



## **Carter Center Preliminary Statement on Tunisia's Presidential Election**

**Nov. 25, 2014**

*This statement is preliminary; a final report will be published four months after the end of the electoral process.*

### **Statement of Preliminary Findings and Conclusions**

#### ***Political Background***

Tunisians expressed their will in a competitive and peaceful presidential election. For the first time since independence, Tunisians were offered the opportunity to choose among a diverse group of presidential candidates in a genuine election. The Nov. 23 presidential polls, the second of two elections intended to consolidate Tunisia's democratic transition, were administered in a professional and neutral manner. Tunisia is the only country in the Arab world to have successfully pursued a consistent path of democratic reform after the 2011 revolutions. As such, Tunisia could serve as a model for other countries in the region struggling to establish democratic institutions.

The results of the October legislative elections helped to shape the dynamics of the presidential campaign. A broad-based party, Nidaa Tounes, emerged as the largest winner with 86 seats, while the Islamist movement Ennahdha was second with 69 seats. In a positive step, all political parties announced before the ISIE officially released the preliminary results that they would accept the outcome of the polls.

#### ***Legal Framework***

International best practices indicate that the legal framework for the organization of an election should be readily accessible to the public, be transparent, and address all the components of an electoral system necessary to ensure democratic elections.<sup>1</sup> Tunisia's legal framework for presidential elections is generally in alignment with international standards.<sup>2</sup>

The electoral process is governed by the January 2014 constitution, the 2014 electoral law and the implementing regulations issued by the Independent High Authority for Elections (ISIE), the

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<sup>1</sup> OSCE/ODIHR, Guidelines for Reviewing a Legal Framework for Elections, page 4.

<sup>2</sup> These include: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention against Torture, Inhuman or Degrading Treatment (CAT), the Convention on the Rights of Persons with Disabilities, and the African Charter on Human and Peoples' Rights (ACHPR).

law on the ISIE, and the law related to the freedom of audiovisual communication that created the Independent High Authority for Audiovisual Communication.<sup>3</sup> Certain areas of the legal framework could be improved, including by establishing adequate timeframes for the different stages of the electoral process and appropriate sanctions for those who violate the legal framework. In addition, campaign provisions, including those on the use of advertising and posters, are too restrictive for candidates to fully respect them. The legal framework is dispersed across several laws and regulations, which makes it difficult for electoral stakeholders to access all applicable rules in one consolidated location and to understand them. The law would benefit from consolidation of all provisions into one comprehensive electoral code.

### ***Electoral system***

The purpose of an electoral system is to translate the will of the people into a representative government. International standards do not prescribe a specific electoral system.<sup>4</sup> Tunisia's electoral system respects the principles of genuine and periodic elections and guarantees universal suffrage, the secrecy of the vote, and freedom from intimidation, as well as equality of the vote and fair representation of all citizens.

According to the constitution, the president is elected for a five-year mandate, in line with international commitments and best practices.<sup>5</sup> If no candidate receives an absolute majority of valid votes cast in the first round, a second round between the two candidates who received the largest number of votes will be held within two weeks of the announcement of the final results of the first round.

The constitution guarantees the right to vote to all citizens who are 18 or older with full enjoyment of their civil and political rights and not subject to any cases of disenfranchisement foreseen under the electoral law. However, article 6 of the electoral law prohibits military and security personnel from voting, a restriction not in keeping with international standards.<sup>6</sup> In addition, the 2014 electoral law does not foresee a mechanism for citizens in health care facilities, penitentiaries, or detention centers to exercise their right to vote, contrary to Tunisia's constitution and international commitments.<sup>7</sup>

### ***Candidate Registration***

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<sup>3</sup> Organic Law no.16-2014 of May 26, 2014 related to elections and referenda (hereinafter: the electoral law), and Organic Law no. 23-2012 of December 20, 2012 relating to the Independent High Authority for Elections, as amended and supplemented by Organic Law no. 44-2013 of November 1, 2013 and the Organic Law no.52-2013 of December 28, 2013 (hereinafter: the ISIE law).

<sup>4</sup> U.N., International Covenant on Civil and Political Rights, Art. 25(b); United Nations Human Rights Council, General Comment 25, para. 21.

<sup>5</sup> ICCPR, art.25(b); General Comment 25, para.9 and 19; Universal Declaration of Human Rights, art.21(3); Council of Europe Code of Good Practice in Electoral Matters, sec. I.1.6.

<sup>6</sup> According to the 2014 budget of the Ministry of the Interior, the number of Tunisian internal security forces amounts to around 93.486 personnel, while the regular armed forces is around 35.500 persons, according to data of the Institute for National Security Studies. See ICCPR, art.25: "Every citizen shall have the right and the opportunity [...] to vote and to be elected at genuine periodic elections...." Also, General Comment 25, par. 14: "The grounds for denying suffrage rights to citizens have to be objective and reasonable and must be prescribed by law."

<sup>7</sup> Right to universal suffrage on the basis of equal treatment before the law: ICCPR, art. 25(b); African Charter on Democracy, Elections and Governance, art. 3 (3).

The right of individuals to participate in public affairs is an obligation under international law.<sup>8</sup> While the right to be elected is a widely recognized principle in both regional and international treaties, it is not an absolute right and may be limited on the basis of objective and reasonable criteria established by law.<sup>9</sup> The Tunisian legal framework allows for an inclusive candidate registration process and is generally in line with international and regional standards.<sup>10</sup> Presidential candidates must be Tunisian by birth, of the Islamic religion, and at least 35 years old. Constitutional measures regarding the candidate's faith should be reviewed for conformity with international standards.<sup>11</sup>

All nominees are required to pay a deposit of 10,000 dinars, refundable if the candidate secures at least 3 percent of the valid votes cast. In addition, in order to appear on the ballot presidential candidates must be endorsed either by 10 members of the National Constituent Assembly (NCA) or a minimum of 10,000 registered voters from at least 10 constituencies with at least 500 voters per constituency.<sup>12</sup> The requirement to collect signatures proved problematic in its implementation stage because of the alleged use of fraudulent signatures.

As provided for by the electoral calendar, candidate registration for the presidential election took place Sept. 8-22. The ISIE received a total of 70 candidacies by the deadline, more than half submitted on the final day. Among the applicants were five women, three members of the NCA, six businessmen, and three ex-ministers who served under the Ben Ali regime. This list included incumbent President Moncef Marzouki and NCA President Mustapha Ben Jaâfar.

The ISIE confirmed a preliminary list of 27 candidates on Sept. 30. Forty-one candidates were rejected for failure to meet the candidate support requirements described above, and two candidates withdrew their applications. One of the five female candidates was confirmed.<sup>13</sup> The ISIE cited several reasons for rejecting candidate applications, including an insufficient number of sponsors and/or the distribution of sponsors across fewer than 10 constituencies; the electronic submission of signatures not in the required format, and the failure to submit a financial deposit.

Many CSOs urged the ISIE to take action against candidates who allegedly used fraudulent voter data for endorsement purposes. In response, the ISIE claimed that it was not capable of investigating the falsification of names and data, and that only those people concerned had legal standing to file a suit, as provided by the law. The ISIE set up a call center to allow voters to verify whether their names appeared in the endorsement lists without permission.

In three cases, the ISIE filed complaints with the criminal courts of first instance against enterprises in which staff allegedly mishandled databases. A fourth complaint was filed on behalf of ISIE member Khameyel Fenniche, whose name had been used without her consent. These

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<sup>8</sup> ICCPR, Article 25(a); ICCPR, Article 21; UNHRC General Comment 25, para. 26.

<sup>9</sup> ICCPR, Article 25; AU, ACHPR, Article 13; Arab Charter on Human Rights, Article 24

<sup>10</sup> ICCPR, Article 25 "Every citizen shall have the right and the opportunity [...] to vote and to be elected at genuine periodic election." See also Article 13 of the African Charter of Human and Peoples' Rights.

<sup>11</sup> ICCPR, art. 2 and 25; UNHRC General Comment 25, para. 15.

<sup>12</sup> The obligation to collect a certain number of signatures in order to stand conforms to the principle of universal suffrage according to the Council of Europe Code of Good Practice in Electoral Matters, which states that signatures required should not exceed 1 percent of voters in the constituency concerned.

<sup>13</sup> Kalthoum Kannou, judge and former president of the Tunisian Magistrates' Association.

four cases are still pending in the court, and their examination will not be finalized until after the presidential electoral process is completed. Losing candidates could be prosecuted. If it is proven that the president-elect's endorsements included fraudulent voters' signatures or data, the president would benefit from immunity while in office, which could impact the legitimacy of the office.

### ***Election Administration***

An independent and impartial electoral authority, functioning transparently and professionally, is the only effective means of ensuring that citizens are able to participate in genuine democratic elections.<sup>14</sup> The Tunisian electoral administration implemented its duties in 2014 in an independent and impartial manner and made commendable attempts to correct deficiencies and address stakeholders' concerns after the legislative elections.

The requirement that both the legislative and presidential elections take place before the end of 2014 meant that electoral authorities had a limited time period in which to organize two separate elections with three possible rounds of voting. The electoral periods of the two elections overlapped by two months and presidential candidate registration took place at the same time as the complaints and appeals period for the legislative candidate registration process. Although the ISIE delegated some of its authority for the legislative elections to the Regional Authorities for Elections (IRIEs), it had to perform a difficult balancing act to ensure that each electoral process would not affect the other. This was compounded by managerial deficiencies because there was no clear division of labor within the ISIE Council and no executive director for much of the electoral period.

With only one week between the election day for the legislative elections and the start of the official campaign period for the presidential election, the election administration had little time to take stock of the first round of elections and prepare for the next one.

Despite these challenges, the ISIE engaged in a laudable lessons-learned exercise with a variety of stakeholders, including the IRIEs and the regional administration offices, citizen observer organizations, and campaign managers. This led to changes in the procedures related to the voting, counting, and results tabulation processes, as well as other administrative issues.<sup>15</sup>

Because of the short time frame, many of the procedural steps prescribed by the legal and regulatory framework were delayed. For instance, the ISIE released the presidential ballot paper only after the start of the campaign. There was no draw to determine the candidate order in the designated spaces for the placement of posters.<sup>16</sup> The ISIE also organized information sessions on campaign procedures for candidates' financial agents and campaign managers, as well as its own monitors, only after presidential candidates had launched their campaign activities. Presidential candidates expressed dissatisfaction with the ISIE for not doing enough to prevent campaign regulation violations and not punishing those candidates engaged in violations.

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<sup>14</sup> UNHRC, General Comment 25, para. 20.

<sup>15</sup> See regulation #2014-33 dated Nov. 6 and modifying regulation #2014-32 dated Oct. 14.

<sup>16</sup> Instead the ISIE used the draw done on Oct. 24, for the order of the candidates on the ballot paper.

The ISIE also replaced approximately 3 percent of the poll workers in the interim period for allegedly having performed poorly and/or not in a neutral and impartial manner during the legislative elections. The ISIE released the list of poll workers for the presidential election on its website on Nov. 11 to give the presidential candidates the opportunity to object to any they believed were not impartial. As a result, the ISIE replaced a total number of 1,500 poll workers, including 500 heads of polling stations.

Throughout the period between the legislative and the presidential elections, the ISIE kept open communication channels with all relevant stakeholders. It met with civil society organizations and continued to use its media center to communicate about key aspects of the electoral process to the wider public, including, for example, details regarding the hours of operation of polling stations.<sup>17</sup>

### ***Voter registration***

Voter registration and the establishment of a complete, current, and accurate voter list are recognized as important means to ensure that each citizen has the right to vote: "Where registration of voters is required, it should be facilitated, and obstacles to such registration should not be imposed."<sup>18</sup> Tunisia's voter registration procedures are mostly in line with international and regional standards.<sup>19</sup>

On June 23, the ISIE opened the first phase of voter registration, targeting those voters who had not registered in 2011. The registration was scheduled through July 22, and later extended through July 29. The ISIE conducted a second phase of registration targeting specific groups of people from Aug. 5-26. The ISIE announced the final number of registered voters on Oct. 6. A total of 1,029,862 Tunisian citizens registered during the 2014 voter registration process, bringing the final tally of registered voters to 5,285,136, of whom 359,530 registered to vote abroad.<sup>20</sup>

Many CSOs and citizens alleged that thousands of voters abroad and in Tunisia were disenfranchised during the legislative elections, as they could not find their names on the voter lists. In response, the ISIE opened a one-week window Nov. 2-8 for these voters to reinsert their names. This phase was not meant to register new voters, but rather to ensure that all voters who had registered appeared on the voter lists and could take part in the presidential election. Voters abroad also were allowed to change their polling centers. At the end of the seven-day period, the ISIE reported receiving 9,452 requests, 87 percent of which came from overseas voters. It approved 1,129 requests to change polling stations, and 489 requests to be reinserted in the voter lists, bringing the total number of voters to 5,285,625. The majority of rejected requests reportedly came from voters who had passively registered in 2011 but had not complied with the requirement to actively register in order to vote in the 2014 elections.

### ***Voter Education***

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<sup>17</sup> The opening time was changed from 7 a.m. to 8 a.m.

<sup>18</sup> UNHRC, General Comment 25, "The right to participate in public affairs, voting rights and the right of equal access to public service," para. 11.

<sup>19</sup> ICCPR, General Comment 25, para. 11.

<sup>20</sup> The number of actively registered voters in 2011 was 4,108,202 (source: ISIE Report on the 2011 NCA elections, February 2012).

The fulfillment of the international obligation of universal suffrage is partially dependent on effective voter education.<sup>21</sup> The ISIE's voter education campaign lacked full effectiveness. The ISIE launched a voter education campaign specifically focused on the presidential elections only 10 days prior to the polls. Civil society organizations also contributed to voter education efforts. However, the ISIE was cautious in calling upon their support to avoid the appearance that they were influencing voters. While the ISIE made education materials such as leaflets on the election date and posters about the presidential voting process available to CSOs, the latter criticized the campaign as too little, too late.<sup>22</sup> Certain CSOs carried out their own voter education campaigns targeting specific groups of voters, such as people with disabilities, women, and youth.<sup>23</sup>

For the presidential election, the ISIE adapted the same voter education campaign that it had carried out for the legislative elections. The ISIE aimed to inform registered voters about the voting procedures and to explain the importance of voter participation. Campaign activities relied on the use of electronic and broadcast media as well as print media, and also involved the deployment of volunteers ahead of the election day.

### ***Campaign Environment***

Political pluralism and genuine choice for voters are critical aspects of democracy. Equitable treatment of candidates and parties during an election, as well as the maintenance of an open and transparent campaign environment, are important for ensuring the integrity of the democratic election process. The presidential election offered voters a genuine choice among a diverse group of candidates for the first time. The rights of free speech and assembly were respected throughout the campaign period. The requirement to notify the election administration 48 hours ahead of campaign events proved burdensome in its implementation, as most candidates ignored it, making it difficult for the IRIEs to monitor campaign events. This regulation should be reviewed.

Two candidates whose parties fared poorly in the legislative elections withdrew in the first days of the campaign, while three additional candidates withdrew in the last week of the campaign.<sup>24</sup> Mustapha Ben Jaâfar, whose party won no seats in the legislative elections, called on all social democratic parties and candidates to unite behind a single candidate or to adopt a common platform to prevent the return of one-party rule.<sup>25</sup> The incumbent president also systematically

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<sup>21</sup> ICCPR, Art. 25.

<sup>22</sup> This was the case of the Tunisian League for Human Rights in Tunis and the Civilian Pole for Human Rights and Development in Gafsa.

<sup>23</sup> This included We Youth in Kairouan, Sfax and Mahdia and the Civilian Pole For Development and Human Rights in Gafsa.

<sup>24</sup> Abderrahim Zouari, candidate of the Destourian Movement, and Mohamed Hamdi, candidate of the Democratic Alliance, announced respectively on Oct. 30 and Nov. 5 that they were withdrawing from the race, whereas independent candidates Nourredine Hached and Mustapha Kamel Nabli, and Wafaa Movement candidate Abderraouf Ayadi announced their withdrawal on Nov 17. As per the electoral law, they remained on the ballot paper. Abderrahim Zouair and Mohamed Hamdi did not record their allotted free airtime.

<sup>25</sup> This initiative, which brought together, in addition to Mustapha Ben Jaafar, Mohamed Hamdi (Democratic Alliance), Mohamed Abbou (Democratic Stream), Zouhaier Maghzaoui (Popular Movement), Imed Daimi (Congress for the Republic), Maya Jribi and Issam Chebbi (Al Jomhour), Hichem Safi (Popular Unity Movement) as well as independent candidate and former president of the Tunisian Bar Association Abderrazak Kilani, failed as all those involved considered that a consensus was only possible in the second round.

raised the specter of despotism and dictatorship if a former official of the Ben Ali regime were to win the presidential election.

Some presidential candidates received the support of parties whose nominees were rejected during the registration process or who had decided to withdraw. After other parties rejected Ennahdha's initial calls to support a "consensus candidate," the party's Shura council decided not to endorse any candidate and urged their voters to cast their votes for "the person who is best able to lead the democratic transition." The incumbent president received the support of six parties considered to have close links with Ennahdha.<sup>26</sup> Al Massar endorsed several candidates, leaving the final choice for the voters to make, while Afek Tounes threw its support behind Beji Caid Essebsi.<sup>27</sup>

The official campaign period for the presidential election was slow to begin. Most candidates and parties, even those who did not have a candidate in the race, took the time to reflect upon the results of the legislative elections. Only a few candidates held rallies during the first week. Others, in particular independent candidates, held press conferences to announce their electoral platform. The rhythm of the campaign intensified in the last 10 days of the campaign as events and public outreach increased. The Carter Center observed rallies with between 6,000 and 10,000 attendees the weekend before election day.<sup>28</sup>

As in the legislative elections, candidates did not consistently notify the IRIEs of their campaign events, and the election administration had difficulties in monitoring them. The ISIE reported more than 1,900 cases of campaign violations, the overwhelming majority of which stemmed from the illegal display of campaign posters and a failure to provide notification of campaign events. Nineteen of the violations were transferred to the prosecutor general.

Unlike in the legislative campaign, the use of commercial billboards was predominant throughout the country during the presidential campaign.<sup>29</sup> Candidates also relied on posters, flyers, door-to-door activities, and a few regional rallies. Candidates who did not enjoy the support of a party made particular use of social networks.<sup>30</sup>

In spite of the president's limited prerogatives, candidates' manifestos touched upon a wide range of issues, from social and economic development to security and the fight against terrorism. Some candidates backed by parties that ran in the legislative elections maintained their legislative programs. Most other candidates focused on the role of the president as the guarantor of the constitution.

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<sup>26</sup> These included Marzouki's party, Congress for the Republic, Maghrebin Construction Party, Development and Reform Party, National Movement for Justice and Development, and National Construction Party.

<sup>27</sup> These were: Beji Caid Essebsi, Hama Hammami, Kalthoum Kannou and Mustapha Kamel Nabli. Al Massar called on Tunisians to vote for the candidate who is more inclined towards achieving the revolution objectives, meeting youths' claims for freedom, dignity and employment, and who plans to break with corruption and dictatorship while endeavoring to build a democratic and civil state based on the principle of citizenship.

<sup>28</sup> These were, from the largest to the smallest, the rallies of Moncef Marzouki's in Sfax on Nov. 15, Beji Caid Essebsi's in Menzeh 1 on Nov. 15, and Hama Hammami's in Menzeh 1 on Nov. 16.

<sup>29</sup> The use of billboards during the legislative campaign was prohibited by the electoral law.

<sup>30</sup> Moncef Marzouki was the most active candidate on Facebook with many dedicated support pages, while Beji Caid Essebsi was perceived to be relying more on the appearance of Nidaa Tounes' members on TV programs.

Against the backdrop of a persistently tense security environment, the media reported that several candidates had received death threats, leading some to cancel their electoral meetings.<sup>31</sup> As a result, the Ministry of Interior granted close protection to all candidates.

### ***Campaign finance***

Democratic elections cannot be held without equitable rules on financing of electoral campaigns. Electoral legislation should specifically provide for transparency of donations to campaign activities of the candidates, standardized presentation of campaign accounts, reasonable limits on campaign expenditure, and regular reporting mechanisms as well as effective and dissuasive sanctions. The 2014 electoral law expanded the powers of the Court of Auditors to conduct a review of the resources and expenses of the political parties, and included stricter and proportionate sanctions against violations than existed in 2011. Several shortcomings undermined the effectiveness of the legal campaign funding provisions and should be reviewed, including the failure to require an interim campaign finance report.<sup>32</sup>

The electoral law details the expenditure and donation limits, and allows private and public funding. According to the decree on campaign financing for the presidential elections, public funding is distributed equitably based on the number of voters at the national level. This works out to 15 TND per 1,000 voters for the first round, and 10 TND per 1,000 voters for the second round. Thus, the total public funding per presidential candidate is TND 79,284 (about USD 43,093), and the ceiling for the total expenditure for each candidate amounts to TND 792,840 (about USD 430,938). Several stakeholders considered the ceiling too low to conduct a meaningful and effective campaign.<sup>33</sup> The law prohibits contributions from foreign or unknown donors as well as from corporations and legal persons. In addition, political parties are not allowed to fund the campaign of their presidential candidates.<sup>34</sup>

The law does not provide for corresponding sanctions for all foreseen violations. For example, no sanctions are outlined for the failure to publish financial statements in a daily newspaper within two months of the announcement of the final results, or failing to appoint an agent to administer one's financial accounts. These gaps undermine the effectiveness of reporting mechanisms and decrease the electorate's trust in the transparency of the political finance system and in the accountability of relevant actors.

### ***Citizen and Candidate Observation***

Citizen observation is a critical manifestation of the right to participate in public affairs and to hold governments accountable. Sources of public international law recognize the right to take part in citizen observer organizations and to contribute to voter education efforts.<sup>35</sup> Both

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<sup>31</sup> For instance, on Nov. 11 and 12, Slim Riahi and Mondher Zenaidi cancelled their respective meetings in Sfax, Kairouan, and Monastir.

<sup>32</sup> United Nations Convention against Corruption, art. 7.

<sup>33</sup> Decree n° 3038 of August 29, 2014 relating to the ceiling of expenditure for the electoral campaign, ceiling of private funding and ceiling of public funding and their conditions and procedures for the presidential elections of 2014.

<sup>34</sup> Art. 76 of the electoral law and art.9 of the ISIE regulation no.20 on campaign finance.

<sup>35</sup> EISA, Principles for Election Management, Monitoring and Observation in the SADC Region, p.19.

Tunisian civil society and political parties took an active part in observing the legislative and presidential electoral processes.

The ISIE accredited an additional 13,000 citizen observers for the presidential election.<sup>36</sup> Many prominent CSOs published their observation findings from the legislative elections, demonstrating the seriousness of their undertakings and a real interest in contributing to improving the electoral process. These included Mourakiboun, Chahed Observatory, ATIDE, Civilian Pole for Development and Human Rights, League of Tunisian Women Voters, Ofyia-Center for Studies of Islam and Democracy, Youth without Borders, I-Watch and Tunisian League for Human Rights.

According to ISIE observer regulations, only presidential candidates were allowed to register representatives to observe the presidential election on their behalf. This meant that all party representatives accredited for the legislative election had to be re-accredited as observers of a presidential candidate in order to gain access to the polling stations. The ISIE reported accrediting 65,000 representatives of candidates for the presidential election.

### ***Electoral Dispute Resolution***

Appeal procedures, and especially the powers and responsibilities of the various bodies involved in them, should be clearly regulated by law in order to avoid any positive or negative conflicts of jurisdiction. In addition, the right to file such appeals must be granted as widely as possible, open to every elector in the constituency and to every candidate running in the election.<sup>37</sup> While candidate representatives may file complaints, the law does not allow voters to file complaints on potential malpractices or irregularities at the polling station, thus denying their right to an effective remedy.<sup>38</sup> Also, there is no possibility for voters to challenge the election results in the courts, which is not in accordance with international standards.

The electoral law provides effective mechanisms for aggrieved contestants to seek redress and respects the right to judicial review. This guarantees an independent oversight of the electoral process as it relates to the candidate registration and electoral results.<sup>39</sup> Article 124 of the electoral law allows representatives of candidates and observers to record remarks on the voting protocol for examination by the president of the polling station.

The guarantee of a timely remedy is integral to the principle of effective means of redress. Despite the short time limits allowed in the electoral law, the administrative tribunal was able to address all complaints and appeals in a timely fashion, though both the judiciary and the litigants criticized the time constraints. The tribunal demonstrated impartiality and respect for due process in its decisions. During the adjudication of the complaints regarding the presidential candidates' registration, the appellate chambers of the tribunal also showed a consistent approach in the examination of the facts and the interpretation of the law.

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<sup>36</sup> The total number of accredited citizen observers for the presidential election was 27,000.

<sup>37</sup> European Commission for Democracy through Law (Venice Commission), Code of Good Practice in Electoral Matters, CDL-AD (2002) 23.

<sup>38</sup> ICCPR, General Comment 25, para. 20 and African Union Declaration on the Principles Governing Democratic Elections in Africa, section IV, article 7.

<sup>39</sup> UNHRC, General Comment 32, para. 19.

Article 143 of the electoral law grants the ISIE wide powers to cancel electoral results of the winner, even before any alleged violations are confirmed by a court ruling if it finds that electoral infractions have been committed. The ISIE should conduct its assessment during the three-day period before announcing the preliminary results. The ISIE exercised this prerogative, cancelling one seat during the legislative election. The seat was later restored by the tribunal.<sup>40</sup> The ISIE may also order a re-run of the election in selected polling stations if the latter's cancelled results would affect the outcome in the presidential elections or the selection of candidates who participate in the runoff election, as per article 142 of the law.

Candidates lodged 23 complaints with the appellate chambers of the administrative tribunal against ISIE decisions denying registration to presidential nominees. Of these, 15 complaints were rejected on substantive arguments and six on technical grounds, one complaint was withdrawn and one was rejected because the person did not apply to be a candidate. Appeals were filed against 15 of these decisions with the plenary assembly of the administrative tribunal, which upheld the decisions of the appellate chambers.<sup>41</sup>

According to the ISIE, 19 cases involving campaign violations were transferred to the prosecutor's office; six concerning the written and electronic press, five of which were in regards to the candidates' use of foreign media. The ISIE also filed a complaint to the prosecutor against some administrative officials for campaigning during working hours. In addition, 13 cases concerned electoral campaigning taking place in private institutions not open to the public and in medical and educational facilities. The ISIE also announced that its monitors reported 1,900 violations, largely concerning the illegal display of campaign posters and the failure to inform the ISIE of planned campaign rallies. Most of these violations were resolved through informal communication between the election administration and the candidate and did not result in sanctions or legal action.

### ***Election Day***

The voting process is the cornerstone of the obligation to provide the free expression of the will of the people through genuine, periodic elections.<sup>42</sup> The quality of voting operations on election day is crucial to determining whether an election fulfills its democratic obligations. It is a core obligation under international law that elections be held by secret ballot, a recognized means of ensuring that the will of the people is expressed freely.<sup>43</sup>

### ***Opening and Polling***

Carter Center observers described the opening process in the 36 polling stations visited as calm, well-organized, and efficient. However, in several stations, observers reported that the opening

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<sup>40</sup> As per art.143, the ISIE cancelled one of the three seats obtained by Nidaa Tounes at the constituency of Kasserine on the grounds of several infractions seriously impacting the results. The administrative tribunal overturned the decision ruling that art. 143 does not foresee a partial cancellation of results, neither does it attribute to the ISIE the power to sanction the offenders by removing one seat.

<sup>41</sup> Only three appeals were rejected on formal grounds, out of which one for lack of notification of the ISIE and the other for filing the complaint after the deadline.

<sup>42</sup> ICCPR, Articles 2, 25(a) and 9.

<sup>43</sup> U.N., International Covenant on Civil and Political Rights, art. 25; U.N. Universal Declaration of Human Rights, art. 23. EISA and Electoral Commission Forum of SADC Countries, Principles for Election Management, Monitoring, and Observation in the SADC Region, p. 24.

minutes were either not filled out or only partially filled out before polling began, which violates the regulations.

Carter Center observers visited 380 polling stations during election day and assessed the overall election environment and process as positive in the overwhelming number of stations visited. They also assessed the implementation of procedures by polling staff as good in nearly all cases. Polling station staff were rated as competent and cooperative in an overwhelming majority of cases. The turnout was reported by the ISIE as 64.6 percent in Tunisia.

There were a few minor irregularities observed, including the failure to check voters for ink before allowing them into the station, and inadequate supplies of paper for voters to dry the ink on their fingers. One issue that carried over from the legislative elections was the absence of voter instructions given to voters by poll workers as required by the regulations. The instruction was assessed as inadequate or not given at all in 20 percent of observed polling stations. Despite these gaps, Carter Center observers rated voter understanding of the voting procedures as adequate in 98 percent of stations visited, signaling that the lack of voter instructions did not have an impact on the voting process.

Carter Center observers reported that while there were long lines at some stations, others had no lines at all. There were a disproportionate number of elderly people in the lines. This was a result of the organization of the voter lists by sequential national ID numbers, the same method used in the Oct. 26 legislative election.

### ***Closing and Counting***

Carter Center observers attended closing and counting in 34 polling stations. The overall assessment of the process in these stations was positive and observers noted that staff were welcoming and receptive. Observers also found that the atmosphere inside the polling stations was professional, organized, and transparent.

In a few cases, the counting did not start immediately after the closing, with a maximum 30-minute break taken between the two events. In some of these cases, the minutes were not completed prior to taking the break, and observers and agents were shown outside while the polling station was prepared for counting. None of the citizen observers or candidate agents present indicated that this was a problem or that it impacted on the process.

Ballot sorting, counting, and verification procedures were followed in all observations made by Carter Center observers. The results of the counting were posted as required in 100 percent of the polling stations observed.

### ***Tabulation***

The transfer of materials from polling centers to tabulation centers again created a delay during the tabulation process for the presidential elections. Carter Center observers reported that by two Monday morning tabulation had not yet started in seven out of 27 tabulation centers. Observers also noted that there was no uniformity in how tabulation centers dealt with this challenge. In some centers the process began immediately when material started to arrive from the polling stations while in others, the staff waited until all of the material from all polling stations arrived before beginning tabulation procedures. In other centers, observers were informed that tabulation would not begin until Monday morning even though material had begun to arrive.

Even though the ISIE had indicated that they would arrange the tabulation centers so that observers would have a clear and meaningful view of the process, 29 per cent of the teams reported that international observers and citizen observers had insufficient access to the process. Furthermore, not all tally center staff were willing to answer questions posed by observers. In nine of the twenty observed cases, staff was refused to answer questions from observers. In other cases, however, staff made concerted efforts to explain the process.

Once the tabulation process was underway, observers gave high marks to the procedures; 89 per cent of TCC observer teams reported that the process appeared to move in an efficient manner and there were no reports of irregularities or interference in the process.

Few citizen observers followed the tabulation process; in ten observed cases there were no candidate agents present and in three centers there were no citizen observers.

**Background:** The Carter Center was accredited by the ISIE to observe the elections and deployed 85 observers who visited 380 unique polling stations as well as the 27 tabulation centers. The mission was co-led by human rights defender and Advocate of the Supreme Court of Pakistan Hina Jilani, international human rights lawyer Ambassador Audrey Glover, and the CEO of The Carter Center, Ambassador Mary Ann Peters. Twenty-eight nationalities were represented on the observation mission.

The Center has had a presence in Tunisia since 2011 and observed the 2011 National Constituent Assembly elections as well as the constitution-making process that culminated in the adoption of the constitution in January 2014. The electoral observation mission was launched in June 2014 with the deployment of 10 long-term observers across the country and a core team of technical experts based in Tunis. The Center will remain in Tunisia to observe the final tabulation process and resolution of electoral complaints. An observation mission also will be sent for a possible run-off in late December.

The objectives of the Center's observation mission in Tunisia are to provide an impartial assessment of the overall quality of the electoral process, promote an inclusive process for all Tunisians, and demonstrate support for its democratic transition. The electoral process is assessed against the Tunisian legal framework, as well as Tunisia's international obligations for genuine democratic elections.

The Center wishes to thank Tunisian officials, political party members, civil society members, individuals, and representatives of the international community who have generously offered their time and energy to facilitate the Center's efforts to observe the presidential election process.