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The Carter Center Finds Nepal’s Counting Process and Election Results Credible

The Carter Center published today a report of its observations of Nepal’s counting process, concluding that the process was largely conducted according to procedures and that the Election Commission of Nepal has announced credible results to the Nov. 19 constituent assembly election. Other key findings of the report include:

Procedural inconsistencies did not affect the integrity of the counting or the confidence of stakeholders present. Inconsistencies in procedures included: contents of ballot boxes were mixed together without establishing the number of ballots in each box as required, making ballot reconciliation impossible; unsigned ballots were counted; and there was an increased informality and improvisation as the count moved from the first-past-the-post ballots to the proportional representation seats. The irregularities appeared to be unintentional and mainly due to the exhaustion of staff as the counting continued for several days.

The majority of Carter Center observers were able to observe adequately the counting process, despite initial confusion regarding the rights of observer access to counting centers.

Party agents from multiple parties were present throughout the entire counting process. The all-party meetings convened prior to the start of the count proved to be a useful opportunity for election officials to clarify the counting procedures. However, these meetings should have resulted in a shared understanding of the rules and regulations as outlined by the electoral legal framework, so that the reconciliation of ballots and the determination of a ballot’s validity are consistent throughout the country. They should not have produced a diversity of local interpretations that undermine the fundamental right to have one’s vote counted accurately.

Center observers reported a strong and reasonable presence of security forces that did not interfere in the counting process.

Credible results and disputes should be resolved through legal and peaceful means. Given the seriousness of some allegations, The Carter Center encourages all parties to make formal complaints through official channels and encourages the respective institutions to

investigate thoroughly and adjudicate individual claims to enhance the credibility and transparency of the election.

The Carter Center will continue to follow the complaints mechanism and political events in the coming months, and in early 2014 will release a final report summarizing its overall observations and provide recommendations for future elections.

The Center observed Nepal's constituent assembly election at the invitation of the Election Commission of Nepal and Chairman of the Interim Council of Ministers Khil Raj Regmi. Former U.S. President Jimmy Carter and former Deputy Prime Minister of Thailand Dr. Surakiart Sathirathai led the Carter Center's short-term mission of 66 observers from 31 countries. The Center's long-term observers remained deployed to observe the conclusion of the counting process, tabulation of results, the resolution of complaints, and the post-election environment.

The Carter Center's reports are available at www.cartercenter.org.

The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers that was adopted at the United Nations in 2005 and has been endorsed by more than 40 election observation groups. The Center assesses the electoral process based on Nepal's national legal framework and its obligations for democratic elections contained in regional and international agreements.

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**Carter Center Post-Election Statement
International Election Observation Mission to Nepal's 2013 Constituent
Assembly Election**

Dec. 19, 2013

Introduction

On Nov. 19, 2013, Nepal held its second constituent assembly election since the end of the armed conflict in November 2006. The election aimed to restart the country's stalled constitution-drafting process after the tenure of the first constituent assembly expired on May 27, 2012, without the adoption of a constitution.¹

Following a written invitation from the Election Commission of Nepal (ECN) and Chairman of the Council of Ministers Khil Raj Regmi, The Carter Center launched its election observation mission on Sept. 25, 2013. Former U.S. President Jimmy Carter and former Deputy Prime Minister of Thailand Dr. Surakiart Sathirathai led the Carter Center's mission.

Twelve long-term observers were deployed in teams of two throughout the country in advance of election day to assess election preparations. On election day, 66 observers from 31 countries visited 336 polling centers in 31 districts to observe voting. After the departure of the short-term observers on Nov. 24, the Center's long-term observers remained deployed to observe the conclusion of the counting process, tabulation of results, the resolution of complaints, and the post-election environment. As counting could not start until all ballot boxes in the constituency had arrived, and given the difficult topography of Nepal, counting did not start in most areas until Nov. 20, with some constituencies delayed even later. The Carter Center observed the counting process at 31 of the 240 counting centers and then observed the conclusion of the counting process in eight districts.

This post election statement is an update on the observation of the counting and complaints processes. It is preliminary and may be amended as The Carter Center continues its assessment. It follows the publication of a preliminary statement on Nov. 21. A final report

¹ The first election to a constituent assembly was part of the Comprehensive Peace Agreement between the Seven Party Alliance interim government and the Communist Party of Nepal (Maoist) in November 2006 that officially ended the decade-long armed conflict in Nepal.

will be published in early 2014 and will include recommendations to help strengthen the conduct of future elections in Nepal.

All assessments are made in accordance with the *Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers* and Nepal's national legal framework and its obligations for democratic elections contained in regional and international agreements.²

Political Background

After the first results of the first-past-the-post (FPTP) count emerged, the United Communist Party of Nepal (Maoist) (UCPN (M)) recalled its party agents from the counting centers on the morning of Nov. 21, demanding a halt to the counting process, as well as a re-poll alleging massive vote rigging. In the following days, the party accused the ECN, the Nepal Army, and "invisible forces" of vote rigging allegedly carried out "under a grand design to defeat Maoist candidates." The allegations did not relate directly to the counting or voting process, but rather to alleged irregularities during the transportation and storage of ballot boxes from polling stations to the counting centers. The UCPN (M) also has demanded the formation of an independent high-level commission to look into the allegations, a demand that also is supported by some Madhes-based and other political parties. In addition, they also have demanded an amendment to the interim constitution ensuring that the adoption of a new constitution or any constitutional amendment would require political consensus instead of a two-thirds majority, as a precondition for them to participate in the constitutional process. The party has threatened not to submit their names for the proportional representation (PR) system seats to the ECN should their demands remain unaddressed. Both the army and ECN have strongly refuted the allegations and asked UCPN (M) and other parties to bring any grievances through the formal complaint mechanism.

Counting Process

A fair and honest counting process is fundamental to the integrity of any election.³ According to ECN directives, in order to provide for greater secrecy of the vote, ballot boxes were not opened and counted in polling centers, but were brought to counting centers at the constituency level. After all ballot boxes were brought to the counting center, the serial numbers and seal numbers were to be noted and compared with the polling center record. Each box should be opened and the ballots counted face down in order to establish the number of ballots in the box. Subsequently, the ballots should be mixed with ballots from other ballot boxes, and then separated into piles for each party or candidate, as well as a pile for invalid ballots. The counting should be conducted transparently with each ballot shown to all observers. Party agents sign the counting sheets, and the results are presented and certified

² As cited in this statement, these include the United Nations Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Indigenous and Tribal Peoples Convention, UN Human Rights Committee (UN HRC) General Comment 25, the UN Convention Against Corruption, and the South Asian Association for Regional Cooperation (SAARC) Charter of Democracy. The Treaty Act of Nepal 1990 stipulates that all treaties and conventions signed by Nepal have precedence over national laws if there is a conflict between the two. For a database of Nepal's obligations, visit: <http://www.cartercenter.org/des-search/des/Introduction.aspx>

³ U.N., ICCPR, Art. 25(b), right to vote, UNHRC, General Comment 25, para 19: 'Elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights.'

by the returning officer (RO). In most cases, after several days, the counting concluded and certificates were presented to the winning candidate.

The Carter Center's Nov. 21 preliminary statement noted that not all counts were proceeding according to the ECN rules. In 11 of the 31 observed counting centers, the contents of ballot boxes were mixed together without establishing the number of ballots in each box as required, making ballot reconciliation impossible. In five cases, ballots were counted by polling station, and were not mixed together as required. This appeared to be at the insistence of political party agents.

In a number of districts, the Center's observers reported that counting practices varied among constituencies and counting officers. An increased informality and improvisation were further noted as the days of counting continued, particularly during the counting for the PR seats. To speed up the process, ballots for different parties often were counted simultaneously during the PR counting. This nevertheless appeared to be acceptable to officials and parties alike, even though party agents could not observe the entire process as a result.

The Carter Center's observers assessed that these inconsistencies did not affect the integrity of the counting or the confidence of stakeholders present, particularly when the changes were a simple matter of expediency. It nevertheless perpetuates the practice of sidelining the law by political consensus.

In a few cases, observers noted a failure to record ballot box seal numbers accurately. Given the concerns raised by some parties alleging irregularities on the security and integrity of the transport of ballot boxes, the credibility of the process would have been better served by election officials and party agents systematically enforcing the checking and matching of serial numbers as part of the counting process.

Determination of Ballot Validity

Consistent rules and procedures for the determination of ballot paper validity during the counting process can help to protect the individual's right to universal and equal suffrage.⁴ On election day, the ECN issued a circular to ROs and election officials specifying 10 procedural points. Although the timing of the circular sparked controversy, most of the points were clarifications on how to determine the validity of votes, including directives to count as valid: ballot papers signed by polling officers with non-black ink, those slightly torn or with the counterfoil still attached, and those where some ink from a thumbprint or swastika stamp had transferred accidentally to other places on the ballot. These ballots were to be counted as valid as long as the intent of the voter was reasonably clear.

Despite these instructions and pre-election day voter education outreach efforts by the ECN, the overall percentage of invalid votes in FPTP seats (4.96 percent) and the PR system (3.2 percent) decreased only marginally when compared to 2008 (5.15 percent and 3.66 percent respectively). There also were 54 constituencies in 21 districts (seven hill and 14 Tarai districts) where the percentage of invalid votes in the FPTP races was above 6 percent.

⁴ U.N., Universal Declaration of Human Rights, Art 21(3), "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

By far the most common error resulting in an invalid ballot was the presence of two swastika marks stamped on different party symbols on the same ballot. Presumably, these voters knew they had two votes but did not understand that there were two separate ballots. This would also explain the lower number of invalid votes in the PR system, despite the larger and more unwieldy ballot paper. Other commonly noted reasons for invalid votes were: the stamp not being placed properly on the ballot; ballot not stamped; ballot not signed by polling officer, or a fingerprint or other mark used instead of the swastika stamp. At times, observers noted the inconsistent application of rules. Some ballots not signed by polling officers or marked with a fingerprint instead of a swastika stamp sometimes were counted, at other times not. In general, however, procedures were followed and inconsistencies (such as counting of unsigned ballots) appeared to be unintentional and mainly due to the exhaustion of counting staff, as the counting continued for several days.

There were also some gray areas, where the determination of validity appeared to be at the discretion of the RO. In one counting center in the Western Region, a small number of PR ballots emerged from the FPTP ballot box, apparently cast by mistake in the wrong box. After a short deliberation with party agents, the RO ultimately invalidated them.

Party Agent and Observer Access to Counting Centers

The presence of observers and party representatives during the counting process is an integral part of ensuring the transparency and integrity of an election, and provisions should be in place to allow their access.⁵ Moreover, the state is required to take necessary steps to help to realize this right and therefore access to the counting process, especially for party agents, should be carefully considered in the preparations undertaken before counting begins.⁶ In spite of initial confusion regarding the rights and procedures of observers at counting centers, the majority of Carter Center observers reported that they were able to adequately observe the counting process.

On some occasions, observers were told that they would need a special permit to gain admittance to the counting center but that they would have no difficulties in receiving this permit. At other times, observers were informed that although such a permit did exist, it would not be necessary for them to obtain it.

In a few counting centers, Carter Center observers were told that they would not be allowed inside for more than a few minutes at a time, but some observers reported that after their arrival, they were allowed to stay throughout the process. Notable exceptions were: Banke, where the Center's observers were told to leave when the ballot boxes were brought in and then only allowed to stay for one hour of counting; Kathmandu, where observers only were allowed in for short periods at a time; and Baitadi, where election officials very firmly told observers to leave at around 3 a.m.

Domestic observers appeared to have been mostly granted access to the counting centers and were present during the counts. However, Carter Center observers noted on several occasions that domestic observers were treated with less respect than international observers and that they were told more forcefully that they could only be present for shorter periods of time.

⁵ U.N., United Nations Human Rights Committee, General Comment 25 on "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service," para. 20 "The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents."

⁶ U.N., ICCPR, art. 2(2), states must take the necessary steps to give effect to human rights

Party agents were present in all observed counting centers, and although the procedures for their admittance differed from district to district, they were allowed to stay throughout the whole counting process. However, observers noted that the number of party agents significantly decreased as the counting process went on, with only a few remaining towards the end of the PR count.

UCPN (M) pulled their party agents out of the counting centers across the country early in the morning of Nov. 21, demanding that the counting process be stopped and alleged fraud during the transfer of ballots be investigated. All Carter Center observers present in counting centers at this moment reported that the party agents left quietly and without any undue disruption, although in a few cases party agents or candidates announced loudly that they were leaving the process before departing. Prior to their departure, UCPN (M) party agents had participated in the process on an equal level with other party agents and had at no point been disruptive or aggressive. UCPN (M) party agents would intermittently return to counting centers on later days, but did not agree to sign any of the forms required to acknowledge the process.

In constituencies six and seven in Morang district, two other political parties, Madhesi Jana Adhikar Forum-Nepal (MJF-Nepal) and Madhesi Jana Adhikar Forum-Democratic (MJF-Democratic), demanded in writing that the counting process be stopped due to suspicion of fraud and formally handed over their accreditation temporarily leaving the counting center. MJF-Nepal continued to attempt to disrupt the counting process by arranging protest rallies outside the counting center as well as padlocking the door to the ballot box storeroom in constituency five. Both parties returned to observe the counting on Nov. 23.

All Party Meetings

According to the ECN's directives on vote counting, returning officers should clearly inform the political parties, candidates, or their agents about the procedures and provisions related to vote counting and make any agreements prior to the beginning of vote counting. This information sharing and agreements are usually conducted in a so-called All Party Meeting (APM). The stated purpose of the APMs was to build consensus between the ECN and party agents on the determination of the validity of ballots, to outline the formal counting process, and to address possible grievances and questions arising from the election process. The Center found that overall these meetings were a useful mechanism to facilitate a shared understanding, especially among party agents, of the counting process.⁷ However, the APMs should result in a shared understanding of the rules and regulations as outlined by the electoral legal framework, so that the reconciliation of ballots and the determination of a ballot's validity are consistent throughout the country. They should not produce a diversity of interpretations of the counting process that results in local variations on the fundamental right to have one's vote counted accurately. Provisions for producing a written statement outlining the agreements reached in the meetings should be signed by all stakeholders present in order to strengthen the credibility of the counting process as a whole.

Observers were able to attend APMs on all but a very few occasions (Parsa and Chitwan). Information varied from district to district regarding observers' right to enter and observe the

⁷ U.N., ICCPR 25(a), right to participate in public affairs, "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;"

process. In general, observers should have full access to any meetings involving election officials amidst the electoral process.

In most instances, observers reported that APMs were attended by a large number of people and were conducted in a relatively calm manner. In some instances, however, observers reported heated disputes between party agents and chief ROs, specifically on the method of counting. Some party agents wanted ballot boxes to be counted by polling center, while the ECN directives and election law clearly stated that ballots from one polling center need to be mixed with ballots from another polling center after the initial reconciliation. In these cases, ROs stood firm on the rules laid out by the ECN. Some delays in the counting process nevertheless were observed due to the aforementioned disagreements.

Other issues discussed at these meetings included how to determine the validity of a ballot, the numbers of party agents allowed in the counting center, discussions on designated areas for observers and party agents, and the timetable for when results would be announced. In some instances, the APMs were also used as a forum for the airing of complaints on the electoral process, including distribution of voter identity cards, allegations of booth capturing and allegations of bias amongst polling staff.

Security at Counting Centers

The state's obligation to provide security to persons without arbitrary intervention or discrimination continues through the counting process.⁸ At counting centers, as on election day, there was a strong security presence mainly from temporary police, Nepal police, and APF. Carter Center observers neither reported the use of excessive force, nor dereliction of duty from the side of the security forces. Some incidents of intervention by security forces were reported from the APMs, when party agents became excessively loud or argumentative, but this was still within the limits of necessity and never violent.

Ballot boxes were transported from the polling centers to the counting centers under the protection of the Nepal police and APF, as well as in some instances by the Nepal Army. Carter Center observers were able to follow the ballot box from the observed polling center as it was transported to its respective counting center and no reports were made of attempted tampering or incidents of the ballot boxes being moved without sufficient security present. Upon arrival at the counting center, the observed ballot boxes were placed in a secure location. One incident of four ballot boxes being moved outside that secure location was reported from Masuriya in Kailali district; however the ballot boxes were returned to the secure location after approximately 20 minutes. The assessment of the observers was that there was honest confusion as to where the respective ballot boxes should be transported.

One observer team in Kapilvastu experienced several incidents in which security forces had to defuse IEDs during the transport of the ballot boxes to the counting center. This was done in a safe and orderly manner and no attempted tampering with the ballot boxes was observed.

The only report of direct disturbance leading to a stronger show of force from security forces came from Morang, where the simultaneous rallies of NC demanding a continuation of the

⁸ Nepal is obligated to provide security of the person by several international commitments, including, U.N., UDHR, art. 3, 9, ICCPR, art.9, and, U.N., International Convention on the Elimination of All Forms of Racial Discrimination, art 5

count and MJF-Nepal demanding its suspension respectively had to be kept physically separated by APF.

Observers concluded that the security presence at the observed counting centers and during ballot box transportation was adequate and that security forces conducted themselves in a non-interfering and non-threatening manner at all times, including when there was a need for more direct action.

Announcement of Results

The announcement of results is a sensitive task in any election, and international best practice indicates that timely, authoritative, and accurate election results can reduce uncertainty in the post-election period and strengthen the credibility of the electoral process.⁹ According to ECN directives, the announcement of results should be published in the RO's office and a copy sent to the ECN. In most of the observed counting centers, results were posted publicly or at times announced via a public address system. Counting of the FPTP races concluded on Nov. 25 with winning candidates issued certificates on the spot. Following their withdrawal from the counting process on Nov. 21, winning UCPN (M) candidates reportedly failed to collect their certificates.

Of the 240 seats elected under the FPTP system, the Nepali Congress emerged as the biggest party with 105 seats closely followed by the Communist Party of Nepal (Unified Marxist Leninist) (CPN-UML) with 91 seats, and the UCPN (M) third with 26 seats.

The counting for the PR system continued until Nov. 28, and on Dec. 3, the ECN notified 30 parties which had won seats under this system and asked them to submit the names of those candidates to be selected from their closed lists. This deadline was extended twice: first to Dec. 18 and then again to Dec. 25 in response to the requests of political parties to give them more time for internal deliberations and negotiations with the UCPN (M) to convince them to join the process. At the time of this statement, the assignment of candidate names by the parties is still incomplete, with only 11 parties having submitted the names to the ECN.

Given the low number of women and disadvantaged candidates elected in the FPTP system (10 women, 63 janajatis, and 2 dalits), the ECN has taken the extraordinary step of requesting political parties to ensure that they submit at least 50 percent of women candidates from their closed lists. It is unclear whether this can be legally enforced given that directives also allow a 10 percent variation in the PR quotas.

In the combined results from both the FPTP and PR systems, NC and CPN-UML are just short of the two-thirds majority required for constitutional changes. The Rastriya Prajatantra Party-Nepal (RPP-Nepal), which did not win a single seat under FPTP, emerged as the fourth biggest party under the PR system. It is also the only national party calling for the declaration of a Hindu state and a referendum on constitutional monarchy. Madhesi parties in 2008 had a combined strength of 83 seats, are this time represented with only approximately 50 members in the next constituent assembly.

⁹ U.N., ICCPR, art 19(2) guarantees the individual's right to seek, receive and impart information either orally, in print or in writing.

FPTP Preliminary Results

S. No	Political Parties/Independent Candidate	Number of seats won
1	Nepali Congress	105
2	CPN-UML	91
3	UCPN (M)	26
4	MJF- Democratic	4
5	Tarai Madhesh Democratic Party	4
6	RPP	3
7	MJF- Nepal	2
8	Nepal Workers and Peasants Party	1
9	Sadbhawana Party	1
10	Tarai Madhesh Sadbhawana Party Nepal	1
11	Independent	2
	Total	240

PR Preliminary Results

S. No	Political Parties	Number of seats won
1	Nepali Congress	91
2	CPN-UML	84
3	UCPN (M)	54
4	RPP- Nepal	24
5	MJF- Democratic	10
6	RPP	10
7	MJF- Nepal	8
8	Tarai Madhesh Democratic Party	7
9	Sadbhawana Party	5
10	Nepal Communist Party (Marxist-Leninist)	5
11	Federal Socialist Party, Nepal	5

	Others (19 parties with less than 5 seats)	32
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According to the ECN, voter turnout nationwide as a percentage of registered voters stood at 78.8 percent (with the lowest turnout under FPTP in Baitadi constituency two with 67.32 percent and Dolpa constituency one the highest at 89.50 percent). These figures are commendable, but the fact remains that the total absolute number of votes cast in 2013 (9,516,734) had decreased when compared to 2008 (10,866,131) and that a wide range of local variations exists. Thus in Rolpa and Panchthar districts, observers noted the localized impact of poll-boycotting parties. For instance, in two remote VDCs in Panchthar, threats and pressure from poll opposing parties resulted in exceptionally low turn out (less than two percent of registered voters). Observers noted that even two weeks after the election, citizens of one of the VDCs were still fearful of reprisals against those who did manage to vote.

Election Disputes

Nepal has an international obligation to provide effective remedies for the violations of rights and to ensure that there are adequate venues for addressing election complaints.¹⁰ On election day, different political parties filed 28 complaints with the ECN. Of these, 25 complaints alleged booth capturing and three were based on the fact that more ballot papers were found in a particular ballot box than the number of voters recorded to have cast their votes. In only two cases were reports of irregularities corroborated by reports from election officials and re-polling was scheduled for those two polling centers. For the remaining complaints, the ECN directed the RO to continue counting after a short inquiry did not substantiate the claims. The ECN has not conducted an independent inquiry into these allegations and they have encouraged the complainants to petition the Constituent Assembly Court (CA Court) if they are not satisfied with the ECN’s decision. To date, 17 cases have been filed at the CA Court. As stated above, the UCPN (M) and some Madhes-based parties have also publicly accused the ECN, the army and “unseen forces” of vote rigging and demanded a commission to look into the allegations.

Given the seriousness of some allegations, The Carter Center encourages all parties to make formal complaints through official channels and encourages the respective institutions to thoroughly investigate and adjudicate individual claims in order to enhance the credibility and transparency of the election.

The Carter Center will continue to follow the complaints mechanism and political events in the coming months and in early 2014 will release a final report summarizing its overall observation of the constituent assembly election.

About The Carter Center

The Carter Center has maintained a team of observers in Nepal since 2007 and launched the current election observation mission on Sept. 25, 2013, following written invitations from the Election Commission of Nepal and Chairman of the Council of Ministers Khil Raj Regmi. Former U.S. President Jimmy Carter and former Deputy Prime Minister of Thailand Dr. Surakiart Sathirathai led the Center’s mission. Beginning in September, 12 long-term observers from eight countries were deployed throughout the country to assess election

¹⁰ Everyone has the right to an effective remedy by an effective state tribunal for acts that violate their rights and freedoms. U.N., ICCPR, art 2(3).

preparations. An additional deployment of international short-term observers just prior to election day meant that on election day, 66 Carter Center observers from 31 countries visited 336 polling centers in 31 districts to observe voting. The Carter Center observed the counting process in 31 counting centers. The Center's long-term observers continued to assess the conclusion of counting and vote tabulation, and The Center will remain in Nepal to observe the resolution of complaints and the post-election environment.

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 more than 40 election observation groups. The Center assesses the electoral process based on Nepal's legal framework and its obligations for democratic elections contained in regional and international agreements.

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