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# **Elections in Tunisia:**

## *Selection of the New Independent High Authority for Elections*

Frequently Asked Questions

Middle East and North Africa

International Foundation for Electoral Systems

1850 K Street, NW | Fifth Floor | Washington, DC 20006 | [www.IFES.org](http://www.IFES.org)

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## Frequently Asked Questions

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*Disclosure:*

*These FAQs reflect decisions made by the Tunisian elections authorities as of January 24, 2014, to the best of our knowledge. This document does not represent any IFES policy or technical recommendations.*

## Overview

On January 8, 2014, Tunisia's National Constituent Assembly (NCA) elected the nine members of the Independent High Authority for Elections (*Instance Supérieure Indépendante pour les Élections*, ISIE) Board of Commissioners. The members were selected by secret ballot and with a two-thirds majority of the NCA.

Dr. Chafik Sarsar, a renowned constitutional law professor, was elected as President of the ISIE with an absolute majority of the NCA. Three of the elected commissioners served in the former election commission bringing past experience and institutional knowledge of the 2011 elections to the current ISIE. Three of the nine newly elected commissioners are women.

The process of electing the ISIE Board of Commissioners was protracted and complex. After eight members were rapidly elected in July 2013, the process was interrupted by the assassination of NCA opposition leader Mohamed Brahmi and the subsequent withdrawal of opposition members from the NCA. The ensuing political crisis slowed the establishment of the ISIE, and so did decisions of the Administrative Tribunal (AT) which first suspended and later annulled the selection process. The NCA amended Organic Law No. 2012-23, which created the ISIE, to address the issues raised by the AT's decisions.

On January 8, 2014, despite numerous delays, NCA members finally succeeded in electing an ISIE Board of Commissioners with a two-thirds majority. The ISIE members elected in July 2013 were re-elected in January 2014.

This broad affirmation of political support will be indispensable to the nine commissioners who are entrusted with the responsibility of organizing the country's future elections and referendums. The election of the ISIE Board of Commissioners is considered by the Tunisian public to be a crucial step toward solving the current political stalemate, and forming an independent government that will lead the country to the next elections.

The following document lays out frequently asked questions and answers on the establishment and immediate responsibilities of the newly constituted Tunisian Independent High Authority for Elections.

## What is the ISIE?

The Independent High Authority for Elections (ISIE) is a permanent election management body and independent public authority that is entrusted with conducting democratic, free, pluralistic, fair and transparent elections and referendums.<sup>1</sup>

Decree-Law (DL) No. 2011-27 of April 2011 established the first election commission to organize the October 2011 elections for the NCA. The mandate of the first commission was to prepare, supervise and monitor NCA elections and ensure the process was “democratic, pluralistic, fair and transparent.”<sup>2</sup> Its 16 members<sup>3</sup> were not elected, but appointed by the High Authority for the Realization of the Goals of the Revolution, Political Reforms, and Democratic Transition.<sup>4</sup>

Organic Law No. 2012-23, which replaced DL No. 2011-27, officially established the ISIE – the successor to the previous election commission. The law passed in the NCA on December 12, 2012, and came into effect nine days later on December 21, 2012, upon its publication in the official gazette of Tunisia.

It is important to note that the draft of the new constitution under review by the NCA clearly underpins the significance of establishing an independent electoral commission.<sup>5</sup> Specifically, Article 123 stipulates that “the Electoral Commission shall be responsible for managing, organizing and supervising the different phases of elections and referendums. The authority shall ensure the fairness, integrity, and transparency of the electoral process, and announce the results. The Commission has regulatory authority in its field of competence. The Commission shall be composed of nine independent, neutral, competent and honest members, who shall perform their duties for a single six-year term, with one third of the membership being replaced every two years.” These nine members are the ISIE Board of Commissioners.

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<sup>1</sup> Article 2 of Organic Law No. 2012-23 on the Independent High Authority for Elections (ISIE).

<sup>2</sup> Article 2 of Decree-Law No. 2011-27.

<sup>3</sup> According to Law, the first commission’s members included three judges; three candidates proposed by the Bar Association; two members chosen to represent nongovernmental organizations; two university professors; a member nominated by the national organizations of notaries; a bailiff; a chartered accountant and journalist; a member chosen to represent Tunisians abroad; and an expert in information technology. This commission was assisted by a second tier of commissions known as the Regional Independent Election Commissions (*Instances Régionales Indépendantes pour les élections*, IRIE).

<sup>4</sup> A post-revolution commission created on March 15, 2011, through the merger of the Council to Defend the Revolution and the High Commission for the Political Reform.

<sup>5</sup> Version 4 of the draft constitution was officially published on June 1, 2013, and is currently under review in the National Constituent Assembly.

## **What are the responsibilities of the ISIE?**

According to Article 3 of Organic Law No. 2012-23, the Independent High Authority for Elections (ISIE) is responsible for organizing, administering and supervising all Tunisian elections and referendums. Article 3 lists the specific responsibilities for the ISIE:

- The ISIE is tasked with maintaining voter registers and continuously updating them; should prepare revised voter lists for each electoral event; and publish them on the ISIE website.
- The ISIE defines, publishes and implements calendars related to elections and referendums; receives and approves candidate nominations for election; and counts the ballots and announces the preliminary and final results of elections and referendums.
- The ISIE ensures the integrity and transparency of elections and referendums; prepares codes of conduct guaranteeing the principles of integrity, transparency and impartiality; accredits observers; and is responsible for training supervisors of the various components of the electoral process.
- The ISIE designs campaigns for civic awareness and voter education in cooperation with national and international civil society organizations.
- The ISIE controls the conduct and regularity of electoral campaigns and financing of election campaigns while ensuring equality among all candidates in public funding.
- The ISIE may make suggestions on the electoral system and provide feedback on draft texts related to elections and referendums.
- The ISIE is expected to fulfill a reporting requirement by drafting a special report after each electoral event; preparing an annual report on ISIE activities; and posting these reports on the ISIE website.

The duties of the new ISIE are similar to those of its predecessor. However, unlike previous legislation, Organic Law No. 2012-23 does not give the ISIE the responsibility of delineating boundaries of electoral districts. The new electoral law will have to define the electoral system and the body to be mandated with drawing electoral boundaries if redistricting is necessary.

Further, Organic Law No. 2012-23 does not specify the powers of the ISIE in adjudicating complaints on different aspects of the electoral process, as was done in Decree-Law No. 2011-27. However, this does not mean the ISIE will not have a role to play in election dispute resolution.

The role of the ISIE in managing voter lists is more detailed in the new legislation. The ISIE is mandated to maintain, update and establish electoral lists for each electoral event. Additionally, it will be responsible for monitoring and overseeing funding for electoral campaigns. This responsibility will have to be further clarified – especially in light of the Court of Accounts' possible role in controlling campaign financing, as was the case in 2011. Also, the ISIE will be given the opportunity to provide opinions on any legislation related to elections. Lastly, the ISIE will set the date of elections, with the exception of the

next elections, whose date will be determined by the NCA. The ISIE will carry out these responsibilities with funding from the government.

## How is the ISIE composed and structured?

At the national level, the Independent High Authority for Elections (ISIE) is composed of the Board of Commissioners and an Executive Secretariat.

The ISIE Board of Commissioners is made of nine members who have decision making authority. Eight members of the ISIE Board of Commissioners are selected from different professional categories and one member represents Tunisians living abroad. The eight professional categories are as follows:

- A court judge
- An administrative judge
- A lawyer
- A notary or a bailiff
- A university professor, potentially an assistant, assistant professor or associate professor
- An engineer specialized in IT systems and security
- A communications specialist
- A public finance specialist

According to Organic Law No. 2012-23, all nine members of the ISIE Board of Commissioners must meet certain illegibility criteria including being “honest, independent, neutral and competent.” They should have no affiliation or have held a position in any political parties for the past five years prior to applying for ISIE membership, nor should they have been elected to professional organizations such as the Bar Association, trade unions or the Association of Chartered Accountants. They should not have held a position of responsibility in the now-defunct Democratic Constitutional Rally (*Rassemblement Constitutionnel Democratique*);<sup>6</sup> called for re-election of former President Zine El-Abidine Ben Ali in 2014; or held responsibility in the government during the former President’s terms. Additionally, they must all be at least 35 years old and have at least 10 years of professional experience.

Organic Law No. 2012-23 gives the ISIE Board of Commissioners the discretion to create regional authorities for elections made up of no more than four commissioners who will assist the ISIE in its mission. The ISIE Board of Commissioners may also delegate some of its responsibilities to these regional electoral commissions. The regional commissioners will need to meet the same criteria of eligibility and have the same obligations as the ISIE Board of Commissioners. They will have to be drawn from the same nine categories. Regional commissioners will be elected by the ISIE Board of Commissioners by an absolute majority. The law does not specify the number of regional authorities to be formed or at what administrative level they will be formed.

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<sup>6</sup> The political party of ousted President Zine El-Abidine Ben Ali.

In 2011, one Regional Independent Election Commission (*Instances Régionales Indépendantes pour les élections*, IRIE) was established in each of the 33 constituencies. They were each composed of 14 regional commissioners who were selected by the previous ISIE Board of Commissioners from a pool of eligible applicants. Their selection and appointment was a protracted process and some felt that the IRIE's members acted too independently from the ISIE Board of Commissioners. Organic Law No. 2012-23 addresses this gap and clearly makes the regional commissioners fully accountable to the ISIE Board of Commissioners.

## How was the new ISIE Board of Commissioners elected?

In early January 2013, a 22-member Pre-Selection Committee – a special parliamentary committee – was formed and mandated to shortlist 36 candidates for the Independent High Authority for Elections (ISIE) Board of Commissioners. The National Constituent Assembly (NCA) would then select the final nine members to serve on the ISIE Board of Commissioners from the shortlist. All political groups were represented in the Pre-Selection Committee proportionate to their representation in the NCA.<sup>7</sup>

The Pre-Selection Committee, chaired by NCA President Mustapha Ben Jafaar, held its first meeting on January 15, 2013. After the Pre-Selection Committee unanimously approved an evaluation grid to rank the candidates, the application process was opened to the public from February 22 to March 4, 2013. This was in accordance with Order No. 16 issued by Chairman Jaafar, and what was published in the official gazette of Tunisia.

On the original March 4 deadline, the Pre-Selection Committee received a limited number of applications. The committee then extended the deadline to March 14 to allow more time for interested applicants to apply. Following this extension, the Pre-Selection Committee received 973 applications. On March 21, 2013, the committee began reviewing applications to determine eligibility. Three hundred and seventy-seven candidates were deemed eligible.

The Pre-Selection Committee decided to call forth 108 of those candidates for a hearing.<sup>8</sup> Based on the applications and hearings, the Pre-Selection Committee planned to shortlist 36 candidates in accordance with the principle of parity: two men and two women for each of the nine categories of the ISIE Board of Commissioners. On May 10, 2013, the list of 108 pre-selected candidates was released by the NCA in the official gazette, and candidate hearings by the Pre-Selection Committee were planned from May 16-18, 2013.

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<sup>7</sup> *Ennahdha* had nine members; Democratic Alliance had four; Congress for the Republic (CPR) had two; *Ettakatol* had one; Freedom and Dignity Group had one; Wafa Group has one; and NCA members not belonging to parliamentary groups had four (Nida Tounes, Al-Aridha, Movement of the People and Al-Moubadara).

<sup>8</sup> The number 108 corresponds to 12 candidates per each of the nine categories, with respect to gender parity (six men and six women).

### ***The first Administrative Tribunal decision.***

On May 14, 2013, the Administrative Tribunal (AT) issued a decision regarding a lodged complaint. The complaint was two-fold: the plaintiffs argued the extension of the deadlines for applications and the evaluation grid to rank the candidates violated the principle of equality between candidates for the ISIE Board of Commissioners.

The AT held that the February 20 decision of Chairman Jafaar was inconsistent with Article 7 of Organic Law No. 2012-23. The AT found that the February 20 order added new conditions relating to age and diploma qualifications, which violated the principle of equal opportunity. On this basis, the AT requested the suspension of the use of the evaluation grid. Regarding the order on March 6 to extend the deadline for applications, the AT ruled this decision did not infringe on the principle of equality.

The Pre-Selection Committee then consulted with independent legal experts and judges of the AT. Based on these discussions, the Pre-Selection Committee decided to adopt a revised evaluation grid based on the AT ruling, but not reopen the call for applications. It, therefore, re-applied the new grid to all eligible candidates. In the interest of expediency, it also cancelled the intermediary steps of forming a list of 108 candidates and holding a hearing. Instead, Pre-Selection Committee members voted on all 377 eligible candidates to establish a list of 36 pre-selected candidates.

### ***A quick timeline of what happened next:***

- June 5, 2013: Chairman Jafaar published the new evaluation grid for the ISIE Board of Commissioners in Tunisia's official gazette.
- June 19 and 20, 2013: The Pre-Selection Committee commenced its vote on the 36 candidates, which would need a three-fourths majority (17 of 22 members).
- July 15, 2013: Consensus was finally reached and the shortlist of 36 candidates was published.
- July 19, 2013: The 36 shortlisted candidates appeared before a plenary session of the NCA to present their candidacy. Following the hearings, NCA members elected five candidates in the first round of voting: Nabil Baffoun, bailiff, received 175 votes; Riadh Bouhouchi, IT specialist, received 157 votes; Khameyel Fenniche, communication specialist, received 157 votes; Mourad Ben Mouelli, administrative judge, received 167 votes; and Mohamed Chafik Sarsar, university professor, received 166 votes. The NCA held a second round of voting on the same day, during which Kamel Messaoud, a lawyer, was elected with 155 votes.
- July 20, 2013: The NCA proceeded to a third and fourth round of voting, during which the representative of Tunisians abroad – Faouzia Drissi – was elected with 153 votes and judge Lamia Zargouni was elected with 156 votes. The fifth round of voting was unsuccessful and the deadlock continued on the election of the specialist in public finance.
- July 22, 2013: The sixth, seventh and eighth rounds of voting also proved unsuccessful, and the position of the ninth member to the ISIE Board of Commissioners remained unfilled.



- July 23, 2013: Messaoud announced his resignation, reportedly to protest against the reluctance of political parties to appoint him as ISIE President. His resignation re-opened the lawyer category and reduced the number of elected ISIE members to seven.
- July 25, 2013: The assassination of prominent opposition leader Mohamed Brahmi provoked a political crisis that paralyzed the work of the NCA, and resulted in the suspension of electing the remaining members of the ISIE Board of Commissioners.
- July 26, 2013: The withdrawal of 60 NCA members effectively halted the work on the draft constitution and elections of the next ISIE. Opposition parties organized in a National Salvation Front continued their demand for the dissolution of the NCA and called for the immediate dismissal of the current government and its replacement with a technocratic government made of independent and competent personalities. Leaders of *Ennahdha* rejected the dissolution of the NCA in defense of electoral legitimacy and refused the dissolution of the government as a precondition for opening a national dialogue.
- August 6, 2013: NCA President and Chairman Jaafar, announced the suspension of the work of the NCA until the beginning of a comprehensive national dialogue involving all political factions.
- October 5, 2013: A new transitional roadmap was signed by most political parties. The NCA was tasked with selecting the remaining candidates to the ISIE Board of Commissioners within one week from the start of the dialogue. However, subsequent decisions of the AT questioning the pre-selection process of ISIE candidates once again halted completion of the selection process.

### ***The second and third Administrative Tribunal decisions***

On September 20, 2013, the AT again suspended the selection process of ISIE Board of Commissioners candidates based on complaints received by candidates who were excluded from the shortlist of 36. The AT questioned the shortlisting process that led to the election of ISIE members in July. In its decision, the AT found that the Pre-Selection Committee was bound by the use of the evaluation grid and its results. In other words, the committee had no discretion to vote and form a list of 36 candidates. The Pre-Selection Committee should have presented the entire list of 377 eligible candidates with who had obtained the highest scores based on the evaluation grid to the NCA.

The decisions by the AT were widely disputed and controversial. Legislators argued that the law provided for a vote by members of the Pre-Selection Committee, with a three-fourths majority to shortlist the candidates. In their opinion, this meant the committee had discretionary power and was not bound by the results of the evaluation.

Regardless, the NCA amended Organic Law No. 2012-23 on October 30, 2013. The amendments clarified that the Pre-Selection Committee had the discretionary power to shortlist 36 candidates, and the results of the evaluation were only indicative. The amended law was promulgated by Tunisian President Moncef Marzouki on November 1, 2013.

The Pre-Selection Committee reconvened to again designate the 36 candidates based on the amended law and AT decisions. This resulted in a new shortlist of 36 candidates, published in the official gazette

on October 30, 2013. However, on November 7, 2013, the AT declared the new list of 36 candidates “illegal” and consequently annulled it, arguing that one candidate did not meet the legal requirements. The AT claimed the Pre-Selection Committee did not take due account of evaluation results when selecting the 36 candidates. The AT argued that the results of the evaluation grid are “binding” and forcible by law therefore the Pre-Selection Committee cannot ignore it. The AT also argued that while the committee has discretionary power to choose among the first few ranked candidates, it does not have absolute discretionary power and must provide reasons “based on objective criteria,” if it selects a candidate not ranked among the first. The AT did not define what it meant by “objective criteria.”<sup>9</sup>

### ***Moving through the deadlock.***

To lift the legal deadlock and move forward, the NCA passed new amendments to Organic Law No. 2012-23 that modified the selection and election of the ISIE Board of Commissioners. Pursuant to the new amendments, the Pre-Selection Committee should present a list of all eligible candidates, ranked on the basis of the evaluation grid, to the general assembly of the NCA. The role of the Pre-Selection Committee was limited to applying the evaluation grid and transmitting the full list of candidates to the plenary of the NCA. Also, the selection of 36 candidates based on parity through a three-fourth vote was annulled.

On December 30, 2013, the amendments were published in the official gazette and a list of 377 eligible candidates was published on the NCA website.

On January 8, 2014, the nine members of the ISIE Board of Commissioners were eventually elected – almost a year after the first meeting of the Pre-Selection Committee. The seven members elected in July were re-elected by the NCA. Among the seven are three former election commissioners who were part of the election management body that organized the October 2011 elections – Nabil Baffoun, Anouar Belhassen and Mourad Ben Mouelli.

The nine elected members of the ISIE Board of Commissioners are as follows:

- Nabil Baffoun, bailiff, received 187 votes.
- Anouar Belhassen, public finance specialist, received 149 votes.
- Riadh Bouhouchi, IT specialist, received 176 votes.
- Fouaza Drissi, representative of Tunisians abroad, received 163 votes.
- Khameyel Fenniche, communications specialist, received 173 votes.
- Mourad Ben Mouelli, administrative judge, received 189 votes.
- Mohamed Chafik Sarsar, university professor, received 174 votes.
- Kamel Toujani, lawyer, received 175 votes.
- Lamia Zargouni, court judge, received 178 votes.

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<sup>9</sup> This analysis came from the Administrative Tribunal’s decision. The decision is not currently available online.

The new ISIE Board of Commissioners took their oath on January 15, 2014 in front of President Moncef Marzouki.

## **How were the ISIE President and Vice President selected and what are their responsibilities?**

On January 9, 2014, the President of the Independent High Authority for Elections (ISIE) was elected from among the nine members of the ISIE Board of Commissioners by an absolute majority of National Constituent Assembly members. Mohamed Chafik Sarsar was elected President of the ISIE with 153 votes.

Other candidates nominated for President were Riadh Bouhouchi, Faouza Drissi, Mourad Ben Mouelli and Lamia Zargouni.

Organic Law No. 2012-23 does not provide details on the specific responsibilities of the President. It states that the President is the legal representative of the ISIE. He or she sets the dates, sets the agenda, calls for and leads all ISIE Board of Commissioners meetings. He or she takes the necessary measures to execute the ISIE Board of Commissioners' decisions.

During their first session, the nine commissioners chose the Vice President. The Vice President can be chosen by consensus or by an absolute majority, if consensus cannot be attained. On January 16, Mouelli was elected by an absolute majority as Vice President of the ISIE. The Vice President replaces the President during his or her absence.

## **What are the term limits for the ISIE Board of Commissioners?**

The Independent High Authority for Elections (ISIE) Board of Commissioners is elected for a non-renewable mandate of six years. Every two years one-third of the members will be renewed. Transitional provisions of Organic Law No. 2012-23 specify that for the first two renewals, ISIE members who are up for renewals will be drawn by lot, except the President who will serve the full six-year term.

## **What are the priorities and challenges immediately facing the ISIE?**

The immediate challenge will be to establish a permanent, professional and efficient election administration apparatus that will ensure the success of forthcoming elections. By law, the Independent High Authority for Elections (ISIE) Board of Commissioners has to create an Executive Secretariat and recruit an Executive Director. The pressing need will be to recruit an Executive Director, as this individual will take the lead in drafting internal rules and regulations, a human resources plan and a draft budget.

The ISIE will need to design the structure of the Executive Secretariat, with different departments and staffing requirements, both at national and regional levels. It will need to assess whether the current premises they inherited from the previous election commission are adequate for setting up a permanent election management body, as well as acquiring all the necessary equipment and services to fulfill its mandate.

The ISIE Board of Commissioners will have to decide on the internal rules and regulations that will govern its daily activities; internal functioning; meetings; structures; communication; regional authorities for elections; composition of national and regional election management bodies; management issues and operations; and decision making processes and publications of its decisions. ISIE internal rules and procedures are crucial, as they will govern daily management and operations.

Additionally, the ISIE will have to properly train election administrators who are likely to have little or no electoral experience. Transitional provisions of Organic Law No. 2012-23 stipulate that former ISIE staff will be given priority during the recruitment phase. Despite that, the ISIE Board of Commissioners will need to invest in training its staff on the different aspects of electoral processes in order to build electoral knowledge and professional capacity. Not only is the ISIE expected to establish a strong and competent national operations, it is also expected to create capable regional election administrations – as needed.

Another challenge facing the ISIE is the lack of an electoral legal framework. While the ISIE will not take the lead in drafting the legislation, as it will be under the purview of the National Constituent Assembly, Organic Law No. 2012-23 mandates the ISIE to make recommendations for electoral reforms. The drafting of the new election law will not start before the constitution is adopted.

The ultimate challenge is to build public trust in this new institution. The new ISIE Board of Commissioners begins its work after what many would inevitably consider a controversial appointment process. Given the general low public trust in national institutions in Tunisia, a proactive communications approach should aim to gradually build public trust toward the ISIE by continually presenting the body and its members as a professional, impartial and independent body fulfilling a clear mandate.

As the new ISIE Board of Commissioners sets its priorities, structure and plans, it will be critical for its members to fully appreciate the importance of implementing a sophisticated communications strategy at an early stage to mitigate the political pitfalls and challenges ahead in a polarized political environment.

## Resources

- Organic Law 2012-23 ([French](#))
- Draft Constitution, officially published on June 1, 2013 ([Arabic](#))
- Decree-Law 2011-27 ([French](#))