHYRWH DSSURSULDWH UHVRXUFHV WR WKH LPSOHPHQ  
FRQVWLWXWLRQ\V KXPdq ULJKWV FRPPLWPHQWV

#### Election Rights

\*XDUDQWHHV IRU HOHFWRUDO ULJKWV HYROYHG VLJQL¿FD  
DGRSWLRQ :KLOH WKH ULJKW WR YRWH GLG QRW DSSHDU L  
LQ WKH VHFRQG GUDIW ± WKH FKDUDFWHULVWLFV RI JHQXL  
ZLWK WKRVH HODERUDWHG LQ LQWHUQDWLRQDO ODZ

7KH &DUWHU &HQWHU FRPPHQGV WKH 1&\$ IRU LWV HIIRUWV  
ZKLFK IRUP WKH IRXQG DWLRQ RI WKH PRGHUQ GHPRFUDWLF  
SUHVLGHQWLDO DQG ORFDO HOHFWRQV EH XQKHHORRGV  
3IDLU DQG WUDQVSDUHQW ZHUH DGGHG LQ WKH IRXUWK G  
QDWXUH RI HOHFWRQV

8QIRUWXQDWHO\ KRZHYHU VRPH FRQFHUQV UHPDLQ \$UWLFOH  
WKDW UHWDLQHG D VSHFL¿F OLPLDWLRQ DQG WKXV PD\  
/LPLDWLRQ FODXVH IRU UHVWULFWLQJ ULJKWV \$UWLFOH  
WR GHWHUPLQH WKH OLPLWV WKDW FRXOG EH SODFHG RQ  
WKDW VKRXOG DQ\ PHDVXUHV EH SODFHG WR UHVWULFW  
SURSRUWLRQDO DQG QHFHVVDU\ LQ D GHPRFUDWLF VRFLH  
/LPLDWLRQ FODXVH

7KH DGRSWHG FRQVWLWXWLRQ IXUWKHU RPLWV WKH SULQF  
7KLV RPLVVLRQ LV VLJQL¿FDQW DQG ODZPDNHUV VKRXOG P  
7XQLVLD\V RUJDQLF ODZV UHODWLQJ WR HOHFWRQV

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7€L j-®pRHWp`Ü@)ÉMX\RWFOH JL@%%KÀ ÀU`€ 0ppÀ`pÀ ` 0



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,QWHUQDWLRQDO ODZ REOLJDWLRQV GR QRW GLFWDWH D  
IXQGDPHQWDO ULJKW WR FKRRVH DQG LPSOHPHQWV RZ  
FRQWHQW RI WKH FRQVWLWXWLRQ VKRXOG KRZHYHU HQ  
JXDUDQWHH WKH LPSOHPHQWDWLRQ RI ULJKWV DUH UHVS  
IXQGDPHQWDO SULQFLSOHV RI GHPRFUDWLF V\WHPV DQG  
EHWZHHQ WKH GLIIHUHQW SRZHUV RI WKH VWDWH DQG WK  
FRXQWHUYDLQJ SRZHUV

7KH FKRLFH RI WKH SROLWLFDO V\WHP ZDV SDUWLFXODUO  
WKH ¿UVW GUDIW RI WKH FRQVWLWXWLRQ HVWDEOLVKHG W

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L P P H G L D W H W H U P

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H[WHQGV WKH ULJKW WR UHIHU D GUDIW ODZ WR WKH &RQV  
WKH KHDG RI JRYHUQPHQW DV ZHOO D KL D QS UR YLHPLERHQJ V KRR  
ERRVW WKH ULJKWV RI WKH RSSRVLWLRQ DQG E\ H[WHQVL

Role of the Judiciary

7KH 7XQLVLDQ FRQVWLWXWLRQ OD\ D VWURQJ IRXQGDWLR  
RQ MXGLFLDO DXWKRULW\ FRQWDLQV LPSRUWDQW JXDUDQ  
DI¿UPV WKDW WKH MXGLFLDU\ LV DQ LQGSHHQGHQW DXWK  
VXSUHPDF\ RI WKH FRQVWLWXWLRQ WKH VRYHUHLJQW\ RI V  
\$UWLFOH SURKLELWV RXWVLGH LQWHUHUHQFH ZLWK WK

7KH ODQJXDJH FRQFHUQLQJ WKH DSSRLQWPHQW RI MXGJHV  
RI WKH FRQVWLWXWLRQ DOORLWV SURYLVLVLRQ QRWHG WH  
SUHVLGHQWLDO GHFUHH EDVHG RQ GHFLVLVLRQV E\ WKH +LJ  
ERG\ IRU WKH MXGLFLDU\ 7KHUH ZHUH QR SURYLVLVLRQV  
ZKLFK PHDQW WKDW DOO SRZHU IRU WKH DSSRLQWPHQW R  
JRYHUQPHQW DV SHU \$UWLFOH ,Q WKH ¿QDO WH[W WK  
WKDW WKH MXGLFLDU\ GRHV QRW IDOO KRVDJH WR WKH  
UHVSRQVLELQW\ RI DSSRLQWLQJ VHQLRU MXGJHV EXW RQ  
EDVHG RQ D SURSRVDO E\ WKH +LJ -XGLFLDO &RXQFLO \$U

)XUWKHUPRUH ODWHU GUDIWV VWUHQJWKHQHG WKH LPPXG  
WR OLIW WKH LPPXQLW\ RI D MXGJH LQ WKH HYHQW WKDW  
,Q WKH ¿QDO WH[W WKH MXGLFLDU\ EHFDXWKM QJ F B XIDQ  
LPPXQLW\ EH UHPRYHG ,W VKRXOG EH QRWHG WKDW WKHU  
SURWHFW MXGLFLDO LQGSHHQGHQFH 7KH JXDUDQWHHV RI  
VHHQ DV D NH\ WXUQLQJ SRLQW LQ 7XQLVLDQ KLVWRU\ LQ  
WKH UHYROXWLRQ DQG WR D OHVVHU H[WHQW VLQFH WKD

7KH 1&\$ DOVR LPSURYHG WKH ¿QDO WH[W HVWDEOLVKLQJ  
\$FFRUGLQJ WR WKH DGRSWHG FRQVWLWXWLRQ WKH &RXQ  
XSFRPLQJ OHJLVODWLYH HOHFWLRQV DQG ZLOO SOD\ DQ L  
PHPEHUV RI WKH &RQVWLWXWLRQDO &RXUW \$ NH\ DVSHFV  
PDWWHUV UHODWLQJ WR WKH DSSRLQWPHQW SURPRWLRQ  
DQG XQWLO WKH IRXUWK GUDIW LW ZDV IRUHVHHQ WKDW K  
WKH RWKHU KDOI QRQ MXGJHV 7KLV PHDVXUH ZDV DPHQG  
WKLUGV 7KH DGRSWHG FRQVWLWXWLRQ DOVR VWUHQJWKH  
MXGJHV \$UWLFOH VWLSXODWHV PRUHRYHU WKDW P `p  
VXUHp0` P,, € UH€đ0

W @I% Â4` PRÁ` pÀ GJ@FWCQ WD e p DÀDO V V@Đ

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SURFHVV D JURXS RI GHSXWLHV SURSRVHG DQ DPHQGPHQW WR H  
FRQVWLWXWLRQ IRU WKH 2 UUV WLPH LQ 7XQLVLDQ KLVWRU\ 7KH U  
SURIHVVLVRQ RI ODZ\HU LV D IUHH LQGSHSHQGHQW SURIHVVLVRQ WKD  
DQG WR WKH GHIHQVH RI ULJKWV DQG IUHHGRP V /DZ\HUV DUH HQW  
SURWHFWLRQ DQG WKH IXO2 OOPHQW RI WKHLU WDVN\ 7KLV DUW  
DXWKRULWDULDQ SDVW LQ ZKLFK ODZ\HUV ZHUH IUHTXHQWO\ VXE  
VHQVH WKH DGRSWHG ODQJXDJH FRXOG SOD\ D UROH LQ VWUHQJW  
ULJKW WR D IDLU WULDO 7KH ULJKW WR DSSHDO DQRWKHU LQJUH  
WKH VHFRRG GUDIW \$UWLFOH EXW ZDV UHPRYHG LQ WKH IRXU  
YHUVLRQ RI WKH FRQVWLWXWLRQ \$UWLFOH

'HVSLWH WKHVH VWURQJ JXDUDQWHHV VHFUXLW\ RI WHQXUH UHTX  
VWDWHV WKDW QR MXGJH PD\ EH WUDQVIHUHG GLVPLVVHG H[SH  
3H[FHSW LQ DFFRUGDQFH ZLWK WKH JXDUDQWHHV SURYLGHG IRU EV  
E\ WKH +LJK -XGLFLDO &RXQFLO EHIRUH DQ\ RI WKH DERYH DFWLR  
WKH ODZ WR GHWHUPLQH WKH FULWHULD IRU GLVPLVVDO 7KHVH P  
WKH MXGLFLDU\

7KH &HQWHU UHFRPPHQGV WKDW WKH JRYHUQQPHQW WKH 1&\$ DQ  
5HSUHVHQWDWLYHV LQFRUSRUDWH VWURQJHU SURYLVLVRQV RQ WK  
IUDPHZRUN FRQVLVWHQW ZLWK LQWHUQDWLRQDO VWDQGDUGV LQ  
RI WHQXUH LQ UHJDUGV WR DSSRLQWPHQW SURPRWLRQ DQG GLV  
IRU VHULRXV PLVFRQGXFW DQG RQO\ IROORZLQJ D IDLU WULDO

7KH 7XQLVLDQ FRQVWLWXWLRQ DFFRUGV WKH MXGLFLDU\ ZLGH SF  
H[WHQVLRQ WR HQIRUFH WKH IUHHGRP DQG ULJKWV JXDUDQWH  
WR D \HDU IROORZLQJ WKH XSFRPLQJ OHJLVODWLYH HOHFWLRQV  
OHDYHV D SRWHQWLDO YRLG LQ FRQVWLWXWLRQDO RYHUVLJKW W  
FRPPLVLRQ IRUHVHHQ E\ WKH FRQVWLWXWLRQ IRU WUDQVSRUWLRQDO  
RI ODZV \$UWLFOH SDUDJUDSK

7KH &DUWHU &HQWHU UHFRPPHQGV WKDW MXGJHV EH UHTXLUHG W  
WR IDYRU WKH HQIRUFHPHQW RI D ULJKW RU IXQGDPHQWDO IUHHG  
ULJKWV WUHDWLHV IURP DQ\ RI 2 FLDO WUHDW\ ERG\ LQFOXGLQJ F  
DFFRXQW DV D PLQLXP VWDQGDUG

\$ IXUWKHU FRQFHUQ LV WKH TXHVWLRQ RI WKH VXSUHPDF\ RI WKH  
FRQVWLWXWLRQ \$UWLFOH WKDW 3MXGJHV DUH LQGSHSHQGHQW 1  
WKHLU UXOLQJV R W H C O N S T I T U T I O N Q K H S R Z O D Z ' H P S K D V L V D G G H G ,  
WH[W WKH ZRUG 3FRQVWLWXWLRQ\ ZDV UHPRYHG D PRYH WKDW  
SDUDJUDSK ZKLFK LQVWUXFWV MXGJHV WR HQIRUFH WKH VXSUHP  
SDUDJUDSK HVVHQWLDOO\ DNVV WKHP WR UHIHU WR WKH ODZ RQO  
RYHU WKH FRQVWLWXWLRQ ZKHUH FRQWUDGLFWLRQV H[LVW EHWZ  
WKH &RQVWLWXWLRQDO &RXUW HYHQ ZKHUH WKH FRQVWLWXWLRQ

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DUWLFOH DVVXPHV SDUDPRXQW LPSRUWDQFH GXULQJ WKH  
LQ WKH DEVHQFH RI WKH &RQVWLWXWLRQDO &RXUW ,W VK  
ZKLFK VHWV OLPLWV RQ WKH VFRSH RI SHUPLVVLEOH UHVW

Composition and competence of the Constitutional Court

8QWLO WKH IRXUWK GUDIW WKH \$VVHPEO\ ZDV PDQGDWHG  
IURP DPRQJ FDQGLGDWHV SURSRVHG E\ WKH 3UHVLGHQW  
3UHVLGHQW RI WKH \$VVHPEO\ DQG WKH 3UHVLGHQW RI WK  
1&\$ GHVLJQDWHG WKH VDPH IRXU DXWKRULWLHV WR DSSR  
SOD\LQJ D UROH LQ WKHLU VHOHFWLRQ 7KLV PHDVXUH ZD  
SRZHUV DQG HQVXUHV WKDW QR RQH HQWLW\ FRQWUROV W

7KH ¿UVW DQG VHFRQG GUDIWV PDQGDWHG WKDW WKH &R  
VSHFLDOLVWV ZLWK D PLQLXP RI \HDUV RI SURIHVVLRQD  
WKHVH SUHUHTXLVLWHV LQ WKH WKLVG GUDIW UHTXLULQJ



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SURYLVLQRV LQWHQGHG WRHMZHXHWDKMPIRRWFHWDQGLWZLRQVWL

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UHYLHZ LV FULWLFDO LQ JXDUDQWHHLQJ WKDW WKH H[HU  
SHUTXLVLWHV RI WKH FRQVWLWXWLRQ

#### Recommendations

7KH &DUWHU &HQWHU HQFRXUDJHV WKH 1&\$ WKH JRYHUQP  
VRFLHW\ RUJDQL]DWLRQV DQG WKH IXWXUH PHPEHUV RI W  
FRQVLGHU WKH IROORZLQJ UHFRPPHQGDWLRQV

#### RIGHTS

*f* 5HYLHZ DQG UHIRUP 7XQLVLD¶V H[LVWLQJ OHJDO IUDPH  
UHJXODWLRQV UHÁHFW DQG UHVSHFW WKH FRXQWU\¶V  
WKH ULJKWV HQVKULQHGH LQ WKH QHZ FRQVWLWXWLRQ

*f* ,QFRUSRUDWH LQWR RUJDQLF ODZV JXDUDQWHHV RI WH

*f* 3URKLELW GLVFULPLQDWLRQ RQ WKH JURXQGV RI UDF  
RSLQLRQ QDWLRQDO RU VRFLDO RULJLQ SURSHUW\ E  
DSSO\ WR DOO SHRSOH LQ 7XQLVLD FLWL]HQV DQG IRU  
ODZ

*f* (QFRXUDJH WKH 6WDWH WR ¿JKW QRW RQO\ YLROHQFH  
DJDLQVW ZRPHQ \$GRSW FRQFUHWH PHDVXUHV WR SUR  
DGYDQFH JHQGHU SDULW\ LQ QRPLQDWLRQ OLVWV LQ  
GHEDWH LQ WKH 1DWLRQDO &RQVWLWXHQW \$VVHPEO\

*f* 6SHFLI\ LQ UHOHYDQW OHJLVODWLRQ 7XQLVLD¶V REOLJ  
WKH SURJUHVVLYH UHDOL]DWLRQ RI HFRQRPLF VRFLD  
FRXQWU\¶V DYDLODEOH UHVRXUFHV

#### ENFORCEMENT

*f* -XGJHV VKRXOG LQWHUSUHW WKH ODZ LQFOXGLQJ WK  
ULJKW RU IXQGDPHQWDO IUHHGRP DQG WR WDNH LQW  
WUHDWLHV LQFOXGLQJ IURP FRXUWV DQG FRPPLVVLRQ

*f* (QFRXUDJH MXGJHV DQG OHJLVODWRUV WR SURWHFW  
IUHHGRP WR DGRSW FKDQJH RU UHQRXQFH D UHOLJL  
DUH FRQVLVWHQW ZLWK WKH JHQHUDO OLPLDWLRQ F

*f* ,Q WKH HYHQW WKDW D VWDWH RI HPHUJHQF\ LV GHFO  
IUHHGRPV DUH VSHFL¿F QHFHVVDU\ SURSRUWLRQDW  
ZLOO H[SLUH DIWHU D GH¿QHGH SHULRG RI WLPH )XUWK  
LQ LQWHUQDWLRQDO ODZ UHPDLQ SURWHFWHMSR DQG

#### INSTITUTIONS

*f* ,QFRUSRUDWH SURYLVLRQV LQWR WKH OHJDO IUDPHZR  
LQ UHJDUG WR DSSRLQWPHQW SURPRWLRQ DQG GLVF  
UHPRYDO RI MXGJHV VKRXOG EH UHVWULFWHG WR FDV  
DQG LQ DFFRUGDQFH ZLWK WKH FRQVWLWXWLRQ E\ U

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IROORZLQJ LWV HVWDEOLVKPHQW

*f* (VWDEOLVK D SURYLVLQRQDO FRPPLVVLRQ SURPSWO\ WR UHYL  
VR DV WR LQFOXGH WKH GUDIW HOHFWRUDO OHJLVODWLRQ  
VKRXOG KDYH WKH DXWKRULW\

*f* FRQVLGHU AP¥ P@ pÀ 1,, WKH C€0P •À`À @đ1,, FRPPLVVLRQ APp°€

*f* DV 0 @`” WRKH DPÀ d WKH p` `pÀp€pÀ t DWRXWLRQ „€0P `€d°0đc0  
FRPPLVVLRQ 7DP°OG 7IH OHQDU pÀGLVFXVVLRQKRI 7IHWKH 7FP€đ€`pÀ

*f*

## ■ The Carter Center at a Glance

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in

more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. Please visit [www.cartercenter.org](http://www.cartercenter.org) to learn more about The Carter Center.



Martin Frank



