

Electoral Politics Under Tunisia's New Constitution

Tunisians are waiting for a new constitution to cement a democratic order after decades of dictatorship. The constitution-making process has dominated politics since the January 2011 revolution; what can be expected when the constitution is complete? How will presidential and parliamentary elections proceed under this new constitution, expected early next year? Although the constitution will initiate a form of legal stability, party politics and new institutional arrangements could converge to complicate decision-making and obscure consensus.

The new constitution is nearly completed and will be approved by either supermajority vote in the National Constituent Assembly or by national referendum as early as autumn 2013.¹ The electoral law has yet to be written; that, along with the distribution of executive powers in the final constitution, will be essential in determining likely outcomes of next year's elections. Together, the constitution and electoral law (to be debated after the constitution is completed) will present strategic challenges for political parties. Ennahda, the dominant self-proclaimed Islamist party, faces stiff opposition from secular parties that are themselves divided along ideological lines.

In the post-election period, a new government will face pressing policy problems such as security sector reform, the fight against corruption, administrative reorganization, and economic reform. The government will also have to implement new institutions that are required by the constitution, including a constitutional court and a decentralization scheme. This to-do list would be a challenge for any consolidated democracy with longstanding traditions of the peaceful transfer of power. It will be an especially heavy

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The Rafik Hariri Center for the Middle East at the Atlantic Council studies political transitions and economic conditions in Arab countries and recommends US and European policies to encourage constructive change.

burden for Tunisia's nascent democracy; emerging leaders and the new government will need increased support from the United States and international community to ensure its success.

To assess and understand the post-constitutional political picture in Tunisia, it is important to consider the current arrangement and internal dynamics of political parties and coalition alliances. The draft constitution and previous electoral laws provide important indicators regarding what system of government will emerge and the range of possible power distributions in the executive and legislature. With a final constitution in place and the allocation of power between the prime minister and president is clear, the new government will need to turn its attention to address critical policy issues. Even with a new constitution and institutional arrangements in place, the potential remains for fracture and deadlock in the face of daunting policy challenges in Tunisia, which could threaten to make consensus building among competing political forces even more complicated. International actors and foreign assistance could play an important role in helping a nascent government overcome such challenges and move to the next stage of Tunisia's democratic transition.

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¹ Duncan Pickard, "The Politics of Tunisia's Final Draft Constitution," Rafik Hariri Center for the Middle East, May 15, 2013, <http://www.acus.org/viewpoint/politics-tunisia-s-final-draft-constitution>.

Shifting Political Spectrum

The political party landscape and the nature of political alliances has changed dramatically since October 2011 elections for the National Constituent Assembly, the body tasked to select a government, pass legislation, and draft a constitution. Ennahda won a plurality of seats and formed a governing coalition with two secular parties: the Congress for the Republic (CPR) and the Democratic Forum for Labor and Liberties, known as Ettakatol. Leaders of Ennahda, CPR, and Ettakatol hold the seats of prime minister, president, and Assembly speaker, respectively, and are known collectively as the Troika. The Troika coalition has presided over sluggish political and economic reform; the three parties are much less popular now than in October 2011 when they were elected.

The alignment of party blocs in the Assembly has shifted substantially. Ennahda is the only party to have enjoyed a high degree of party loyalty, with members following decisions made in party headquarters and none leaving the Ennahda parliamentary group. Other parties have fallen victim to internal conflicts. Ettakatol's membership has dwindled from twenty to around six, with most joining the Democratic Group, the Assembly's largest opposition bloc. CPR also saw a schism in June 2012 between its president and secretary general.

That is not to say that Ennahda has governed unscathed. Polls have shown that popular support for Ennahda has dwindled too, largely among secular voters. Ennahda's conservative base, Salafis, and Salafi sympathizers have also attacked the party leadership and might withdraw support in the next elections. The Salafi party Hizb al-Tahrir aspires to challenge Ennahda from the Islamist right. Yet Hizb al-Tahrir has not registered on any polls and might not even run in the next elections.² Ennahda does not feel threatened from the right and knows that more votes are in play in the center.

Voter disillusionment puts many votes up for grabs. One figure eager to capitalize on this is Beji Caid Essebsi, the now-former interim prime minister after the resignation of Zine El-Abidine Ben Ali. Essebsi launched a new secular

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party, Nida Tunis in June 2012, which has emerged as the secular movement with the broadest support.³ Essebsi, who is eighty-seven years old, represents the older generation, although his party appeals to Tunisians seeking a return to the progressive policies and Francophile secularism of former president Habib Bourguiba. Essebsi has declared his candidacy for president, even though the Assembly has yet to decide the role of the president and a draft clause limits the age of eligibility for presidential candidates to seventy-five.

Powers in the Constitution

Political parties are jockeying for power, but without a complete and final version of the constitution, it is unclear for what they are competing. The arrangement of presidential and parliamentary powers will determine how parties will interact with each other after they have been elected. Ennahda's preferred structure is a parliamentary government with an indirectly elected prime minister, based on the rationale that an executive chosen by consensus would be less likely to wield a heavy hand. If such a position were maintained, the president could be kept weak. Ennahda's position concurs with how the party assesses its greatest political strength and what system would enhance its political sustainability. Ennahda's field presence is better suited to a proportional election where it is guaranteed solid representation annually, rather than a presidential system where a loss in a majoritarian system means that the party would have little formal power. Ennahda is competitive in each of Tunisia's electoral districts due to the party's robust field organization (it was the only party to win seats in all thirty-one districts at home and abroad in the 2011 elections, in most cases even the top two seats).⁴ Secular parties, on the other hand, were resigned to Ennahda's parliamentary strength in the first elections, but are intent on introducing

2 Erik Churchill and Aaron Zellin, "A Balancing Act: Ennahda's Struggle with Salafis," *Sada*, April 19, 2012, <http://carnegieendowment.org/2012/04/19/balancing-act-ennahda-s-struggle-with-salafis/acsc>; Monica Marks, "Ennahda's Rules of Engagement," *Sada*, October 18, 2012, <http://carnegieendowment.org/2012/10/18/ennahda-s-rule-of-engagement/fedx>.

3 Monica Marks and Omar Belhaj Salah, "Uniting for Tunisia?," *Sada*, March 28, 2013, <http://carnegieendowment.org/sada/2013/03/28/uniting-for-tunisia/fu3g>.

4 Erik Churchill, "Tunisia's Electoral Lesson: The Importance of Campaign Strategy," *Sada*, October 27, 2011, <http://carnegieendowment.org/2011/10/27/tunisia-s-electoral-lesson-importance-of-campaign-strategy/fbjo>.

a strong presidency as a veto player to counterbalance Ennahda in the parliament. The secular parties feel that if they work in concert they could capture the 60 percent of voters who did not vote for Ennahda in October 2011.

After nearly a year of painstaking deliberations the parties have compromised on a semi-presidential system: a directly elected president, an indirectly elected prime minister, and powers shared between them. The president would be head of state and the armed forces and would be solely responsible for foreign policy and national security. The president would appoint the governor of the central bank and could declare states of emergency (with the consent of the parliament). The president could also introduce bills, call referenda, and veto draft legislation. The legislature could override a veto by an absolute majority for ordinary laws and by a three-fifths majority for organic laws;⁵ the president cannot veto a budget bill. The draft empowers the president to act as an arbiter during government formation, but he or she would not appoint the prime minister. The prime minister would appoint all government ministers except those of defense and foreign affairs (whom the president appoints). The prime minister would have broad authorities to set Tunisian domestic policy, order the administration, and issue executive orders.

This division of executive powers in Tunisia increases the likelihood of what has been called a divided minority government, the least stable of arrangements in a semi-presidential system.⁶ In a divided minority government, the president and the prime minister come from different political parties, and neither party controls a majority in parliament. The threat of divided minority governments has led to the failure of many semi-presidential systems. Looking at the twentieth century, one scholar found sixteen “democratic failures” (e.g., Armenia, Belarus, Niger) compared with six “democratic successes” (e.g., France, Poland, South Korea) among semi-presidential systems.⁷ Divided minority government doomed the Weimar Republic and threatened

stability in France during the 1980s, until the election law was changed so that presidential and parliamentary elections would be held on the same day, thus reducing the likelihood of divided minority government.

Next Year's Elections

Although the electoral law has yet to be drafted, it seems likely that the electoral system and the constitution will likely create conflicting incentives and disincentives for parties to merge. First, the new electoral law will likely be based on the one used for the 2011 elections, which favored small parties and created a relatively large number of seats per district. Small parties fare better with more seats per district because more seats mean more potential winners.⁸ Furthermore, the 2011 electoral formula (the mathematical calculation used to translate votes into seats) favored smaller parties. Indeed, Tunisia's formula assigned ninety of 217 seats to Ennahda; another acceptable formula used just as frequently worldwide would have granted Ennahda 150 seats.⁹

Another issue that may emerge in debate on the electoral law is the use of a minimum threshold that would require any party to win at least a certain percentage of the vote nationwide in order to be eligible for a seat in the assembly; in Germany, for example, the threshold is five percent. Some senior Ennahda members have called for a national threshold of three percent. The Assembly will take up the electoral system after passing the constitution, but the overall structure of the districts and the electoral

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5 In the French legal tradition, organic laws operationalize key constitutional articles. Organic laws in Tunisia relate to elections, citizenship, local government, and the armed forces, among other fields. Organic laws require an absolute majority in the Chamber of Deputies, while normal laws require only a majority of members present.

6 Cindy Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic* (Princeton, NJ: Princeton University Press, 2005), p. 12–29.

7 Robert Elgie, “Varieties of Semi-Presidentialism and Their Impact on Nascent Democracies,” *Taiwan Journal of Democracy* 3.2 (December 2007), p. 67.

8 In 2011, there was an average of 6.6 seats per district and a maximum of ten.

9 Tunisia used a Hare quota with largest remainders; the alternative is calculated using the d'Hondt method. See John M. Carey, “Electoral Formula and the Tunisian Constituent Assembly,” Dartmouth College, May 9, 2013, <http://sites.dartmouth.edu/jcarey/files/2013/02/Tunisia-Electoral-Formula-Carey-May-2013-reduced.pdf>.

formula will likely remain similar to what was used in the previous election.

The competing incentives provided by the electoral law and the constitution—the two legal texts most important to defining Tunisia’s political landscape—present a strategic challenge to Tunisia’s political parties. The current electoral system disadvantages large parties, but the constitution encourages them. The constitution creates a strong, elected presidency, but winning a presidential election requires nationwide support. The president’s power is significant enough—although checked by the parliament and prime minister—that most serious parties will be compelled to present a presidential candidate, which necessitates the commitment of significant time, money, and resources.

Based on the expected election law and constitution alone, it appears that Ennahda is in the best position to win the presidency, as it is now the most unified and best organized nationwide. For secular parties, the structural components of the election present a more strategic challenge. A secular candidate will stand a better chance of winning a presidential election if the candidate is backed by a coalition of secular parties. However, to win a plurality in the Chamber of Deputies, any individual party or coalition would be better suited to remain separate, building a robust grassroots network of smaller lists and coalitions that achieves the national threshold but does not fall victim to the restrictions placed on it by the electoral formula. This presents a tremendous coordination challenge.

Recent polling on electoral support for parliamentary elections suggests a close race between the Islamist Ennahda bloc and the secular Nida Tunis party, with a large number of undecided voters. A March 2013 poll indicated that Nida Tunis received support from 24 percent of eligible voters, Ennahda had 20 percent, and CPR and Ettakatol together had only 2.5 percent.¹⁰ The Popular Front and the Republican Party, which have roughly 10 percent support, are two parties that could be reliable coalition partners for Nida Tunis. The field is still wide open, however, with 26 percent of respondents stating no preference and 8.5 percent still undecided. The poll could not be disaggregated

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regionally, so it is not possible to determine what effect the electoral system would have on these seats. The polls show an uphill battle for Ennahda to win enough seats to drive a governing coalition in parliament, and with its current secular partners polling so weak they virtually fall out of relevance. With the election still months away, such close poll numbers and a high number of undecided voters mean the Chamber of Deputies is anyone’s game.

The selection of presidential candidates will also be contentious. Within Ennahda, there is likely to be competition between Ali Laarayedh, who assumed the position of prime minister after then–prime minister Hamadi Jebali was compelled to resign in March when Ennahda leadership overruled his call for a technocratic government.¹¹ Jebali’s perceived nonpartisanship in this crisis won him support among moderates outside Ennahda, but he is unpopular with many party leaders. Competing factions within Ennahda will likely determine the party’s choice of candidate between Jebali and Laarayedh, the most likely contenders for the presidency.

The secular picture is more dispersed. Nida Tunis has backed Essebsi’s candidacy, but he might give way to a younger party leader like its secretary general, Tayyib Baccouche. Najib Chebbi of the Republican Party has also made overtures for the presidency. The presidential election will almost certainly be a runoff election, and secular parties are confident that they can coalesce behind one candidate, regardless of party affiliation, given the unified goal of defeating Ennahda. Polling data from May 2013 carry little predictive power given the closeness of the race. A runoff between Essebsi and Jebali, for example, is split virtually 50-50.¹²

10 Poll from Emrhod Consulting, quoted in “Moncef Marzouki et le CPR les plus impopulaires selon Emrhod Consulting,” *Business News*, April 2, 2013, <http://www.businessnews.com.tn/Tunisie—Moncef-Marzouki-et-le-CPR-les-plus-impopulaires-selon-EMRHOD-Consulting,520,37268,3>.

11 Duncan Pickard, “Laarayedh’s Tunisia Will Continue the Transition to Democracy,” Rafik Hariri Center for the Middle East, February 27, 2013, <http://www.acus.org/viewpoint/laarayedh's-tunisia-will-continue-transition-democracy>.

12 Poll from 3C Etudes, quoted in “Sondage: Nida Tounes en tête des législatives et présidentielles,” *GlobalNet*, May 27, 2013, <http://www.gnet.tn/temps-fort/tunisie/-sondage-nida-tounes-en-tete-des-legislatives-et-presidentielles/id-menu-325.html>.

The timing of the elections is another important undecided factor. If presidential and parliamentary elections are held on the same day or within close proximity, the chance of one party winning both the parliament and the presidency increases. France changed its electoral law in 2000 to organize parliamentary elections a month after presidential elections, asking voters to confirm the choice they made just weeks before, reducing the likelihood of the president and prime minister coming from different parties (known as cohabitation). Conversely, staggered elections months or years apart make it more likely for voters to put two different parties in office. If Tunisia followed a staggered arrangement, parliamentary elections would be held next year, while current President Moncef Marzouki of CPR could stay in office for some additional months, or the parliament could appoint an interim president. Ennahda's leadership is conflicted on the issue, although simultaneous elections are more likely given the complications around how to fill the office of the president in the interim period.

Divided Minority Government?

The electoral system suggests that no party will have an easy time winning a majority in parliament; the preconditions for a divided minority government are set. Cindy Skach, a leading scholar of semi-presidentialism, has found that three factors can reduce the chances of divided minority government: a system of strong political parties, an electoral system that tends to reduce the total number of parties, and presidential candidates seen as "party men" who are fully integrated into and supported by their parties.¹³ Essebsi can satisfy the final criteria (if he is allowed to run), but none of the other conditions describe Tunisia.

There are several governance scenarios that could result from the current institutional and political arrangement, with the chance of divided minority government running high. In terms of the presidential election, polls show that Ennahda cannot depend on its base alone to win the office. Ennahda is more likely to achieve success trying to win over liberal, secular voters rather than positioning itself to appeal to the more conservative side of the political spectrum. To do so, the party leadership will have to convince secular voters of its platform, especially around economic and security policy.

The preconditions for a divided minority government are set.

The formula for the parliamentary election is different. The electoral system requires that Ennahda stay competitive in all electoral districts to claim one or two votes in each if it hopes to be involved in government formation: the disadvantage to large parties prevents Ennahda from concentrating its resources on its strongholds since winning the majority of seats in one district is practically impossible. Ennahda is also hampered in its ability to form a government due to the weakness of its current coalition partners, CPR and Ettakatol, since their support has declined significantly; an alternative secular partner has not emerged as a replacement.

A strong coalition of secular parties, led by Nida Tunis, would have a better shot at driving a government in parliament. Nida Tunis's poll numbers are surging, and a cohort of secular parties would make more natural coalition partners than a combination of secular parties and Ennahda. The electoral system's favorable treatment of smaller parties would entice small parties to remain independent with the hope of joining a potential Nida Tunis-led governing coalition in parliament. This disincentive to coalesce might benefit small parties in parliamentary representation, but it inhibits the success of a secular presidential candidate. Ennahda walks into the election with a strong base motivated by the inclusion of Islamic principles in government, and can also compete with secular voters on the basis of party platforms.

Policy Priorities and International Assistance

The new Tunisian government will face a daunting set of policy priorities. At the top of the list are security sector reform and economic development. Security threats are on the rise, amplified by the flow of arms across Tunisia's porous border with Libya. The Tunisian security apparatus has also been the most robust against attempts at reform.¹⁴ Unemployment, one of the causes of a deteriorating security situation, has improved little. More positively, real GDP

¹³ Skach, *Borrowing Constitutional Designs*, p. 12–29.

¹⁴ Querine Hanlon, "Security Sector Reform in Tunisia," United States Institute of Peace, March 2012, <http://www.usip.org/files/resources/SR304.pdf>; Monica Marks, "Plagued by Insecurities," *Sada*, March 5, 2013, <http://carnegieendowment.org/2013/03/05/plagued-by-insecurities/fo7g>.

grew by 3.6 percent in 2012, overcoming the previous year's contraction.¹⁵ The success of the new government in managing Tunisia's plodding economy—reforming the fractured banking sector, forging new trade relationships, setting a strategic direction for the rudderless central bank, encouraging regional investment, and negotiating international assistance—will be elemental in determining the stability of Tunisian democracy.

The prime minister will have a difficult time leading institutional reform, already a complicated task, if he or she has to balance multiple masters and interests: party leaders in the governing coalition and the president of the republic (perhaps from another party), all while not being able to rely on a majority of seats from his or her party in parliament. The institutional factors will align against robust legal and policy reform; progress will require consensus-building and difficult compromises from all stakeholders.

The new Chamber of Deputies will face a robust legislative docket related to issues proscribed in the constitution. The constitution will create a new constitutional court with the power of judicial review, as well as new administrative and financial courts with mandates to audit and root out corruption. The relationship between the constitutional court and the existing court structure will have to be worked out by law and is particularly controversial given a feud between rival judges' unions. The new constitution empowers local authorities under a new decentralization scheme, protecting the independence of subnational governments for the first time, and the constitution also mandates the creation of independent bodies to manage elections, defend against human rights abuses, and develop the media sector.¹⁶ The Chamber of Deputies, working with the government, will have to pass laws to further define the status of these bodies and their relationship to existing institutions.

There are many opportunities for the United States and others to continue their support of Tunisia's transition

to democracy, and passage of the constitution will not mark the end of that transition. Indeed, Tunisia should be further embraced into the international community of democracies.¹⁷ Furthermore, Tunisia's challenges are only more complicated with a constitutional framework in place. The good news is that United States and the international community are in a better position to be of help with the post-constitutional problems than the pre-constitutional ones. The United States should deepen its commitment to economic development in Tunisia by supporting educational exchanges, especially in vocational training; pursuing a more robust trade partnership; cooperating more closely with the Tunisian security services;¹⁸ and helping to build the infrastructure of the judiciary and bar associations to adapt to the new courts called for in the constitution. Advisers—in electoral administration, parliamentary structures, institutional design, economics, finance, security sector reform, decentralization, and court systems—could help the government and Chamber of Deputies work through their post-constitutional to-do list.

Tunisia represents the first best chance for a homegrown democracy in the Arab world. Looking ahead, after the October 2013 elections, members who served in the first Assembly will represent a cadre of over 200 Arab politicians with direct experience in constitution-making. These and other political leaders in Tunisia should be a resource to their peers across the Arab world and could lend valuable experience in other countries where democracy is developing in uneven ways, such as Libya, Egypt, and Yemen. Despite all the bumps along the way, Tunisia presents a compelling and inspiring model for navigating political competition peacefully and reconciling vastly different visions of the country's future direction.

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16 Draft Constitution of the Republic of Tunisia, April 22, 2013.

17 On the importance of Western linkages for democratization, see Steven Levitsky and Lucan Way, *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (Cambridge: Cambridge University Press, 2010).

18 George Casey and Jim Kolbe, "A New Deal: Reforming US Defense Cooperation with Egypt, Libya, and Tunisia," Atlantic Council, <http://www.acus.org/publication/new-deal-reforming-us-defense-cooperation-egypt-libya-and-tunisia>.

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