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Carter Center Post-Election Statement
International Election Observation Mission to Nepal's 2017 Provincial and Federal Elections
Dec. 21, 2017

Introduction

On Dec. 9, The Carter Center issued a preliminary statement on the conduct of Nepal's federal and provincial elections, held in two phases (Nov. 26 and Dec. 7).[1] This post-election statement is an update following the completion of the counting process and the beginning of the tabulation of results. The Center's findings and conclusions remain preliminary, pending the announcement of results and the resolution of any election-related disputes. A final report will be published in early 2018 and will include recommendations to help strengthen the conduct of future elections in Nepal.

Counting for both phases started only after the close of polls on Dec. 7 and was done in counting centers established in each of Nepal's 77 districts. Carter Center observers were present at 27 counting centers, including six districts where voting took place in Phase 1 and 21 districts where voting took place in Phase 2.

The Carter Center conducts its observation in accordance with the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers, as well as the Election Commission of Nepal's Code of Conduct. The Center assesses elections based on Nepal's national legal framework and its obligations for democratic elections contained in regional and international agreements.

Counting Context, Modalities, and Directives

The accurate and transparent counting of votes plays an indispensable role in ensuring that the electoral process is genuinely democratic and reflects the will of the voters. International standards require that the vote-counting process be fair, impartial, and transparent.[2]

[1] www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/nepal-prelim-120817.pdf
[2] Universal Declaration of Human Rights, Article 21; International Covenant on Civil and Political Rights (ICCPR), Article 25(b); U.N. Human Rights Committee General Comment 25, para. 20.

Nepal's counting process has historically been cumbersome and very slow. For the 2017 provincial and parliamentary elections, additional challenges were expected because of the concurrent nature of the elections and the use of three ballot papers for the four elections held in each province[3] – one ballot paper for the first-past-the-post (FPTP) race for the federal House of Representatives, one ballot paper for the FPTP race for the provincial assembly, and a single ballot paper for the two proportional representation (PR) races for those bodies.

As in previous elections, all ballots cast in a constituency were counted at the counting center for that district, located at the district headquarters.[4] Counting for both Phase 1 and Phase 2 ballots began only after the closing of the Phase 2 polls, at 5 p.m. on Dec. 7. In many cases, counting was not started until party agents and the returning officer responsible for the constituency reached consensus on how to implement the procedures (despite the existence of Election Commission of Nepal directives). Rotating teams conducted counting on a 24-hour basis for several days.

The decision of the Election Commission of Nepal (ECN) to delay the counting of Phase 1 ballots reflected good international practice. To avoid influencing voters' choices, no election results should be announced before all voters have had an opportunity to cast their ballots. However, the phasing of elections did create certain risks, as Phase 1 ballot boxes needed to be stored for 10 days before being opened for counting. In Phase 1 districts where Carter Center observers were present, ballot boxes were safely transported and secured. They were placed under the responsibility of the returning officers, with strict protection by security forces and, equally importantly, under the close scrutiny of political party agents. Carter Center observers reported no incidents related to the storage of Phase 1 ballot boxes.

After Phase 1 polling, the ECN issued directives detailing the official counting procedures. The Carter Center did not observe any substantial efforts on the part of the ECN to train counting staff on the implementation of the directives nor to distribute them widely among stakeholders. Although the directives provided details on certain aspects of the counting process, important gaps remained. These gaps, combined with previous common and accepted practices and local level agreements, meant that often the actual procedures in the counting centers diverged from the official directives.

Access of Observers

International observers, including those from The Carter Center, encountered serious obstacles to access at some counting centers, despite repeated assurances of access from the ECN and instructions sent to returning officers to facilitate the presence of international observers. Ultimately, the decision of whether to allow access – and for how long – was left to the returning officers and, in some cases, to security forces.

[3] Both the federal House of Representatives and the provincial assemblies were selected through a mixed system, with some seats chosen through FPTP and some seats chosen through PR. See the Carter Center's preliminary statement.

[4] Each district counting center was responsible for the counting for at least one federal HoR constituency (and at least two provincial assembly constituencies) – but populous districts had more constituencies.

Sixteen of the 27 districts in which Carter Center observers were present provided full access to observers.[5] The other 11 restricted Carter Center observers' access. Seven observer teams experienced severe limitations – being permitted to observe for only a few minutes at a time, or up to an hour or so.[6] Three teams reported mixed access, where observers were welcome to observe counting for one constituency but were denied access to observe the counting for another constituency in an adjacent room, or where observer access varied from day to day at the same counting center.[7]

In one district (Baitadi), the Carter Center team was treated aggressively and was refused access to observe the start of counting. Following ECN intervention, they were given access the following day, but the hostility of staff, party agents, and others led the mission to withdraw the observer team and redeploy it to another constituency.

The reasons for limiting access were not always clear. In several instances, returning officers cited space limitations. In other cases, however, election officials did not provide a reason or stated that ECN directives allowed access for international observers but did not specify a length of time. In one case, observers were asked to leave the counting temporarily after a dispute arose between party agents.

The European Union election observation mission also reported access restrictions at many counting centers. Domestic observers appeared to have more liberal access to counting centers; however, these groups have not yet reported on the level or quality of their access.

Limiting observer access to this crucial aspect of the process is contrary to international standards, to the expressed intent of the ECN directives, and to the terms of observer accreditation. The presence of observers is integral to ensuring the transparency and integrity of an election, and provisions should always be in place to allow them adequate access.

Despite limits on observers, party agents were consistently present in counting centers. The Carter Center did not observe that party agents were restricted in their work or hear reports of party agents making substantive complaints about the conduct of counting in any of the counting centers visited.

Counting Operations and Procedures

Layout of counting centers and organization of teams. Overall, the layout of the counting centers in the district headquarters complied with ECN directives. In urban areas (particularly in the Kathmandu Valley), counting center locations were spread over various government buildings to ensure better working space, given the high number of constituencies and polling centers involved.

[5] Carter Center observer teams were present in Baitadi, Banke, Bhaktapur, Chitwan, Dadeldhura, Dailekh, Dhanusha, Gulmi, Jhapa, Kailali, Kalikot, Kanchanpur, Kapilbastu, Kaski, Kathmandu, Kavrepalanchowk, Lalitpur, Lamjung, Morang, Nawalparasi, Nuwakot, Paachthar, Parsa, Rautahat, Rolpa, Siraha, and Surkhet.
[6] Chitwan, Gulmi, Jhapa, Kailali, Kanchanpur, Nuwakot, Siraha.
[7] Banke, Kaski, Surkhet.

Security presence. Security forces were extensively deployed in all counting centers visited. Physical barriers also were in place, apparently to prevent the destruction of ballots by party agents, which took place during a dispute in Chitwan district during the local elections. While the heavy presence of security forces could be interpreted as overwhelming, observers found that the security presence was reassuring to counting staff, political parties, and candidate agents. Nevertheless, security forces in some cases overstepped their role by limiting the access of observers.

Presence of political party agents. Political party agents were present in all observed counting centers and were allowed to stay throughout the entire process. Despite relatively detailed ECN directives, counting staff and party agents agreed upon vote-counting procedures before counting started. The purpose was to reach consensus and address in advance possible grievances. While this ensured overall acceptance of the process and of the results at the local level, the practice led to inconsistencies from district to district, particularly regarding validity of ballots.

Counting procedures. In the counting centers where Carter Center observers had access, the counting process was generally assessed positively, even though the counting directives were often not followed precisely or implemented in a consistent manner. Some 96 percent of reports from counting centers where Carter Center observers had access assessed the overall conduct of the count positively, particularly the integrity and accuracy of the count. However, the restricted access of observers undermined the overall transparency of the process. Taking into account counting centers where Carter Center observers were denied access or had only limited access, the number of positive assessments dropped to 82 percent.

ECN directives mandated that counting start only after all the ballot boxes from the constituency were brought to the counting center. Following a check of the ballot box seals, each box was to be opened in the presence of party agents and the ballots counted face down in order to establish the number of ballots in the box. Subsequently, ballots were to be mixed with those from other polling centers and then separated into piles for each party/candidate as well as for invalid ballots. Then the piles were to be counted.

ECN instructions were widely ignored, as most counting officers (supported by political party agents) found them overly cumbersome and slow. Carter Center observers reported that counting practices, therefore, varied among constituencies and counting officers. In counting centers where Carter Center observers were given access, the deviations from the directives were made in good faith, based on pragmatic considerations to increase efficiency, and did not compromise the integrity or the transparency of the count. One exception involved the mixing of ballot papers: Observers reported that only in a minority of counting centers were the mixing instructions followed. In most of those instances, ballot reconciliation was not done because the counting teams did not determine the number of ballots in each box, as required by the directives, prior to mixing. This made reconciliation of the ballots impossible.

At counting centers where observers had meaningful access, the process was generally transparent, although in a few cases observers were not positioned close enough to observe all aspects of the process. The opening of the boxes was done transparently in the presence of party agents. In most cases, ballots were shown to all party and candidate agents. Carter Center

observers reported only minor incidents of disagreement on ballot validity, and these were quickly resolved. Each counting center publicly announced partial results at regular intervals. As the counting of FPTP ballots was completed and the process continued with PR ballots, the proceedings became more informal, and the presence of party agents decreased in some centers.

Declaration of invalid votes. Consistent rules and procedures for the determination of ballot-paper validity during the counting process help to protect the individual voter's right to equal suffrage. The law and the ECN directives are clear and detailed in this respect.[8] While most provisions meet international standards, others seem overly restrictive. In particular, a ballot is deemed valid only if the swastika stamp is used; no other mark is allowed. This means that a ballot can be declared invalid even if the intent of the voter seems clear.

Although the ECN tried to make the determination of ballot validity more consistent by producing posters for counting center staff summarizing the criteria, determination of ballot validity was in practice often the result of consensus reached at the local level. This sometimes resulted in clear inconsistencies, even within a counting center. This is an area where regulations and practice should be improved to be more inclusive and to ensure that voter intent is respected.

Tabulation and Announcement of FPTP Results

Counting for FPTP was finalized on Dec. 13, ahead of schedule. PR ballot counting ended on Dec. 17. At the end of the counting of FPTP ballots, party and candidate agents signed the counting sheets, and the results were certified by the returning officers and made public. A certificate was presented to the winning FPTP candidate, and results of the PR elections were transmitted electronically, as stipulated, to the ECN for nationwide tabulation. Tabulation of PR results is the responsibility of the ECN Secretary, in his function as chief returning officer, with the technical work being done by the "PR unit" of the ECN. The Carter Center has had ample access to the ECN's PR unit and the information technology management division to follow the tabulation process, which is ongoing.

Conclusion of the Process and Final Announcement of Results

Although the counting of votes is finalized, and the winners of FPTP seats for both the House of Representatives and the provincial assemblies have been officially declared, the electoral process is not yet over. Following the end of the tabulation of results for the PR races, the ECN will declare how many seats each party has won. The political parties will then assign candidates to seats won, according to the ranking of lists but respecting the legal representation requirements for gender and ethnicity. Final announcement of results may be further delayed, as the ECN has indicated that it will likely wait to announce final winning candidates for the House of Representatives until the election of the members of the National Assembly, in order to ensure that constitutional and legal requirements are respected, in particular the one-third quota for women. The modalities for the indirect election of the National Assembly have not been yet determined. Additionally, the adjudication of electoral complaints and disputes must be finalized. The Carter Center election observation mission will continue to follow these processes and include relevant developments in the final report.

[8] Article 22 of the ECN counting directive listed 16 cases in which a ballot paper is considered invalid. It does not reference the intent of the voter.