

THE
CARTER CENTER



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**ELECTION OBSERVATION MISSION
NEPAL, FEDERAL AND PROVINCIAL ELECTIONS, 2017**

PRELIMINARY STATEMENT

Kathmandu, December 9, 2017

The Carter Center election observation mission has been in Nepal since October 2017, following an invitation from the Election Commission of Nepal (ECN) to observe the election of the House of Representatives and provincial assemblies. The elections were held simultaneously but in two phases: on Nov. 26 and Dec. 7. The Carter Center mission was led by former Deputy Prime Minister of Thailand Dr. Surakiart Sathirathai and former U.S. Ambassador Peter Burleigh. Following the arrival of five core team experts, 14 long-term observers were deployed throughout the country in November to assess the electoral preparations. On Phase 1 election day, 16 observers visited 68 polling centers in the six provinces where voting took place to observe voting and the transport of sensitive materials. For Phase 2 polling, a total of 64 observers from 34 countries were mobilized across all seven provinces, visiting 214 polling centers. In total, The Carter Center observed election-day procedures in 32 districts and 282 polling centers. Teams are observing counting of ballot papers in 24 of the 77 counting centers. The Carter Center mission will continue to observe counting and vote tabulation and will remain in Nepal to observe the post-election environment. The Carter Center assesses elections against the national legal framework and international standards for democratic elections and conducts its observation missions in accordance with the Declaration of Principles for International Election Observation.

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

Executive Summary

With the important caveats that counting is still ongoing and that there are number of aspects of the election process that need further improvement, The Carter Center's observation mission for Nepal's 2017 federal and provincial elections has found that the process has been generally well-conducted thus far. Despite political tensions, logistical and operational challenges, and tight timelines, the authorities, in particular the Election Commission of Nepal (ECN), organized the elections within the constitutional deadline. Carter Center observers assessed the conduct of voting

in both phases of the elections positively. It is important to note, however, that at the time of this statement, many counting centers, especially in Phase 2 districts, had just begun their work. In addition, the final tabulation and publication of results will not be completed for several days. As a result, The Carter Center cannot provide an assessment of these processes yet, and therefore cannot make an overall assessment of the conduct of the electoral process.

Assuming the remaining stages of the process are completed successfully and transparently, Nepal's 2017 federal and provincial elections will be a positive step in implementing the new constitution and consolidating the political transition.

Political parties and candidates were generally able to campaign freely and get their messages to voters, despite violence carried out by militants opposing the elections. However, voter education efforts were insufficient, and a large number of civil servants and security personnel were disenfranchised, among other issues.

It is important to note that observers' access to the counting process has been restricted in several locations, and The Carter Center urges the ECN to ensure that all aspects of counting and tabulation of votes, including at the central level, are fully open to international and domestic civil society observers.

The 2015 Constitution significantly restructured the state administration, making it a federal system with seven provinces. This created a need for elections to the new federal parliament and new provincial assemblies. The election system was modified from the previous mixed "parallel" system used in 2008 and 2013. The majority of members are now elected under a first-past-the-post (FPTP) system, and the overall number of parliamentary members has been reduced. The Electoral Constituency Delimitation Commission was formed just prior to calling elections to determine new constituency boundaries for federal and provincial elections. The commission had very limited time to work, but nevertheless held widespread consultations, and its decision was accepted as the basis for these elections.

The existing legal framework offers the basic elements to ensure the preparation and conduct of credible elections. However, the finalization of the election legislation was rushed and came only after the elections had been called. Although this was understandable because of the political context and the constitutional deadline, international good practice is that major legislative changes be made well before an election is called.

The legal framework gives the Election Commission of Nepal sufficient power to undertake its mandate, and the ECN did a good job in preparing and conducting the electoral process in an orderly manner from a technical and operational perspective, despite a challenging security environment and multiple uncertainties regarding the electoral process. Nevertheless, the ECN could have performed better in some areas. It did not take full advantage of its authority to instruct and control lower-level election officials, who often implemented procedures inconsistently. The election administration as a whole did not, in some cases, demonstrate sufficient transparency. The Code of Conduct was not fully and equally enforced during the campaign.

The ECN is to be commended for its efforts to ensure as many citizens as possible were registered before the elections were called, allowing close to 1.4 million additional registrations. To ensure maximum participation, the ECN allowed registered voters without a voter ID to vote with any other ID. However, the fact that hundreds of thousands of polling staff and security personnel were unable to exercise their right to vote was a significant issue and was not in accordance with previous Nepali practice and with international standards. Concerns about difficulties in proving eligibility to register need resolution, as do lingering quality issues in the voter register.

In part because of the compressed timeframe and late decisions on ballot design, voter and civic education was poor. Even within the ECN's very limited concept of "vote education" – construed strictly as showing voters how to mark the ballot – efforts were insufficient, particularly in rural areas. There appeared to be little, if any, efforts to educate voters on the significance of the elections and the powers and responsibilities of the elected bodies under the new constitution. In particular, the role of the new provincial assemblies went largely unaddressed by both the ECN and by political parties.

The rights of freedom of assembly and to participate in public affairs are generally respected in the legal framework and practice. The nomination process was well-run and allowed a wide choice for voters. However, smaller parties and independent candidates felt that they were disadvantaged by the short nomination period, the issuing of ballot symbols, and the ordering of symbols on the ballots.

Parties and candidates campaigned actively throughout the country and had sufficient political space to conduct their campaigns. However, a large number of incidents involving improvised explosive devices (IEDs) marred the campaign period (and both election days). Although these incidents appeared to be designed to intimidate candidates and voters rather than to cause large numbers of casualties, one temporary policeman was killed and several candidates and supporters were injured. In addition to the impacts on those directly affected by the IED attacks, there may also have been some impact on the general environment and the ability of some candidates to get their messages to voters. In spite of the IED attacks, overall it appears that political parties and candidates were generally able to campaign freely and get out their messages.

Despite constitutional and legal quota provisions, women's participation in the electoral process continues to be limited. Political parties remain largely uncommitted to promoting women's participation. Very few female FPTP candidates were nominated (7.45 percent), leaving quotas to be met through the proportional lists. The participation of women as election officials, party agents and civil society election observers was lower than that of men. Although the ECN made efforts to facilitate voting by persons with disabilities, improvement of accessibility is necessary.

As a consequence of the changes to the electoral system, it is now more difficult to achieve minority and women's representation, given the fact that the quotas do not involve exclusively under-represented minority groups. This has created concern that groups that are not under-represented may be over-represented following the elections.

Civil society's role in the electoral process continued to be, as in the past, focused on domestic observation. While the number of observers decreased from previous elections, improvements in

both methodology – particularly in electoral violence monitoring – and coordination were evident. ECN regulations and procedures did not facilitate the task of domestic observation.

As noted above, the conduct of polling on both election days was assessed positively by Carter Center observers (97 percent of polling centers visited). Voting was conducted in a peaceful, orderly manner, although ongoing violence occasioned a heavy security presence at all polling locations. A few problems were observed regarding ensuring the secrecy of the vote, family voting, and improper assisted voting, but these cases were relatively isolated. Limited access of Carter Center observers was also an issue in a small number of polling centers. There was a high level of participation of party and candidate agents (97 percent of polling centers visited), and domestic observers were also active (32 percent of observations).

Counting for both phases of elections began in the 77 counting centers after polling closed on Dec. 7. At the time of writing, many counting centers, especially in Phase 2 districts, had just begun their work. The Carter Center cannot yet make any assessment of counting, and therefore cannot make an overall assessment of the conduct of the electoral process.

Preliminary Findings and Conclusions

BACKGROUND

Following the election of two Constituent Assemblies in 2008 and 2013, a new constitution was adopted in September 2015. The constitution substantially modified Nepal’s administrative and governance structure, introducing a federal system and a bicameral parliament. Implementation of the constitution became the priority of national policy, and holding elections constituted an important component of the implementation process. Elections for all levels – local, provincial, and national parliament – were mandated to be held prior to Jan. 21, 2018, the expiration of the term of the existing parliament.

The election process was organized and conducted under a number of constraints. Local elections had not happened in nearly 20 years and required a new municipal structure. Provincial elections had never taken place (as provinces did not previously exist). Importantly, the period following the enactment of the new constitution was characterized by significant political tension, changes of government, and an impasse over elections, as some parties representing minority groups threatened to boycott and disrupt any elections unless the constitution was amended. In this context, local elections were conducted in a phased manner. Two phases were held on May 14 and June 28, 2017, despite ongoing protest. Following a compromise that met some demands of the boycotting parties, the third and final phase of local elections was held on Sept. 18, 2017.

The resolution of the political crisis also allowed parliamentary and provincial elections to move forward. On Aug. 21, the government of Nepal called elections for Nov. 26. Several necessary steps had not yet been taken, such as the adoption of electoral legislation and the delimitation of constituency boundaries. This placed serious time constraints on the organization of the elections within the constitutional deadline. Following ECN requests, the dates of the elections were modified, and two phases were designated. Phase 1 was set for Nov. 26 in 32 districts in the

northern half of the country; Phase 2 was set for Dec. 7 to cover the remaining 45 districts in the southern half. All provinces were scheduled to have polling in both phases, with the exception of Province 2 in the south, which would only have elections during the second phase.

Following accreditation by the ECN, The Carter Center deployed an international election observation mission in October 2017 and began assessing the overall election process. All Carter Center election observation missions are conducted in accordance with the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers. The Center's assessment of the elections is based on benchmarks established in Nepal's legal framework and its obligations for democratic elections contained in regional and international agreements. These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Indigenous and Tribal Peoples Convention, Convention on the Rights of Persons with Disabilities (CRPD), U.N. Human Rights Committee (UNHRC) General Comment 25, the U.N. Convention Against Corruption, and the South Asian Association for Regional Cooperation (SAARC) Charter of Democracy.

ELECTORAL SYSTEM AND LEGAL FRAMEWORK

Electoral system

Although no specific electoral system is prescribed by international law, establishing a clearly defined electoral system that ensures compliance with international obligations and addresses important national issues and aspirations is essential to allow for credible elections and credible governments.¹

For these elections, Nepal chose to maintain a system similar to that used for previous Constituent Assembly elections, albeit with significant modifications. The new federal parliament will have two houses: the National Assembly (upper house) and the House of Representatives (lower house). The National Assembly will have 56 of its members elected indirectly through an electoral college and three other members appointed by the president. Positively, all members of the House of Representatives (HoR) are elected directly through popular vote, a key Carter Center recommendation following the 2013 elections.²

The number of members of the HoR was reduced to 275 from 601 seats in the previous constituent assemblies. The seven provincial assemblies have a combined 550 seats.³ The constitution also mandates that provincial and federal elections be conducted under a mixed "parallel" system, with 60 percent of seats elected under first-past-the-post (FPTP) and 40 percent of seats under proportional representation (PR), a shift from the proportions used during the Constituent Assembly elections.⁴ For the PR part of the system, votes are cast for parties, with a threshold of 3 percent for the HoR and 1.5 percent for the provincial assemblies.

¹ UDHR, Article 21(3); ICCPR, Article 25. See also UNHRC, General Comment 25, para. 21

² The term "federal elections" in this statement refer exclusively to the election of the members of the HoR.

³ The size of each provincial assembly varies according to the number of constituencies in the province.

⁴ The constituent assemblies had 40 percent of seats elected under FPTP and 60 percent of seats elected under PR.

As was the case during the 2008 and 2013 Constituent Assembly elections, the 2015 Constitution provides quotas, including for women (“at least one third” of each parliament should be composed of women) and a number of population groups (or “clusters”). While the philosophy behind the quotas was to promote inclusiveness in the elected bodies, the quotas have been criticized for including many population groups, and not just those that are under-represented. The move to a system in which the majority of members are elected under FPTP, and in which the number of seats has been significantly reduced, further complicates the implementation of quotas.

New constituencies had to be delimited in order to hold elections, although the constitution is not very clear in defining the basis of representation. The constitution prescribes that there should be at least one representative in the HoR for each of the 77 new districts. It also mandates that the 165 federal constituencies and 330 provincial constituencies have to be defined primarily on the basis of population and geography, while taking into consideration other factors, such as transportation and access to government services. For the PR component, the nation is considered as a single constituency for the HoR, and each of the seven provinces serve as a single constituency for the provincial assemblies. The work of the Electoral Constituency Delimitation Commission, which held widespread consultations, was accepted as the basis for these elections.

Legal framework

A legal framework that allows for credible elections in compliance with international human rights is a major part of international obligations for genuinely democratic elections.⁵

An important element in the electoral process was the finalization of the legal framework adapted to the new constitutional provisions. Legislators chose to retain a fragmented legal framework, with a number of different legal acts, instead of a more integrated model.⁶ The ECN also issued a significant number of regulations and directives to implement the legislation.

Although constitutional deadlines were already clear in 2015, the drafting and discussion of the new laws was relatively rushed, which negatively affected electoral preparations. A substantial part of the necessary legal framework for the provincial and federal elections was only adopted after the call for elections, greatly reducing the time available to the ECN to prepare for the elections and to issue regulations. Although this rushed timetable was understandable given the political context and the constitutional deadline, international good practice is that major legislative changes should be made well before an election is called.

Nepal’s legal framework contains the basic elements for ensuring democratic elections. It ensures the right of qualified citizens to vote, form political organizations, seek political office as an independent candidate or as a member of a political party, campaign subject to reasonable regulations, and file election-related complaints to protect or enforce rights as a voter or a candidate

⁵ ICCPR, Article 2; UNHRC, General Comment 25, paras. 5, 7, 9, 19, 20.

⁶ In addition to the constitution, the primary laws that govern the conduct of the elections for the HoR and provincial assemblies are the House of Representatives Elections Act, Provincial Assembly Elections Act, Election Commission Act, and the regulations, directives, and Code of Conduct that were issued by the ECN. Other electoral laws include the Electoral Rolls Act, Act Relating to Political Parties, and the Election Offense and Punishment Act.

before, during, and after the elections. Nevertheless, the legislation has some aspects that will need to be addressed to better align it with international standards and to address challenges encountered by the ECN and other electoral participants. These include campaign finance regulation, the unnecessarily restrictive Code of Conduct, and observer access to the entire electoral process.

ELECTORAL ADMINISTRATION

An independent and impartial election management body that functions transparently and professionally is recognized as an effective means of ensuring that citizens can participate in a genuinely democratic electoral process. It is also the responsibility of an election management body to take necessary steps to ensure respect for fundamental electoral rights.⁷

The Election Commission of Nepal is empowered to “conduct, supervise, direct and control” the various elections stipulated by the constitution, including the preparation of the voter rolls. It is given sufficient powers and resources under the legal framework to undertake its mandate, as well as to ensure respect for fundamental electoral rights. The ECN is to be commended, given the timeline constraints and various uncertainties, for its performance in organizing and conducting the electoral cycle within the deadlines stipulated in the constitution. Political parties generally expressed satisfaction with the ECN’s work.

Nevertheless, the ECN did not fully exercise control of electoral operations in the field, stating that the local-level officials were independent. Thus, ECN directives and instructions were not always fully implemented at the local level (in particular by the returning officers), affecting the consistency of electoral operations in the field.

Decisions on ballot paper design indicate a lack of sufficient consultation with stakeholders. While the initial decision to have two ballots (one for PR and one for FPTP), with two choices on each ballot, made sense from a logistical perspective, it was challenged in court, resulting in a Supreme Court decision to split the FPTP ballots. This had negative consequences for operational preparations, not least the late launch of voter education efforts. Despite the operational difficulties derived from the late decision on ballot papers, the ECN was still able to print, pack, and deliver all ballot papers in time for both phases.

Throughout the process, the ECN publicly complained of a lack of capacity to enforce the Code of Conduct. Carter Center observers were consistently told that the ECN did not take action on issues such as candidates exceeding spending limits, the use of public resources by candidates, and the use of helicopters by major political leaders (which would very quickly absorb most of the allowed campaign funding), hampering the establishment of a level playing field.

The ECN did not ensure the right to vote for polling staff and security personnel that were deputized for polling duties. In these elections, around 200,000 civil servants were assigned as polling staff during the elections, while about 100,000 temporary police, over 100,000 regular police, and some 90,000 army personnel were deployed for poll security duties, the great majority of whom were not able to exercise their right to vote.

⁷ UNHRC, General Comment 25, para. 20.

There were unfortunate restrictions on transparency throughout the electoral administration, reflected in the closed manner in which ECN decision-making takes place, the lack of presentation of complete data (such as turn-out rates per polling center and full results data), and restrictive regulations concerning domestic and international observation. Ballot printing was not opened to observation, and there were several instances of polling and counting officials limiting or refusing access to observers. These restrictions on access to independent observers run counter to the principle of electoral transparency and hinder the effectiveness of both domestic citizen and international election observers. In addition, it was unfortunate that, despite having invited international observers, the ECN publicly declared that there was no need for international observation and that it should be phased out.

Finally, a growing concern is the apparent increase in the costs of the electoral administration since 2008. The 2017 provincial and federal elections were the costliest in Nepal's history, with a high cost per voter compared to international good practice.

VOTER REGISTRATION

*Ensuring universal suffrage and the enjoyment of the fundamental right to vote for all eligible people is essential to credible elections, and this, in most cases, requires an efficient and credible electoral register. If voter registration is required, it should be facilitated with no obstacles imposed.*⁸

According to ECN directives, only those registered and whose names are on the voter list on polling day are allowed to vote.⁹ Following the 2008 elections, the ECN conducted a voter registration drive introducing biometric technology. This resulted in a significant improvement over the previous register, but some concerns about disenfranchisement remain, including about the requirement that one have a citizenship card in order to register and those concerning constraints on proving residency. Carter Center observers also reported concerns in several districts about a low percentage of minorities and marginalized group members being registered, as well as obstacles for these groups to register.

For the 2017 electoral cycle, the ECN updated the 2013 registration database. In 2013, the final voter register included 12,147,865 voters, while the register used for the 2017 local elections had 14,054,482 voters. Registration was re-opened following the second phase of local elections, but only for provincial and federal elections. This exercise, which lasted from mid-July to mid-August, represented an intense effort by the ECN and showed impressive results, adding close to 1.4 million voters to the register, for a final number of 15,427,938 voters eligible for the provincial and federal elections (7,776,628 men, 7,651,143 women, and 167 third gender).

No major issues regarding the voter register were highlighted during these elections, although there were minor reports of voters with voter IDs not in the roll and of serial numbers on the voting roll not matching the voter IDs. Nevertheless, the printing and distribution of voter cards is still problematic, a massive logistical effort conducted on the two days prior to polling. Fortunately,

⁸ ICCPR, Article 25(b); and UNHRC, General Comment 25, para. 11

⁹ In order to be eligible to register as a voter, a person must be a Nepali citizen, having completed 18 years of age on the date prescribed by the ECN, and be a permanent resident in the ward of a municipality.

the ECN decided in a very pragmatic manner that any other government-issued ID card would also be allowed for voting purposes.

VOTER EDUCATION

Comprehensive and effective voter education is essential to inform the electorate of their rights and to clarify procedures ahead of election day, thus ensuring that citizens can exercise their electoral rights.¹⁰

The ECN has acknowledged that voter education efforts were insufficient, in part because of the late adoption of legislation and late decisions on ballot design. Given that elections were being organized for state structures newly developed by the 2015 Constitution, extensive voter education efforts would have been expected (and necessary) to ensure voters understood the purpose of the various electoral processes and better comprehended what their representatives would be elected to do. However, few efforts were made to conduct civic and voter education regarding the implementation of the new constitutional provisions. The term “voter education” has been used in Nepal in a narrow manner, directed almost entirely to informing voters how to mark the ballot paper. While there is no doubt that this was an important task given the changes in the voting process, it is regrettable that more substantive efforts in educating voters about the overall political and electoral process were not undertaken.

Even within this limited concept of voter education, the efforts were insufficient, particularly in rural areas and for less-educated voters. Efforts were made to increase voter education efforts following the local elections and following Phase 1 of the federal and provincial elections. For instance, mock ballots for voter education efforts were printed at 10 times the number they were for the local elections, and other initiatives were launched. Nevertheless, Carter Center observers reported that voter education in many districts frequently seemed to be left to party activists or were not visible at all.

CAMPAIGN ENVIRONMENT

In addition to being inclusive and transparent, a genuinely democratic election requires a campaign period in which rights such as freedom of opinion and expression, freedom of association, freedom of movement, security of the person, and access to information are respected and upheld by all stakeholders of the election.¹¹ The effective implementation of the right to stand for elective office ensures that voters have a free choice of candidates.¹²

In Nepal, the legal and regulatory framework respects the basic rights to participate in public affairs, and party and candidate registration was generally inclusive and conducted without undue obstacles, giving voters a wide choice of political options.

During the electoral period, the Communist Party of Nepal (Unified Marxist–Leninist) [CPN (UML)] and Communist Party of Nepal (Maoist Center) [CPN(MC)] announced that they would

¹⁰ ICCPR, Article 25(b); and UNHRC, General Comment 25, para. 11

¹¹ ICCPR, Articles 9, 12, 19, and 22; and UNHRC, General Comment 25, para. 25

¹² ICCPR, Article 25 (a). UNHRC, General Comment 25, para. 15

run as a “leftist” alliance and merge after the elections. This was a major and unexpected political shift. Other parties moved to form competing alliances, including what has been called a “democratic alliance” consisting of Nepali Congress and smaller parties. Several other smaller parties also merged in order to overcome the introduction of PR thresholds.

Political parties actively campaigned through both phases of elections. Carter Center observers reported increased activity in the second phase districts, particularly during the last days before the silence period. The most active parties were the largest three: CPN(UML), CPN(MC), and Nepali Congress. Rastriya Janata Party Nepal (RJPN) and Federal Socialist Forum, Nepal (FSFN) were reported as very active by Carter Center observers in Province 2 and active in Province 5. Other smaller parties were reported as active, but at a lower level across the country (e.g. Rastriya Prajatantra Party Nepal and Rastriya Prajatantra Party) or in specific districts or strongholds (e.g. Bibeksheel Sajha Party and Naya Shakti Nepal). Most parties and candidates conducted door-to-door campaigns, with the three largest parties holding rallies in urban centers. Carter Center observers attended several larger rallies and reported them to be peaceful.

The campaign period was marred by incidents of election-related violence in many districts, often through use of improvised explosive devices. Throughout the campaign period, there were reports of over 70 attacks directed at political party and independent candidates, party offices, or campaign events, and dozens of other IED attacks on polling locations or other places. While these attacks seemed primarily designed to intimidate, a number of candidates, supporters, and others suffered injuries, and one temporary policeman was killed in Dang district. Despite the attacks, most parties and candidates continued to exercise their fundamental rights of freedom of expression, association, and assembly. Nonetheless, many stakeholders expressed dissatisfaction with government actions aimed at curbing violence.

The short period between the end of candidate nomination and Phase 1 polling day was very challenging. The PR lists were only finalized five days prior, to the detriment of smaller parties, which did not have adequate time to inform voters about their assigned party symbols. This is particularly important because only symbols are included in the ballots. Also, the order of symbols in the ballot was made in accordance with the number of seats the party received in the latest parliamentary elections, giving clear advantage to the major established parties.

The role of money in the electoral process was highlighted by many stakeholders, not least by the ECN. There was much public criticism of the lack of enforcement – or uneven enforcement – of the Code of Conduct, particularly in terms of campaign expenditures that clearly exceeded the prescribed ceiling. There were accusations that the ruling party misused state resources, including the use of government transport during the campaign. Carter Center observers also noted multiple cases in which candidates from various parties took advantage of their official positions during campaigning. Finally, the Code of Conduct remains very restrictive regarding electoral campaigns (such as placing excessive limitations on the use of media and restrictions on electoral advertising, including the use of T-shirts, caps, etc.).

PARTICIPATION OF WOMEN

International treaties make clear that women should enjoy equal rights to men¹³ and that states can and should take temporary special measures to achieve de facto equality for women.¹⁴

In the 2006 Comprehensive Peace Accord, Nepal's political leadership committed to end all forms of discrimination. This was translated in a number of constitutional provisions, including increased participation of women in politics and in the electoral process in particular. This commitment has not yet been fully realized and should be the focus of continued reform efforts.

The constitution establishes that, in all assemblies, women should constitute at least one-third of the members. However, there are no quotas for the FPTP races for the HoR and provincial assemblies, thus all the burden of "balanced" representation falls in the PR component. While the ECN made sure all party lists contained at least 50 percent women as required, there were very few women candidates in the FPTP races (only 7.45 percent). Parties have made it clear that they do not feel women are "winnable" candidates. The increase in the proportion of FPTP-elected members, the reduction of seats in the federal parliament, the increased role of money in politics, and internal party policies are all factors limiting the participation of women candidates.

Women comprise more than 50 percent of Nepal's population, but they constitute only 49.5 percent of registered voters, reflecting a need to increase outreach to women. Election day observation indicated that the number of women polling staff – and particularly polling officers – was still considerably less than that of men (in polling centers observed, 42 percent of polling staff were women, but only 15 percent of polling officers). Similarly, 35 percent of observers and 14 percent of party agents were female at polling centers observed.

PARTICIPATION OF MINORITIES AND PEOPLE WITH DISABILITIES

International treaties state that temporary special measures for advancing ethnic minorities or groups that have suffered past discrimination may be taken and should not necessarily be considered discriminatory.¹⁵ States should ensure and promote human rights and fundamental freedoms without any discrimination on the basis of disability.¹⁶

Constitutional provisions for "representation requirements" ensure that, at least through the PR lists, indigenous and minority groups will have a level of representation in both the HoR and the provincial assemblies. However, spokespersons for these groups have complained that the quotas benefit even groups already well-represented and are, in fact, detrimental to the representation of minority groups.

While the constitution promotes non-discrimination, spokespersons for people with disabilities complained that this has not been the case for them. They feel access to the electoral process is still a major unresolved issue, including access to voter registration, polling, and voter education.

¹³ U.N., ICCPR, Article 3

¹⁴ U.N., CEDAW, art. 3

¹⁵ U.N., ICERD, art. 1(4)

¹⁶ U.N., CRPD, art. 4

Despite some efforts by the ECN, which conducted sessions of voter awareness with organizations representing people with disabilities, it is widely felt that efforts were insufficient and that the electoral procedures were not disability-friendly. For example, disability groups stated that the ECN's instruction to returning officers to provide vehicle passes for persons with disabilities could not be used by most because of the bureaucracy involved in obtaining the pass.

CIVIL SOCIETY AND DOMESTIC OBSERVATION

*A key international obligation for democratic elections is the right of citizens to participate in the public affairs of their country, which includes allowing civil society to play an active role in electoral observation and participation in voter education activities.*¹⁷

Some 20 long-term and 16 short-term domestic observer groups were accredited by the ECN to observe the elections. Some considered specific aspects of the process, such as gender or the rights of disadvantaged groups. Many observer groups participated in the Election Observation Coordination Group in an effort to better coordinate their efforts, including the National Election Observation Committee (NEOC), the General Election Observation Committee (GEOC), Sankalpa, Democracy Resource Center Nepal (DRCN), and News Club Nepal, among others. The pre-election statements of these groups, including analysis of election-related violence that DRCN provided on a regular basis, greatly contributed to the transparency of the process.¹⁸

There were a smaller number of domestic observers present than during previous elections because of financial constraints and the short time in which the elections were conducted. The Carter Center found that domestic observers were present in 32 percent of polling centers visited in both phases.

ELECTORAL DISPUTE RESOLUTION

*Efficient electoral dispute-resolution mechanisms, including effective remedies, are an integral part of ensuring that the will of the people is upheld during an electoral process and that violations of fundamental rights can be redressed.*¹⁹

Most of the complaints received by the ECN were for violation of the Code of Conduct. It was difficult to get the official number of complaints filed, but media accounts cited numbers in the hundreds. As in past elections, the ECN resolved complaints informally by giving warnings to candidates or parties and asking them to correct, or desist from committing again, the reported violation. Complaints questioning the eligibility of some candidates for the HoR and provincial assemblies were filed with the ECN. Of the nine complaints received, the ECN invalidated two candidacies, with a later complaint resulting in the revocation of the candidacy of another candidate. The Supreme Court upheld the ECN decision. The disenfranchisement of polling staff and security personnel was challenged in court. The Supreme Court indicated that their right to vote should be provided for, but the ECN did not take any measures to enable the affected people to vote.

¹⁷ ICCPR article 25; UNHRC, General Comment 25, para. 20.

¹⁸ Supported by The Carter Center.

¹⁹ ICCPR, Article 2(3).

The Carter Center will continue to follow election dispute resolution in the post-election period.

VOTING

*A free voting process in which a citizen can cast a secret ballot free of intimidation or coercion and in which each person's vote has equal weight is a cornerstone of a democratic election process.*²⁰

Key aspects of the Nepali electoral rules are that voters show photo identification in order to prevent voter impersonation and that voters have their thumbs marked with indelible ink in order to prevent multiple voting. By law, polling staff must ensure secrecy of the vote, although persons needing assistance can have someone help them.

Voters turned out in high numbers across both phases. The ECN estimated voter turnout at 65 percent during Phase 1 (32 districts and 20.7 percent of registered voters) and around 70 percent during Phase 2 (45 districts and 79.3 percent of registered voters). Across both phases, The Carter Center observed opening, polling, and closing procedures at 282 polling centers in 32 of Nepal's 77 districts (46 percent of polling centers visited were rural, 54 percent urban).

Polling day in both phases was mainly peaceful, with observers assessing the environment in and around polling locations as calm in 97 percent of visits. During both election days, Carter Center observers reported that a heavy security presence was deployed across the country, with security forces present at all polling locations visited. As during the period leading up to the elections, there were several IEDs that were discovered or that detonated in or around polling locations. During Phase 2 polling day, two IEDs were detonated at separate locations in Nawalparasi, injuring six people. There were also several smaller clashes between parties, including one between party cadres in Bhaktapur that led to at least three injuries.

There were 10,671 polling places and 19,809 polling centers across both phases of elections, each with a maximum of 1,064 registered voters. Carter Center observers reported that only 22 of 32 polling centers visited across both phases of elections opened on time (at 7 a.m.) or by 7:15 a.m. Despite the delays (in six cases of over 30 minutes) in the remaining polling centers, observer teams were positive in their assessments of the conduct of opening procedures (31 of 32 polling centers observed). In no case did the delayed opening seem to deter voters from waiting to cast their votes.

Polling went well overall in polling centers observed. Carter Center observers assessed the overall process and environment positively in 98 percent of visits. Voting procedures in most polling centers were generally followed; 97 percent of these activities were assessed positively. Inking was mostly done in accordance with procedures, but in some polling centers, ink was not applied to the correct finger. There were some issues reported regarding voters' serial numbers and voter IDs, but there was only one report of an eligible voter being turned away.

²⁰ UDHR, Article 21(3); ICCPR, Article 25(b); UNHRC, General Comment 25, para. 20; UNHRC, General Comment 25, para. 21.

Carter Center observers reported a few incidents concerning family voting (observed in 4 percent of polling center visited) and irregular assisted voting²¹ (4 percent of polling centers visited), issues with secrecy of the vote (6 percent of polling centers visited), and issues involving insufficient access for Carter Center observers (3 percent of polling centers visited). The engagement of party and candidate agents was positive; these were present at 97 percent of polling locations visited. Domestic observers were present at 32 percent of polling location visited.

Closing of polling centers was assessed positively at 25 of 27 closings visited. In Phase 1, the transport and storage of ballots was assessed positively in all seven instances (seven districts in six provinces).

COUNTING

Counting for both phases of elections began in the 77 counting centers after polling closed on Dec. 7. At the time of writing, many counting centers, especially in Phase 2 districts, had just begun their work. The Carter Center cannot yet make any assessment of counting, and therefore cannot make an overall assessment of the conduct of the electoral process.

The Carter Center conducts election observation in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005.

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production. Visit: www.cartercenter.org to learn more about The Carter Center.

²¹ Especially in the first phase