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**The Carter Center Highlights Shortcomings in Tunisia's Post-Polling Period;
Outlines Issues to be Addressed in Future Electoral Processes**

After a successful day of polling in Tunisia on Oct. 23, The Carter Center notes that several key areas related to the tabulation of results and appeals procedures did not receive sufficient attention of the High Independent Authority for the Elections (ISIE). The ISIE has published results at the district level number by the number of seats won by parties and independent lists. However, The Center remains concerned that several weeks after the elections, detailed preliminary results disaggregated at the polling station level have not been published, as is widely recognized as a best practice to increase transparency.¹

The Center acknowledges that the tabulation process was conducted in a fairly organized manner. Due to a lack of clear procedures outlining results management and training of election authorities, however, the tabulation process varied from region to region, in particular how electoral officials worked to resolve potential inaccuracies in results protocols. In future electoral processes, election authorities should ensure that regulations and procedures regarding data processing are disseminated and explained to electoral stakeholders well in advance. Procedures should address the review and audit of results by authorities to ensure adequate and transparent safeguards are in place.

The Center notes that when making decisions with an impact as significant as the invalidation of seats or one's candidacy, the ISIE should base its decision on substantive evidence. As a matter of practice, it is critical to justify the sanction as well as duly notify the concerned parties.

The Administrative Tribunal received a total of 104 requests for appeal. The tribunal worked efficiently and transparently to adjudicate the cases and provide a timely and effective remedy to

¹ African Union, Charter on Democracy, Elections and Governance, Art. 3 (4). EU, Handbook for European Union Election Observation, Second Edition, p. 83 and 86; International IDEA, Code of Conduct: Ethical and Professional Administration of Elections, p. 14; OSCE, Existing Commitments For Democratic Elections In OSCE Participating States, p. 73; OSCE, Guidelines for Reviewing a Legal Framework for Elections, p. 29; NDI, Promoting Legal Frameworks for Democratic Elections, p. 51.

appellants. However, 50 percent of the appeals filed to challenge the preliminary election results were dismissed on the basis of procedural shortcomings, a significant rate indicating a lack of understanding regarding the appeals process. In the future, the Center urges the election authorities to conduct targeted outreach efforts to political party and list representatives to better facilitate an understanding of the complaints and appeals procedures.

This statement follows the Center's preliminary assessment of the National Constituent Assembly (NCA) elections and statement released on Oct 25. The Carter Center observed a total of 272 polling stations and all 27 tabulation centers in-country and continues to follow challenges through the announcement of final results, the seating of the National Constituent Assembly and the formation of the new government.

Tabulation of Results

While the tabulation process was generally peaceful in most areas throughout the country, the ISIE's lack of clear procedures and the delayed delivery of the results reconciliation forms negatively impacted the tabulation process, prolonging the aggregation of preliminary results.

The ISIE did not prepare an operational manual of procedures for the tabulation process. Rather, informal instructions were issued relatively late in the process to Regional Independent Commissions for Elections (IRIE) staff who received minimal training and were largely unfamiliar with the results management system. Additionally, the criteria for quarantining mismatched results reconciliation forms containing errors and the relevant decision-making authority regarding changes were unclear. Timely decision making from the ISIE and better preparedness would have strengthened the integrity of the results management process and enhanced the transparency of this critical phase of the process.²

Although staff anticipated tabulation in the hours following the polling closing, delivery of the materials took much longer than anticipated by the Tunisian army, as units completing a circuit had to wait until all polling centers were finished before completing their collection route. As a result, staff became unnecessarily fatigued due to the unanticipated length of time it took to complete the process.

Access to observe the tabulation process was varied across the country. While some IRIEs allowed observers and party agents to observe tabulation closely, in other areas, observers were permitted to be present at the work areas in limited and controlled groups, which did not allow direct observation of the process. First-hand information is key in conducting credible and impartial observation. Regrettably, observers in many areas were reliant on informal interactions with IRIE senior management and data entry staff in order to assess the level of progress and issues arising during the tabulation process.

There were several incidents of results protocol forms (or *proces verbaux*) being mistakenly included in sealed ballot boxes with sensitive materials on completion of the count. To resolve the situation, the ISIE issued guidance directing the IRIEs to open ballot boxes and remove the *process verbaux* in the presence of a legal official (bailiff), representatives of political parties and independent lists, and domestic and international observers. While IRIEs managed this

² Article 3 and 12 and of AU, African Charter on Democracy, Elections and Governance.

unexpected incident in a uniform and transparent manner after receiving instructions, the Center recommends enhanced training on procedures to avoid a repetition of this type of issue during future electoral events. The Center commends IRIE staff who was notably dedicated to the task despite the numerous challenges of this lengthy operation.

Announcement of Preliminary Results

The ISIE announced preliminary results on Oct. 27 in Tunis. The announcement followed the release of partial results as tabulation was completed by district, which was not initially planned by the ISIE but was positive measure to help alleviate concerns as to why the process was taking longer than anticipated and appease tension mounting among stakeholders.

The Carter Center observers reported that results were generally accepted by stakeholders, though protesters targeted the Ennahda headquarters and mayor's office in Sidi Bouzid, with clashes ensuing between police and protesters, in response to the disqualification of Al Aridha Al Chaabia (Popular Petition) by the ISIE.

Delay in posting detailed preliminary results by polling station

To enable the public and other stakeholders to verify the accuracy of the results and to increase public confidence, it is important for the ISIE to publish the preliminary results disaggregated by individual polling station on its website, as stipulated by law, and the national media. In addition, the ISIE should issue relevant statistics including the number of invalid and blank ballots, which is a key indicator of the effectiveness of public outreach. Such steps are consistent with international best practices in order to meet Tunisia's obligations for access to information and to increase the transparency of the electoral process.³

Appeals procedures and public outreach

An effective complaints adjudication system can lend credibility to an electoral process, providing a peaceful alternative mechanism to violent post-election responses. Best practices require that potential complainants should be informed of the means by which to file a complaint and the timeframe for its resolution.⁴

According to revised article 72 of the Electoral Law, the preliminary results of the elections could be appealed within two days following their announcement before the Administrative Tribunal by heads of list or their representatives.⁵ As per Tunisia's commitment regarding the right to an effective remedy and international best practices, a better alternative would have been to allow for appeals by all parties interested in the process, including voters and civil society organizations and not just by the head of candidate lists or their representatives.⁶

³ ICCPR, article 19,

⁴ UN Commission on Human Rights, *Civil And Political Rights, Including The Questions Of Independence Of The Judiciary, Administration, Of Justice, Impunity*: para. VIII.12.a "Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should: Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law."

⁵ According to revised article 72 of the amended Electoral Law, the appeal had to be filed by the head of the list or his representative, via a lawyer registered with the Court of Cassation. In addition, it had to be notified to the ISIE via a bailiff with a copy of the appeal petition and its justifications.

⁶ ICCPR, article 2 (3) ; OSCE/ODIHR, *Observation Handbook* (fifth edition), p.18

In line with the law, the Administrative Tribunal scheduled its hearing sessions within a period of seven days from the submission of an appeal. Once the case was heard, the plenary session announced its verdict within three days. These final verdicts were announced by Nov. 8 and notified in writing to the complainants. The Center commends the Administrative Tribunal for respecting the relatively short deadlines foreseen by the Law, despite the high number of cases and the Aid holiday celebrations.

The Administrative Tribunal received a total of 104 requests for appeal. Out of these, only six were accepted both on the form and substance resulting in Ennahda receiving an extra seat in Medenine⁷ and Al Aridha Al Chaabia recovering seven seats,⁸ hence rising to the third political force within the NCA. Prior to the announcement of the preliminary results, the ISIE had invalidated eight seats in six constituencies of this party: one in the constituency of France 2, as the head of the list held responsibilities within the RCD⁹ and seven in Tunisia because of a violation of the provision on party financing (Article 52 of the election law).¹⁰ The ISIE's decisions were overturned by the Tribunal due to two reasons: a lack of substantive proof and in other constituencies the expenditures in question occurred outside of the campaign period, the time during which the regulation was in effect.

The Center is concerned about the fact that the ISIE did not provide any indications regarding the nature of the violations allegedly committed by the party in its decision. It merely referred to article 70 (power to revoke) and 52 (prohibition of private and foreign financing of political parties) of the electoral law. Bearing in mind the negligible amount of proof used to invalidate the seats won by Al Aridha, regulations should be applied consistently to avoid perceived selectivity of the election authorities in targeting specific lists.¹¹ In accordance with international law, sanctions should be applied evenly and also be proportional to the alleged violation. Hence, the fundamental right to stand for candidacy should only be restricted on the basis of reasonable evidence.¹²

In 52 instances, that is to say 50 percent of the total number of appeals, cases were dismissed on the sole ground of procedural shortcomings. This was partly due to misleading information and insufficient outreach by the ISIE to political parties and list representatives regarding the means by which to file a complaint.¹³ In addition, it appeared that the appellants lacked understanding of concerning the formal requirements to file an appeal according to revised article 72.

⁷ Decision announced on November 4, 2011. The IRIE in Medenine had counted empty ballots among the total number of votes which led to Ennahda receiving a smaller share and being granted 4 instead of 5 seats in the district. Ennahda filed a law suit with the Administrative Tribunal arguing that the process was in disagreement with the 67th article of the electoral law which states that empty ballots should not be counted in the total number of votes.

⁸ Decision announced on November 8, 2011.

⁹ No appeal was formed by the Popular Petition in that case.

¹⁰ In the constituencies of Tataouine, Sfax 1, Jendouba, Kasserine and Sidi Bouzid

¹¹ ICCPR, art. 26 "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."; UN International Convention on the Elimination of All Forms of Racial Discrimination, art. 5; LAS, Arab Charter on Human Rights (2004), art. 24.3-4.

¹² ICCPR, art. 25 (b).

¹³ On several instances, the ISIE issued misleading information as to where appeals should be sent, including in a press release issued by the ISIE on October 27, where the ISIE confusingly announced that appeals to the preliminary results should be sent to the ISIE "les recours relatifs à ces résultats préliminaires peuvent être envoyés

Improved outreach by the ISIE and careful studying of the electoral law by the appellants would have allowed list representatives to get a court ruling on the substance of their complaint and the Administrative Tribunal to create a more substantial and elaborated case law for the future.

Background:

The Carter Center received a letter of invitation from the ISIE to observe the electoral process in mid-July, followed by official accreditation on Aug. 4. The Center observed the NCA elections, deploying nearly 70 observers who visited 272 polling stations in all of the state's governorates. The mission was led by former President of Mauritius Cassam Uteem and CEO and President of The Carter Center Dr. John Hardman. Former First Lady Rosalynn Carter accompanied the leadership delegation.

The Center will remain in Tunisia to observe the announcement of final results for the election of the National Constituent Assembly and the formation of the interim government. 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 international support for this ambitious 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's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct that was adopted at the United Nations in 2005 and has been endorsed by 37 election observation groups. The Center will release periodic public statements available on its website: www.cartercenter.org/.

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à l'instance centrale à l'adresse suivante : 19, Rue Ibn Al-Jazzar, Lafayette - 1002 Tunis."

<http://www.tap.info.tn/fr/politique/300-politique/12130-proclamation-des-resultats-preliminaires-des-elections-de-la-constituante-jeudi-a-partir-de-20h00.html>