



## Carter Center Preliminary Statement on Tunisia's Legislative Elections

Oct. 28, 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***

The legislative elections, the first conducted under Tunisia's new constitution adopted by the National Constituent Assembly (NCA) on Jan. 27, are an historic step in the country's transition to democracy.<sup>1</sup> Anticipated since the formation of the NCA in 2011, they represent a fulfillment of the hope of the Arab Spring, both in Tunisia and the greater Arab world. Together, the legislative and presidential elections will complete the transitional phase from the NCA, a body that operated both as a constituent assembly and a legislature, to a democratically elected legislative body and president.

Political party leaders and the NCA debated the dates of the legislative and presidential elections and the order in which they would take place at great length. After weeks of blockage, the parties involved in the national dialogue eventually reached an agreement on the sequencing of presidential and legislative elections: Legislative elections would take place first, followed by the presidential, with no overlap of dates between them.<sup>2</sup> The vote was decided by a 12-6 majority. In accordance with the transitional provisions of the law on the Independent High Authority for Elections (ISIE), the NCA set the date for the legislative elections for October 26, 2014.<sup>3</sup>

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

The organization of elections should be regulated by an unambiguous, understandable, and transparent legal framework, which addresses all components necessary to ensure democratic elections.<sup>4</sup> Tunisia's electoral legal framework provides a solid basis for the conduct of elections in line with international and regional standards as well as best practices. Certain areas could benefit from improvement. The legal framework is dispersed throughout several documents and is

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<sup>1</sup> The constitution was adopted with overwhelming support, gaining 200 out of 216 votes.

<sup>2</sup> The national dialogue launched in October 2013 was mediated by the so-called Quartet, namely UGTT, Tunisian Union for Industry Trade and Handicraft (UTICA), the Tunisian League for Human Rights (LTDH) and the Bar Association, as a mechanism aimed at easing political tensions. It was first set up by Tunisia's main workers' union (UGTT). The dialogue played a role in defusing the crisis in October 2013.

<sup>3</sup> Article 33 of the law on the ISIE.

<sup>4</sup> International Election Standards: Guidelines for Reviewing the Legal Framework of Elections, International IDEA, 2002.

mainly composed of the January 2014 constitution, the 2014 electoral law, the law on the ISIE, and the law related to the freedom of audiovisual communication that created the Independent High Authority for Audiovisual Communication (hereinafter “the HAICA”).<sup>5</sup>

Regrettably, because of the political pressures within the NCA during the drafting of the electoral law, some provisions of the electoral law are ambiguous or inconclusive, leaving the election management body to clarify important details through ad hoc regulations.<sup>6</sup> These provisions include, for example, the rules on gender parity and alternation for the supplementary list; campaign and campaign finance; verification of signatures for the endorsement of presidential candidates; and the powers of the tribunal during the examination of complaints against the results. As the ISIE had to adopt numerous regulations, the legislative framework is dispersed throughout several documents, some of them issued or amended after the beginning of the related part of the election process. This sometimes led to lack of timely information of the election stakeholders, thus undermining legal certainty.

Tunisia has also ratified a number of international and regional treaties whose provisions are relevant to the electoral process. These include the International Covenant on Civil and Political Rights (ICCPR),<sup>7</sup> 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),<sup>8</sup> the Convention against Torture, Inhuman or Degrading Treatment (CAT), the Convention on the Rights of Persons with Disabilities,<sup>9</sup> and the African Charter on Human and Peoples’ Rights (ACHPR),<sup>10</sup> among others.

### ***Electoral system***

The essence of any electoral system should be to translate the will of the people into a representative government. International standards do not prescribe a specific electoral system to achieve this purpose.<sup>11</sup> Tunisia’s electoral system respects the principles of free, fair, and periodic elections and guarantees universal suffrage and the secrecy of the vote.

Many features of the 2011 elections were retained. The National Constituent Assembly chose to maintain a closed-list proportional system in which seats are

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<sup>5</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). The legal electoral framework also includes the Law no. 36-2014 of July 8, 2014, establishing the dates of legislative election, the Decree Law no. 87-2011 of September 24, 2011, on the organization of political parties and the Decree no. 1088-2011 of August 3, 2011, related to the electoral constituencies and establishing the number of seats per constituency for the elections to the National Constituency Assembly.

<sup>6</sup> The ISIE adopted a total of 32 regulations throughout the electoral process.

<sup>7</sup> Ratified on March 18, 1969.

<sup>8</sup> Ratified on Sept. 20, 1985.

<sup>9</sup> Ratified on April 2, 2008.

<sup>10</sup> Ratified on April 2, 2008.

<sup>11</sup> U.N., International Covenant on Civil and Political Rights, Art. 25(b); United Nations Human Rights Council, General Comment 25, para. 21; International IDEA Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections, p. 28.

allocated according to the largest remainder method.<sup>12</sup> According to the transitional provisions of the electoral law, the ISIE conducted the 2014 elections using the same constituency boundaries as in 2011, thus retaining 33 electoral constituencies with an average of seven seats.<sup>13</sup> There is no threshold required to win a seat. This system is said to allow greater opportunities for smaller parties and political coalitions, as the electoral formula for the calculation of the distribution of seats increases the possibility of producing multiparty representation in the legislature.

The current boundary delimitation is based on Decree no. 2011-1088 of August 3, 2011, which provides for the delimitation of constituencies and the number of seats per constituency in-country and abroad. This decree also introduced a positive discrimination by allocating more seats to underdeveloped constituencies, mainly in the south of the country.<sup>14</sup> This resulted in significant variations in the number of residents in relation to the distribution of seats per constituency, therefore not fully ensuring the principle of equality of suffrage.<sup>15</sup>

The president and members of the legislative assembly are elected for a five-year mandate, according to the constitution. This is considered a reasonable interval in line with international commitments and best practices.<sup>16</sup> The constitution guarantees the right to vote to all citizens 18 or older with full enjoyment of their civil and political rights who are not subject to any cases of disenfranchisement foreseen under the electoral law.

### ***Candidate Registration***

The right of individuals to participate in public affairs is an obligation under international law.<sup>17</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>18</sup> The domestic

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<sup>12</sup> According to the largest remainder method, the number of votes that each party received is divided by the electoral quotient, which is the total number of valid votes in the constituency divided by the number of seats in the constituency. Each party receives seats equal to the quotient. The seats that remain unallocated are distributed to the parties on the basis of the remaining fraction; the parties with the larger fractions are each allocated one additional seat until all the seats have been allocated.

<sup>13</sup> As in the NCA, the future Assembly of the Representatives of the People will have 217 seats, divided into 199 seats representing the 27 in-country constituencies and 18 seats representing the 6 out-of-country constituencies.

<sup>14</sup> According to article 31 of the 2011 electoral law, seats are distributed on the basis of one seat per 60,000 inhabitants, while an additional seat is allocated to constituencies in which, after determining the number of seats, there is a balance of more than 30,000 residents. However, while the population of Kabeli amounts, at the latest demographic estimation of 2013, to 156,893 residents and the population of Zaghouan to 176,027, these constituencies have been allocated five seats each instead of three, as it would be according to aforementioned article; while the population of Nabeul 2 is 363,229 and has been allocated six seats. Similarly, the population of Tozeur amounts to 108,676 residents and has four seats instead of two, while the constituency of Seliana has 234,069 residents and has been allocated six seats instead of four. It appears, therefore, that a sizeable discrepancy exists in the value of each vote.

<sup>15</sup> Article 25 of the ICCPR, UNHRC, General Comment, No. 25, par.21, emphasizes the principle that “within the framework of each State's electoral system, the vote of one elector should be equal to another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group.” Also, “the maximum difference in voting power should not exceed 10 to 15 percent.” Venice Commission, Code of Good Practice in Electoral Matters, 2002, p. 17.

<sup>16</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; Paragraph 7.1 of the OSCE 1990 Copenhagen Document.

<sup>17</sup> ICCPR, Article 25(a); ICCPR, Article 21; UNHRC General Comment 25, para.26

<sup>18</sup> ICCPR, Article 25; AU, AfCHPR, Article 13; Arab Charter on Human Rights, Article 24

legal framework allows for an inclusive candidate registration process and is generally in line with international and regional standards relating to the freedom of association and the right to run for office.<sup>19</sup> The constitution provides for the political rights of citizens, including the right to form and participate in the activities of a political party as well as to assembly and association. Overall, there are no discriminatory or unreasonable restrictions to run in the legislative elections.<sup>20</sup>

Over 1,500 candidate lists were submitted; regional electoral authorities were responsible for reviewing and approving the lists in each constituency. They approved 1,327 lists, containing more than 9,500 candidates. Parties submitted 61 percent of the lists; the rest were divided between independent lists (26 percent) and coalition lists (13 percent). The legal framework encourages an abundance of candidate lists for the legislative elections, especially as the law foresees the distribution of public funding to each candidate or candidate list.<sup>21</sup> Several political parties complained that the high number of candidate's lists would lead to a fragmentation of votes and to a large number of "wasted" votes for parties that did not eventually win a seat in the legislature. Lists that do not achieve three percent of the vote, or one seat, are required to repay any public financing received.

In spite of technical difficulties with the computerized registration system on the last two days of candidate registration, when the majority of the lists were submitted, Carter Center observers reported that the IRIEs managed the process well. Most political parties acknowledged that the IRIEs were cooperative and expressed satisfaction with the process.

Candidate selection criteria varied considerably from party to party, and from region to region, even within the same party. For many political parties, the lists were proposed at regional level and approved at central level. In some of the main political parties, the process of selecting candidates was disruptive and resulted in the resignation of members. A few of these joined other political parties or formed their own independent lists.

Although the law requires that all electoral lists alternate between female and male candidates, it does not mandate horizontal parity, or the appointment of female candidates to the head of the lists. As a result, few parties placed women at the head of their lists. Only 145 of 1,327 lists were headed by women, though 47 percent of the candidates were female.<sup>22</sup> In light of Tunisia's progressive aspirations regarding gender equality safeguarded by the new constitution and the electoral law. Tunisian legislators should consider additional measures to support more equal participation of women in elected office.

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<sup>19</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>20</sup> Candidates for the legislative election must be registered voters, having Tunisian citizenship for at least the last 10 years, be at least 23 years of age on the day of submitting their candidacies, and not prohibited by law from such candidacy.

<sup>21</sup> Art. 75, 78, 81 of the electoral law and Decree no. 2761 of August 1, 2014.

<sup>22</sup> Those lists that had the highest share of women heads of list included Union for Tunisia and Al Amen Party, according to the state secretary for women's and family matters, see:  
<http://www.lecourrierdelatlas.com/797530092014Tunisie.-Les-electrices-tunisiennes-desormais-plus-nombreuses-que-les-electeurs.html>.

While many parties reported that it was easy to recruit female candidates, others reported difficulties in identifying women who were willing to run for the assembly. This was particularly common in internal regions in southern Tunisia, where some parties reported that women were pressured by relatives to abstain from the elections. Some interlocutors claimed that when recruiting women candidates, parties and independent candidates were not looking for experienced female politicians but merely interested in meeting the legal requirement. In some cases, the difficulty in recruiting women was partly due to internal fighting about the list ranking within parties.

### ***Election Administration***

An independent and impartial electoral authority that functions transparently and professionally is recognized internationally as an effective means of ensuring that citizens are able to participate in genuine democratic elections and that other international obligations related to the electoral process can be met.<sup>23</sup> Despite some criticism from parties and civil society alike, the ISIE implemented its duties in an independent and impartial manner. Unfortunately many difficulties experienced by the ISIE were similar in scope to those experienced in the 2011 NCA elections, including failure to communicate effectively with electoral stakeholders and lack of transparency.

The ISIE was created on Dec. 20, 2012, by the adoption of the law on the ISIE. The body is composed of a council with nine members, and an executive body at the central and regional levels. According to the law, the ISIE was created as a permanent independent institution. After decades of authoritarian government in which elections were administered by the Ministry of the Interior and controlled by the regime, this represents a significant and positive break from the past and helps to meet Tunisia's international obligations in this regard.

Though the ISIE was created at the end of 2012, the body was not formed for more than a year. The election of its members by the NCA was protracted and took several months to conclude. The body was only elected in January 2014, after the conclusion of a lengthy complaints and appeals period in the Administrative Court.<sup>24</sup> The assassination of NCA member Mohamed Brahmi on July 25, 2013, also halted all NCA activities for about two months. The members were selected by secret ballot, and with a two-thirds majority of the NCA. Because provisions in the ISIE law require women's representation in the candidate selection process, three of the nine council members are women.

The delays in forming the ISIE, along with the late adoption of the electoral law and the requirement that both the legislative and presidential elections take place before the end of the year, meant that electoral authorities had a very short time period in which to organize two separate elections with three possible rounds of voting. Regardless, the ISIE administered the elections in an impartial and adequate manner, showing willingness to adjust its implementation strategy in order to address stakeholders' concerns.

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<sup>23</sup>UNHCR, General Comment 25, para. 20.

<sup>24</sup> The Administrative Tribunal considered several complaints concerning the application of the selection criteria used to short-list candidates for consideration by the NCA plenary for ISIE membership.

The ISIE experienced some growing pains in organizing its work, implementing its duties, and informing the public of both its successes and challenges. As in 2011, there was no clear division of labor in the ISIE Council. It operated more as an administrative organ than a policy-making body. This dynamic was compounded by the lack of an executive director for much of the electoral period.<sup>25</sup> This hindered the decision-making process and delayed the adoption of regulations necessary to administer the elections in a timely manner.<sup>26</sup> In addition, the ISIE Council did not exercise its duties and decision-making transparently. The council failed to publish the minutes of its deliberations on the ISIE website and in the official gazette as required by the ISIE Law and the body's rules of procedure, and to release key information in a timely manner.<sup>27</sup> This lack of transparency created the impression among some stakeholders that the ISIE was deliberately concealing information or experiencing internal divisions.<sup>28</sup>

Though the electoral authorities had several successes, the ISIE failed to communicate clearly and concisely with the public, media, political parties, and the IRIEs throughout the electoral process. This affected the credibility of the council and led to criticism from political parties and CSOs. In many cases, the ISIE could have avoided this situation by explaining the process in a clear, accurate, and concise manner. When the ISIE council did communicate with the media and other stakeholders, their statements were often uncoordinated and incoherent. For instance, the council issued periodic communications on the numbers of candidate lists in the legislative elections and candidates for the presidential elections; however, the information was contradictory and the numbers simply did not add up.<sup>29</sup>

As foreseen by the law, the ISIE Council created 33 regional decision-making bodies (IRIEs) in June 2014 – one for each of the 27 constituencies in Tunisia and the six constituencies abroad – delegating to them five prerogatives in the fields of voter registration, candidacy for the legislative elections, electoral campaign, polling and counting, training and awareness.<sup>30</sup> Although their creation played a positive role in voter and candidate registration on a constituency level, the lack of clear delineation

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<sup>25</sup> On August 1, the ISIE accepted the resignation of Executive Director Nabil Salmi for health reasons. Mr. Salmi underwent open heart surgery in June. The ISIE appointed its Chief of Staff Sabeur Ezzoug as interim executive director.

<sup>26</sup> Although it started to work on the voting, counting and tabulation procedures during the summer, the ISIE did not release the related regulations until three weeks before election day for voting and counting, and one week for tabulation. This delay meant, among other things, that CSOs and political parties trained their observers and representatives on the basis of the 2011 procedures in order to meet deadlines for cascading training.

<sup>27</sup> The ISIE published minutes of its deliberations on its website in August from May 14, 2014. These minutes have not been published in the official gazette. It also took more than a week for the ISIE to release statistics about the number of voters registered. They have not yet released the statistics for the last day of registration. The ISIE also announced the final number of registered voters less than three weeks before the election day.

<sup>28</sup> Mourakiboun, for instance, claimed throughout the electoral period that the ISIE's failure to release the final voter list demonstrated that the voter register was flawed.

<sup>29</sup> While Mr. Sarsar announced on Sept. 6 that 1,316 lists had been preliminarily accepted and 192 rejected, at a talk show on Nessma TV on Sept. 9 he stated that the number of rejected lists amounted to 194. One day later, the ISIE published on Facebook a statement showing that the number of accepted candidate lists was 1,317, while 191 lists had been rejected. As the ISIE began to post the accepted lists on its official website, as of Sept. 12 the total number was 1,314.

<sup>30</sup> Unlike the ISIE and the regional administrative offices, the IRIEs are not permanent. The Arabic term for the IRIEs actually means “subsidiary bodies for the elections” which by extension can be described “regional bodies.” However, most stakeholders, including the ISIE, have kept referring to these bodies by using the term from 2011, namely IRIEs.

between the roles and tasks of the IRIEs and the regional executive bodies created situations in which it was unclear who had the authority, leading to tensions between the entities.<sup>31</sup> While the regional executive bodies were intended to provide administrative and operational support to the IRIEs, they were consistently understaffed. This resulted in the IRIEs taking on more operational duties than assigned to them by the regulatory framework. These organizational and management issues created deficiencies in the process that the IRIEs and local election administration solved through the exercise of a certain amount of flexibility and inventiveness.<sup>32</sup>

Throughout the electoral process, IRIEs and the central administration showed different and inconsistent understandings of some of the procedures. This was apparent during the voter registration process and also visible during the recruitment of polling staff, when the IRIEs and the ISIE adopted different procedural approaches to addressing complaints regarding recruited candidates. In some cases, the IRIEs considered each case individually and requested proof of political affiliation if applicable; in other cases, IRIEs acted on all complaints by replacing the concerned polling staff.<sup>33</sup> The recruitment of poll workers was divisive; as criticism from party and list representatives as well as civil society organizations grew, the ISIE instructed IRIEs to remove those polling station agents who did not look impartial.

### ***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>34</sup> Tunisia's voter registration procedure is mostly in line with international and regional standards.<sup>35</sup> Despite some technical difficulties, the ISIE conducted an inclusive voter registration process, ensuring that interested and eligible Tunisian citizens could participate in the elections.

Certain steps could be taken to bring Tunisia's practices in greater alignment with international standards regarding the right to vote. Restrictions on the right to vote of military and security personnel contained in Article 6 of the electoral law, however, does not comply with international standards.<sup>36</sup> In addition, even though all prisoners, except those specifically deprived by a court, have the right to vote, there is no possibility foreseen in the electoral law for mobile, proxy or postal voting, and the ISIE failed to adopt any procedures for voter registration in penitentiary institutions,

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<sup>31</sup> This was the case in Gafsa where the IRIE president took over from the regional coordinator one week prior to the initial deadline of the first voter registration period. Likewise, a conflict arose between the IRIE and the regional election administration in Tozeur at the beginning of August.

<sup>32</sup> For instance, during the campaign period for the legislative elections, Kasserine and Sidi Bouzid IRIEs created local branches at delegation level aimed at facilitating the coordination between the IRIEs and the candidates. Moreover, Sousse and Monastir IRIEs conducted trainings for the heads of list on campaign financing.

<sup>33</sup> In Monastir, one party list criticized the IRIE for requesting proof of poll workers' political affiliation, while in Kef, the IRIE replaced individuals only when political parties were able to provide evidence of non-neutrality. On the other hand, in Beja and Sidi Bouzid, the IRIEs chose not to require evidence in challenges of non-neutrality.

<sup>34</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>35</sup> ICCPR, General Comment 25, para.11.

<sup>36</sup> ICCPR, General Comment 25, para.4 stipulates that any limits placed on universal suffrage in the context of voter registration must be based on objective and reasonable criteria.

therefore arbitrarily disenfranchising these voters.<sup>37</sup> Similarly, the ISIE did not conduct systematic registration of persons in hospitals, who were therefore also deprived of their right to vote.

The electoral register for these elections was compiled based on the lists of voters who actively registered in 2011.<sup>38</sup> The ISIE established 33 voter registration centers corresponding to the constituencies in and out of the country for the registration of those voters who did not actively register in 2011. Offices were staffed by 2,500 registration workers and included 597 fixed registration offices and 275 mobile offices.

The initial phase of the voter registration period was scheduled from June 23 to July 22. The ISIE extended it for one week after criticism from political parties and several CSOs about the low number of voters who had registered. The ISIE added a second registration period from Aug. 5-26 in order to reach out to specific categories of the population who had not registered in the first phase.<sup>39</sup> The ISIE also decided to use this extra period to address the issue of registration of voters who would turn 18 between Oct. 26 and Nov. 23, thus taking positive and proactive measures to enfranchise this group of voters.

During the two registration periods, 1,029,862 Tunisian citizens were added to the voter list, 760,514 during the first registration period and 269,348 during the second period. At the end of the two periods, women represented 50.5 percent of all voters, against 47 percent in 2011.<sup>40</sup>

According to the ISIE, the total number of registered voters for the 2014 elections was 5,285,136, of which 359,530 are registered to vote abroad.<sup>41</sup> Some 3.3 million registered voters checked their data through the Internet and via cell phone. It is regrettable that while the ISIE published the voter list after the first phase of voter registration, they did not release the final list at the end of the second phase of voter registration.

The voter list was posted for public inspection after each phase of registration. A total of 87 objections were filed with the 33 IRIEs in the country and abroad. The majority of these were resolved by the IRIEs in a satisfactory fashion. No appeals were filed with the Courts of First Instance concerning voter registration.

### ***Voter Education***

Voter education is necessary to ensure an informed electorate that is able to effectively exercise the right to vote. The fulfillment of the international obligation of universal suffrage is partially dependent on effective voter education.<sup>42</sup> Internationally

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<sup>37</sup> According to the 2014 Report of the U.N. High Commission for Human Rights, there are approximately 24,000 prisoners in the 27 incarceration facilities in Tunisia, including 13,000 in provisional detention.

<sup>38</sup> See Article 169 of the electoral law.

<sup>39</sup> These potential voters included those passively registered voters from 2011 who had voted in 2011 but had not yet registered in 2014, youth and women who did not have an ID card and Tunisians residing abroad.

<sup>40</sup> See: <http://www.lecourrierdelatlas.com/797530092014Tunisie.-Les-electrices-tunisiennes-desormais-plus-nombreuses-que-les-electeurs.html>

<sup>41</sup> The number of actively registered voters in 2011 was 4,108,202 (source: ISIE Report on the 2011 NCA elections, February 2012).

<sup>42</sup> ICCPR, Art. 25.

recognized good practice indicates that impartial and consistent voter education is the primary responsibility of state organs, chiefly the election management body. Political parties, civil society and international organizations may also contribute to voter education efforts.

While the ISIE organized dedicated voter education campaigns, both for the voter registration and the election day, and cooperated with other stakeholders such as civil society and political parties, it could have been more proactive in reaching out to the public in a more systematic way early on in the process. The ISIE could, for instance, have designed and launched a general campaign about the necessity to register prior to voting even before the start of the electoral period, this way preparing the public for the various steps of the process.

The ISIE launched an awareness-raising campaign to coincide with the official campaign period and voter education material was made available in most parts of the country some two weeks before the election. The campaign aimed both to encourage people to vote and to educate voters, explaining various technical aspects of the process, such as how to find your polling center. The material included posters and billboards, newspaper advertisements and TV ads, as well as advertisement on taxis and public transportation. The ISIE continued also to use social networks as a way of communicating with the public. In addition, the election administration deployed mobile teams of voter education agents to some parts of the country. These teams simulated voting procedures, actively involving passersby. In some areas, the official voter registration campaign was supplemented by voter education initiatives by CSOs; however, they were far fewer than during the voter registration period.

### ***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 to ensuring the integrity of the democratic election process. Although more than 4,500 violations were reported during the campaign to the IRIEs and the ISIE, the majority concerned violations that did not have a substantial impact on the campaign or the electoral process overall, such as posters being torn down or put in illegal places, the use of political publicity, and unauthorized meetings.

Many political parties conducted activities at the end of August and in advance of the campaign period that they characterized as regular party activities. Some parties candidly admitted to Carter Center observers that they were engaging in campaigning before the official start date of Oct. 4. They stated that they were introducing the party, which they described as a way of mobilizing their voters. Methods of pre-campaigning included going door-to-door, distributing fliers, organizing political cafes, canvassing in markets, and setting up tents or tables and chairs in key strategic locations.

Most large parties released their programs a couple of weeks before the start of the official campaign. Many of these programs were first developed at national level before being modified to adapt to local realities, thus giving the race a local flavor. Most electoral platforms addressed similar issues, from the restoration of the state's authority, to the need for a global development plan to target unemployment, to the creation of a comprehensive strategy to fight terrorism. In the south, other factors such as ideological affiliation and family/tribal ties played an important role in mobilizing voters.

Independent lists, as well as smaller parties and coalitions, including CPR, Wafaa and Popular Front, resented the ability of large parties to mobilize party resources and machineries. They claimed that audiovisual and print media were dominated by political party messaging from the bigger parties.<sup>43</sup> The media coverage of the official submission of presidential candidates, which occurred just one day after the announcement of the preliminary candidate lists for the legislative elections, afforded parties who fielded presidential candidates an additional advantage.

Though the electoral campaign started slowly, the pace quickened in the second week with a substantial increase in the number of electoral meetings.<sup>44</sup> Public attendance at those meetings observed by the Carter Center varied from five at the smallest meeting to 10,000 at the largest one. Generally speaking, the right to freedom of expression and association was respected. However, Carter Center observers reported that the requirement to notify the IRIE two days prior to each event was not always respected by candidate lists, with some not even aware of this requirement, which resulted in many events being held without prior notification.<sup>45</sup> Some meetings were cancelled by electoral authorities because the organizers failed to provide the required advanced notification.

Some Carter Center observers noted that the advance notification requirement was not applied uniformly by IRIEs. Some accepted lists of events, while others accepted only individual notifications.<sup>46</sup> The notification requirement benefited those candidate lists supported by larger parties as opposed to smaller parties and independent lists that lacked the necessary resources to comply with this administrative requirement.

While tensions between parties existed throughout the electoral period, they did not manifest themselves during the official campaign. The Carter Center observed that even though many electoral events took place in the same locations simultaneously, no altercations occurred.

### ***Campaign finance***

Fair and democratic elections cannot be held without fair rules on financing of electoral campaigns. Furthermore, the rules on political party financing should apply to the funding of electoral campaigns. The electoral legislation should specifically provide for transparency of donations to political parties and campaign activities, standardized presentation of party and campaign accounts, reasonable limits on campaign expenditure, regular reporting mechanisms, as well as effective and dissuasive sanctions.

The electoral law extended the powers of the Court of Auditors and reinforced the campaign finance regulations. The law details clear and precise requirements for campaign financing, grants the Court of Auditors the power to conduct control of campaign financing, and provides for effective and proportionate sanctions in cases of

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<sup>43</sup>The term “bigger parties” would usually designate Nidaa Tounes and Ennahdha.

<sup>44</sup>The number of meetings reported by the media during the second week was 73, compared to 17 in the first week, which is a more than fourfold increase.

<sup>45</sup> See ISIE Regulation #2014-28 on Rules and Procedures of Organizing the Electoral and Referendum Campaigns, Chapter 3, Articles 18 and 19. The local office of Moubadara in Sahline (Zaghouan) told Carter Center observers that they did not need to report the events to the IRIE.

<sup>46</sup> For instance, the IRIE in Gafsa would not accept the notification of events if they were planned beyond the 48-hour time frame, while in Kasserine, candidate lists could submit a week-long schedule of events.

violations.<sup>47</sup> The Court of Auditors has the power, within six months of the publication of the final results, to annul the election of every member of the newly elected assembly who ran on a list that exceeded the campaign spending by more than 75 percent or did not submit its financial statement according to the procedure required by the law.<sup>48</sup>

Under the electoral law, the ISIE also has the authority to monitor and enforce campaign funding rules. The ISIE hired and trained approximately 1,200 people to monitor adherence to campaign finance regulations.<sup>49</sup> Based on the reports of these monitors, the ISIE can cancel the results in a polling station or constituency if it finds that violations of the campaign finance provisions significantly affected the results in a “fundamental and decisive way.” This assessment will be conducted by the ISIE during the three-day period before announcing the preliminary results.

However, there are some shortcomings that undermine the effectiveness of campaign funding provisions and could benefit from a thorough review. The law does not require that political parties and candidate lists file an interim report, thus denying voters information before the polling on how the electoral contestants funded their campaign.<sup>50</sup> The law also does not provide for corresponding sanctions for all violations foreseen, such as the obligation of the parties and lists to publish their financial statements in one of the daily newspapers within two months of the announcement of the final results, and their obligation to appoint an agent to administer their accounts.

Public funding is distributed progressively on an equitable basis based on the number of voters in each constituency and the population density. In addition, expenditure and donation limits were set allowing for private and public funding. Contributions from candidates, political parties, and national citizens are legal, while contributions from unknown donors as well as from foreign governments and foreign legal, public, private, or natural persons are prohibited. Many political parties complained that the amount of public funding was too low to conduct a credible campaign, especially for those parties with no access to private funding sources.<sup>51</sup>

Several CSOs reported that they had evidence that all of the major political parties had exceeded the campaign expense ceiling and that this evidence had been forwarded to the ISIE. Although this is related to the overall spending limit being unreasonably low to be effective and respected by the electoral contestants, it might lead to the cancellation by the ISIE, before the announcement of the preliminary results, of the mandates obtained by the winning lists or parties.

### ***Civil society and citizen 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

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<sup>47</sup> Art. 98 -100 of the electoral law; the law foresees financial penalties progressively raised according to the percentage of exceeding of the campaign spending limit, as well as cancellation of the seats obtained by the perpetrating parties or lists.

<sup>48</sup> Art. 98 of the electoral law.

<sup>49</sup> ISIE Regulation no. 20 of August 8, 2014.

<sup>50</sup> United Nations Convention against Corruption, art. 7.

<sup>51</sup> The average amount of public financing is less than 8,000 DT per political party or candidate list per constituency.

voter education efforts.<sup>52</sup> Many citizen observer networks that emerged in 2011 for the NCA elections remained active, continuing to play an essential role in the democratic transition, contributing, for instance, to the constitution-making process.<sup>53</sup>

The law on the ISIE requires the ISIE to cooperate with CSOs on voter awareness-raising and education programs. Even though the ISIE recognized that the participation of CSOs in the awareness-raising campaign on voter registration had a substantial impact on the process and contributed to increasing the number of registered voters, it decided not to associate with civil society in its get-out-the-vote campaign for fear of influencing voter choice.

Many CSOs that were involved in voter awareness also observed the process, including ATIDE, Ofyia (in cooperation with CSID), Sawty, I Watch, and the Tunisian Human Rights League. Mourakiboun had the most observers, more than 5,000 on election day. They also conducted parallel vote tabulation (PVT). The ISIE accredited some 14,070 domestic observers and 496 international observers.

Most citizen observer organizations reported that they were in continuous contact with the ISIE and that their goal was to improve the electoral process by highlighting deficiencies and weaknesses and providing solutions. They also complained that the ISIE, in many cases, did not respond to their concerns.

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

The electoral law provides for an expedient procedure for the adjudication of election disputes related to voter and candidate registration as well as election results, thus providing a timely remedy for aggrieved parties and respecting the right to judicial review so as to guarantee an independent oversight of the electoral process.<sup>54</sup> The implicated courts conducted their responsibilities in an effective and timely manner.

A total number of 133 complaints were filed with the Courts of First Instance on candidate registration, and 111 appeals were filed with the Administrative Tribunal; 25 appeals were rejected on formal grounds, 53 were rejected on the merits, and 33 were accepted on both formal grounds and merits.<sup>55</sup> Reasons for rejection of candidate lists included ineligibility because candidates registered during the second phase of voter registration or not at all, lack of gender parity on the complementary lists, insufficient numbers of replacement candidates, non-submission of tax declaration, and either a missing or not legalized signature of the candidate. The IRIEs consistently applied candidacy criteria when accepting or rejecting lists. The Courts of First Instance as well as the Administrative Tribunal made commendable efforts to adjudicate all petitions in a timely manner in accordance with the expedited procedure foreseen in the law.

However, a significant number of decisions of the Courts of First Instance analyzed by the Carter Center displayed an inconsistent approach to the interpretation of the electoral law, thus compromising the right to an effective remedy.<sup>56</sup> The electoral law

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<sup>52</sup> EISA, Principles for Election Management, Monitoring and Observation in the SADC Region, p.19.

<sup>53</sup> Two CSOs submitted constitutional drafts, one of which remained the basis of the NCA drafting process.

<sup>54</sup> U.N. Human Rights Committee, General Comment 32, para. 19.

<sup>55</sup> Out of these, 39 were filed by political parties, 36 by independent lists, and 36 by the IRIEs.

<sup>56</sup> The Carter Center analyzed 75 out of the 133 decisions the Courts of First Instance on candidate registration. Notably, some Courts of First Instance ruled that the law does not stipulate that the complementary list should respect the rule of alternation but only the principle of parity, while other

does not foresee a centralized procedure before the Plenary Assembly of the Administrative Tribunal for appeals on candidate registration, which resulted in an inconsistent approach on one legal question, mainly due to the ambiguity of the electoral law.<sup>57</sup> This compromised the right to an effective remedy and equality before the law. It is commendable that the Administrative Tribunal functioned in a transparent manner and supplied the Carter Center with copies of all 111 decisions. Based on the Center's analysis of these decisions, the court demonstrated a considerable degree of impartiality, issuing its rulings with a sound evidentiary and legal basis within the time limits set by the law.

Although Article 124 of the electoral law allows representatives of lists, candidates, or parties and observers to record any remarks on the voting process, it does not detail how these remarks should be handled by polling station staff. Further, the law does not allow voters to file complaints at the polling station on irregularities or malpractices of the electoral process, thus denying the right to an effective remedy for any violation of electoral rights.

Appeals against the preliminary results are allowed as long as they are filed by candidates or their representatives with the appellate chambers of the Administrative Tribunal within three days of publication of the results, with an appeal to the plenary assembly of the Administrative Tribunal within 48 hours of notification of the ruling.<sup>58</sup> However, contrary to international standards, there is no provision for individual voters to file petitions to the court challenging the results.<sup>59</sup>

Although short time limits are necessary in order to avoid protracted litigation pending the determination of the election results, the three-day deadline for filing of complaints to the appellate chambers of the Administrative Tribunal and the five-day limit for the plenary assembly to render its decision are overly restrictive and raise concerns as to whether due consideration of the cases is fully guaranteed.<sup>60</sup>

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courts, in the absence of precision in the law on whether both lists should abide by the rules of parity and alternation, ruled that they should. Likewise, some courts overturned decisions of the IRIEs rejecting lists including candidates who registered during the second phase of voter registration, while others ruled that the second phase of voter registration didn't accord the right to candidacy at the legislative elections. Furthermore, while according to some courts the certified signature of the candidate is necessary to demonstrate the candidate's free will and agreement to run in the elections, others ruled that is it not required by the law, so a list should not be rejected on this ground.

<sup>57</sup> In particular, four chambers of the Administrative Tribunal ruled candidates who registered during the second phase were allowed to stand, while one chamber ruled that some candidates on four lists could not.

<sup>58</sup> ICCPR, General Comment 25, para. 20 states that "there should be an independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of votes," and African Union Declaration on the Principles governing Democratic Elections in Africa, section IV.7, states that "individuals or political parties shall have the right to appeal and to obtain a timely hearing against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country."

<sup>59</sup> ICCPR Art. 2(3)(a): "To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy..." Also Venice Commission, Code of Good Practice in Electoral matters, para. 99: "Standing in such appeals must be granted as widely as possible. It must be open to every elector in the constituency and to every candidate standing for election there to lodge an appeal."

<sup>60</sup> As all TCC interlocutors commented, the time limits are too short as the system is centralized, and the complainants should collect all evidence to submit together with their complaints within three days of the publication of the results at the IRIEs.

## ***Election Day***

### ***Opening and Voting***

The voting process is the cornerstone of the obligation to provide the free expression of the will of the people through genuine, periodic elections. Certain participatory rights must be fulfilled in order for the voting process to accurately reflect the will of the people, including the right to vote, to participate in public affairs, and to enjoy security of the person.<sup>61</sup>

Preparation for the opening of polling stations began one hour before polls were scheduled to open on Oct. 26 at 7 a.m. Carter Center observers noted that most procedures were followed and polling stations were opened on time.

Voting took place in a calm, orderly and transparent manner. The turnout was reported by the ISIE as 61.9 percent in Tunisia. Carter Center observers reported long lines at opening, which decreased in length as the day progressed. All observers reported that the polling station layout was effective in facilitating the flow of voters. A provision of the electoral law that limited the number of voters at each polling station to 600 also supported an efficient processing of voters and queue control.<sup>62</sup>

As in the 2011 NCA elections, Carter Center observers reported that in some polling centers, there were long lines at some stations, while others had no lines at all. While the ISIE distributed voters among polling stations within polling centers more equitably than in 2011, their allocation was again problematic. Observers noted that there were a disproportionate number of elderly people in the lines, and several were told by polling center presidents that this was because the voter lists had been organized by age. The ISIE explained that the voter lists were in fact organized by sequential ID numbers, which resulted in high numbers of elderly people at the same station. These voters turned out in large numbers, resulting in long lines at those stations.

Except for a few minor irregularities, polling procedures were followed in those stations observed by Carter Center observers. These irregularities included cases of inadequate instructions to voters on how to vote, illegal campaigning outside polling stations, and insufficient numbers of polling staff. Observers also reported that voters' understanding of the voting procedure appeared very good or adequate in over 90 percent of observed stations.

In a tribute to the active participation of Tunisian civil society and political party representatives, citizen observers and candidate representatives were present in all polling stations visited. They appeared well organized and knowledgeable of procedures. Carter Center observers received many reports of violations of the ban on campaigning in and around polling centers, with party representatives talking to voters outside polling centers and attempting to influence their choice.

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

Polling staff appeared to have less of an understanding of the procedures for closing than for the voting, with disagreements among staff as to what the procedures were occurring in several stations. Nevertheless, the overall assessment of Carter Center observers was that the closings were calm, organized, and efficient.

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<sup>61</sup> ICCPR, Articles 2, 25(a) and 9.

<sup>62</sup> Article 119 of the electoral law.

Although the counting process was not as smooth as the voting in some stations observed, and in some isolated cases assessed as less than adequate, there was no indication that the confusion affected the results of the count. In several polling centers, the count did not begin immediately after the closing as called for in the manual of polling and sorting procedures issued by the ISIE. The break was for not more than an hour, and once the process began, it continued until completed. Election material remained in full view of observers and was not removed from the polling station during the break. In all polling stations observed, the completed minutes of the sorting and counting was publicly posted before the minutes were transferred to the tabulations center.

### ***Tabulation***

The tabulation process was delayed by the failure to transfer the necessary electoral materials from the polling stations to the tabulation centers in a timely manner. When the process did begin, in most cases, observers were not able to effectively observe the details of the process because of the distance from the work area and lack of access to tabulation center staff. However, with a few exceptions, observers described the overall atmosphere in the tabulations centers as orderly and calm. In the few tabulation centers where the observers were able to make a meaningful assessment, they characterized the process as slow but well-managed and professional.

**Background:** The Carter Center was accredited by the ISIE to observe the elections and deployed 72 observers who visited 348 unique polling stations as well as the tabulation centers in all of the 27 constituencies in Tunisia. The mission was led by former Prime Minister of Yemen Abdulkarim al-Eryani. More than 25 different nationalities were represented on the observation mission.

The Center has had a presence in Tunisia since 2011 and observed both 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 will also be sent for the presidential election scheduled for Nov. 23 and the possible run-off on Dec. 28.

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 legislative election process.