



## COMMENT

on the draft

Decree on Election of National  
Constituent Assembly of Tunisia

May 2011

## **About the ARTICLE 19 Law Programme**

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme operates the Media Law Analysis Unit which publishes a number of legal analyses each year, commenting on legislative proposals as well as existing laws that affect the right to freedom of expression. The Unit was established in 1998 as a means of supporting positive law reform efforts worldwide, and our legal analyses frequently lead to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at <http://www.article19.org/publications/law/legal-analyses.html>.

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## OVERVIEW OF RECOMMENDATIONS

- The Draft Decree should explicitly recognise the protection of the right to freedom of expression and information, as well as the right to participate in election campaigning as basic principles in both election information provision and election campaigning; the Draft Decree should also include the three-part test for assessment of any restriction to these rights.
- The connection between the right to freedom of expression and the right to participate in election campaigning should be highlighted by setting out that any interference with the right to participation in election campaigning which amounts to interference with the right to freedom of expression should meet the three part-test established by the Human Rights Committee.
- Special measures should be taken to ensure that public/state broadcasters are impartial at all times, particularly during election period.
- In the absence of self-regulatory mechanisms, the Draft Decree (or other regulation) should impose a duty on the state/public media and private broadcasters to provide fair, balanced and impartial information in their reporting of news and current affairs during election campaigning. At the same time, the legislation should grant the editorial independence of broadcasters and prohibit inappropriate interference with programmes' content from the government.
- The Draft Decree should stipulate an obligation of the Electoral Commission to carry out voter education programmes to ensure citizens are properly informed about voting process and other relevant issues, including through public media.
- The Draft Decree should explicitly state that public authorities are prohibited from interfering in activities of media outlets and media workers during election, and ensure that media can carry out their work without harassment and prosecution.
- The Draft Decree should stipulate that the media does not bear responsibility for unlawful statements made by candidates in their broadcasts, unless the media outlet concerned has either taken specific steps to adopt the statements, or where the statements are quite clearly illegal and the media outlet had an adequate opportunity to prevent their being disseminated.
- The Draft Decree (or another regulation) should provide for the independence of the Electoral Commission and stipulate its mandate and various functions in relation to freedom of expression of individuals and media outlets during election period.
- Provisions of the Draft Decree on hate speech should be amended in the light of international standards on prohibition of advocacy that constitutes incitement to discrimination, hostility or violence. This regulation should be uniform for all areas and should not be specific to election campaigning.

- The Draft Decree should define the term “national information media”.
- The Draft Decree should explicitly guarantee the right of political parties and candidates to access state/publically owned media during the election campaign.
- The right of political parties, not only individual candidates, to access state/publically owned media should be guaranteed. Political parties should be free to decide how to use their time as they best see fit, either by airing party messages or by presenting individual candidates.
- The Draft Decree should provide that political parties and candidates have free direct access to air time on fair and non-discriminatory basis.
- The drafters should consider the introduction of guidelines for the provision of direct access programmes on private broadcasters.
- The Draft Decree should stipulate that political parties must fully disclose sources and amounts of financial contributions and the types and amounts of campaigns expenditures; these obligations should cover periods prior and after the election.
- The Draft Decree (or another regulation) should provide for transparency of the functioning of the Electoral Commission, including the openness of the meetings of the Commission on local and national levels.
- The Draft Decree should introduce clear and comprehensive system of complaints to the Electoral Commission, including on matters concerning electoral campaign, disputes and media.
- The Draft Decree should provide specific sanctions for violations of various aspects of freedom of expression and election and interference with media freedom.

## 1. INTRODUCTION

This Comment outlines ARTICLE 19's analysis on the draft Decree on Election of the National Constituent Assembly of Tunisia (*hereinafter*, "the Draft Decree") against international standards on freedom of expression.<sup>1</sup> The text of the Draft Decree was published in Arabic in the *Assabah* newspaper on 13 April 2011, and the English translation was made available to international community at the end of April.

ARTICLE 19 is an international, non-governmental human rights organisation which works with partner organisations around the world to protect and promote the right to freedom of expression. ARTICLE 19 has been working on Tunisia for a number of years; most recently, we have been assisting Tunisians legislators and experts in drafting the freedom of expression related legislation.

ARTICLE 19 welcomes the efforts of the Tunisian Interim Government to pass a new regulation on election to the Tunisian National Constituent Assembly as an important step in preparing credible and peaceful nationwide elections in 2011. This Comment analyses those provisions of the Draft Decree that govern media coverage of elections and the right of voters and candidates to seek, impart and receive information in view of their participation in the elections. The aim of this Comment is to assess how these provisions, or the lack thereof, meet international freedom of expression standards and best practices in the given area.

On the outset of this Comment, ARTICLE 19 wishes to reiterate that from freedom of expression point of view, four issues are central to the election processes.

- *First*, the media outlets should be autonomous; in particular, they should remain free from political or corporate interferences. The media is particularly important in time of elections. Candidates for political office must be able to get their political message across freely and the media provides them a crucially important platform for doing so. In addition, the media play an important role in reporting and analysing the policies and backgrounds of political candidates. If during an election, a large number of political candidates cannot make their voices heard or the editorial independence of the media is interfered with, democratic elections have failed.
- *Second*, the media should be pluralistic and diverse in content, views and formats.
- *Third*, voters and parties and candidates should not be prevented from imparting, seeking and receiving information and ideas relevant to their participation in elections.
- *Fourth*, in view of the state duty to organise free elections, the legislation should provide mechanisms allowing access of election candidates to the media.

In this respect, ARTICLE 19 has concerns regarding the failure of the Draft Decree to sufficiently address the role of the media in the electoral process and to provide adequate protection for freedom of expression in election period. Our specific concerns include: the failure of the Draft Decree to guarantee the respect for freedom of expression and media freedom during election process, as well as a failure to recognize the right to participate in election campaigning; failure to require that any restriction of expression should meet a three-part test in order to be in compliance with the law; failure to provide for fair, balanced and impartial reporting in broadcast media; failure to protect the media during election process, including protection against attacks on media outlets and media workers; lack of provisions on voter education; and failure of the Draft Decree to set clearly the obligations of the Electoral Commission in relation to media.

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<sup>1</sup> The text of the Draft Decree is attached in the Annex to this Comment.

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ARTICLE 19 believes these concerns are particularly acute in the light that at present, Tunisia also needs to reform a number of other media laws to bring them in line with international standards on freedom of expression, including the need to transform the state broadcaster. Furthermore, we understand that series of initiatives have been undertaken by journalists, media, broadcasters and experts to introduce a comprehensive system of media self-regulation. Some of the issues outlined below (in particular the obligation of broadcasters to provide fair, balanced and impartial reporting on election) should be left of self-regulatory mechanisms. ARTICLE 19 fully supports the initiatives to introduce effective self-regulatory systems and the respective recommendations should be viewed in the light of absence of such mechanisms at present.

ARTICLE 19 hopes the recommendations and analysis, contained in the Comment, are useful to the Tunisian Interim Government and experts when reviewing the text of the Draft Decree from a freedom of expression perspective. Furthermore, we reiterate the urgent need to adopt regulation that would allow freedom of the media in crucial pre-election period in order to ensure that political parties and civil society groups are able to freely participate in the electoral process. ARTICLE 19 stands ready to assist the Tunisian Government and other stakeholders in finalizing the text of the Draft Decree and other freedom of expression related regulations.

## 2. INTERNATIONAL STANDARDS ON ELECTION AND FREEDOM OF EXPRESSION

### 2.1. *Right to Political Participation*

Article 21 of the Universal Declaration on Human Rights guarantees the right to political participation. While at the time of adoption it was viewed as a statement of principles, it is now widely accepted as imposing obligations upon all "members of the international community".<sup>2</sup> The right to participate in public decision-making processes is also protected under Article 25 of the International Covenant on Civil and Political Rights (*hereinafter* "the ICCPR") that stipulates:

- Every citizen shall have the right and the opportunity ... without unreasonable restrictions:
- 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.

According to Article 2 of the ICCPR, states have an obligation to ensure this right. From this obligation follows the duty of the authorities to ensure that electors have the necessary information to register and vote. Article 19 of the ICCPR grants "everyone", including political parties and candidates, a right to hold an opinion without interference and impart their views and ideas freely. At the same time, Article 19 provides for a corresponding right of the public to seek and receive those views and ideas. The protection of the ICCPR extends to information and ideas "*of all kinds ... [expressed] either orally, in writing or in print, in the form of art, or through any other media*".

### 2.2. *Right to Freedom of Expression*

The role of freedom of expression in realizing the right to take part in public affairs is also well-established. The Human Rights Committee, in its General Comment No. 25, has emphasized that freedom of expression is

essential ... for the effective exercise of the right ...and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty ... Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.<sup>3</sup>

The international standards and jurisprudence make it clear that governments have a negative obligation not to interfere with the imparting of information by the media or by willing speakers. Any restriction must restrict the freedom of expression as little as possible. The ICCPR sets forth a three-part test for determining the legitimacy of restrictions on freedom of expression: a) any restriction must be provided by law; b) it must serve one of the legitimate

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<sup>2</sup> The Proclamation of Teheran, Final Act of the International Conference on Human Rights at 4 para. 2, UN Doc. A/CONF 32/41, endorsed by the General Assembly in GA Res. 2442 (XXIII), 19 Dec. 1968; 23 GAOR, Supp. No. 18 (A/7218), at 49.

<sup>3</sup> UN Human Rights Committee, General Comment 25, adopted on 12 July 1996, para. 12; available at: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/d0b7f023e8d6d9898025651e004bc0eb?Opendocument>.

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purposes expressly enumerated in the Covenant<sup>4</sup>; and c) it must be necessary in a democratic society.

Vague or broadly defined restrictions, even if they satisfy the “provided by law” criterion, are unacceptable as they go beyond what is strictly required to protect the legitimate interest. Accordingly, governments may prevent the dissemination of election broadcasts only where such dissemination would be certain to lead to a disruption of public order or a violation of some other interest that the government is legitimately entitled to protect. A strong argument can be made that government-controlled media, particularly where they control the only or main channels in a region, may not refuse to broadcast political debate save in limited circumstances.

Governments have a general obligation to safeguard the physical security of all people within their jurisdiction.<sup>5</sup> In addition, statements in UN documents support a heightened obligation of governments to protect journalists and media offices from physical attack. For these reasons, and owing to the particular importance during election campaigns of protecting the security of the mass media, including those that publish controversial views, governments must be especially vigilant during election campaigns to condemn, investigate and punish attacks against media personnel and property.

Principles on transparent, open and pluralistic electoral campaign in the media have been also outlined in reports of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.<sup>6</sup> These reports provide additional guidelines aiming at guaranteeing free expression during the electoral campaign.

In 2009, the four special mandates on freedom of expression – the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (*hereinafter* “the OSCE”) Representative on Freedom of the Media, the Organization of American States Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information issued *Joint Statement on the Media and Elections (hereinafter* “Joint Statement”).<sup>7</sup> Highlighting the key role of the media in framing electoral issues and informing the electorate, the four special mandates call on states to adopt a number of measures supporting free expression during elections. Among these measures are rules against discrimination in the allocation of political advertisement, entrusting all regulatory powers to independent bodies, exemption of the media from liability for disseminating unlawful statements made directly by parties or candidates, etc.

From a comparative perspective, the most detailed statements of participatory right are to be found in documents of the OSCE. As an example, in the Copenhagen Document of June 1990, the participating states committed themselves to “ensure that the will of the people

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<sup>4</sup> The ICCPR permits restrictions only to protect "the rights or reputations of others", "national security", "*ordre public*" (which in addition to public order includes the general welfare), "public health or morals", "propaganda for war" or "incitement to discrimination, hostility or violence" on grounds of nationality, race or religion.

<sup>5</sup> For instance, Article 9 of the ICCPR states that: "Everyone has the right to liberty and security of person." Article 2, requires each state party "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant."

<sup>6</sup> See for example, Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Mr. Abid Hussain, UN Doc. E/CN.4/1999/64 29 January 1999.

<sup>7</sup> Joint Statement of Special Mandates on the Media and Elections, May 2009; available at <http://www.article19.org/pdfs/press/special-mandates-highlight-framework-for-media-and-elections.pdf>.

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serves as the basis of the authority of government” by, among other means, ensuring “that no legal or administrative obstacle stands in the way of unimpeded access to media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.”<sup>8</sup>

Specific rules relating to broadcast coverage of election campaigns have been set out by ARTICLE 19 in the Guidelines for Election Broadcasting in Transitional Democracies (*hereinafter* “ARTICLE 19 Guidelines”).<sup>9</sup> Furthermore, ARTICLE 19’s policy document Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation (*hereinafter* “Access to Airwaves”),<sup>10</sup> in Section 9, also deals with the election coverage issues. Both these policy documents are built on international standards on broadcasting during elections and best comparative practice, and thus represent a goal to which all countries holding elections should aspire. In particular, the Access to Airwaves recommends the following main principles:

*Principle 29: Adequate Public Information*

29.1 States have an obligation to ensure that the public receive adequate information during an election, including through broadcasting, about how to vote, the platforms of political parties and candidates, campaign issues and other matters of relevance to the election. Such information should be made available through news and current affairs programmes, special election programmes, direct access political broadcasts and, where allowed, commercial political advertisements.

29.2 Public broadcasters have a primary obligation in this regard but obligations may also be placed on commercial and/or community broadcasters, in accordance with this Section, provided that these obligations are not excessively onerous.

29.3 Broadcasters should be required to ensure that all election coverage is fair, equitable and non-discriminatory (see Principle 31.1).

29.4 Any obligations regarding election broadcasting should be overseen by a regulatory body that meets the conditions of independence set out in Section 4.

*Principle 30: Voter Education*

States are required to ensure that voters understand the technicalities of voting, including how, when and where to register and to vote, their right to choose candidates freely and by secret ballot, and the importance of voting. Where this is not already provided for in other ways, public broadcasters should carry voter education programmes. Commercial and/or community broadcasters may also be required to carry voter education programmes.

*Principle 31: Direct Access Political Broadcasts*

31.1 Public broadcasters should be required to grant political parties and/or candidates direct access airtime, on a fair, equitable and non-discriminatory basis, for political broadcasts. Commercial and/or community broadcasters may also be required to grant parties and/or candidates direct access airtime for political broadcasts. The term ‘fair, equitable and non-discriminatory’ applies to the amount of airtime granted, the scheduling of the broadcasts and any charges levied. Public broadcasters should, and commercial/community broadcasters may, be required to provide technical assistance to parties and candidates for purposes of production of direct access political broadcasts.

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<sup>8</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, para. 7.8.

<sup>9</sup> ARTICLE 19 Guidelines for Election Broadcasting in Transitional Democracies, London, 1994; available at <http://www.article19.org/pdfs/tools/electionbroadcastingtrans.pdf>.

<sup>10</sup> ARTICLE 19 *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation*, March 2002; available at <http://www.article19.org/pdfs/standards/accessairwaves.pdf>.

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31.2 Broadcasters should not be allowed to refuse to carry obligatory direct access political broadcasts unless they clearly and seriously breach a legal obligation. At the same time, broadcasters should be protected against legal liability for direct access political broadcasts, in accordance with Principle 5.

*Principle 32: Commercial Political Advertisements*

Where parties and candidates are permitted to purchase broadcast time to air political advertisements, broadcasters should be required to make such time available on an equal, non-discriminatory basis to all parties and candidates.

*Principle 33: Rapid Redress*

The body responsible for overseeing election broadcast obligations should ensure that prompt redress is available to parties and candidates for election-related violations, including in response to complaints. The oversight body should, in this context, have the power to impose a range of remedies including requiring the offending broadcaster to carry a correction, retraction or reply. The decisions of this body should be subject to judicial review.

While the OSCE and ARTICLE 19's documents lack the formal status of international law, they are widely regarded as authoritative interpretations of international standards in this area.

### **2.3. Non-discrimination and the duty of balance**

The right of political parties and candidates to have equitable access to the public media receives powerful support from the strong prohibition of discrimination, including on grounds of political opinion, under international law. The ICCPR, in Article 2 para 1 declares that governments are obliged both to refrain from discrimination and to ensure that private parties do not engage in discrimination concerning matters that would affect the enjoyment of fundamental rights:

Each state party to the present Covenant 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 distinction of any kind, such as race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Other human rights treaties impose similar obligations, such as Article 2 of the African Charter African Charter on Human and Peoples Rights. Thus, if a government-controlled media outlet provides air time to the ruling party, either by way of time for direct statements or by way of news coverage, then it is obliged to devote equitable amounts of time to competing political parties on a non-discriminatory basis.

Furthermore, from the comparative perspective, it should be noted that several national courts have ruled that their constitutional guarantees of freedom of expression and non-discrimination require government-controlled media to publish replies by government critics to government statements on controversial issues. This obligation is all the stronger during election campaign periods when the right of the electorate to be well-informed requires that parties or candidates whose views have been misrepresented or attacked be given the opportunity to reply. Several courts have elaborated the particular duties of a government-

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controlled publication or broadcasting station to provide accurate, balanced information and an opportunity for opposing views to be aired.<sup>11</sup>

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<sup>11</sup> See ARTICLE 19 Guidelines, p. 56-57

### 3. ANALYSIS OF THE DRAFT DECREE

#### 3.1. *Overall comments*

Generally, ARTICLE 19 notes that this Comment does not deal with the assessment of whether the Draft Decree is consistent with standards on the conduct of election; it only focuses on its compliance with freedom of expression standards.

From the freedom of expression perspective, the Draft Decree fails to provide for a number of important matters.

- **The Draft Decree fails to guarantee the respect for freedom of expression and media freedom during election process. It also fails to recognize the right to participate in election campaigning.** ARTICLE 19 notes that no provisions of the Draft Decree recognize the importance of the right of freedom of expression in relation to election and fail to impose an obligation to respect media freedom during election period. Similarly, the Draft Decree does not recognize that participation of voters in election campaigns is a form of their right to freedom of expression; such guarantee is missing in the Draft Decree. ARTICLE 19 believes that clear recognition of these rights in the election context is particularly important for countries in democratic transition, such as Tunisia.
- **The Draft Decree fails stipulate that any restriction on freedom of expression should meet a three-part test in order to be in compliance with the law.** These restrictions can take a number of forms, such as a form of speech or distribution of leaflets and the like. ARTICLE 19 submits that without recognition of this international standard, the Draft Decree fails to ensure that any restrictions in elections should be assessed not only for its compliance with the legislation, but for whether it was necessary in a democratic society. As a result, many future restrictions on freedom of expression in elections risk being in violation with international standards even though they are in compliance with the Draft Decree
- **Failure to provide for fair, balanced and impartial reporting in broadcast media:** In the absence of self-regulatory mechanisms, ARTICLE 19 is concerned that the Draft Decree does not contain any provisions on the obligation of broadcast media (both private and state/public) to ensure that candidates receive fair, balanced and impartial coverage, while respecting the editorial independence of broadcasters. ARTICLE 19 notes that, generally, it is preferable to provide for fair, balanced and impartial reporting through effective self-regulatory mechanisms. ARTICLE 19 fully supports the introduction of effective self-regulatory system for media; this recommendation should be viewed in the light of fact that at present, such mechanisms do not exist in Tunisia. ARTICLE 19 is also aware that simultaneously with reforming the election laws, the Tunisian Interim Government is undertaking a review and reform of other legislation, including the regulations on electronic media. It is possible that the drafters intended these requirements are to be stipulated in other pieces of legislation or in the ethical codes.

In the interim, given the constraints of the legislative reform in terms of timing and coordination, we recommend that such provisions would be provided also in the

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Draft Decree to ensure they are in place during the election period, given the principle of non-discrimination in relation to candidates. While it is well-established that the private print media have considerable freedom in their reporting of elections, broadcast media, whether private or state-owned, should be required to cover electoral campaigns in a fair, balanced and impartial manner. The requirements of a fairness and balance media mean that all parties and significant viewpoints are paid due, or equitable, attention. The obligation to report in a fair and balanced manner applies to news and current affairs programmes, as well as to other programmes which may also have an influence on the attitude of voters.

- At the same time, in connection to the point raised above, the Draft Decree should guarantee the **editorial independence of broadcasters** which means that there should be no inappropriate interference with programmes' content. It should also be stressed out that the requirement for fair, balanced and impartial reporting is not applicable to individual items. This requirement should be understood as an *overall* obligation to pay due attention to all parties and significant view points through the electoral campaign. Subsequently, the Draft Decree should also provide for these obligations are subsequently respected in practice.
- **Failure to provide for voter education:** the Draft Decree does not contain any provisions on the obligation of the Electoral Commission to carry voter education. The Draft Decree only provides for obligations to publish electoral lists and other technical matters but no voter education programme is envisioned. ARTICLE 19 notes that the obligation of states to carry such programme stems from the international law obligation to “hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”<sup>12</sup> This also means that citizens should have the necessary information to register and vote, and to make.

We also refer to Principle 30 of *Access to Airwaves*, which recommends states ensure “voters understand the technicalities of voting, including how, when and where to register and to vote, their right to choose candidates freely and by secret ballot, and the importance of voting. Where this is not already provided for in other ways, public broadcasters should carry voter education programmes. Commercial and/or community broadcasters may also be required to carry voter education programmes.” As such, ARTICLE 19 recommends that the Draft Decree explicitly stipulates such obligation.

- **Failure to protect the media during election process, including protection against attacks on media outlets and media workers:** Considering a long history of media censorship and oppression in Tunisia, ARTICLE 19 is concerned that the Draft Decree is completely silent on this matter. We recommend that the Draft Decree introduces two specific issues in this respect:
  - **Prohibition of interference:** the Draft Decree should explicitly state that public authorities refrain from interfering in the activities of media outlets and journalists with a view to influencing election. Even if such provisions are guaranteed elsewhere (e.g. in other regulations that are currently drafted by the

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<sup>12</sup> See Article 25 of the ICCPR.

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Interim Government), the Draft Decree should state them in full. This is also desirable in that the legislative reform in other areas might be delayed.

- **Liability of media:** ARTICLE 19 observes that the Draft Decree contains no provisions on exempting media from legal liability for unlawful statements made by political candidates in direct broadcast. It notes that *Election Guidelines*, in Principle 6 recommend that media who merely republish messages made by others should enjoy protection: “It is strongly recommended that the media be exempted from legal liability for unlawful statements made by candidates or party representatives and broadcast during the course of election campaigns, other than those which constitute clear and direct incitement to violence. The parties and speakers should be held solely responsible for any unlawful statements they make.”

As such, we recommend that the Draft Decree specifically stipulates that the media should not bear responsibility for unlawful statements made by political candidates in reports or broadcasts, unless the media outlet concerned has either taken specific steps to adopt the statements or where the statements are quite clearly illegal and the media outlet had an adequate opportunity to prevent their being disseminated. The media should also have reduced responsibility for the content of direct access broadcasts. If the media were responsible for the contents of direct access broadcasts, this would put them in the position of being potential censors. This departure from the normal rules of liability is justified by the short duration of campaign periods and the fundamental importance to free and fair elections of unfettered political debate. This limitation of liability does not, however, relieve political parties and other speakers themselves from liability for their statements.

- **Electoral Commission:** ARTICLE 19 observes that although the Draft Decree stipulates various functions of the Electoral Commission, it does not specify its mandate and composition and does not deal with any issues related to formation of this Commission. We assume that these matters are regulated in another piece of legislation (e.g. the Decree/Law on Election Commission) that is being drafted simultaneously with the Draft Decree. We note that ARTICLE 19 has not had an opportunity to review the regulation of this other legislation, hence, we are not able to provide any comments in relation to the Commission. In general, we note that the law should provide for the independence of the Electoral Commission and should also clarify its powers in relation to media. We also note that the Election Commission should be obliged to publish the election results in specific time; since at present, the Draft Decree, in Article 70, makes this obligation rather obscure.

#### Recommendations:

- The Draft Decree should explicitly recognise the protection of the rights to freedom of expression and information and the right to participate in election campaigning as basic principles in both election information provision and election campaigning and include the three-part test for assessment of any restriction to these rights.
- The connection between the right to freedom of expression and the right to participate in election campaigning should be highlighted by setting out that

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any interference with the right to participation in election campaigning which amounts to interference with the right to freedom of expression should meet the three part-test established by the HR Committee.

- Special measures should be taken to ensure that public/state broadcasters are impartial at all times, especially during election period;
- In the absence of self-regulatory mechanisms, the Draft Decree (or other regulation) should impose a duty on the state/public media and private broadcasters to provide fair, balanced and impartial information in their reporting of news and current affairs during election campaigning. At the same time, the legislation should grant the editorial independence of broadcasters and prohibit inappropriate interference with programmes' content from the government.
- The Draft Decree should stipulate an obligation of the Electoral Commission to carry out voter education programme to ensure that citizens are properly informed about voting process and other relevant issues, including through public media.
- The Draft Decree should explicitly stipulate that public authorities are prohibited from interfering in activities of media outlets and media workers during election and ensure that media can carry out their work without harassment and prosecution.
- The Draft Decree should stipulate that media do not bear responsibility for unlawful statement made by candidates in their broadcasts, unless the media outlet concerned has either taken specific steps to adopt the statements or where the statements are quite clearly illegal and the media outlet had an adequate opportunity to prevent their being disseminated.
- The Draft Decree or another comprehensive legislation should provide for the independence of the Electoral Commission and stipulate its mandate and various function in relation to freedom of expression of individuals and media during election period.

### **3.2. Electoral campaigning principles**

#### Overview

Principles on electoral campaigning are outlined in Article 37 of the Draft Decree. *Inter alia*, the Draft Decree prohibits “electioneering” that “contains calls for hatred, fanaticism and religious, group, regional or tribal discrimination during the electoral campaign.”

#### Analysis

ARTICLE 19 observes that these provisions are extremely unclear and vague and fail to respect international standards in this area. Overbroad and undefined provisions such as in Article 37 can lead to illegitimate restriction of freedom of expression. We also believe that definition of hate speech should be uniform for all areas (including election) and the Draft Decree should define and prohibit “advocacy of national, racial or religious hatred that

constitutes incitement to discrimination, hostility or violence” in accordance with Article 20 para 2 of the ICCPR. This provisions of Article 37 needs to be amended accordingly.

**Recommendations:**

- Provisions of Article 37 on hate speech should be amended in the light of international standards on prohibition of advocacy constitutes incitement to discrimination, hostility or violence. This regulation should be uniformed for all areas, not only for issues related to election.

**3.3. Access to media**Overview

Article 44 of the Draft Decree states that in their campaign, the candidates are allowed to use “only the national information media”, under the supervision of the Electoral Commission. Article 45 further states that the Electoral Commission shall “strive to remove all obstacles” in relation to access to information media on the basis of non-discrimination between candidates and on the basis of “precise standards” related to respect for private life, dignity, rights of the others and public order. It is also stipulated that the Electoral Commission shall fix technical standards and rules related to programs on election campaigns. Article 46 of the Draft Decree states that the rules and measures concerning the electoral campaign, including the periods of time, programs and space allocation to various candidates, shall be also set up by the Electoral Commission that shall ensure that this should be done on the basis on the principles of political pluralism, transparency, equity and parity of chances.

Analysis

ARTICLE 19 comments that there provisions need to be amended through the following measures.

- Term “**national information media**” needs to be defined. The Draft Decree fails to provide any indication what is meant by this term.
- The Draft Decree should provide **the right of political parties and candidates to access state/publically owned media during the election campaign**. The Draft Decree in Article 44 states that the candidates are “allowed to use only the national information media” without stipulating that this actually amounts to their right.
- The Draft Decree appears to fail to guarantee **the right of political parties to access state/publically owned media**, since Article 44 of the Draft Decree mentions only “candidates, men and women.” It is unclear whether the intention here was to create a dual system where special provisions would be provided for candidates since, likely, some candidates will be independent, without associating themselves with particular political party. However, in such case, the Draft Decree fails to provide access to political parties to media in a different manner. ARTICLE 19 therefore suggests clarifying this issue and stipulating clearly that free access to all state/public media is guaranteed to parties as well. Political parties should be then free to decide how to use their time as they best see fit, either by airing party messages or by presenting individual candidates.

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- ARTICLE 19 observes that the Draft Decree fails to provide for **free direct access to air time** for political parties and candidates. As noted above, the Draft Decree in Article 44 states only that national information media can be used for electoral campaigning; and subsequent articles envision the rules for access to be set by the Electoral Commission. However, at no point does the Draft Decree state that this should be provided for free. ARTICLE 19 notes that free direct access to airtime for political parties and candidates, at least in the public media, is arguably required by international law in transitional democracies as an essential means for ensuring that voters can make informed electoral choices.<sup>13</sup> Regardless, where such airtime is provided for, it is essential it is allocated to political parties and candidates on a fair and non-discriminatory basis.
- ARTICLE 19 also notes that the Draft Decree appears to limit the access of political parties and candidates to **private broadcast media**: the Draft Decree allows only for the possibility of electoral campaigning in “national information media” (while failing to provide the definition of the term – see above). It is not clear whether this term also encompasses the private broadcasters. The Draft Decree also fails to stipulate what is the penalty if private media are used for campaigning purposes. ARTICLE 19 notes that at present, there is an overwhelming consensus that the equitable access should also apply in relation to privately owned broadcasting media. This obligation is also recognized in Principle 29 of *Access to Airwaves*, which states that such requirement can be obligations may also be placed on commercial and/or community broadcasters provided that these obligations are not excessively onerous; and that “commercial/community broadcasters may ... be required to provide technical assistance to parties and candidates for purposes of production of direct access political broadcasts.” The guiding principle in implementation, and in deciding whether or not to require private broadcasters to provide direct access slots, should be to ensure that the public is sufficiently informed in a balanced manner

### Recommendations:

- The Draft Decree should define the term “national information media”.
- The Draft Decree should explicitly guarantee the right of political parties and candidates to access state/publically owned media during the election campaign.
- The right of political parties, not only individual candidates, to access state/publically owned media should be guaranteed. Political parties should be free to decide how to use their time as they best see fit, either by airing party messages or by presenting individual candidates
- The Draft Decree should provide that political parties and candidates have free direct access to air time on fair and non-discriminatory basis.
- The drafters should consider the introduction of guidelines for the provision of direct access programmes on private broadcasters.

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<sup>13</sup> See ARTICLE 19 Guidelines, No. 9.

### **3.4. Transparency**

#### Overview

Article 52 of the Draft Decree stipulates the obligation of parties to open a bank account related to the electoral campaign. This account shall be then controlled by auditing department and “publicised under measures to be fixed by decree.”

#### Analysis

ARTICLE 19 notes the provisions of Article 52 of the Draft Decree do not sufficiently provide for transparency of spending within electoral campaigns. We recommend that the Draft Decree includes specific obligation of political parties to fully disclose – both prior and after the election – sources and amounts of financial contributions and the types and amounts of campaigns expenditures. This information should be publically available.

Furthermore, ARTICLE 19 observes that the Draft Decree does not contain any provisions on transparency of the Electoral Commission. We recommend that the Draft Decree provides for transparency of operations of the Electoral Commission and stipulates what materials and information should be disclosed as a part of proactive disclosure requirement. Further, the meetings of the Electoral Commission (including the local ones) should be open to everyone, including media.

#### **Recommendations:**

- The Draft Decree should stipulate that political parties must fully disclose sources and amounts of financial contributions and the types and amounts of campaigns expenditures; these obligations should cover periods prior and after the election.
- The Draft Decree should provide for transparency of the functioning of the Electoral Commission, including the openness of the meetings of the Commission on local and national levels.

### **3.5. Enforcement mechanism**

#### Overview

Various provisions on enforcement mechanism can be found in the Draft Decree; these include the provisions on appeals against application for air time in election campaign in provisions of Article 45 – 48 of the Draft Decree. These provisions also allow for judicial review of the decisions of the Electoral Commission. The Draft Decree also lists specific offences related to election.

#### Analysis

In general, ARTICLE 19 observes that the current version of the Draft Decree does not contain a uniform complaint system for all matters related to election, including those concerning media and disputes. We reiterate the need for guaranteeing the independence of the Electoral Commission and clear stipulation of its duties and mandate in relation to media. ARTICLE 19 will be happy to provide further analysis of specific law setting up the Electoral Commission in this respect.

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Furthermore, ARTICLE 19 notes the current provisions for liability for interfering with the right to election campaigning is very brief. In particular, the Draft Decree sets no deadlines and specific processes of dealing with complaints, apart of stating that the Commission shall make “immediate end to any abuses”. It also does not list any form of measures that the Commission can take base on its finding.

ARTICLE 19 also notes that no offences listed in the Draft Decree deal with sanctions for interfering with the right to election campaigning and interference with media freedom. It is not clear whether such sanctions are already provided in other laws (e.g. criminal or administrative codes). However, we again note that it might be preferable to include these provisions in the Draft Decree as well in the light of a complexity of the current legislative reforms in Tunisia

### **Recommendations:**

- The Draft Decree should introduce clear and comprehensive system of complaints to the Electoral Commission, including on the matters concerning electoral campaign, disputes and media.
- The Draft Decree should provide specific sanctions for violations of various aspects of freedom of expression and election and interference with media freedom.

## **APPENDIX: Draft Decree on Election of National Constituent Assembly of Tunisia**

The following is the full text of the draft decree related to the election of the National Constituent Assembly, unanimously approved the day before yesterday [11 April] by the members of the Higher Authority for the Realization of the Objectives of the Revolution:

"Draft decree no. ... of 2011, dated ... [blanks as published] concerning the election of the National Constituent Assembly

The Interim President of the Republic,

At the proposal of the Higher Authority for the Realization of the Objectives of the Revolution, Political Reform and Democratic transition [Arabic: Al-Hay'ah al-'Uliya li tahqiq ahdaf al-thawrah wal islah assiyasi wal intiqal addimuqrati ] that was established in accordance with decree no 6 of 2011, dated 18 February 2011,

after taking cognizance of the views of the Prime Minister, issues the decree the text of which follows:

### **Preamble**

Breaking with the previous regime that was based on despotism and disregard to the will of the people by illegally staying on in power and falsifying elections,

In loyalty to the objectives of the revolution of the Tunisian people aimed at consecrating a legality founded on democracy, freedom, equality, social justice, dignity, political pluralism, human rights and alternation on power,

Proceeding from the commitment of the Tunisian people to elect a National Constituent Assembly that will draft a new constitution for the country, and in view of the fact that the previous electoral law had failed to secure democratic, pluralist, transparent and fair elections, there has been a consensus to elect a National Constituent Assembly in accordance with the following rules:

### **Article 1**

The members of the National Constituent Assembly are elected through a public, free, direct and secret ballot in accordance with the principles of democracy, equality, pluralism, fairness and transparency,

A Higher Independent Electoral Commission will supervise and control the electoral process. The composition, tasks and branches of the commission will be fixed by decree

### **Chapter 1: Electors Part 1**

#### **Article 2**

Elections are the right of all Tunisians, women and men, aged 18 on the eve of the elections, who enjoy their civil and political rights and are not concerned in any way by the deprivation of right mentioned below,

#### **Article 3**

Electors vote with their identity cards, and the Higher Independent Electoral Commission fixes the process of registration of voters to exercise this right,

#### **Article 4**

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Military men, civilians discharging their military duties and the agents of the Internal Security as defined in article 4 of law no. 70 of 1982, dated 6 August 1982, concerning the definition of the general status of the International Security forces as amended, will not exercise the right to vote,

### Article 5

Are banned from exercising the right to vote

1. The persons who have been convicted by the courts for a crime or misdemeanour that touches honour and sentenced to six months in jail without parole, and who have not recovered their civil and political rights
2. The persons who have been prohibited from voting
3. The persons whose assets have been confiscated following 14 January 2011 [Revolution Day]

### Part 2: The lists of electors

#### Article 6

The electors' lists are fixed for every municipality and for every sub-governorate in the regions that have no municipality. This will be done on the basis of the details showed by national identity cards. Electors will be registered on an electors list on the basis of their addresses of residence mentioned in the registration application.

Tunisian diplomatic or consular missions abroad will fix and re-examine the lists of electors for Tunisians residing abroad and registered with these missions. This will be done in accordance with the conditions and provisions of this text, under the supervision of the Higher Independent Electoral Commission mentioned in article 1 above.

The electoral commission's branch attached to a diplomatic centre will decide in the event of appeals concerning the drafting of electoral lists. Appeals may be made against decisions made by the electoral commission's branches in question to the Higher Independent Electoral commission in accordance with a procedure fixed by the latter

#### Article 7

Electoral lists are placed in the premises of the branches of the independent electoral commission, municipalities, sub-governorates, local village and town chiefs' offices, Tunisian embassies and consulates, and every elector has the right to see them at least 45 days before election day. Moreover, elector's lists will be published on the Internet website of the Higher Independent Electoral Commission

#### Article 8

The head of a branch of the Higher Independent Electoral Commission, the chairman of municipality, the deputy-governor, the village or town chief ['umdah], as well as the head of Tunisian diplomatic or consular missions abroad will post electoral lists in their premises. Updated lists will carry the names of electors that have been registered or those whose names have been crossed out.

The Higher Independent Electoral Commission will make public the beginning and end of periods of time when comments or appeals may be made about the publication of lists, in accordance with the provisions of this text, through the written and audio-visual media

#### Article 9

It will be possible for the following persons to be registered on the elector's lists once the call for elections has been made:

- The military men and the Internal Security agents if they no longer assume this job
- The persons who meet the legal age requirements after the registration deadline has lapsed
- The persons whose ban has been lifted
- The persons allowed to be registered on elector's lists by a court order
- Tunisians living abroad and who happen to be in the national territory during the elections

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Registrations takes place only if the persons concerned present a written application for this purpose to the local branch of the Higher Independent Electoral Commission, accompanied by the necessary documents at least 10 days before Election Day. A form prepared for this purpose will be filled and a copy of which will be handed to the person concerned after his identity has been checked. The municipality or the sub-governorate will inform the Higher Independent Electoral Commission of this.

#### Article 10

[The following] Will be crossed out from the elector's lists:

- The name of a person who dies and whose death has not been recorded
- The names of civilians discharging their national military duties
- The names of persons proven to have lost their right to vote
- The name of an elector who applies in writing for his name to be registered on another list. In this case he should prove that he has applied to be registered on another list

#### Article 11

The cost of the preparation and publication of the electoral lists will be met by the Higher Independent Electoral Commission mentioned in article 1 above

#### Part 3: Disputes concerning registration on electoral lists Article 12

Disputes concerning the electoral lists will be submitted to the ad-hoc branch of the independent electoral commission that will settle the case within eight days at most

#### Article 13

Objection to the electoral lists will be submitted to the ad-hoc branch of the independent electoral commission by means of a registered letter with a return receipt within seven days of the posting of lists. Objection concerns either an application to register a name or to cross it out. The date of objection will be considered to be that of the post stamp on the registered letter.

#### Article 14

The concerned parties and the administrative authorities may appeal against the decisions made by the branch of the independent electoral commission to the local, ad-hoc court of 1st instance. This should be done within five days of the date of the notification of those concerned by such decisions. The court of 1st instance should hand down its verdict about the case within five days of the filing of the case, and its verdict will be final.

All procedures and decisions concerning the electoral procedure of the National Constituent Assembly are exempt of fiscal stamps and registration at the excise and customs offices

### Chapter 2: Candidacy

#### Part 1: conditions of candidacy

#### Article 15

May be a candidate for the National Constituent Assembly:

- Any elector aged 23 at least the day he or she presents his or her candidacy.

May not be a candidate for the National Constituent Assembly:

- Any one who has held senior office in government or in the structures of the Constitutional Democratic Rally [The Ben Ali former ruling party in the last 23 years]. To this effect, a list of such senior officials will be drafted by the Higher Independent Electoral Commission for the elections
- Any of those who have urged the toppled president to be a candidate for the 2014 presidential elections. A list of these persons will be drafted by the Higher Independent Electoral Commission

#### Article 16

Candidacies for the National Constituent Assembly will be presented on the basis of parity between men and women. Candidates will be included in electoral lists on the basis of alternation of the names of men and women. Lists will be rejected that fail to respect this principle, except within the limits of what is required by the individual number of seats allocated to certain circumscriptions

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#### Article 17

The electors mentioned below may not be candidates for the National Constituent Assembly, unless they resign their posts or ask to be made redundant:

- The heads of diplomatic or consular missions
- The governors
- The judges
- The sub-governors fist class, the secretaries general of governorates, the sub-governors and the village and town chiefs ['umdah]. They may not be candidates in an electoral circumscription where they have held office

#### Article 18

Membership of the National Constituent Assembly may not be held concurrently with a job offered by a foreign state or an international government organization, where the holder of the job is paid by such a state or organization

#### Article 19

Membership of the National Constituent Assembly may not be held concurrently with the holding of civil service non-electoral functions where holders receive salaries paid by the state, local authorities, public institutions, public or semi-public companies, directly or indirectly. Similarly, membership of the National Constituent Assembly is not allowed if it is held concurrently with a managerial post in public institutions or companies

#### Article 20

A member of the National Constituent Assembly is not allowed during his membership to hold a post in public institutions or companies mentioned in previous articles of this document

#### Article 21

A member of the National Constituent Assembly may not be appointed to represent the state or local authorities in the structures of the public institutions mentioned above

#### Article 22

Any member of the National Constituent Assembly is now allowed to use his post in any publicity concerning financial, industrial, commercial or professional projects. The National Constitutional Assembly may take any measures it deems fit in the event of the provisions of this article being contravened

#### Article 23

Any member of the National Constituent Assembly is relieved of his functions after the final declaration of the results of the elections if his or her status when elected contravened the provisions of this decree related to the banning of holding various functions concurrently. Such a member will be made redundant if he or she was holding a civil service post. These provisions do not apply to contractual employees.

Every member of the National Constituent Assembly who, during his or her mandate, is given a senior post or a function mentioned in the articles 16 to 20 of this document, or who, during his or her mandate accepts a senior post that should not be held concurrently with his or her membership will be relieved of his or her membership automatically unless he or she resigns of his or her own volition. The declaration of resignation or automatic dismissal will be made by the National Constituent Assembly.

If a seat in the National Constituent Assembly becomes vacant, it will be filled with the next candidate figuring on the electoral list concerned

### Part 2: Presenting candidacies

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#### Article 24

The electoral list of candidates in a constituency presents a declaration signed by all the candidates and mentioning:

1- The name of the list put forward

2 - A statement showing the lists of electors in which candidates are registered.

The statement will be accompanied by a copy of the national identity card of every candidate

#### Article 25

The lists of candidates will be presented to the ad-hoc branch of the independent electoral commission, written on two copies on ordinary paper, 45 days before Polling Day. This operation will be recorded in a special register, stamped and bearing numbers, where the name of the list and date and time of its submission are mentioned.

A copy of the list will be at the branch of the independent electoral commission, and a provisional receipt will be given to the person presenting an electoral list. A final receipt will be given within the next four days so as to put the presented list on official record if it is conform to the provisions of this decree

#### Article 26

It is not allowed to give the same name to more than one electoral list, and presenting several lists at the same constituency by a single party is prohibited.

The number of candidates in every list must be equal to the number of seats allocated to the electoral constituency concerned

#### Article 27

It is not allowed to be a candidate in more than one electoral list and in more than one constituency

#### Article 28

Candidacies may be withdrawn 48 hours before Polling Day, at most. The declaration of withdrawal will be recorded in accordance with the same regulations concerning the declarations of candidacy. A candidate who withdraws from a list may be replaced by another candidate at least 48 hours before the withdrawal is announced by the head of the electoral list.

#### Article 29

If the official registration of a list is rejected, an appeal may be made against the rejection decision at the local court of 1st instance. The court will deal with the dispute within five days. An appeal may be made against the decision of the court of 1st instance at the administrative court that will decide the case within 48 hours and its verdict will be final.

#### Chapter 3

#### Article 30

The electors will be called by decree, and such a decree will be issued at least two months before Polling Day.

#### Part 1: Ballot system

#### Article 31

The number of the members of the National Constituent Assembly and the number of seats allocated to each constituency will be fixed on the basis of a deputy for every 60,000 inhabitants. An additional seat is added to a constituency if, after the allocation of seats to it, it transpires that there remains 30,000 inhabitants of the constituency.

The National Constituent Assembly will include members representing Tunisians abroad. The way they will be represented will be fixed by decree

#### Article 32

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Voting on lists will take place in one round, and seats will be allocated to constituencies on the basis of the proportional representation system, taking into account the largest remainders of voters

#### Article 33

Voting will take place in accordance with electoral constituencies. Every governorate will be a constituency or several constituencies, with the proviso that the number of seats allocated to each constituency should not exceed 10.

Two additional seats will be allocated to the governorates that have less than 270,000 inhabitants  
An additional seat will be allocated to the governorates that have between 270,000 and 500,000 inhabitants

Each list will seek to ensure that its candidates belong to various sub-governorates of the electoral constituency, and one of them at least must be less than 30 years old.  
Constituencies will be designated by a decree issued by the president of the republic on the proposal of the Higher Independent Electoral Commission

#### Article 34

An elector chooses a candidate, without crossing out names or touching the order of candidates

#### Article 35

If only one list is presented to elections, it will be declared a winner, irrespective of the number of votes it gets

#### Article 36

If more than one list is submitted for elections in a constituency, seats will be allocated in accordance with the electoral average, at a first stage. The electoral average will be fixed by dividing the number of votes that have been cast by the number of seats allocated to the constituency concerned. A list will have a number of seats equal to that of the number of times it has gained the electoral average. Seats will be accorded to lists in accordance with the order of names of candidates figuring on the list when it was presented

If seats remain that have not been allocated on the basis of the electoral average then they will be allocated at the level of the constituency concerned. If the remaining names of two or more lists are equal then the youngest candidate will win

### Part 2: The electoral campaign

#### Article 37

The electoral campaign will observe the following basic principles:

- 1 - Neutrality of the administration, the worshipping places and the national information media
- 2 - Transparency of the electoral campaign concerning their financing sources and the ways the finances allocated to it are spent
- 3 - Equality between all candidates
- 4 - Respect for the physical integrity and honours of both candidates and electors

#### Article 38

Electioneering is banned in:

- The places of worship
- The workplaces
- Educational institutions and universities

Moreover any electioneering is banned that contains calls for hatred, fanaticism and religious, group, regional or tribal discrimination during the electoral campaign

#### Article 39

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The agents of the public authority are prohibited from distributing the programs, leaflets or ballot papers of candidates. Similarly, the use is banned of public resources in the electoral campaign of any candidate or list of candidates

#### Article 40

Electoral public meetings are free. However, the local branch of the independent election commission must be informed of such meetings at least 24 hours before they are held

#### Article 41

Each electoral meeting should have a bureau composed of at least two persons chosen by a candidate or a list of candidates. The task of such a bureau is to keep order and ensure that the meeting passes off in good conditions. The bureau may dissolve the meeting if they deem fit. The bureau may also, if necessary, seek the help of the public force

#### Article 42

No electoral posters of a candidate or an electoral list should carry the flag or symbol of the Tunisian Republic

#### Article 43

Electoral campaigning is banned on Polling Day

#### Article 44

Candidates, men and women, are allowed as part of their electoral campaign to use only the national information media. The Higher Independent Electoral Commission will supervise the use of the information media on the basis of the principles mentioned in article 1 above. It will take the necessary measures for this purpose

#### Article 45

The commission in question will strive to remove all obstacles that are at variance with the freedom of access to the information media on the basis of non-discrimination between all the lists of candidates, and on the basis of precise standards related to respect for private life, the dignity of man, the rights of others and public order

The Higher Independent Electoral Commission will fix the technical standards and rules related to the programs of the electoral campaigns, which must be observed by the information and communication institutions of the public and private sectors

#### Article 46

The Higher Independent Electoral Commission will fix the rules and measures concerning the electoral campaign, including the periods of time, programs and space allocated to the various lists of candidates. The commission will also ensure their distribution and timing of their publication in the information media, in consultation with the various concerned parties. This will be on the basis of respect of the principles of political pluralism, transparency, equality and parity of chances

#### Article 47

The Higher Independent Electoral Commission will be in charge of the control of the application of these rules, and will receive appeals concerning their violation. The commission will, if need be, take the necessary measures to put an immediate end to any abuses before the end of the electoral campaigns. Anyone suffering damage from the measures taken by the commission in question in this regard will have the right to appeal to the administrative court

#### Article 48

The commission will be committed to assume control, either spontaneously or following an appeal. It may undertake all investigations and enquiries, without the possibility of being obstructed by

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professional secrecy. The commission may, if necessary, seek the help of the agents of the judiciary police.

The owners of information institutions and operators of communication networks should provide the commission with the necessary documents and statements to help it conduct the necessary research and investigations.

#### Article 49

As part of its tasks, the commission will recruit observers to control documents and take cognizance of all contraventions, in coordination with national authority for the reform of information and communication, and the national trade union of Tunisian journalists

Observers appointed by the commission will immediately inform the latter of any abuses, and supply it with all the documents and recordings proving them

#### Article 50

During the electoral campaign and under the supervision of the Higher Independent Electoral Commission, the administrative authorities will allocate special places and equal spaces where the electoral posters of every list will be placed. Places reserved for publications will be allocated on the basis of drawing lots.

Placing any posters outside these places and in spaces reserved for other lists will be banned

The local branch of the Higher Independent Electoral Commission will ensure respect for these provisions, and they should order the administrative authorities to remove any posters contravening the above mentioned provisions.

#### Article 51

The electoral campaign will open 22 days before Polling Day

#### Article 52

Every party or list of candidates should open a bank account related to the electoral campaign, which will be controlled by the auditing department, and it will be published under measures to be fixed by decree

Financing the electoral campaigns from any kind of foreign sources is banned.

#### Article 53

A donation will be allocated to every electoral list as a public assistance to help it finance the electoral campaign, on the basis of a financial sum for every 1,000 electors at the level of a constituency. Fifty per cent of the donation will be allocated equally between all the lists of candidates before the electoral campaign, and the other 50 per cent during the campaign. Each list that fails to win 3 per cent of the votes cast will be asked to give back half of the donation allocated to it.

The ceiling of electoral expenses and the way public assistance will be paid will be fixed by decree

### Part 3: The polling stations

#### Article 54

The Higher Independent Electoral Commission will fix the list and locations of the polling stations in every municipality or village, and this will be made public to the electors by means of announcements posted at the premises of governorates and sub-governorates, as well as in the offices of town and village chiefs, and in municipalities. This will be done at least seven days before the day of elections.

The number of electors at each polling station should not be less than 800 in municipalities where the number of electors is or exceeds 7,000.

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The location of a polling station should not be the premises of a political party or a non-governmental organization.

The Higher Independent Electoral Commission will appoint among electors a head of every polling station, and two other persons to help him. Members of a polling station bureau should not be selected among candidates.

#### Article 55

At least two members of a polling station bureau should be present during all the time of election. Every candidate has the right to be present at the polling station during voting time, and he may appoint somebody to deputize for him or represent him to control the voting process

The Higher Independent Electoral Commission may agree to the use of observers to control the voting process. The Higher Independent Electoral Commission should be informed of the names of deputies, representatives or observers at least three days before Polling Day. The commission will hand over a receipt for such information.

Representatives and deputies should be appointed among electors registered on the elector's lists. Representatives and deputies may record their remarks about the voting process in a memo that must be accompanied by the minutes of the voting process. The minutes in question should mention this as well as the periods of time representatives and their deputies were present at a polling station and the time they left them it.

#### Article 56

At the end of the voting process, each head of a polling station must draft a list of the voters who have cast their votes. The members of the polling station bureau are banned from wearing badges indicating their political leanings. This ban applies to the representatives and deputies of electors. The head of a polling station should ensure that this ban is observed.

The members of a polling station bureau are entitled to decide ways of settling any dispute that arises during the casting of votes, and they should mention it in the minutes of the voting proceedings.

#### Article 57

The head of a polling station is in charge of keeping order at the station, and if necessary he may suspend the voting process. No public force is allowed to be placed in a polling station without the permission of the head of the station. The head of a polling station may order that any elector causing trouble during voting should be taken out of the station.

Electors must leave the polling station as soon as they cast their vote, and all debates and negotiations are banned inside the station.

No elector is allowed to enter the polling station if he carries any kind of weapon.

#### Article 58

The elections for the National Constituent Assembly will be conducted with unified voting cards that will be printed by the Higher Independent Electoral Commission. The voting cards will be placed in every polling station, on a table prepared for this purpose.

Every list of candidates should select a symbol when applying for candidacy among the symbols presented to them by the Higher Independent Electoral Commission. The selection of symbols by lists will be carried out on the first-come first-served basis, and a receipt will be given for this purpose.

With regard to political parties, the symbol will be the same in all constituencies.

#### Article 59

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A ballot box must be placed in every polling station, and each box must have just one opening where voting cards will be placed.

At the fixed time and in order to allow the start of the voting process, the head of a polling station opens the ballot box in the presence of all the members of the bureau and of the representatives of electors as well as observers to make sure that the box is empty. He then closes it with two locks. He keeps the key of one lock and gives the other to the oldest member of the bureau.

#### Article 60

On entering the polling station, an elector shows his national identity card. His name, surname, address, his national ID card number and the date of its issuance are verified. He then personally takes a voting card from a table prepared for this purpose, and without leaving the polling station he must enter the secret ballot cubicle where he votes by putting a cross in front of the list of his choice. The elector then returns to the hall where the head of the polling station makes sure that he has only one voting card which is placed in the ballot box by the elector himself.

After the conclusion of the voting process, the elector signs the electors' list, in front of his name and surname.

Every elector that enters the polling station before the end of the time limit for polling has the right to exercise his right to vote.

#### Article 61

Every illiterate elector or suffering from a clear handicap that prevents him or her from conducting the various stages of the voting process mentioned in the previous article may seek the help of an elector of his or her choice who must not be a candidate. Such an elector is not allowed to seek the help of more than one person.

Voting by proxy is prohibited.

The number of voting cards in a polling station must not exceed 10 per cent of the number of voters in any given polling station

#### Part 4: Counting the votes Article 62

When the voting process comes to an end, the polling station bureau members immediately reveals the votes cast, and the counting of votes is carried out in public. The ballot box is opened in the presence of electors' representatives or deputies mentioned in article 56 of this document, and if some of them or all of them are absent, this should be noted down in the minutes of the voting process mentioned in article 56 of this document.

The voting cards in the ballot box are then counted. If their number exceeds or is less than that of electors' signatures a re-count should take place. If the discordance between the number of voting cards and that of voters is confirmed, it should be mentioned in the minutes of the session. The cause of the discordance is then investigated, and after the number of votes cast is ascertained, the head of the polling station bureau authorizes the vote-counting process. If the vote-counting affects the results of the elections the case is referred to the administrative court.

The local branch of the Higher Independent Electoral Commission investigates the causes of the discordance between the number of votes cast and that of the electors, and informs the public prosecutor about the matter, if necessary.

#### Article 63

The members of the polling station bureau assume the function of vote-counting supervision. If necessary, additional vote-counting officers are brought in, they will be appointed by the head of the

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bureau from among the electors present. This is in order to permit the use of enough tables where voting cards are placed to be counted and the results of the elections are then revealed.

Around each table, one of the vote-counting officers takes a voting card and hands it, still folded, to another colleague of his. The later loudly reads its contents, and then at least two other vote-counting officers should see the number of votes won by a candidate and note it down at the same time in the vote papers prepared for this purpose.

When the results of the voting are revealed, the vote-counting officers note down the number of votes obtained by each candidate. They then sign the documents and handed them over to the head of the polling station, together with the voting cards.

If a disagreement arises between two vote-counting officers over allocating a vote to a candidate, then such a vote is not taken into account. After a voting paper is signed and given a number, it is handed over to the members of the bureau who decide about it at the conclusion of the revelation of the voting results. The issue is referred to the administrative court if vote-counting affects the results of the elections. The blank voting cards are counted separately.

#### Article 64

[The following] Will be cancelled:

- Any voting card other than those placed by the polling bureau at the disposal of the electors
- Any voting card bearing a sign or words identifying a voter
- Any voting card mentioning a change or an addition of one or more candidates

#### Article 65

The polling station bureau members establish the results of the vote by adding up the results showed on the vote papers drafted by the groups of vote-counting officers. They add to any candidate the votes that they believe are due to him after a decision is made about any suspicious voting cards.

#### Article 66

Before Polling Day, the Higher Independent Electoral Commission appoints by simple decision a central bureau for every electoral constituency. A central bureau should not be a vote collection bureau.

The vote collection bureaux will collect the results of the ballot that are brought from polling stations, and will draft a three-copy minutes about this, which will be signed by all the members of the collection bureau.

The task of a central bureau is to collect all the results of the ballot that are brought to it from the vote collection bureaux, if they exist, or from all the polling stations of the constituency, if no collection bureau is set up.

A central bureau is also in charge of classifying and grading candidates, and it will draft a three-copy minutes signed by all the members of the centre for this purpose.

The composition of a central bureau and vote collection bureaux will be fixed in accordance with the provisions of article 55 of this decree.

All evidence-related documents will be collected by the heads of poling stations, the head or heads of vote collection bureaux, if they have been set up, or by the head of the central bureau. The documents will then be handed over to the Higher Independent Electoral Commission.

#### Article 67

The three-copy minutes of the ballot will record the number of votes won by each candidate or list of candidates (in accordance with proposal 1 or 2) at the polling station, as well as the final number of

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votes cast, together with the number of electors registered on the electors' list. The minutes should also mention the number of cancelled votes that are disregarded when the ballot results are declared. The cancelled voting cards will be added to the minutes in question, together with the other voting cards cast. All these documents will be immediately handed over to the vote collection bureau, if it exists, or to the central bureau.

At the end of the sorting of votes, the minutes of the ballot process will be posted at every polling station. Additionally, the detailed results of the elections will be published on the Internet website of the Higher Independent Electoral Commission. The latter may, by simple decision and before Polling Day, appoint a vote collection bureau or several bureaux in every constituency. It appoints also polling bureaux for every vote collection bureau. Vote collection bureaux may not be polling bureaux.

#### Article 68

Every elector or his or her representative may witness all vote sorting operations and vote counting in all the locations where these operations are conducted. He or she may also ask for all remarks, protests and objections concerning these operations to be put on record in the minutes of the voting session before or after the declaration of the voting results.

#### Article 69

The ballot operation costs will be borne by the Higher Independent Electoral Commission mentioned in article 1.

### Chapter 4: The declaration of the elections results

#### Article 70

The Higher Independent Electoral Commission will make the initial declaration of the elections results

#### Article 71

Appeals may be made against the elections results at the administrative court within 48 hours of the initial declaration of results

#### Article 72

The Higher Independent Electoral Commission will ascertain whether winners have respected the provisions concerning the financing of the electoral campaign, and it may cancel the victory of a list that contravened these provisions.

After the settling of all the appeals against the elections results or after the lapse of the appeals deadline if no appeals are made, the Higher Independent Electoral Commission will make the final declaration of results. This will be done by a decision published in the official gazette of the Republic of Tunisia, and on the Internet website of the commission

### Chapter 5: Electoral crimes

#### Article 73

Will be punished with a six-month jail term and a 1,000 Dinar fine:

1. Any person impersonating another person or a status, making false statements or using forged documents. This applies also to anyone hiding a case of deprivation of voting rights mentioned in the law, or voting in more than one polling station at the same elections.
2. Any person divulging a secret concerning the choice of an elector, in the framework of article 62

#### Article 74

Anyone contravening the provisions of article 38 will be punished with a month jail term and a 1,000 Dinar fine

Anyone violating article 39 will be punished with a month jail term and a 2,000 Dinar fine

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### Article 75

Will be punished with a five-year jail term and a 3,000 Dinar fine anyone who deliberately:

1. Adds or hides a name on the electors list, in contravention to the provisions of this decree
2. Steals or destroys an electors list, voting cards or a ballot box
3. Forges, steals, destroys or confiscates polling minutes
4. Violates ballot freedom by using violence, threatening to use violence or taking bribes to the detriment of an elector or one of his relatives

### Article 76

No elector is allowed to receive material aid from a foreign source directly or indirectly, and any contravention of this provision entails the following:

1. The person concerned will be punished with a month jail sentence and a 2,000 Dinar fine
2. As soon as a conviction sentence is issued, the person concerned will automatically lose the status of candidate or that of elector, after the declaration of the results of the elections. However, the right to call for the application of the provisions of this article is dropped two years after the declaration of the elections results.

### Article 77

Any attempt to commit the crimes mentioned in the articles from 75 to 78 is liable to punishment, and the provisions of article 53 of the criminal code do not apply to such a case. Moreover, the perpetrator of such crimes may be deprived of exercising his or her political rights for five years starting from the date of the handing down of a final sentence against him or her.

### Article 78

In the case of the violation of 44, 45 and 46 mentioned above, the Higher Independent Electoral Commission refers the case to the local public prosecutor to warn the contravening person to stop immediately the violation in question. If he or she refuses to obey, he or she will be immediately referred to the criminal court that will impose a fine ranging from 2,000 to 5,000 Dinars on him or her.

### Article 79

This decree will be published in the Official Gazette of the Tunisian Republic and it will apply as of the date of its publication."

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