



**Nov. 21, 2013**

**FOR IMMEDIATE RELEASE**

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### **Carter Center Congratulates Nepal on Well-Conducted Election Process**

The Carter Center finds that Nepal's Nov. 19 constituent assembly election was conducted remarkably well, especially in the face of attempts by boycotting parties to disrupt the process through violence. The Election Commission of Nepal estimated the voter turnout at more than 70 percent.

The Center is still following the counting of ballots and will remain in country to observe the remainder of the election process. Although it is too early to know the final results, the Center trusts that political parties will accept the choice of voters with confidence and where they have disputes they will address them through the proper channels.

"I am very disappointed to hear of the UCPN(Maoist) rejection of the counting process and withdrawal of their party agents," said former U.S. President Jimmy Carter. "I trust that they will respect the will of Nepali voters as expressed on election day. They must refrain from violent protest, and I urge them to allow the electoral process to continue."

In 2008, Nepal voted to establish a new social compact through elected representatives tasked with drafting a new constitution. More than five years later, the people have spoken again, resolutely, in the face of frustration with the constituent assembly's inability to finalize its work. The Center hopes that the renewed energy and enthusiasm of the Nepali people on election day will be harnessed by their elected representatives to set aside partisan differences and focus on drafting a new constitution. The trust that voters have placed in their representatives comes with the responsibility to deliver. More political infighting, stalemate, and disagreement will mean more years in which Nepal's youth go without jobs, the economy lacks the political stability needed to reassure investors, and the sacrifices of the political transition remain unfulfilled.

Carter Center observers positively assessed the preparation for the election and the polling process on election day. The new biometric voter register and the use of voter ID cards helped ensure that the principle of one person, one vote was generally respected, although there were reports of some citizens not finding themselves on the voter rolls due to technical errors.

The extensive presence of party agents and domestic observers on election day provided transparency and should help build the confidence of parties, candidates, and voters in the integrity of the process, and the Center encourages the election commission to continue to facilitate access for observers during the counting.

The Carter Center also notes a marked improvement in the campaign environment since 2008, with political parties and candidates able to campaign freely for the most part. Nevertheless, physical clashes among political parties, as well as the use of violence to prevent people from exercising their democratic rights, should not occur. The Carter Center encourages all parties and groups to act peacefully and to respect the evident desire of Nepali citizens to continue the political transition and to come to agreement on a new constitution.

Nepal's electoral system creates the conditions for a diverse elected body that is broadly representative of gender, ethnicity, and caste as well as political preferences of voters. The Center was disappointed that the political parties did not put forward more candidates who reflect that diversity in the first-past-the-post elections. Although the proportional representation ballot will make up for some of that weakness, greater commitment is needed to ensure that the interests of women, youth, and historically marginalized groups are reflected in the new constitution.

The Carter Center has maintained a team of observers in Nepal since 2007, and established the current election observation mission on Sept. 25, 2013, following written invitations of the Election Commission of Nepal and Chairman of the Council of Ministers Khil Raj Regmi.

The Center's mission was led by former U.S. President Jimmy Carter and former Deputy Prime Minister of Thailand Dr. Surakiart Sathirathai. Twelve long-term observers from eight countries were deployed throughout the country since September to assess election preparations. On election day, 66 Carter Center observers from 31 countries visited 336 polling centers in 31 districts to observe voting and 31 counting centers. The Center's observers continue to assess the conclusion of counting and vote tabulation, and they will remain in Nepal to observe the resolution of complaints and the post-election environment. 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.

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

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**CARTER CENTER ELECTION OBSERVATION MISSION  
TO NEPAL'S NOV. 19, 2013, CONSTITUENT ASSEMBLY ELECTION**

Statement of Preliminary Findings and Conclusions

***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.<sup>1</sup>

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. The Carter Center's mission was led by former U.S. President Jimmy Carter and former Deputy Prime Minister of Thailand Dr. Surakiart Sathirathai. 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 and 31 counting centers. Carter Center observers continue to assess the conclusion of counting and vote tabulation and will remain in Nepal to observe the resolution of complaints and the post-election environment.

The following observations are preliminary and may be amended as The Carter Center continues its assessment. Any commentary or recommendations are offered in the spirit of support for a genuine democratic election 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.<sup>2</sup>

***POLITICAL BACKGROUND***

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<sup>1</sup> 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.

<sup>2</sup> As cited in this statement, these include 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.

The first constituent assembly was dissolved on May 27, 2012, following its failure to adopt a new constitution within its regular and extended tenure, mainly due to intense disagreements about the form of federalism to be adopted. The dissolution of the constituent assembly without completing its assigned task led to a prolonged political and constitutional crisis. On March 13, 2013, the leaders of four major political parties forged an 11-point agreement to end the crisis. This agreement led to the formation of an Interim Election Council (IEC), chaired by the sitting Chief Justice Khil Raj Regmi, as an election government and to the passage of a 25-point ordinance by the president to remove constitutional hurdles. A High Level Political Committee, a loose alliance of Nepal's largest political parties, was formed to support the IEC. On June 13, 2013, the IEC announced the constituent assembly election for Nov. 19, 2013.

Both the appointment of Chief Justice Regmi as chair of the IEC and the announcement of the election date were publicly opposed by a number of smaller parties, including a 33-party alliance led by the Communist Party of Nepal-Maoist (CPN-Maoist), which carried out an at times violent boycott of the election process, especially as election day approached. In view of such threats the IEC announced a security plan with the deployment of police, armed police force and army for election security. The deployment of temporary police and the army for security purposes was controversial.

#### ***LEGAL FRAMEWORK AND ELECTORAL SYSTEM***

A sound legal electoral framework is essential for the effective administration of democratic elections that adhere to national law and international obligations.<sup>3</sup> The legal electoral framework in Nepal has its base in the interim constitution of 2007 and several separate laws.<sup>4</sup> In addition, the Election Commission of Nepal (ECN) has issued a number of directives, rules, and codes of conduct to regulate the process. The interim constitution, which originally foresaw only one constituent assembly election, was modified by the March 2013 presidential order so as to remove legal barriers to holding a new election, at that time planned for June 2013. These issues were mostly related to institutional aspects of the political crisis, voter eligibility, and updating electoral provisions. Apart from these changes, the legal framework for the 2013 constituent assembly election is similar to that of 2008, with a few significant changes in candidate registration and election observation.

Under international standards for democratic elections, voters must be able to freely choose their representatives, and the electoral system must therefore enable them to do so. This constituent assembly election is conducted under the same mixed system that was in place for the 2008 election: 240 seats elected in first-past-the-post races; 335 seats elected through proportional representation in a single nationwide constituency; and 26 seats selected post-election day by the council of ministers. Although the mixed electoral system in Nepal is in principle sound, the legal provision for political parties to choose, after the determination of results, which candidates will receive proportional representation mandates limits the right of voters to freely choose their representatives, since voters do not know at the time of voting which candidates will be selected by the parties. Similarly, the provision for 26 members to

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<sup>3</sup> ICCPR, article 2; UN HRC General Comment 25, paragraphs 5, 7, 9, 19, 20.

<sup>4</sup> Election of the Members of the Constituent Assembly Ordinance (2013), Election Commission Act, Electoral Roll Act, Constituent Assembly Court Act, Election Offenses and Punishment Act, Citizenship Act, Political Parties Act.

be selected by the government after the election undermines the basic right of representation.<sup>5</sup> The stated purpose of the appointment of 26 constituent assembly members is to include “prominent persons who have rendered outstanding contributions to national life, and the indigenous peoples which could not be represented through the elections...”<sup>6</sup>

The legal framework defines all major aspects of the election process and for the most part provides for the freedoms of association, assembly, expression, and movement necessary for genuine elections. However, the considerable number of laws, rules, and directives makes the legal framework at times difficult to understand for candidates, voters, election officials, and observers, and there are repetitions, conflicts, and occasional gaps in the legal provisions. The delimitation of first-past-the-post constituencies was affected by conflicting constitutional provisions, and despite the new population data gathered in the 2011 census, constituency boundaries remain unchanged since 2008. Additional legal issues that should be reviewed in the future are overly restrictive campaign rules, unclear complaints and appeals mechanisms, observer rights, campaign finance, and gaps in the election day rules.<sup>7</sup>

The Code of Conduct for political parties, candidates, government, media, and NGOs is positive overall, in that it sets clear ground rules for participants. For instance, several articles deal with the prevention of abuse of state resources during the campaign, including interference by officials. In some aspects, however, the Code of Conduct is overly restrictive, including a ban on opinion polls during the campaign period, a prohibition of banners and clothing with campaign logos, and requirements that election materials (pamphlets, flags, etc) be of a specific format. Such provisions are at variance with Nepal’s international obligation to restrict freedom of expression only when strictly necessary. Moreover, the inclusion of unnecessary restrictions made the Code of Conduct difficult to enforce and may therefore have weakened respect for more important provisions.

Although the Code of Conduct sets limits on campaign spending, the legislation has comparatively few provisions on campaign finance.<sup>8</sup> It does not specify the permitted source of funds or require the sources of funding to be declared. All candidates must file post-election spending statements with the ECN, but the ECN does only a formal check of these documents and does not audit them or make them public. Regrettably, new draft provisions in the Code of Conduct to strengthen campaign finance regulations by obliging all candidates to disclose the sources of campaign funding were dropped from the final version. Carter Center observers heard from numerous stakeholders that spending limits were unrealistically low, and some candidates indicated that they were spending much more than the permitted limits.

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<sup>5</sup> In General Comment 25 on Art 25 of the ICCPR, the UN Human Rights Committee noted that “Participation through freely chosen representatives is exercised through voting processes...”

<sup>6</sup> Interim Constitution of Nepal, Art. 63(3)(c).

<sup>7</sup> There is no explicit requirement to check voters for indelible ink before providing them with ballots (despite a requirement to apply ink), no provision for spoiled ballots, and no ballot reconciliation procedure mandated during the counting process.

<sup>8</sup> The UN Convention Against Corruption states in Article 7.3 “Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.”

## *ELECTION ADMINISTRATION AND VOTER EDUCATION*

An independent and impartial election management body that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuinely democratic electoral process.<sup>9</sup> It is also the responsibility of an election management body to take necessary steps to ensure respect for fundamental electoral rights, as defined in international and national law.<sup>10</sup> After a brief period in early 2013 with no commissioners, the ECN is now fully functioning with five commissioners, and decisions are made on the basis of consensus. This contributes to building public confidence in the integrity of the election. However, the ECN could be more transparent in its decision-making processes by allowing observers and party agents to be present at its meetings and by publishing meeting minutes.

The ECN managed to keep the technical side of the process largely on schedule while acting in an impartial manner, despite the constitutional crisis, the tight timeframes for conducting a November election in a geographically complex country, and threats of poll disruption by some boycotting parties. Materials needed for polling were delivered on schedule in most places, including voter rolls and ballots. Despite delays in delivering training materials in some districts, training of polling and counting officials was carried out professionally at the sessions attended by the Center's observers. In most cases, political parties at district level were satisfied with pre-election day preparations, with distribution of voter ID cards being a notable exception.

The ECN decided relatively late in the process to proceed with a plan to print and distribute 12.1 million voter ID cards with photographs by election day. Carter Center observers noted widespread concerns about delays in voter ID card distribution among local election officials, and concerns about the potential for abuse of the cards if distribution was not strictly controlled. Distribution of the cards did not begin until Nov. 14, and the ECN gave conflicting messages as to how they would be distributed and whether they would be distributed on election day, leading to public uncertainty on this issue.

Voter education is an important element in ensuring that citizens can exercise their electoral rights.<sup>11</sup> The ECN prepared an extensive voter education campaign, including through television and radio, distribution of leaflets and posters, street theater and door-to-door campaigns by voter education volunteers. After initial delays in many districts, the campaign became increasingly visible, although observers found that voter education appeared less effective in rural areas visited. One notable aspect was a targeted education campaign in areas where the percentage of invalid votes in 2008 was higher than six percent, in an attempt to reduce that percentage in this election.

ECN materials were produced in 24 languages for broadcasting on local FM radio stations. However, observers noted that there were often no print materials available in local languages in areas inhabited largely by linguistic minorities.

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<sup>9</sup> UNHRC, General Comment 25, paragraph 20.

<sup>10</sup> UN HRC General Comment 25, paragraph 20.

<sup>12</sup> ICCPR, Article 25(b); and UN HRC General Comment 25, paragraph 11.

## *VOTER REGISTRATION*

A comprehensive and inclusive voter registration process is a key part of ensuring universal suffrage and the enjoyment of the fundamental right to vote and the right to be elected.<sup>12</sup> Voter registration reform was the priority recommendation of The Carter Center and other observation organizations following the 2008 constituent assembly election, due to the widespread lack of confidence in the accuracy of the voter rolls. The ECN addressed the problem by creating an entirely new voter register with biometric data, based on voluntary registration through nationwide registration drives, and succeeded in registering 12,147,865 voters (i.e., citizens 18 years and older). This was, however, short of its initial goal of 14.7 million voters and further still from the estimated 16 million potentially eligible voters, based on the 2011 census. A positive step resulting from the March 2013 amendment of the interim constitution of 2007 is that most 18 year olds were eligible to vote. By ECN decision, all registered citizens who turned 18 years of age by July 15, 2013, were eligible to vote.

Under Nepal's international obligations, it is required to facilitate voter registration and remove barriers to registration.<sup>13</sup> A continuing, sensitive issue for voter registration in Nepal has been proof of eligibility. The Supreme Court ruled in 2011 that under Nepali law only a citizenship certificate could be used to prove that an individual was a citizen and therefore eligible to vote. While this requirement prevented non-Nepali citizens from registering, it also made it difficult for citizens who lacked the documents needed to obtain a citizenship certificate, particularly among historically marginalized communities, married women, and the landless. In line with the Supreme Court decision, the authorities took steps to improve access to this document, including sending mobile distribution teams to each district, amending the law to allow children of naturalized citizens to obtain citizenship, and amending voter registration rules to allow people registered for the 2008 election to be included on the voter rolls for the 2013 election without a citizenship certificate. However, some political parties, particularly in Tarai districts, stated their dissatisfaction with the voter rolls, noting that some of the rule changes came late in the process.

The ECN instituted an out of district voter registration program to allow internal migrants unable to prove residence in their new district to remotely register for their home district, thereby removing an initial barrier to registration. This measure was limited in effectiveness, however, since out of district registrants could only vote by going to the polling center at which they are on the voter roll. There is no provision for out of country registration or voting, although 2,000,000 or more Nepalis are estimated to work abroad.<sup>14</sup>

While voter registration was conducted correctly overall, often in difficult conditions, the percentage of errors – e.g., misassigned polling locations, incorrect identifying information – was not known as no audit of the voter register was conducted prior to this election. Positively, political parties had access to the voter rolls during the election period and raised relatively few concerns with observers.

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<sup>12</sup> ICCPR, Article 25(b); and UN HRC General Comment 25, paragraph 11.

<sup>13</sup> UN General Comment 2t, para 11.

<sup>14</sup> World Bank, "Governing Labour Migration in Nepal", 2009.

## ***PARTY AND CANDIDATE REGISTRATION***

The effective implementation of the right to stand for elective office ensures that voters have a free choice of candidates.<sup>15</sup> For this reason, any conditions placed on political party and candidate registration processes should be reasonable and non-discriminatory.<sup>16</sup>

The Carter Center finds that party and candidate registration was generally inclusive and conducted without undue obstacles, giving voters a wide choice of political options and respecting the right of citizens to be elected. There were signature requirements for parties which were not represented in the previous constituent assembly and monetary deposits required for first-past-the-post (FPTP) candidates, but these conditions were not unreasonable, as evidenced by the high number of registered parties and candidates. However, the requirement that candidates not be employed by the state could be considered overly restrictive, as it applies even to lower level positions such as teachers and postal employees.

For this election 10,709 candidates from 122 parties were registered on proportional representation lists, and 6,128 candidates were registered in the FPTP constituencies, including 1,115 independent candidates. The cases of refusal of registration (some 20 FPTP candidates and 302 proportional list candidates) appeared to be well grounded. For proportional lists, the ECN rejected candidacies mostly because nominees were not on the voter register, were less than 25 years of age, or were on the list of another party.

In some constituencies in eastern Nepal, FPTP candidate registration was hampered or tense due to strikes or threats of violence by boycotting groups, but the process was ultimately successfully conducted throughout the country. The proportional representation lists were only finalized five days prior to election day, leaving voters little time to become familiar with them.

## ***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.<sup>17</sup> In 2008 Nepal witnessed acts of electoral violence, intimidation, and booth capturing. More recently, poll-opposing parties obstructed the voter registration in March 2013.

With a legal silence period of 48 hours ahead of election day, official campaigning ended at midnight Nov. 16. Despite occasional clashes among competing political parties, for the most part candidates and parties could reach out to potential voters and freely convey their messages. In some areas where problems had been reported in 2008 - for example the Eastern and Central Tarai - the campaign environment was notably improved, although some serious incidents persisted. However, there were a number of incidents by boycotting parties, including disruptions of campaign events, attacks on candidates and party agents, and road blockades. The boycotting parties called a 10-day nationwide strike prior to and including election day that saw indiscriminate petrol bomb attacks against buses, and IEDs and fake

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<sup>15</sup> ICCPR, Article 25 (a). UN HRC General Comment 25, paragraph 15.

<sup>16</sup> UN HRC General Comment 25, paragraphs 15 – 17.

<sup>17</sup> ICCPR, Articles 9, 12, 19, 22; and UN HRC General Comment 25, paragraph 25.



bombs planted, often near polling locations, in order to create a climate of fear. These attacks killed one person and seriously injured several more.

Campaigning was initially somewhat subdued and picked up only after the end of the Dasain holidays, with breaks for the Tihar festival and the Chat holiday in the Tarai.<sup>18</sup> The most commonly observed campaign activities were door-to-door canvassing, mass assemblies, motorcycle or vehicle rallies, leaflet distribution, and the display of party flags. Some parties also conducted nationwide campaigns, such as the Mechi-Mahakali National Awareness campaign by the Unified Communist Party of Nepal (Maoist) (UCPN(Maoist)) and the Rath Yatra by Rastriya Prajatantra Party - Nepal (RPP-Nepal), but in general observers noted that campaigning focused more on personal contact and door-to-door canvassing, particularly in the mountains and hills. In a number of districts, observers confirmed that political parties shared their campaign schedule with other parties ahead of time and coordinated with the district administration in order to minimize the potential for incidents.

As campaigning intensified, reports of violations of the Code of Conduct increased across the country. Most of these concerned minor infractions, but also included the unauthorized use of vehicles for campaigning, use of school premises for campaign activities, and the use of helicopters without seeking authorization from the ECN. As of Nov. 17, the ECN had also recorded 21 cases of cash or in kind incentives being offered to voters. To investigate violations, the ECN dispatched monitoring teams to all five regions. In a few isolated cases, Carter Center observers noted violations of the legal silence period in the field.

However, there were also a number of more serious incidents involving supporters of competing parties. These included acts of vandalism, obstructions of campaign activities, fights, and serious assault, such as for example, a clash between activists of the Tarai Madhes Democratic Party and the Madhesi People's Rights Forum-Democratic in Sarlahi district on Oct. 17, leaving 17 injured with five in critical condition; a clash between UCPN(Maoist) and Nepali Congress (NC) in Rukum district on October 22, leaving at least three injured; a confrontation between UCPN(Maoist) and the Madhesi People's Rights Forum-Nepal in Rautahat district on Nov. 14 reportedly involving the use of firearms and grenades; and an attack by UCPN(Maoist) supporters of a Unified Marxist Leninist (UML) campaign event in Baitadi district on Nov. 15, injuring at least six. Although sporadic, such clashes between supporters of different parties were nevertheless spread across the country, particularly in constituencies with a legacy of electoral violence or with a predicted close race.

The activities of boycotting parties had a significant effect on the campaign environment. Despite assurances by the CPN-Maoist to keep their boycott campaign peaceful and symbolic, both CPN-Maoist and the Federal Democratic National Front affiliated Federal Limbuwan State Council (FDFNF affiliated FLSC) in the East increasingly resorted to forceful obstruction and aggressive tactics in their boycott campaign. In early October, the ECN's voter education efforts were the target of several incidents of destruction of voter education material. By late October, CPN-Maoist had shifted their focus to obstruction of campaign activities of candidates, in particular those of senior leaders of major parties by imposing regional strikes ahead of their visits, often targeting the UCPN(Maoist) chairman.<sup>19</sup>

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<sup>18</sup> This also reflected the uncertainty prevailing at the time regarding a potential postponement of the election.

<sup>19</sup> The FDFNF affiliated FLSC declared a ban on candidates entering their constituencies in nine districts of the Eastern region from Oct. 19 onward; however, in practice the impact was minimal.

Poll-opposing parties had also called for a general strike from Nov. 11-20, which after the first day was converted into a transportation strike. However, with the impact of the strike waning and a number of arrests of strike enforcers, boycotting parties increasingly resorted to violence and scare tactics in the run-up to the election. A number of explosive devices were planted at strategic locations. Most of them were detected in time, but there were some reports of injuries including four NC members being injured by shrapnel when a bomb went off in Makwanpur on Nov. 13. There were a number of attacks on buses and trucks which defied the strike. Such attacks with petrol bombs included a passenger bus leaving Kathmandu on Nov. 16, injuring nine people; a bus carrying NC supporters in Surkhet district on Nov. 14, injuring nine; and a similar attack in Lalitpur district, injuring a child on Nov. 12. On Nov. 17, a truck driver died of his injuries after being the victim of a Nov. 14 petrol bomb attack in Bara district. With many migrant citizens returning to their home district in order to vote, such incidents were targeted at inducing fear and limiting voter turnout.

### ***PARTICIPATION OF WOMEN, MINORITIES, AND DISADVANTAGED GROUPS***

States must ensure the ability of all citizens to participate in public affairs and should take positive measures to end discrimination or lack of opportunity in practice.<sup>20</sup> This applies to all persons, but there are additional specific international obligations regarding the rights of women and indigenous groups.<sup>21</sup> In the 2006 Comprehensive Peace Agreement, Nepal's political leadership committed to end all kinds of discriminations including those based on gender, ethnicity, and region through an "inclusive, democratic and forward-looking" restructuring of the state, a commitment that was reiterated in the interim constitution.

In this context, the legal minimum representation quotas for women, members of indigenous groups and others are a positive step towards promoting inclusiveness of political representation.<sup>22</sup> Positively, the Code of Conduct includes gender issues, such as the requirement for campaigning to be sensitive to gender and to people with disabilities and a prohibition of speech that would promote hatred or violence on the basis of gender.

Overall, 35.4 percent of candidates were women. However, few political parties took steps to promote inclusiveness on their own initiative. Only 667 of the 6128 FPTP candidates were women (10.8 percent), and some women were reportedly assigned constituencies with a low likelihood of victory.<sup>23</sup> The ECN sent a high number of proportional representation lists back to parties for correction, in part as they did not conform to the social inclusion criteria.

While women were well-represented among voter education volunteers, observers noted that district election offices had few female staff and typically only in junior positions. Although there is an ECN policy for hiring of polling staff to be gender inclusive, no specific targets were set. On election day, observers found that 35 percent of polling staff in polling centers visited were women.

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<sup>20</sup> UN HRC General Comment 18, paragraph 10.

<sup>21</sup> ICCPR, Art 3; CEDAW, Art 7; and ILO Indigenous and Tribal Peoples Convention, 1989, Art. 6.1(b)

<sup>22</sup> Half of each party's proportional representation list candidates must be women, and 33 percent of all candidates (including FPTP) of each party nominating at least 100 list candidates must be women. In addition, there are minimum quotas for indigenous and other groups for parties nominating at least 100 list candidates.

<sup>23</sup> There were some regional differences. In the hill districts of the Far West there was only one female FPTP candidate in any of the 10 constituencies, while in Udaypur district in the East 13 women contested in three constituencies, making up 20 percent of candidates.

The situation with regards to participation of minorities, indigenous and historically disadvantaged groups in the electoral process is more complex. In a number of districts where a particular indigenous group is numerically strong, such as Gurung in Lamjung, Thakali in Manang, and Limbu in Taplejung, observers found them to be well-represented among FPTP candidates. Conversely, The Carter Center noted that Dalit representation among FPTP candidates was low in most districts visited by long-term observers.<sup>24</sup>

### ***ELECTION OBSERVATION***

The right of citizens to participate in the public affairs of their country, including through election observation groups, is a key international obligation for democratic elections.<sup>25</sup> Election observation is provided for by the interim constitution and by legislation. In practice, more than 23,000 domestic (citizen) observers from 43 organizations and 235 international observers were accredited.

Although observers have been able to observe most aspects of the process thus far (through Nov. 21), the legislation does not clearly define the rights of observers and opens the possibility for election officials to deny access to observers. For instance, the law is silent regarding the presence of observers at ECN meetings or at the printing of ballots, and the ECN did not allow observation of these activities for citizen or international observers. The ECN directive on the election process stipulates that a maximum of five observers may be present in a polling center at a given time. Moreover, the law says that Returning Officers may allow observers to be present in the counting center but does not state the grounds for denying access. Carter Center observers noted that citizen observers were on occasion denied full access to polling and counting processes.

ECN directives also placed some undue restrictions on observers. For instance, citizen observers were required to be at least 21 years old and have specific educational qualifications. These requirements are more stringent than the requirements to become a voter and therefore impinge upon the right of some citizens to take part in the public affairs of their country. In addition, the educational qualifications discriminated against women and marginalized groups, who have historically lower levels of education. Following a lawsuit filed with Supreme Court by the Election Observation Committee (EOC), a domestic observer group, the ECN decided in October to modify another restrictive provision that required observers to observe outside their home constituency. The policy was changed to apply only to the polling center where an observer is registered on the voter roll. This change was commended by The Carter Center.

Making all steps of the process fully open to observation is an important aspect of building and maintaining public confidence in the integrity of the process. The rights of observers should be more clearly defined in legislation in order to ensure transparency in all aspects of the election process.

### ***MEDIA ENVIRONMENT***

International obligations related to the media and elections include freedom of expression; opinion; and the right to seek, receive and impart information through a range of media.<sup>26</sup>

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<sup>24</sup> Dalits are a historically marginalized caste group who live throughout the country.

<sup>25</sup> ICCPR, Article 25 (a). UN HRC General Comment 25, paragraphs 20 and 26.

<sup>26</sup> ICCPR, Article 19. UN HRC General Comment 25, paragraph 25.

Several provisions of the ECN's Code of Conduct regulate the activities of mass media over the course of the electoral cycle, and to monitor its adherence the ECN established a separate media monitoring center.<sup>27</sup> While The Carter Center did not conduct comprehensive media monitoring, it offers the following observations on the overall media framework.

In general, The Carter Center assessed the role of media in the election process as positive. Election related news received broad coverage on television and radio, and in the print media of Nepal. Television and local FM radio stations also frequently hosted candidate debates and question and answer sessions with the public, and a number of media outlets carried paid advertisement for political parties. Observers noted that local FM radio stations were an important source of information, particularly in rural and remote areas, as newspaper distribution is limited or delayed.<sup>28</sup>

Political parties and candidates in general appear to have had good access to local media. Representatives of Madhesi or other smaller and regional parties at times alleged that while their access to local media was good, national media outlets tended to ignore their activities. The Center also notes that a number of media outlets - both at district and national-level - were either directly owned, sponsored by, or perceived to be affiliated with a particular political party or candidate, which often led to a strong editorial bias and at times the local media landscape was described as polarized. To some extent biases appear to have been counteracted by the plurality of media and the presence of independent media. In a few cases, particularly in the East, observers found that reports on incidents involving poll opposing parties were exaggerated in the national media or details not sufficiently verified. On Nov. 18, the ECN directed the government to bar ABC Television from broadcasting until 5 p.m. the next day, as the channel was found to be clearly favoring a party in their broadcasting. However, following an objection from ABC Television the directive was not implemented by the government.

### ***ELECTORAL DISPUTE RESOLUTION***

Nepal has an international obligation to provide effective remedies for violations of rights and to ensure that there are adequate venues for addressing election complaints.<sup>29</sup> Prior to election day, relatively few written complaints were filed at the constituency level, with most complaints being filed verbally and addressed informally. Nevertheless, Carter Center observers have noted that election officials in the field did not have a uniform understanding of the complaints mechanism and that some political parties stated that they did not have sufficient information on filing complaints or that they did not have confidence in the complaints and appeals system. Political party representatives informed The Carter Center observers that enforcement of the Code of Conduct was uneven, with some smaller parties in the Tarai alleging that election officials were reluctant to address violations by larger parties.

The ECN received 187 complaints from July 23 to Nov 17 regarding violations of the Code of Conduct. The ECN's response in most cases was to issue warnings or to request parties and candidates not to repeat the violation. The ECN did not impose any fines, although it has

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<sup>27</sup> Provisions of the Code of Conduct include that transmission of news should be unbiased and based on facts and not give special treatment to any candidate. In addition, the ECN allocated time for political parties to publicize their programs on government owned TV and radio stations, but directed these media outlets not to favor or oppose any political party or candidate in their editorials.

<sup>28</sup> Although some of the most remote areas have no FM coverage.

<sup>29</sup> ICCPR, Article 2.3, and UN HRC General Comment 25, paragraph 20.

the power to do so (and for serious violations, to disqualify candidates). According to the ECN, no fines were imposed by election officials in the districts. The ECN was criticized by some parties, civil society, and media for not taking stronger action in response to violations.

The ECN received seven complaints about candidates not meeting legal qualifications, and two of these were upheld. In one case, a constituent assembly member elected in 2008, was disqualified under a new legal provision which barred convicted murderers with a life sentence from being candidates. Another candidate was disqualified for holding an official position legally incompatible with candidacy. The remaining complaints were rejected for lack of evidence.<sup>30</sup> While the law does not provide for appeal of ECN decisions regarding candidacy, under the interim constitution any citizen may apply directly to the Supreme Court regarding alleged denial of rights. This provides a venue for judicial review of ECN decisions but does not necessarily provide for a timely remedy.

The Supreme Court heard several cases regarding the pre-election day period. These concerned the rights of domestic observers, the constitutionality of the Chief Justice of the Supreme Court concurrently serving as Prime Minister, the absence of a provision on the ballot for “vote against all”, the low number of women candidates, and the 10-day strike carried out by boycotting parties. Prior to election day, the Supreme Court did not take any final decisions, although it did issue a stay order against the 10-day strike.

Complaints regarding the conduct of voting, counting, announcement of results and other issues can be considered by the ECN or by the specially appointed Constituent Assembly Court, depending on the nature of the alleged violation.

## ***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. Key aspects of the election rules are that voters show a photo ID 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 officials must strictly ensure secrecy of the vote, although persons needing assistance can have someone help them.

On election day voters turned out in high numbers in most parts of the country, with the ECN estimating voter turnout at more than 70 percent. The Carter Center observed opening, polling and closing procedures at 336 polling centers in 31 of Nepal’s 75 districts. The authorities deployed a heavy security presence in view of the threat of boycotting parties to disrupt the polls, with police forces present at almost all polling centers visited.<sup>31</sup> Election day was largely peaceful, with Carter Center observers assessing the environment at polling locations and in the immediate vicinity as calm in 99 percent of visits. However, the ECN reported several instances of clashes among political party supporters, and a number of security incidents apparently caused by boycotting parties, including a bomb which seriously injured a child in Kathmandu. In Kapilvastu, the movement of observers was delayed on multiple occasions due to the discovery of explosive devices, 17 in total.

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<sup>30</sup> An FPTP candidate in Lamjung district was also disqualified the day before election day for holding an incompatible position (postal employee), as a result of an ECN investigation.

<sup>31</sup> According to the ECN, 61,000 Nepal Army personnel, 56,000 Nepal Police, 20,000 Armed Police Force, and 45,000 temporary police were deployed for the election.

For the 2013 elections, 18,457 polling centers were established in some 10,000 locations, each with a maximum of 900 registered voters. Carter Center observers reported that only 10 of 31 polling centers visited opened on time (7 a.m.), but that most of the remainder had opened by 7:30 a.m. In most cases delays in the opening appeared to have been caused by the late arrival of party agents. Despite some delays, observer teams were very positive in their assessment of opening procedures, with 30 teams assessing the process as “good” or “very good.” Party agents were present in all polling centers visited during opening.

Overall, most polling center staff adhered to procedures during the voting process, with Carter Center observers assessing 92 per cent of these activities positively. Overall, observers based their positive assessments in the polling centers visited on the smooth conduct of voting, the uniform practice of checking voter identity, and the presence of necessary materials in almost every polling center.

There were nevertheless some problems observed during the voting process. The most common was that in 26 percent of observations indelible ink was applied to the wrong thumb or was not applied at all. Secrecy of the vote was not fully ensured in seven percent of polling centers visited; this was often due to inadequate set up of polling centers but at times party agents or security personnel could see voters marking their ballots. There were also observations of visually impaired voters not receiving proper assistance. In one instance, party agents were observed to be repeatedly indicating to elderly voters where to mark the ballot. In 7 percent of observations unauthorized persons were present and in seven percent polling centers were overcrowded. According to the ECN, polling was cancelled in one polling center in Jumla district due to disruption by CPN-Maoist and is now scheduled for Nov. 22. In Rautahat, Gorkha, Parbhat and Humla districts voting was temporarily disrupted in one polling center each.

Although the distribution of voter ID cards was not supposed to take place on election day, observers found that they were being distributed at some ten percent of polling centers visited. This was usually being done by polling staff or voter education volunteers, but in one case distribution was done by party agents. Prior to election day several observer teams found instances of voters not being able to find themselves on a voter roll despite having a registration receipt. On election day itself, observers found that almost all voters who came to vote were on the voter roll in polling centers visited.

Transparency is an important element in ensuring the integrity of election processes. Party and candidate agents were present at almost all polling stations visited, and domestic observers were present at 74 percent of polling stations visited, although often only one or two. In five percent of visits, party agents or domestic or international observers were restricted in their work, usually because they were denied entry to polling centers or asked to leave by the polling officer.

The closing process was assessed very positively. All voters waiting in the queue at closing time were allowed to vote in the 33 closings observed. Procedures were mostly followed, except that in two instances the unused ballots were not packed securely.

## ***COUNTING***

A fair and honest counting process is fundamental for the integrity of any election. In order to provide for greater secrecy of the vote, ballot boxes are not opened and counted in polling

centers but are brought to counting centers at FPTP constituency level. The ballots from each ballot box should be counted face down to establish the number of ballots in the box, and then the ballots are mixed with ballots from other ballot boxes before counting to obtain the results. As counting cannot start until all ballot boxes in the constituency have arrived, and given the difficult topography of Nepal, counting did not start in most areas until Nov. 20, with some constituencies delayed even further.

Through Nov. 21, The Carter Center has observed the counting process at 31 of the 240 counting centers. In these locations, counting started late in the day on Nov. 20, with the exception of constituencies in the Kathmandu valley. In Gorkha and Chitwan, counting was initially delayed by complaints about the conduct of the voting process. By the time of the release of this preliminary statement, vote counting had started in most counting centers observed, and some preliminary results were becoming available.

Observers noted initial confusion in several counting centers, with a lack of clarity as to when counting would begin and to what extent observers and agents would be admitted. Once the process started, all observers reported that counting was proceeding transparently, if slowly.

Observers 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 counts, ballots were counted by polling station, and were not mixed together as required. This appeared to be at the insistence of political party agents.

Early in the morning of Nov. 21, UCPN(Maoist) decided to pull its party agents out of counting centers across the country.

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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