ELECTION REPORT ☆

Observing Nepal's 2013 Constituent Assembly Election

Final Report

THE CARTER CENTER

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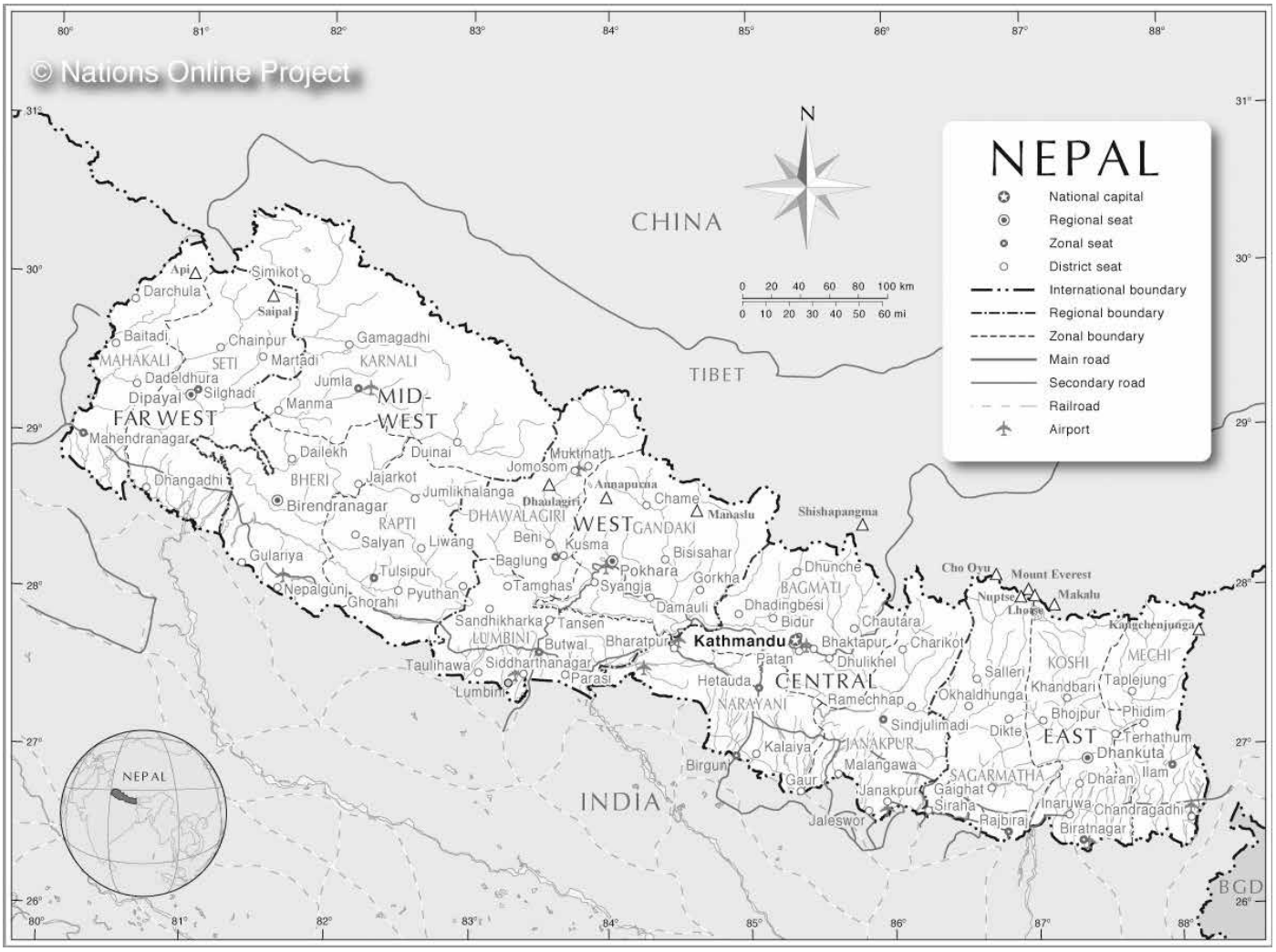
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NEPAL
National capital
Regional seat
Zonal seat
District seat
International boundary
Regional boundary
Zonal boundary
Main road
Secondary road
Railroad
Airport
CHINA
TIBET
INDIA
BGD
N
0 20 40 60 80 100 km
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FAR WEST
MID-WEST
WEST
CENTRAL
EAST
MAHAKALI
SETI
KARNALI
BHERI
RAPTI
DHAWALAGIRI
GANDAKI
LUMBINI
BAGMATI
NARAYANI
JANAKPUR
KOSHI
MECHI
SAGARMATHA
Kathmandu
Pokhara
Birendranagar
Nepalgunj
Bharatpur
Biratnagar
Janakpur
Dhankuta
Terhathum
Taplejung
Phidim
Bhojpur
Khandbari
Okhaldhunga
Salleri
Dikte
Ramechhap
Sindjulimadi
Charikot
Bhaktapur
Dhulikhel
Patan
Chautara
Dhunche
Bidur
Dhadingbesi
Gorkha
Damauli
Syangja
Tansen
Butwal
Siddharthanagar
Lumbini
Taulihawa
Tamghas
Pyuthan
Ghorahi
Tulsipur
Gulariya
Salyan
Liwang
Beni
Kusma
Baglung
Bisisahar
Jomosom
Muktinath
Annapurna
Dhaulagiri
Chame
Manaslu
Shishapangma
Cho Oyu
Mount Everest
Nuptse
Lhotse
Makalu
Kanchenjunga
Jumla
Manma
Dailekh
Dunai
Jajarkot
Jumlikhalanga
Mahendranagar
Dhangadhi
Dipayal
Silghadi
Dadeldhura
Baitadi
Darchula
Api
Saipal
Simikot
Chainpur
Martadi
Gamagadhi
Malangawa
Gaur
Birgunj
Kalaiya
Hetauda
Jaleswor
Rajbiraj
Gaighat
Sirana
Inaruwa
Chandragadhi
Dharan
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NEPAL

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Executive Summary

On Nov. 19, 2013, Nepal held its second constituent assembly election since the 2006 peace agreement ended a long-running civil conflict. The first constituent assembly charged with drafting a new constitution could not reach agreement on key issues, including the eventual structure of a federal state. The assembly was dissolved in May 2012 after it went beyond its initial two-year mandate and four extensions without finalizing a constitution. The Supreme Court disallowed any further extensions of the mandate. The failure to agree on a new constitutional framework, the dissolution of the constituent assembly, and disagreement about which party would head the government during a new election caused a protracted political and constitutional crisis. Negotiations among the major political parties led to an agreement on an interim government under the leadership of sitting Chief Justice Khil Raj Regmi and on an election for a second constituent assembly. This agreement was disputed by a group of parties led by a breakaway faction of the main Maoist party, which organized an at-times violent boycott of the electoral process.

The Nov. 19, 2013, second constituent assembly election was well-conducted and reflected a serious effort to respect international obligations for genuinely democratic elections.

The Carter Center has maintained a team of observers in Nepal since 2007, observing the peace process, the work of the constituent assembly, and key electoral preparations, including voter registration. The ongoing mission transformed into an international election observation mission on Sept. 25, 2013, following an invitation by the chairman of the Council of Ministers and the Election Commission of Nepal (ECN). Subsequently, 12 long-term observers were deployed in six hub-cities across Nepal. Closer to election day, 54 additional short-term observers were deployed to observe voting and counting. In total, Carter Center observers represented 31 nationalities. The mission was led by former U.S. President Jimmy Carter and the former deputy prime minister of Thailand, the Honorable Dr. Surakiart Sathirathai. The Carter Center made its assessments based on Nepal's legal framework and its obligations for democratic elections contained in regional and international treaties. The Center's observation mission was conducted in accordance with the Declaration of Principles for International Election Observation.[1]

1 The Declaration of Principles for International Observation and Code of Conduct was adopted at the United Nations in 2005. The Carter Center is one of more than 40 intergovernmental and international nongovernmental organizations signatories to the Declaration of Principles. For more details, see section on Election Observation Methodology.

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A Nepali man prepares flags for a political rally in Kathmandu. The flags were held up by motorcyclists as they wound through Kathmandu's narrow streets.

On Jan. 2, 2014, the ECN submitted the official results of the second constituent assembly election to the president. The Nepali Congress (NC) and the Communist Party of Nepal (Unified Marxist–Leninist; CPN–UML) emerged as the two largest parties in the 601-seat constituent assembly, with 196 and 175 seats, respectively. They were followed by the Unified Communist Party of Nepal (Maoist; UCPN–Maoist), which won 80 seats and lost its position as the largest party in the previous constituent assembly. With 24 seats, Rastriya Prajatantra Party–Nepal (RPP–Nepal) emerged as the fourth largest party in the constituent assembly due to its results in the proportional representation component of the electoral system, as it did not win any seats in the first-past-the-post races. Various Madhes-based parties won a combined 50 seats. In total, 30 parties of the 122 parties that contested the election are represented in the constituent assembly, along with two independent candidates.

Thanks to the quota requirements in the proportional representation component of the electoral system, Nepal's constituent assembly remains the most inclusive legislative body in South Asia, but it is marginally less so than the assembly elected in 2008. Thirty percent of the 575 elected deputies are women. In terms of ethnic and caste diversity, the elected body comprises 7 percent Dalit, 34 percent Janajati, and 18 percent Madhesi representation. The remaining 41 percent belongs to the category Khas Aryan and others.[2]

2 There are several larger identity categories in Nepal that are partly crosscutting. Madhesi refers to plains-dwellers with strong cultural, linguistic, and social ties across the border to India. Dalits are historically marginalized and discriminated-against caste groups that are found dispersed throughout Nepal. Janajati refers to indigenous nationalities with mother tongues other than Nepali. Khas Aryan is a relatively recent, umbrella term for Nepali-speaking dominant castes such as Bahun, Chettri, and Thakuri.

On Jan. 21, 2014, the elected members of the constituent assembly were sworn in. As of February 2014, the 26 appointed members remained to be nominated, and by-elections must be held in four constituencies.

Key Findings and Recommendations

The Nov. 19, 2013, second constituent assembly election was well-conducted and reflected a serious effort to respect international obligations for genuinely democratic elections. The overall successful conduct of the election was a remarkable achievement in view of the months of political crisis since the dissolution of the constituent assembly and the attempts of some boycotting political parties to derail the electoral process. In spite of these challenges, the electoral process was improved in several important respects compared to the first constituent assembly election in 2008. Although there were sporadic violent incidents and instances of intimidation during the election period, the process was considerably more peaceful than the 2008 election. For these reasons, Nepalis should be congratulated on an election that furthers the peace process and restores democratic legitimacy.

In spite of these achievements, there remain areas in which the electoral process could be improved to ensure that it fully meets Nepal's international obligations for democratic elections. The second constituent assembly, which has a mandate to finalize the new constitution and define the country's institutional framework, will have a unique opportunity to reform legislation for future elections. In advance of widely anticipated local elections, the ECN also has an opportunity to build on the success of the 2013 election to address remaining challenges in voter registration, voter education, training of election officials, and other aspects of the electoral process.

In this final report, The Carter Center assesses the conduct of Nepal's election against the country's legal framework and obligations for democratic elections. The Center hopes that the findings and recommendations in this report will be taken into consideration by the constituent assembly, the election commission, the government, political parties, and civil society when discussing electoral reform. The main findings and recommendations of the Carter Center's election observation mission are as follows:

Legal Framework

Consolidate electoral legislation and introduce reforms.

The legal framework remained largely the same as in the 2008 election and, overall, sufficiently provided for the conduct of the election. The interim constitution emphasizes broad political participation and is the basis for Nepal's inclusive constituent assembly membership. However, the interim constitution did not foresee the need for a second constituent assembly election and had to be modified following the dissolution of the first assembly without adopting a new constitution. The adoption of the main electoral law and modification of the interim constitution by presidential order reflected the extraordinary political situation of the country following the dissolution of the assembly. While necessary for the election to take place, this was outside accepted democratic practice in which laws are adopted by elected representatives of the people.

There is a need for considerable reform of electoral legislation after the new constitution is adopted. The complexity of the legal framework for elections—with its numerous laws, directives, regulations, and codes of conduct—at times made it difficult for stakeholders to interpret and apply. Although the aspects of the legal framework needing reform will depend in part on the structure of future state institutions, it will be important for reforms to consolidate electoral legislation. Areas to be addressed in the current legal framework include the electoral system, delimitation of constituency boundaries, voter registration eligibility, candidacy rights, observer rights, campaign finance regulation, some election-day rules, and provisions regarding the postelection nomination of candidates. The binding code of conduct for election participants contains a number of positive measures, especially in providing for a fair campaign environment and in reinforcing the rights of women, but some provisions are overly restrictive in regulating the campaign activities of parties and candidates.

Electoral System

Elect all deputies by popular vote.

The electoral system for the constituent assembly employs a mix of first-past-the-post, proportional representation, and nomination by the government to ensure representation from each of Nepal's administrative districts and from its large number of ethnic, linguistic, and other groups. In addition, there are quotas for women, minorities, and disadvantaged groups, thereby broadening participation and making the elected assembly more reflective of Nepal's diverse population.

Some aspects of the current system, however, do not fully correspond to democratic principles. The provision for political parties to select those candidates from the proportional representation lists that receive mandates after election day—as well as the provision for the Council of Ministers to nominate some members of the constituent assembly—limits the right of voters to choose their representatives. The electoral system chosen under the new constitution should ensure that voters directly choose all of their representatives in at least one chamber of the legislature. The Carter Center hopes that any new electoral system would protect and extend the advances already made in promoting the participation and representation of women, indigenous groups, minorities, and other groups.

Election Management

Build on success by enhancing transparency.

The ECN did a commendable job in planning, preparing, and conducting a credible election despite the political crisis, the boycott by some political parties, and uncertainty as to whether the election would take place at all. The appointment of election commissioners on the basis of consensus and the efforts of the commission to act as an independent body provided the basis for public confidence in the conduct of the election. At the field level, there was a dual system for the organization and conduct of the election, involving election commission staff and judicial officials. Most stakeholders were satisfied with election preparations, although the late distribution of voter ID cards created some concern. However, the election commission's decision not to allow observation of ballot printing was a missed opportunity to provide full transparency and to increase confidence.

The ECN now has a solid foundation to build upon this success prior to the next election in order to include more citizens on the voter register; clarify election rules; improve voter education, outreach, and training of polling and counting officials; make the complaint mechanism more effective; increase the number of female and minority election officials; and enhance the transparency of the commission's decision making.

Most stakeholders were satisfied with election preparations, although the late distribution of voter ID cards created some concern.

Boundary Delimitation

Adjust constituency boundaries to ensure equality of the vote.

The interim constitution provides for the delimitation of the first-past-the-post constituency boundaries so as to ensure that both the distribution of constituencies among Nepal's administrative districts and the number of voters per constituency reflect the population as determined by the census. Despite the 2011 census, which should have led to adjustments to constituency boundaries, conflicting requirements for delimitation outlined in the interim constitution meant that there was little the Constituency Delimitation Commission could do in terms of reassigning constituencies among districts—ultimately leaving the Tarai region slightly underrepresented. The commission did not take steps to adjust constituency boundaries within districts. This meant that a few constituencies had a considerably higher population than neighboring constituencies within the same district, affecting the equality of the vote.

Well in advance of the next elections, constituency boundaries should be adjusted, based on data from the 2011 census, to ensure that constituency populations are as equal as possible.

Voter Registration

Audit the voter register and expand registration to include all adult citizens.

The voter registration program took important steps toward meeting Nepal's international obligations to ensure universal and equal suffrage. To address some of the problems identified in the 2008 election, when the voter lists were a major source of controversy, the ECN created a new biometric voter register. Voter eligibility criteria were consistently applied in building the new register. As a result, stakeholders had confidence that those on the voter lists were eligible to vote and that voters could be properly identified on election day. This confidence was reinforced by providing public access to the voter lists.

Several issues, however, remain to be addressed before voter registration can be said to fully meet international obligations. The number of voters on the register is considerably lower than the number the ECN initially expected to register and even lower compared to the potential number of eligible voters suggested by the 2011 census. No audit of the new voter register, which would identify the reasons for this difference, was conducted as of writing this report. Eligibility requirements make it difficult for some married women, disadvantaged people, and others without documents to prove citizenship. Citizens residing temporarily outside Nepal are unable to register, and citizens who have migrated within the country often find it difficult to be on the voter list of the constituency in which they actually live. The Carter Center recommends that the government, the constituent assembly, and the election commission take the steps necessary to provide for a fully inclusive voter register. These steps include conducting an audit of the voter register; expanding voter registration to include all adult citizens; and taking proactive measures to ensure that all citizens, especially married women and people lacking proof of citizenship, have access to documents needed for voter registration.[3]

Voter Education

Tailor voter education messages to target audiences, including more effective use of minority languages.

The election commission undertook extensive voter education efforts that included using mass media at the national and local levels and utilizing approximately 15,000 voter education volunteers. To some extent, these efforts were hampered by the holidays that took place during the election period, but they also were limited in many locations by materials not being published or available in local languages. Voters appeared to be aware of the requirement that they would need a photo ID in order to vote. However, the percentage of invalid ballots remained relatively

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At the National Election Observation Committee, a domestic election observation organization based in Kathmandu, a worker hands out observer credentials.

3 Married women usually have to rely on the cooperation of their in-laws to obtain a citizenship certificate. For more details, see section on Voter Registration.

high, decreasing only marginally from 2008. This finding indicates that a considerable number of voters remained unaware of basic procedures related to voting, limiting their ability to express their choice of representatives in the constituent assembly. Specific voter education efforts targeting minority groups such as Dalits, Janajatis, and women suffered from the short time frame in which voter education was conducted as well as delays in the distribution of materials to the field. For future elections, voter education volunteers should receive training further in advance and have specific targets for outreach. The ECN also should ensure a more effective use of local languages in voter education materials.

Candidate and Political Party Registration

Remove unnecessary restrictions from candidacy requirements, establish a mechanism to enforce quota provisions, and finalize lists of candidates in a timely manner.

The registration of parties and candidates was inclusive and gave voters a wide range of choices. The process generally met Nepal's obligations to ensure the right of citizens to stand for election, although the prohibition of candidacy for anyone employed by the state (except elected and appointed positions) could be considered unnecessarily restrictive.

The final deadline for publication of proportional representation candidate lists was very close to election day, giving voters little time to familiarize themselves with the candidates. Parties complied with the 50 percent quota requirement for women on the proportional representation candidate lists, but only 10.8 percent of first-past-the-post candidates were women. Not all parties complied with the legal requirement that women comprise at least 33 percent of each party's total number of candidates. In order for Nepal to comply fully with its international obligations with regard to the right to be elected and the right of citizens to choose their representatives, The Carter Center recommends setting the deadline for finalization of the proportional representation candidate lists earlier in the process, establishing a mechanism for consistently enforcing quota provisions, and reducing the scope of restrictions on the right to be elected to those positions that present a clear conflict of interest with candidacy.

Campaign Environment, Campaign Finance, and the Media

Impose penalties for serious violations of the code of conduct, including violence and vote-buying. Strengthen campaign finance regulation.

The campaign environment improved noticeably compared to the 2008 election. For the most part, candidates and parties could reach out to potential voters and freely convey their messages during the campaign period, despite occasional clashes among competing political parties and obstructive tactics used by some of the boycotting parties. Campaigning was initially low-key, reflecting doubts as to whether the election would take place. As campaigning intensified closer to election day, the number of violent incidents among competing parties increased, and there were instances of vote-buying and lesser violations of the code of conduct, which generally went unpunished.

The registration of parties and candidates was inclusive and gave voters a wide range of choices.

Only minimal legal requirements regarding campaign financing were in place, and a number of candidates appeared to ignore maximum spending limits. The electronic and print media gave broad coverage of the election. While the Carter Center mission did not conduct systematic media monitoring, field observation indicated that the media were generally able to work in a free environment, allowing voters to have access to competing points of view.

To safeguard the large set of international obligations that support the political rights of Nepal's citizens as they relate to candidates and political campaigns, more stringent campaign finance regulation and prevention of vote-buying should be priority areas for reform before the next election.

In addition, the ECN's monitoring mechanisms should be reviewed in general to ensure penalties are imposed for serious violations of the code of conduct, including violence.

Election-Related Violence

Strengthen training of security forces on legal and constitutional roles and responsibilities.

Instances of violence were greatly decreased in comparison with the 2008 election. Nevertheless, there were serious incidents resulting in injury and even death in a few cases. In addition to occasional violent disputes among supporters of competing parties, boycotting parties increasingly resorted to violence and scare tactics in the run-up to the election. Several buses and other vehicles were firebombed as some boycotting parties attempted to enforce a 10-day transportation strike. With many migrant citizens returning to their home districts to vote, such incidents were intended to instill fear and decrease voter turnout. An intensive deployment of security forces in response to threats by boycotting parties appeared to reduce considerably the ability of those parties to disrupt the election. The Carter Center recommends building on these successes and strengthening the training of security forces on their legal and constitutional roles and responsibilities during the entire electoral process.

> *Instances of violence were greatly decreased in comparison with the 2008 election.*

Citizen Observation

Define the rights of citizen observers in legislation. Ease criteria required to qualify.

In addition to international observation, a large number of observers were deployed by civil society organizations prior to, during, and after election day. These citizen observers were able to observe most aspects of the process, and their efforts made a positive contribution toward enhancing transparency and building public confidence in the integrity of the election. However, legislation does not clearly define the rights of observers, and there were instances in which election officials denied them access. Election observers—especially citizen domestic observers but also international observers—should be assured access to all parts of the electoral process, including meetings of election officials at national and local levels, printing of ballots, voting, and counting. The ECN's rules were overly restrictive regarding nomination of observers, although one of the most restrictive rules was repealed after a lawsuit was filed by a citizen observer group. The Carter Center recommends that the rights of observers be defined in the election legislation and that the criteria for being a citizen observer be eased to bring them in line with qualifications for voting.

Voting

Address ballot issues and emphasize secrecy of the vote in training.

For the most part, Nepal met its international obligations with respect to ensuring the integrity of the voting and counting process. Carter Center observers assessed as positive the conduct of voting in some 90 percent of the polling centers visited, noting an overall peaceful environment free from intimidation or coercion, the uniform practice of checking voter identity, the impartiality of polling staff, and the presence of necessary materials. New voter lists contributed to the generally smooth conduct of voting, and transparency was ensured in most locations by the presence of party and candidate agents and citizen observers. According to the ECN, voter turnout nationwide was 78.34 percent.

However, problems—in particular the inking of voters' thumbs as a measure against potential multiple voting while ensuring secrecy of the vote and adhering to other procedures—were observed in some polling centers. In a few constituencies, there were indications of "booth capture," a term used to refer to instances of supporters of one party/candidate taking over the process in order to influence the vote. Scattered security incidents—including bomb attacks and intimidation

of voters—also were reported. These incidents were connected to attempts of boycotting parties to disrupt the election as well as isolated clashes among supporters of competing candidates and parties.

To strengthen polling procedures in future elections, The Carter Center recommends that ECN rules provide for spoiled ballots and checking for indelible ink, that polling officers receive increased training on ensuring secrecy of the vote, and that ballots contain the names of parties and candidates in addition to the respective symbols.

Counting

Ensure that counting is conducted uniformly across the country.

At the close of voting, the unopened ballot boxes from all polling centers in each constituency were transported to a counting center. In most constituencies, the counting process began slowly and lasted for several days. The integrity of the counting process appeared to be generally maintained at the counting centers observed, although procedures were not uniformly followed. A relatively high number of invalid ballots were found, especially for first-past-the-post ballots. A few parties, including UPCN–Maoist, pulled their observers and agents out of counting centers after counting began, alleging wide-scale fraud during the transport of ballot boxes to counting centers. After an agreement was reached to investigate their claims, these parties dropped threats that they would not participate in the new constituent assembly.

To further increase public confidence in the integrity of the counting process, the transport of ballot boxes to counting centers should be done in such a way as to ensure maximum transparency. Ballot boxes should not be stored at intermediate locations. Moreover, all procedures for counting and tabulation of votes should be established well in advance. To ensure that the counting process is understood by all participants, returning officers also could organize briefings in advance of election day for candidates, party agents, and citizen observers.

Dispute Resolution

Clarify roles and responsibilities regarding complaints and ensure effective remedies.

Prior to election day, relatively few written complaints were filed at the constituency level, with most complaints being made verbally and addressed informally. The ECN found violations in some cases but issued warnings rather than fines. Some regional parties expressed a lack of confidence in the complaints system, alleging that the commission and local election officials were reluctant to take action against the larger parties. The commission appeared to deal with complaints regarding candidate registration more rigorously.

Following election day, the ECN did not investigate complaints alleging irregularities during the voting process but limited itself to asking relevant local election officials if they could corroborate the allegations. The commission did not provide written decisions in these cases. The ECN has overlapping jurisdiction with the Constituent Assembly Court, a special constitutional body. Some 22 cases were filed with this court, but no final decisions had been reached when this report was written. The resolution of these cases, which is without a deadline and extends well past the inauguration of the constituent assembly, could undermine the right to effective remedy.

In most constituencies, the counting process began slowly and lasted for several days.

To ensure that parties, candidates, and voters know where to submit complaints and that all complaints are dealt with transparently, The Carter Center recommends that the roles and responsibilities of election officials in handling complaints be clarified and that information on complaints received and how they are dealt with be made publicly available. The electoral legislation should be reviewed to ensure that complaints regarding the voting and counting processes are

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A poster of a woman running for office hangs on a street in Kathmandu.

resolved rapidly to ensure effective and timely remedy.

Participation of Women and Minority Groups

Consider ensuring parity of women and men in all elected councils.

The legal minimum representation quotas for women, ethnic minorities, and other groups are positive steps toward promoting inclusive political representation, partially fulfilling Nepal's international obligation to ensure the ability of all citizens to participate in public affairs. Nevertheless, the decline since 2008 in the representation of women and members of marginalized groups among both candidates and winners in the first-past-the-post races underlines the continuing need for temporary special measures as well as a democratization of internal party structures in order to achieve the goal of social inclusion.

Proactive measures should be taken to strengthen the participation of women, Dalits, and members of other marginalized groups in decision-making processes within political parties. The drafting of the new constitution is an opportunity to further develop inclusion policies, and consideration should be given to ensuring parity of women and men in elected councils at all levels.

The Carter Center in Nepal

The Carter Center has been involved in Nepal since 2003, when it received a request to explore ways of providing assistance in ending Nepal's then-ongoing conflict. The Center followed up with several assessment missions to Nepal to determine whether its support could be of use.

At the invitation of the government of Nepal, the major political parties, and the Election Commission of Nepal, The Carter Center established a field presence in January 2007 to observe the first constituent assembly election process, with long-term observers being deployed to the five development regions in March 2007. After the first constituent assembly election in April 2008, the Center continued its presence, with international and national observers deployed on a permanent basis in the five development regions. Between January 2007 and September 2013, the Center released 25 reports on constitution drafting; political and peace-process monitoring; and key electoral preparations, including voter registration. Formal observation was conducted in all 75 districts of Nepal.

In September 2013, The Carter Center again received official invitations from the government of Nepal and the ECN to observe the second constituent assembly election scheduled for Nov. 19. On Sept. 25, the mission officially became an international election observation mission with the deployment of long-term observers who joined national staff in six regional offices in Dhangadhi, Nepalgunj, Pokhara, Kathmandu, Birgunj, and Biratnagar to closely observe all aspects of the pre-election process. The international mission was funded by the United States Agency for International Development, the United Kingdom's Department for International Development, and the Norwegian Ministry of Foreign Affairs.

The Center released its sixth and final report on the voter registration process on Oct. 1, acknowledging efforts made by the ECN to improve voter register. A pre-election statement was released on Oct. 31, outlining the Center's main observations on the election preparations as well as a series of recommendations to the commission, candidates, parties, and the government. Short-term observers, led by former U.S. President Jimmy Carter and former Deputy Prime Minister of Thailand Dr. Surakiart Sathirathai, joined the mission before the election, On Nov. 21, the Center released its Statement of Preliminary Findings and Conclusions on the Nov. 19 Constituent Assembly Election. Observers continued to monitor the election process following election day, and on Dec. 19, the mission issued a postelection statement that focused on the counting process, tabulation and announcement of results, and dispute resolution.

Election Observation Methodology

Since 1989, The Carter Center has observed 96 elections in 38 countries, including the 2008 constituent assembly election in Nepal.[4] The Center is one of more than 40 intergovernmental and international nongovernmental organizations that have endorsed the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005.[5] Endorsing organizations pledge their commitment to assuring the integrity and transparency of their election observation missions and look to this document to guide the purpose, scope, and conduct of their missions.

A longer deployment allows valuable relationships to develop with all election stakeholders and helps increase domestic understanding about the role of international observers.

The Carter Center believes that international observers can play an important supporting role in emerging democracies by providing a credible and impartial assessment of the electoral process—thereby increasing confidence in the results where warranted—as well as by providing recommendations on areas in which the process can be improved, thus assisting in strengthening and improving the democratic process.

The Center further believes that the quality of election observation can be enhanced by having observers in the field for a substantial period of time both before and after the election. A longer deployment allows valuable relationships to develop with all election stakeholders and helps increase domestic understanding about the role of international observers. In the case of Nepal, the extensive length of the Center's presence in the country has made it possible to conduct a thorough observation and analysis not only of the election process but of the democratic process as a whole by establishing close and long-term contacts with national, regional, and local stakeholders.

The purpose of the election observation mission has been to provide a credible and impartial assessment of the electoral process in Nepal, taking into consideration the ongoing peace process, the political climate, the lack of an elected legislative assembly, and the need for a constitution. Through its presence, the Center aimed to assist in reinforcing the credibility of domestic observer groups, to provide a foundation for other democratization initiatives in the country, and to demonstrate the international community's interest in and support for credible elections in Nepal in which international standards are met.

4 For past Carter Center election observation mission reports, including Nepal's 2008 constituent assembly election, visit www.cartercenter.org/news/publications/election_reports.html.

5 For the text of the declaration, visit www.cartercenter.org/peace/democracy/des_declaration.html.

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Ram Lal Tamrakar, 75, told a Carter Center observer, "Saas Huda samma Aas," which means "I'm hopeful 'til my last breath." He believes that those elected to the constituent assembly will finally create Nepal's constitution.

The field office director and members of the core team, consisting of both international and national staff, maintained relationships and conducted interviews with party leaders, government and election officials, civil society leaders, and members of the international community. With information gathered on both regional and national levels, the Center prepared and released periodic public statements and reports on the election process. These report were widely distributed and covered by the local and international media.

At both the central and district levels, the Center maintained close working relationships with the United Nations Development Program's Electoral Support Project, the U.N. Regional Coordinator's Office, the National Democratic Institute (NDI), The Asia Foundation, the International Foundation for Electoral Systems (IFES), and other international organizations involved in the election process. Closer to the election, the Center held meetings with the two other international observer groups: the European Union Election Observation Mission and the Asian Network for Free Elections (ANFREL).

The Center also regularly met domestic observer groups, including the National Election Observation Committee (NEOC), Democracy and Election Watch (DEW–Nepal), and other smaller civil society organizations. On election day and in the postelection period, the Center liaised with other observer groups to share information on issues such as election procedures and observer rules and regulations and to coordinate the deployment of short-term observers to maximize geographical coverage and minimize duplication.

Criteria for Election Assessment

The Center assessed Nepal's electoral process based on the country's legal framework and obligations for democratic elections contained in ratified international treaties and other documents. The structure of this report reflects the fundamental rights/obligations related to democratic elections

Table A: Major Sources of Nepal's International Obligations

Treaty/Declaration	Status	Date
U.N., Convention on the Political Rights of Women	Ratified/Acceded	April 26, 1966
U.N., International Convention on the Elimination of All Forms of Racial Discrimination	Ratified/Acceded	Jan. 30, 1971
U.N., Convention on the Rights of the Child	Ratified/Acceded	Sept. 14, 1990
U.N., Convention on the Elimination of All Forms of Discrimination Against Women	Ratified/Acceded	April 22, 1991
U.N., International Covenant on Civil and Political Rights	Ratified/Acceded	May 14, 1991
U.N., International Covenant on Economic, Social, and Cultural Rights	Ratified/Acceded	May 14, 1991
U.N., Optional Protocol to the International Covenant on Civil and Political Rights	Ratified/Acceded	May 14, 1991
U.N., Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women	Ratified	May 15, 2007
U.N., Indigenous and Tribal Peoples Convention	Ratified	Aug. 22, 2007
U.N., Convention on the Rights of People With Disabilities	Ratified	May 7, 2010
Optional Protocol to the Convention on the Rights of People With Disabilities	Ratified	May 7, 2010
U.N., Convention Against Corruption	Ratified	March 31, 2011
U.N., Universal Declaration of Human Rights	Party To	

contained in international documents, including interpretative documents, especially the General Comments of the U.N. Human Rights Committee (UNHRC).

Deployment of Long-Term Observers

Following invitations from the ECN and from the chairman of the interim election council, the Carter Center's ongoing mission transformed into an international election observation mission on Sept. 25, 2013.

After an initial briefing in Kathmandu in late September by members of the core team as well as by national stakeholders and representatives from other international organizations, the Center deployed 12 international long-term observers from eight countries to join the national regional coordinators already present in the field. These observers were deployed in pairs to the five development regions and one key city. They were based in Dhangadhi, Nepalgunj, Pokhara, Kathmandu, Birgunj, and Biratnagar. The Birgunj team covered large sections of the eastern and central Tarai.

Observer teams traveled throughout their regions, visiting many of the 75 districts in the pre-election period. They met with political party leaders, election officials, security forces, representatives of marginalized groups, civil society activists, domestic observers, journalists, international organizations, and voters. During the pre-election period, they interviewed interlocutors on four key subjects: 1) pre-election safety and security; 2) pre-election preparations, including election administration and voter education; 3) political parties, the electoral campaign, media, and codes of conduct; and 4) participation of civil society, marginalized groups, and election observers. They also observed public events such as candidate registration, mass meetings, and campaign rallies, and they prepared for the deployment of short-term observers. Observers submitted weekly reports as well as rally, incident, and other reports as necessary.

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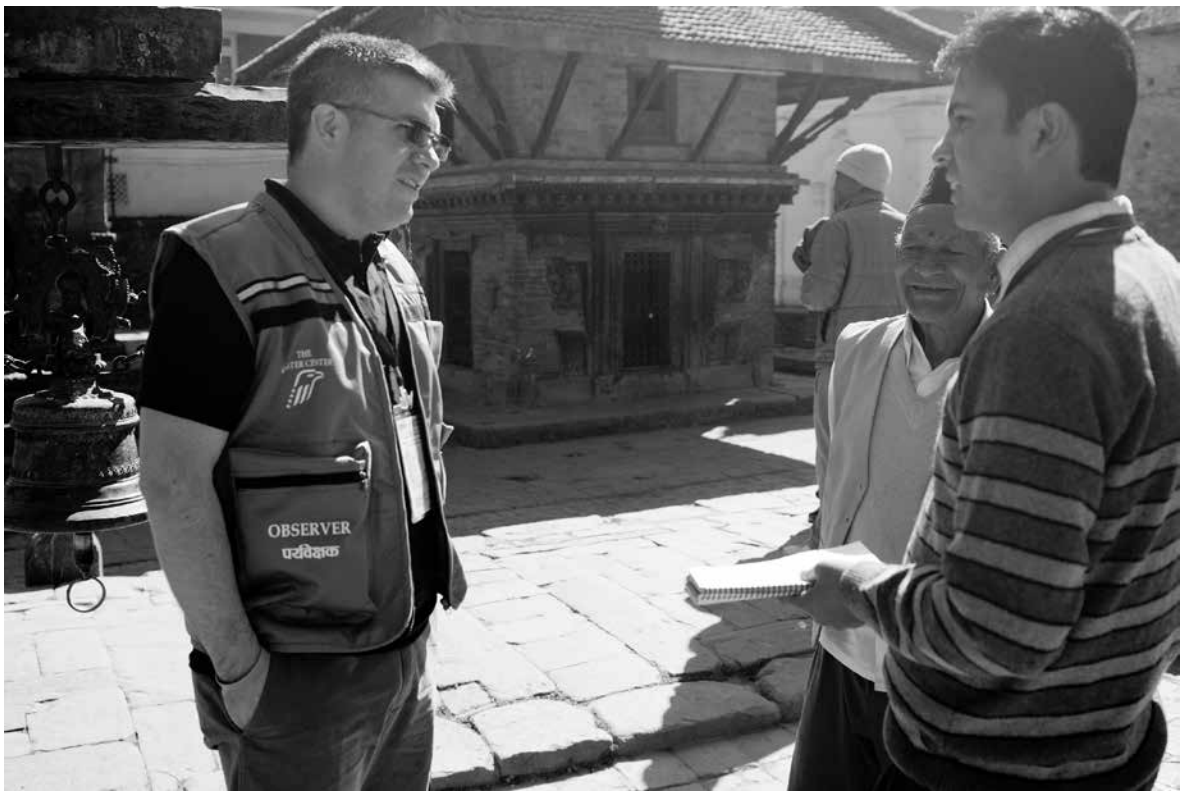

Carter Center observer Ramiro Martinez witnesses a polling station being set up by staff the day before elections began.

The pairs observed extensively on election day. Following election day, together with members of the core team, they observed counting as well as the complaints and appeal process. They followed up on reported incidents and other relevant aspects of the postelection period and continued to conduct meetings with stakeholders to gather information on the election process. After preparing final reports and conducting a debriefing with the core team, long-term observers departed Nepal on Dec. 15.

Deployment of Short-Term Observers

For the period around election day, the Center deployed 54 observers from 28 countries. They arrived in Kathmandu on Nov. 13 and received two days of briefing on the political situation in Nepal, the electoral framework and preparations, security guidelines, deployment logistics, election-day procedures, and reporting requirements. Their briefing included a mock polling exercise conducted with the support of IFES. They also received training on the Center's election monitoring technology, which was used to electronically submit observation checklists via handheld tablets. In addition, all short-term observers had team meetings with their long-term observers, who provided them with a regional briefing as well as materials outlining the specifics of their deployment areas.

Observers were deployed to their respective areas of responsibility three days prior to election day. During this period, they conducted meetings with local stakeholders to gain a better understanding of the local election environment. Areas of responsibility were selected after a thorough assessment based on the previous observation, historical context, levels of sensitivity, ECN requirements, political environment, and the presence of marginalized groups. On election day, Carter Center observers visited 336 polling centers in 31 districts in all five development regions as well as the three ecological zones.

The core team staff in Kathmandu maintained contact with observers throughout their deployment and received and analyzed the electronic checklists for opening, polling, and closing on election day. The majority of the teams remained in their deployment area for three days after election day to observe portions of the counting process. Observers were debriefed in Kathmandu before departing the country on Nov. 24.

Leadership Team

A team consisting of high-level political leaders and senior Carter Center staff led the observation delegation to Nepal. The leadership team included former U.S. President Jimmy Carter; Dr. Surakiart Sathirathai, former deputy prime minister of Thailand; Ambassador A. Peter Burleigh, senior adviser to The Carter Center; Ambassador Kobsak Chutikul, former ambassador of Thailand; Dr. John Hardman, president and chief executive officer of The Carter Center; Dr. David Pottie, associate director of the Carter Center's Democracy Program; and Mr. David V. Hamilton, field office director of The Carter Center in Nepal.

In the days preceding and following the election, the team met with political leaders, election commissioners, civil society leaders, and representatives of domestic and international observation delegations. On election day, members of the leadership team visited multiple polling locations in the Kathmandu Valley. The team's presence served to bring additional public attention and legitimacy to Nepal's electoral process and the Center's observation efforts. On Nov. 21, 2013, President Carter, Dr. Hardman, Dr. Pottie, and Mr. Hamilton presented the Center's statement of preliminary findings and conclusions at a press conference in Kathmandu.

International Support

The international community has provided dedicated support to the people, political parties, civil society, and election commission of Nepal since the 2008 constituent assembly election. In addition to the work of The Carter Center, several international organizations gave long-term support to the electoral process. In particular, IFES, NDI, and the United Nations Development Program should be noted. This support has been essential in building the capacity of institutions, political parties, and civil society and in improving the electoral process. The contributions of international donors, both bilaterally and through the Nepal Peace Trust Fund, have been instrumental in supporting the conduct of elections.

Long-term international election observation missions were deployed by ANFREL and the European Union as well as by The Carter Center. On election day, an expert group from the South Asian Association for Regional Cooperation countries, facilitated by The Asia Foundation, observed the election proceedings, as did observers from several embassies in Nepal.

Historical and Political Background

Nepal as a modern nation state was born in 1768, when Prithvi Narayan Shah conquered the Kathmandu Valley and its surrounding areas and declared the territory a unified state. His descendants ruled as hereditary monarchs until their replacement by another family, the Ranas, in 1846. The Ranas ruled as hereditary prime ministers of Nepal until 1951. The end of the Rana rule made possible for the first time discussions aimed at the election of a constituent assembly responsible for drafting a permanent constitution. The first election—delayed until 1959 because of political instability—was won by the Nepali Congress party. A Parliament, rather than the hoped-for constituent assembly, was elected, and a constitution, which left executive authority with the king, was written by a drafting commission that included party politicians. King Mahendra staged a coup soon after and in 1960 seized control of the government and most affairs of the state. The system established by King Mahendra—direct governance by the monarch and a number of advisory councils—was called the *Panchayat* (assembly of five elders) and continued until 1990.

Multiparty Democracy

In 1990, a mass popular uprising—called *Jana Andolan* (people's movement)—took place against the Panchayat regime. This uprising was led by a coalition that included the Nepali Congress party and various parties under the umbrella of the United Left Front. All political parties and their activities had been officially banned during the Panchayat period (1960–1990). These parties succeeded in obtaining from King Birendra Bir Bikram Shah Dev an agreement to dismantle the Panchayat system, draft a new constitution, and install a political system patterned on the British model. Under this system, the king remained as a constitutional monarch, with elections being held every five years to select a government. A new constitution, drafted by a small group of individuals hand-picked by the king and the leaders of the political parties, was enacted in 1990.

The first election—delayed until 1959 because of political instability—was won by the Nepali Congress party.

The 1990 constitution was a compromise document. It recognized the country's diversity by acknowledging the country's multiethnic and multilingual character and, by and large, granted the prerequisite civil and political liberties for a democratic system. More radical calls for the election of a constituent assembly or the demand to declare Nepal a secular state, however, were ignored. The constitution also continued to define the state as a Hindu monarchical kingdom with the king retaining crucial control over the army.

Within this framework—constitutional monarchy with an elected civilian

government—general elections were held in 1991, 1994, and 1999. Most governments during this period were led by the Nepali Congress, with the Communist Party of Nepal (Unified Marxist–Leninist) and to a lesser extent, the Rastriya Prajatantra Party (made up of former Panchayat-era politicians) making up the opposition.

Constant inter- and intraparty squabbling and factionalism led to frequent changes in leadership: Nine governments were formed in the decade between 1990 and 2000. Political wrangling, the formation of highly unstable coalitions, and, above all, the short period of time that each government held power meant that the formation or implementation of policy was largely put on hold during this period. Widespread disillusionment directed toward the new democratic leaders of Nepal was a predictable result.

In 1996, a small leftist party, the Communist Party of Nepal–Maoist, left mainstream parliamentary politics and undertook an armed rebellion against the government.

The Maoist Conflict

In 1996, a small leftist party, the Communist Party of Nepal–Maoist, left mainstream parliamentary politics and undertook an armed rebellion against the government. Initially based in the western hills of Nepal, the party's insurgency expanded throughout Nepal during the next decade. Police posts and other seats of power in rural areas became the frequent targets of Maoist attacks during this period.

In June 2001, nine members of the royal family were killed in the Narayanhity Royal Palace, reportedly by Crown Prince Dipendra, resulting in the coronation of his uncle, Gyanendra Bir Bikram Shah Dev. From the start, widespread public skepticism regarding the official version of events called into question the legitimacy of King Gyanendra's reign. In November 2001, a state of emergency was declared, and the army mobilized to subdue the Maoist rebellion. In May 2002, King Gyanendra took his first steps toward reclaiming absolute power for the monarchy when he dismissed the popularly elected prime minister, Sher Bahadur Deuba, allegedly because of Deuba's failure to hold elections. In February 2005, King Gyanendra staged a coup with the backing of the Royal Nepal Army and placed many political leaders from the mainstream parliamentary parties under house arrest. The failure of the political class to control the Maoist insurgency provided the pretext for his assumption of direct rule.

The Peace Process

Peace talks held between the government and the Maoists in 2001 and 2003 failed to resolve the conflict. In November 2005, a group of parliamentary parties called the Seven-Party Alliance (SPA) signed a 12-point memorandum of understanding with the Maoists in which they pledged to create a nationwide democratic movement against the autocratic monarchy. The agreement was signed in India with the support of the Indian government. A crucial component of the agreement was the commitment of both sides to the election of a constituent assembly that would draft a new constitution.

King Gyanendra's direct rule came to an end as the result of a 19-day popular uprising in April 2006 known as *Jana Andolan II* (People's Movement II), in which both the Maoists and the SPA took part. This movement, during which 23 protesters were killed, forced King Gyanendra to reinstate the 1999 House of Representatives, which he had dissolved in 2002. As part of this process, the Nepali state embarked on a period of political transformation to become a secular, federal republic wherein all Nepali citizens would have political representation.

In November 2006, a comprehensive peace agreement (CPA) was concluded between the Maoist party and the SPA. In January 2007,

the House of Representatives was dissolved and replaced by an interim legislature, which included the Maoists. In April 2007, the Maoists joined the interim government. At the invitation of all parties, the United Nations Mission in Nepal was created in January 2007 and tasked with monitoring arms management and the provision of technical assistance to the election commission in preparation for the constituent assembly election. The mission's arms monitors supervised the registration and storage of weapons from both the People's Liberation Army (PLA) and the Nepal Army as well as the establishments of seven cantonments for PLA combatants across Nepal.

The results of *Jana Andolan II* and the CPA were expected to be enshrined in a new constitution promulgated via an elected constituent assembly. However, the constituent assembly election did not take place until 2008, and then it repeatedly failed to meet established deadlines. Thus, what was initially envisioned as a two-year process (2006–2008) eventually was extended through a second constituent assembly election in 2013, and the constitution-drafting process continues. Lawmakers from the second constituent assembly have set Jan. 22, 2015, as the deadline for the new constitution.

During this period, historically marginalized groups around the country, radicalized by the Maoists in the decadelong insurgency, began to press with increasing intensity for their rights and a greater inclusion in national-level affairs. This movement was particularly pronounced among the Madhesi people living in the Tarai, Nepal's southern plains. Many felt that the Maoists, upon their entry into government, were unable or unwilling to deliver effectively upon their previous promises to marginalized groups—chief among them the establishment of autonomous ethnic territories and improved national policies to increase inclusiveness. Nepal's history of exclusionary practices and a highly centralized state are widely seen as the main factors that fueled the decadelong armed conflict. Consequently, explicit inclusion of language favorable to historically marginalized communities was a key feature of both the CPA signed in 2006 and the interim constitution of 2007.

The First Constituent Assembly Election

Throughout 2007, many historically disadvantaged groups—including Madhesis, women, Dalits, and Janajatis (indigenous peoples)—protested with demands of changes to state structures, increased guarantees of representation in government bodies, and adjustments to the electoral system. The turmoil in the Tarai, along with a lack of preparation and insufficient political will, delayed the constituent assembly election initially scheduled for June 2007. More than 30 deaths resulted from mass demonstrations held in 2007 across the Tarai against anti-Madhesi discrimination by the government in what came to be known as the Madhes *Andolan* (Madhesh Movement). Tensions were further enflamed in March 2007, when a clash between supporters of a prominent Madhesi organization, the Madhesi People's Rights Forum (MPRF), and the Maoists resulted in the deaths of nearly 30 Maoist cadres. Unrest in the Tarai continued for many months, with periodic strikes, *bandhs* (shutdowns), outbreaks of violence, and the rise and proliferation of armed groups.

Nepal's history of exclusionary practices and a highly centralized state are widely seen as the main factors that fueled the decadelong armed conflict.

Throughout the summer of 2007, the government signed prominent agreements with leading Madhesi and Janajati groups, promising to meet key demands for greater inclusion of marginalized groups in political and electoral processes in order to pave the way for elections in November 2007. In September 2007, the Maoists withdrew from the government, citing their own unmet demands, including changes to the electoral system, the declaration of Nepal as a republic, and the practical implementation of a number of previous

agreements. The election was postponed once again as a result of a failure to reach an understanding. In December 2007, an agreement was reached that included modifications to the electoral law and a provision to abolish the monarchy at the first sitting of the constituent assembly. The Maoists rejoined the government, and a new election date of April 10, 2008, was announced.

Protests by marginalized groups regarding the almost complete failure of the government to implement its previous commitments to them threatened to derail the planned election. In February 2008, a strike intended to pressure the government, led by a coalition of three separate Madhesi parties — the MPRF, the Sadbhawana Party, and the Tarai Madhes Democratic Party (TMDP) — lasted for 16 days. The main demands of the coalition, which called itself the United Democratic Madhesi Front (UDMF), were the creation of a single, autonomous Madhes state with the right to self-determination and further amendments to the electoral law. The strike effectively disrupted the supply of crucial goods to Kathmandu and other hill areas. Protesters supporting the strike clashed regularly with the police in Tarai districts during this period, leaving at least five people dead and hundreds injured.

On Feb. 28, an agreement was signed between the government and the UDMF. As a result, all protests were called off, and the group promised to participate in the election. Two days later, the government signed another agreement with the Federal Republican National Front, which had been agitating in the eastern hills and mountains. The ECN's willingness to allow an extension of the candidate registration deadlines demanded by the UDMF helped to ensure that these agitating groups would have the opportunity to take part in the election.

Nevertheless, significant aspects of the peace process remained incomplete before the 2008 constituent assembly election, most prominently the integration, retirement, and rehabilitation of Maoist combatants as well as accounting for human rights violations and wartime-era crimes.

The First Constituent Assembly

A final agreement regarding a constituent assembly election was adopted by the political parties in December 2007. It elaborated a plan for an assembly of 601 seats — 335 elected under a proportional representation system, 240 under a first-past-the-post system, and 26 nominated by the Council of Ministers.

The election took place in April 2008, following months of delay and political maneuvering. Approximately 60 percent of registered voters cast ballots in what was seen as a significant step in the peace process begun in 2006 with the signing of the CPA. The Communist Party of Nepal–Maoist, which later became UCPN–Maoist, won 220 seats to become the largest party in the constituent assembly. The Nepali Congress captured the second largest number of seats with 110, followed closely by the Communist Party of Nepal (Unified Marxist–Leninist), which won 103. The Madhesi parties, collectively, captured the fourth largest share with 83 seats.

At its first session, the constituent assembly declared Nepal a federal democratic republic, effectively ending the monarchy and its official role in Nepali politics.

The constituent assembly was initially given a two-year time frame for drafting a new constitution, but this date was extended four times: first one year, then three months, then again for three months, and finally six months, with a final deadline of May 27, 2012. After further extensions of the mandate were explicitly forbidden by the Supreme Court, the constituent assembly's failure to draft a new constitution led to its dissolution on May 27, 2012.

During its four-year term, the constituent assembly made some important progress. Thirty-five thematic commissions were created for the discussion of contentious issues and, of these, 32 were eventually resolved. A November 2011 agreement resulted in the departure of the majority of Maoist combatants from the cantonments and the disbursement of voluntary retirement financial packages. Integration of Maoist combatants into

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The head of a polling center in Kathmandu. "It is a great day," he said.

the Nepal Army remained a highly contentious issue until its eventual resolution in April 2012.[6]

Proposals for the formation of the Truth and Reconciliation Commission and a Commission of Inquiry into enforced disappearances had been tabled at various points in the constituent assembly and had been part of consecutive agreements between political parties. However, proposed drafts did not fulfill international norms and have been subject to various decisions and stay orders of the Supreme Court. In particular, provisions that would allow an amnesty even for grave human rights violations drew heavy criticism from human rights defenders and victims' associations for perpetuating a culture of impunity for wartime-era crimes.[7]

The Dissolution of the Constituent Assembly

Fears of communal tensions increased among citizens as the deadline for drafting a constitution drew closer with key features of a federal restructuring remaining unaddressed. Protests during this period confirmed the already popular belief that disputes over federalism were one of the most likely triggers of communal tension across Nepal. Identity-based mobilizations in April/May 2012 did not, however, spark widespread communal tensions but did worsen intercommunal relations in some areas. Relations in these places improved soon after the constituent assembly was dissolved, although local conflict mediation efforts appeared to have helped to diffuse tension.

After years of disagreement between hard-line and more moderate factions, the Maoist party formally split in June 2012. The two resulting parties, CPN–Maoist and UCPN–Maoist, were led by Mohan Vaidya ("Kiran") and Pushpa Kamal Dahal ("Prachanda"), respectively.

6 Of the approximately 19,000 former PLA combatants originally identified by the U.N.'s joint integration team, a total of 1,462 former PLA combatants were eventually integrated into the Nepal Army.

7 A cabinet decision led to the withdrawal of an additional 425 conflict-era cases, including cases of murder and rape, shortly before the May 2012 dissolution of the constituent assembly.

Constitutional Crisis and the Second Constituent Assembly Election

Following the dissolution of the constituent assembly without adopting a constitution, then-Prime Minister Baburam Bhattarai of UCPN–Maoist remained as the head of a caretaker government, while political leaders negotiated the formation of a new government to hold a new election. Several windows for holding an election, in November 2012 and then spring 2013, passed with political parties unable to agree on government formation.

On March 13, 2013, the leaders of four major political parties signed an 11-point agreement to end Nepal's prolonged constitutional and political 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. Subsequently, a high-level political committee, a loose alliance of Nepal's largest political parties, was formed to support the council. On June 13, 2013, the council announced the constituent assembly election for Nov. 19, 2013.

Both the appointment of the sitting chief justice as chair of the council and the announcement of the election date were publicly opposed by a number of smaller parties, including a 33-party alliance led by the CPN–Maoist, which carried out a boycott of the electoral process that was violent at times, especially as election day approached. In view of such threats, the IEC announced a security plan with the deployment of the police, armed police force, and army for managing election security. The deployment of temporary police and the army for security purposes was controversial.

Electoral Institutions and the Framework for the 2013 Constituent Assembly Election

The Interim Constitution

The interim constitution of 2007 established the fundamental elements of the electoral process for the constituent assembly, including the right to vote and to be elected, the electoral system, the basis for electoral legislation, an independent election management body (the Election Commission of Nepal), the Election Constituency Delimitation Commission, and a special judicial institution to adjudicate any complaints about the election (the Constituent Assembly Court).[8]

The interim constitution introduced a number of measures and rights to democratize Nepal and make it more inclusive of all of its citizens. As it was not intended to be a permanent document, however, it contained gaps that affected the electoral process. Primary among these, the interim constitution did not foresee the possibility that the first constituent assembly would not adopt a constitution prior to its dissolution, and it only provided for a single assembly election. Following the dissolution of the constituent assembly, this created several legal obstacles to holding a new assembly election, including voter eligibility, the date of the election, and institutional blockages. After the 11-point agreement was reached in March 2013 among the major parties, the interim constitution was modified by an ordinance passed by the president to remove legal barriers to holding a new election, at that time planned for June 2013.

Legal Framework

A sound legal electoral framework is essential for the effective administration of democratic elections that adhere to national law and international obligations.[9] In addition to the interim constitution, the legal electoral framework in Nepal consists of several separate laws: the 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, and the Political Parties Act. In line with its legal authority, the Election Commission of Nepal also issued a number of legally binding directives, rules, and codes of conduct to further regulate the electoral process.

The interim constitution introduced a number of measures and rights to democratize Nepal and make it more inclusive of all of its citizens.

8 Each of these elements is discussed in detail in subsequent sections of this report.

9 International Covenant on Civil and Political Rights, Article 2; U.N. Human Rights Committee, General Comment 25, paragraphs 5, 7, 9, 19, and 20

Significant changes to the electoral system had been envisioned initially in the March 2013 ordinance, including a reduction of the number of seats from 601 to 491, the introduction of a threshold for the proportional representation component of the constituent assembly election, and a reduction in the number of appointed members. These changes, which would have likely decreased the number of political parties and minority groups represented in the second assembly, were scrapped in September 2013 to accommodate the demands of smaller ethnic-based parties.

The legal framework for the 2013 election was, therefore, similar to that of 2008. The only new piece of legislation was the Election of the Members of the Constituent Assembly Ordinance (2013). It replaced the Constituent Assembly Election Act (2007), which applied to the election of the 2008 constituent assembly. The most significant changes to the legal framework were modifications to candidate eligibility, new restrictions placed on domestic election observers, and an expansion of the electoral code of conduct to include nongovernmental organizations.

The legal framework in Nepal defines all major aspects of the electoral 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, and there are repetitions, conflicts, and occasional gaps in the legal provisions. These issues include the delimitation of constituency boundaries, overly restrictive campaign rules, undue limitations on observer rights, gaps in campaign finance regulation, and gaps in the election day rules.[10]

The 2013 Election Code of Conduct

The election legislation gives the ECN the authority to promulgate legally binding codes of conduct for stakeholders in the election process, in consultation with those affected.[11] The

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A woman displays her voter identification card. She told a Carter Center observer that she believes this election will determine the country's future, and she wants to be sure women's rights are included.

10 These issues are addressed in subsequent sections of this report.

11 Election Commission Act, 2063 (2007), Articles 28 and 29

commission issued three codes of conduct: for political parties, candidates, government, media, and nongovernmental organizations; for domestic observers; and for international observers. The first of these—the code of conduct for political parties, candidates, government, media, and nongovernmental organizations—was a constant point of reference during the campaign period for parties, candidates, and media.

This code of conduct was positive overall, especially in that it set clear ground rules for participants in the electoral process. For instance, several articles deal with the prevention of abuse of state resources during the campaign, including interference by government officials. Other positive measures included appropriate rules for marches, rallies, and other campaign events; a prohibition on hate speech during campaigning; an equitable provision for free airtime on television and radio for political parties, in proportion to their results in the 2008 election; and a mechanism for the investigation of alleged violations.

In some aspects, however, the code of conduct was overly detailed and restrictive: a ban on opinion polls during the campaign period, a prohibition of banners and clothing with campaign logos, and requirements that election materials (such as pamphlets and flags) be of a specific format. Such provisions are at odds with Nepal's international obligation to restrict freedom of expression only when necessary.[12] Moreover, the inclusion of unnecessary restrictions made the code of conduct difficult to enforce and may, therefore, have weakened respect for more important and enforceable provisions.

Participation of Women, Minorities, and Marginalized Groups

Nepal is a party to international conventions that commit states to taking positive measures to end discrimination and ensuring, in practice, the equality of all citizens. These include the Convention on the Elimination of All Forms of Discrimination Against Women, the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the International Convention on the Elimination of All Forms of Racial Discrimination, in addition to the International Covenant on Civil and Political Rights (ICCPR). The interim constitution says that it is a state obligation to "effectively implement the international treaties and agreements of which the state is a party."[13]

The interim constitution also states that all citizens are equal before the law, and it specifically prohibits discrimination based on "religion, race, caste, tribe, sex, origin, language, or ideological conviction."[14] It allows special legal provisions for the "protection, empowerment, or advancement" of women and certain groups such as Dalits,[15] indigenous peoples, Madhesi, people with disabilities, and others. The interim constitution further declares that it is an obligation of the state to end discrimination and ensure the participation of the protected groups "in all organs of the state structure on the basis of proportional inclusion."[16]

Establishing a clearly defined electoral system is essential to holding genuine democratic elections in which voters freely choose their representatives, although no specific electoral system is prescribed by international law.

These principles are the basis for the quota system for election to the constituent assembly as well as for other legal protections in the election process. Nepal's inclusion of these principles in its legal framework is very positive. However, the principles were not always implemented in a consistent manner in this election, particularly with regard to the access of women and some

12 ICCPR, Article 19(3). Freedom of expression may be restricted only when "necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals."

13 Interim Constitution of Nepal, Article 33(m)

14 Interim Constitution of Nepal, Article 13

15 See footnote 2.

16 Interim Constitution of Nepal, Article 33(dl)

minorities to the citizenship documents necessary to be included in the voter register and in participation as election officials and candidates.

Electoral System

Establishing a clearly defined electoral system is essential to holding genuine democratic elections in which voters freely choose their representatives, although no specific electoral system is prescribed by international law.[17]

According to the interim constitution, the constituent assembly is a unicameral body composed of 601 seats. The electoral system employs a mix of first-past-the-post, proportional representation, and nomination to ensure representation from each of Nepal's 75 administrative districts and from its large number of ethnic, linguistic, and other groups. The assembly is composed of:

- First-past-the-post: 240 members elected from single-mandate constituencies
- Proportional representation: 335 members elected from closed, unranked party lists from a single nationwide constituency
- Nomination: 26 members nominated after election day by a consensual decision of the Council of Ministers. According to the constitution, these members should be "prominent people who have rendered outstanding contributions to national life and the indigenous people who could not be represented through the elections."[18]

As a consequence of the mixed electoral system, each voter received two ballots: one first-past-the-post ballot with individual candidates specific to the voter's constituency and one proportional representation ballot with political parties competing in the nationwide constituency.

The electoral system ostensibly ensures a broad representation of Nepal's diverse population. The constitution and the electoral legislation provide specific requirements for the representation of women, indigenous people, and other historically disadvantaged groups. However, a weakness of the system is that the proportional representation component of the electoral system provides that, after results are determined, political parties select candidates from their unranked lists to receive mandates. Since voters do not know at the time of voting which candidates will be selected by the parties, this aspect of the electoral system undermines the fundamental right of voters to freely choose their representatives.

The nomination of 26 members of the constituent assembly by the Council of Ministers also undermines the right of the people to freely elect their representatives.[19] Although the intention to provide representation for minorities not otherwise represented through the election is positive, there is nothing in the constitution or electoral law that requires the council to adhere to this intention. In practice, the council can potentially select anyone it wishes. Moreover, this provision technically gives the executive branch authority over the composition of the legislative branch. In the 2008 election, the phrase "on the basis of consensus" led to the interpretation that the mandates were simply divided among major political parties.

Participation of Women, Minorities, and Marginalized Groups

A historic achievement of the interim constitution was the requirement to ensure representation of women, ethnic minorities, historically disadvantaged groups, and other groups in the constituent assembly. Specifically, women, Dalits, oppressed communities, indigenous people, people from underdeveloped regions, Madhesi, and "other classes" must be proportionally represented in the lists of candidates nominated by political parties for the proportional representation component of the electoral system.[20] Electoral law provides for specific quotas of candidates from these groups on the basis of the census; for women, the quota for

17 Universal Declaration of Human Rights, Article 21(3), and ICCPR, Article 25. See also UNHRC, General Comment 25, paragraph 21: "Although the [ICCPR] does not impose any particular electoral system, any system operating in a state party must be compatible with the rights protected by Article 25 and must guarantee and give effect to the free expression of the will of the voters."

18 Interim Constitution of Nepal, Article 63(3)(c)

19 In General Comment 25 on Article 25 of the ICCPR, the U.N. Human Rights Committee noted that "Participation through freely chosen representatives is exercised through voting processes...."

20 Interim Constitution of Nepal, Article 63(4)

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Voters wait in the queue for polls to open on election day in Bhaktapur Square.

the proportional representation lists is 50 percent. Based on articles 13 and 33 of the interim constitution, electoral law also expands the definition of the special categories to include people with disabilities, poor farmers, and laborers.

An additional constitutional requirement is that at least one-third of the total number of candidates nominated by a party must be women, including first-past-the-post and proportional representation candidates. In nominating first-past-the-post candidates, parties must take the principle of inclusiveness into account, but there are no specific requirements in this respect.[21]

These quotas are positive provisions that have greatly expanded the scope of political participation and made the first constituent assembly one of the most inclusive national representative bodies in Asia. However, legislative amendments prior to the 2008 election (and also adopted for the 2013 election) limited the potential effectiveness of these provisions by applying the quotas only to parties that nominate at least 30 percent of the full slate of 335 proportional representation candidates. Parties that nominate fewer than 100 proportional representation candidates must apply the quotas only "to the extent possible."[22] This exception appears to deviate from the intention of the interim constitution to expand participation as broadly as possible.

Election Management

An independent and impartial election management body that functions transparently and professionally is recognized as an effective means of ensuring that citizens are able to participate in a genuinely democratic electoral process.[23] 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.[24]

21 Interim Constitution of Nepal, Article 63(4)

22 Election of the Members of the Constituent Assembly Ordinance (2013), Article 7(15). The exception does not apply to women candidates, who must be equally represented regardless of the number of candidates nominated.

23 UNHRC, General Comment 25, paragraph 20

24 UNHRC, General Comment 25, paragraph 20

The appointment of the Election Commission of Nepal is directly regulated by the interim constitution. The ECN is composed of a maximum of five commissioners, including the chief commissioner. Commissioners are appointed by the president for a six-year term on the basis of a recommendation of the Constitutional Council, a political body that includes an opposition leader from the constituent assembly as well as the prime minister, chief justice, three ministers, and the speaker of the assembly. In early 2013, the term of the last commissioner ended, and as there was no constituent assembly at the time, the Constitutional Council could not be fully composed and no new ECN members could be appointed. As a part of the 11-point agreement of March 2013, this obstacle was removed by the ordinance endorsed by the president, with ECN and other constitutional appointments to be made by political consensus. The five members of the ECN were quickly appointed on this basis.

Observers noted that while women were well-represented among voter education volunteers in districts throughout the country, most district election offices had few female staff, and females were often in relatively junior positions.

In addition to managing election preparations, the ECN was responsible for the registration of political parties and proportional representation candidate lists; monitoring the implementation of the law, regulations, and codes of conduct; and deciding complaints regarding alleged violations. It was supported in these activities by a secretariat composed of civil service employees. Unfortunately, the staff of the secretariat changed frequently, as they were subject to normal civil service rotation. As a result, there was often a lack of continuity within the ECN staff.

The ECN took decisions on the basis of consensus, which contributed to building public confidence in the integrity of the election. Although the ECN conducted regular media briefings to announce its decisions and activities, the commissioners did not allow observers and party agents to be present at their meetings and did not publish minutes of meetings, which limited the transparency of decision making.

At the field level, the election was managed by 75 district election officers and 240 returning officers. The district officers were permanent staff responsible for voter registration prior to the election period and for conducting operational preparations in advance of the election, including voter education, training of polling personnel, and delivery of materials. The returning officers were temporary appointees responsible for the conduct of the election at the constituency level. By law, returning officers were, at minimum, officers of the Nepal Judicial Service and were frequently judges. In each of the 75 districts, one returning officer was designated as chief returning officer. Responsibilities of returning officers included conducting first-past-the-post candidate registration, appointing polling and counting staff, training counting staff, ensuring the integrity of the voting process, carrying out the counting process, declaring results of the first-past-the-post election, and reporting the proportional representation results in the constituency to the ECN.

Observers noted that while women were well-represented among voter education volunteers in districts throughout the country, most district election offices had few female staff, and females were often in relatively junior positions. Only two of the 240 returning officers and four of the 75 district election officers were women. At the central level, only one commissioner, none of the joint secretaries, and two of the undersecretaries at the ECN were women.

In general, the ECN, district election officers, and returning officers were perceived as impartial, although representatives of some smaller parties in the Tarai told Carter Center observers that election officials were reluctant to take action to end violations of the code of conduct by the larger

parties and concentrated enforcement activities on less powerful parties. Following election day, the UCPN–Maoist alleged that extensive violations had taken place during the transfer of ballots and blamed "hidden forces" and the army but also, in part, the ECN.

The ECN managed to keep the technical side of the process largely on schedule, despite the constitutional crisis, the tight time frame for conducting the election, logistical difficulties in providing secure and effective transportation of sensitive materials in a geographically complex country, and threats of poll disruption by some boycotting parties. Materials needed for polling, including voter rolls and ballots, were delivered on schedule in most places.

The printing of ballots was not done transparently, as no observers were allowed to be present for the printing and packaging of ballots. The Carter Center and other international observation missions made repeated requests, which were denied, to observe ballot printing. The ECN reported that it printed 14,952,000 first-past-the-post ballots and the same number of proportional representation ballots. (The number of registered voters for this election was 12,147,865.) The ECN stated that the reason for printing a larger number of ballots than required was to have extra ballots for each polling center that the returning officer kept in a sealed envelope in case of any emergency.

Despite delays in delivering training materials to some districts, the training of polling and counting officials was carried out professionally at the sessions attended by Carter Center observers. In most cases, political parties at the district level told Center observers they were satisfied with pre-election day preparations, although the distribution of voter ID cards was 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 before 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.

The cards were ultimately distributed at polling centers in the days leading up to election day but, for the most part, not on election day itself. Interviews with polling center staff indicated that approximately 70 percent of voters received their cards prior to election day. Voter ID card distribution appeared, in retrospect, to go relatively well. Although some problems were reported regarding assignment to the correct polling center, incorrect details on some cards, and, in some cases, photos that did not correspond to the name on the card, problems appeared to be isolated.

Overall, the system of election management largely met Nepal's international obligations in this respect, especially in view of the organizational and security challenges in this election. Nevertheless, measures should be considered to increase transparency, improve the distribution of voter ID cards, and impose sanctions for violations of electoral rules.

Boundary Delimitation

The appropriate delimitation of electoral boundaries is a prerequisite for the fulfillment of the principles of universal suffrage and equal representation.[25] Boundaries should be drawn in such a way that the principle of equal suffrage is preserved, so that every voter should have roughly equal voting power.[26]

In the mixed electoral system adopted for the constituent assembly election, the entire country is considered a single constituency for the proportional representation system, whereas candidates in the first-past-the-post races contest from 240 electoral constituencies. First-past-the-post

25 U.N., Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, paragraph 103

26 UNHRC, General Comment 25, paragraph 21: "The principle of one person, one vote must apply, and within the framework of each state's electoral system, the vote of one elector should be equal to the vote of another ...The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely."

Deborah Hakes

A man picks up his voter ID card at his polling station the day before election day in Kirtipur.

constituencies are formed within administrative districts, with each district having at least one constituency. Constituency boundaries cannot cross district boundaries, and the interim constitution states that constituencies for the election of members of the constituent assembly should be delimited by an independent Constituency Delimitation Commission based on the latest census data.

Provisions regarding boundary delimitation were included in the interim constitution in response to demands for fairer representation of the population in the Tarai. Since then, however, various contradictory provisions for the delimitation of first-past-the-post constituencies in the interim constitution have proven to be inconsistent with the aim to provide roughly equal weight to all voters.

Electoral boundaries were redrawn ahead of the first constituent assembly election in 2008 to reflect the population distribution as recorded in the 2001 census and with the intention of bringing the number of constituencies in the Tarai in line with its overall share of the population (48.4 percent according to the 2001 census). This was one of the main demands of the Madhes movement in January 2007 and represented an important step toward making the constituent assembly more inclusive.[27] In 2007, the Constituency Delimitation Commission added 35 constituencies to 22 districts in both the hills and the Tarai where populations had previously been underrepresented. As a result, the number of constituencies in the Tarai was increased from 84 to 116. The ideal size of a constituency in the hills

27 Census data from 2001 showed that while 48.4 percent of Nepal's population lived in the Tarai, the Tarai region was allotted only 84 of the 205 constituencies (41 percent) in existence at the time.

is made up of 94,372 residents and in the Tarai, 102,040 residents. The number of 240 constituencies for the first-past-the-post races was determined by the commission in 2007 on the basis of this calculation and subsequently incorporated into the interim constitution.[28]

The 25-point ordinance of March 2013 did not alter any of these provisions. In the meantime, however, new population figures of the 2011 census were published. The data showed clear shifts in the population dynamics. Specifically, census results showed a sharp increase in urban population centers and an increase in the share of the population living in the Tarai, which rose from 48.4 percent in 2001 to 50.27 percent in 2011.

Hence, in part as a response to the advocacy of Madhes-based parties and to fulfill the constitutional requirements of delimiting constituencies on the basis of the latest census data, a new Constituency Delimitation Commission was formed in June 2013 and given a one-month period to submit its report to the government. However, the commission soon ran into difficulties as it attempted to reconcile various contradictory constitutional provisions, including:

- Retaining the number of 240 constituencies determined by the previous Constituency Delimitation Commission (versus the mandate of the commission in 2007, which was free to determine the number of constituencies needed)
- At a minimum, retaining for each district the number of constituencies that had been assigned to it under the law prevailing for the parliamentary election in 1999 (at that time, there were 205 constituencies for the Parliament)
- Based on the latest census data, maintaining as far as possible the same proportion between the number of mandates and population for all administrative districts[29]

These provisions meant that the commission could reassign only those 35 constituencies that had been added to 22 districts in 2007, as it could not reduce the number of constituencies assigned to a district in 1999 or add to the 240 constituencies. Because most of those constituencies added in 2007 had already been assigned to Tarai districts and because census figures showed a much larger population growth in the metropolitan areas of Kathmandu Valley than in the Tarai, the reassignment of the additional constituencies was unlikely to increase the percentage of constituencies in the Tarai beyond the existing 48.3 percent. Therefore, a new boundary delimitation would have failed to fulfill one of its explicitly stated aims in the interim constitution, namely to match the proportion of constituencies in the Tarai to the proportion of the population living there according to the latest census (50.27 percent).

Census data not only showed considerable variation in the population size among constituencies of different districts but also between constituencies within the same district. Within Lalitpur, for example, there was a difference in population size of constituencies 1 and 3 of more than 120,000. There were proposals to realign boundaries of constituencies within some districts, but these proposals did not find a majority in the commission. Ultimately, the commission report recommended that the government leave the existing 240 constituencies as they were.

Nepal's international obligation to ensure the equality of the vote in determining constituency boundaries was not fully met for this election. In part, this was due to constitutional difficulties, but there also was no adjustment of constituency boundaries within districts according to the latest census figures, which would not have presented the same legal obstacles. The Carter Center regrets that this opportunity for rectifying some of the imbalances in population figures across constituencies in the same district was missed. For future elections, constitutional provisions on constituency delimitation should ensure equality of the vote, and constituency delimitation should be done well in advance of the election.

28 The commission accomplished this in two steps, first adding constituencies in those hill or mountain districts where census data showed that populations were underrepresented, then adding constituencies in the Tarai to bring the number in line with both population values from census data and the adjusted number of hill and mountain constituencies.

29 Interim Constitution of Nepal, Article 63(3)(a) as amended on Dec. 28, 2007

Pre-election Developments

Voter Registration

A comprehensive and inclusive voter registration process provided to the broadest pool of citizens is a key element of ensuring universal suffrage and the enjoyment of the fundamental right to vote and the right to be elected.[30]

Voter registration reform was a 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 roll.

Voter registration reform was a 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 roll. The ECN addressed the problem by creating an entirely new voter register with biometric data, including photographs and fingerprint records of each voter. The new register was created through nationwide registration drives that required the active participation of citizens and proof of eligibility. The ECN succeeded in registering 12,147,865 voters (i.e., citizens 18 years and older as of July 15, 2013). This was short of its initial goal of registering 14.7 million voters and much lower than the estimated 16 million potentially eligible voters, based on the 2011 census.

Under international obligations, Nepal is required to facilitate voter registration and remove barriers to registration, especially those that could be discriminatory in practice.[31] Proof of eligibility has been a continuing, sensitive issue for voter registration. 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 people without Nepali citizenship from registering, it also made registering difficult for citizens who lacked the documents necessary to obtain a citizenship certificate, an issue particularly acute among historically marginalized communities, married women,[32] and the landless. Among other issues, the citizenship certificate requirement had the result that some people who had been on the voter list in 2008

30 ICCPR, Article 25(b); and UNHRC, General Comment 25, paragraph 11

31 U.N. General Comment 25, paragraph 11

32 In its observation of the voter registration process, The Carter Center noted that the ability of some married women to register to vote was affected by guidelines that required a married women to have her husband or father-in-law support her application for a citizenship certificate, which was more restrictive than the provisions of Citizenship Act 2063 (2006). The Ministry of Home Affairs informed the Center that it had issued an instruction to district administration offices in January 2013 allowing married women to obtain a citizenship certificate using the father's citizenship certificate as supporting documentation. However, women who choose to use their father's citizenship certificate as support could forfeit their right to inherit from their husbands (if they did not have a marriage certificate), and that could create difficulties for their children to obtain citizenship certificates. For more details, see the Carter Center's Sixth Interim Statement on the Election Commission of Nepal's Voter Register with Photograph Program, Oct. 1, 2013.

were no longer able to prove their eligibility to vote.

The Supreme Court also directed the ECN and authorities to take measures to ensure that all of those entitled to register could actually do so. In line with the Supreme Court's decision, the authorities took incremental steps to improve access to obtaining citizenship certificates, including sending mobile distribution teams to each district, amending the law to allow children of naturalized citizens to obtain citizenship, and, in spring 2013, amending voter registration rules to allow people registered for the 2008 election to be included on the voter roll for the 2013 election even without a citizenship certificate.

However, some political parties, particularly in Tarai districts, stated their dissatisfaction with the voter roll, noting that some of the rule changes came only at the end of the process and that relatively few people could take advantage of them. For example, only 3,947 voters were registered for this election on the basis of their inclusion in the 2008 voter list.

Many internal migrants have difficulty legally proving their new residence. The ECN instituted an out-of-district voter registration program to allow internal migrants to register remotely for their home district, thereby removing a key barrier to registration. However, this measure was limited in effectiveness in facilitating voting since out-of-district registrants could only vote by going to the polling center at which they were on the voter roll. There was no provision for out-of-country registration or voting, although 2,000,000 or more Nepalis are estimated to work abroad.[33]

While voter registration was well-conducted overall—often in difficult conditions—the percentage of errors (for example, misassigned polling locations or incorrect identifying information) was not known, as no audit of the voter register was conducted prior to the election even though international donors had offered technical and financial support for an audit. Positively, political parties had access to the voter roll during the election period and raised relatively few concerns with observers about the register.

In the March 2013 ordinance endorsed by the president, the ECN was given the authority to set the cutoff date for the eligibility to vote. By ECN decision, all registered citizens who turned 18 years of age by July 15, 2013, were eligible to vote. This meant that many 18-year-olds were eligible to vote in this election, an improvement from 2008 when all 18-year-olds were excluded.

Despite lower than projected voter registration figures and continuing difficulties for some citizens in being able to register to vote, the new voter register was a major improvement in the 2013 electoral process. It largely addressed a major issue that created significant disputes in the previous 2008 election.

There are still important issues to address regarding the inclusiveness and accuracy of the voter register to ensure full respect for Nepal's international obligations. In particular, citizenship and voter registration rules should be reviewed to ensure that married women, indigenous people, the landless, and other vulnerable categories do not face obstacles that make it more difficult for them to register in practice. An independent audit of the voter register should be conducted to determine why more citizens have not registered as well as to learn the nature and extent of any technical problems with the register. To facilitate registration and voting by migrants, proof-of-residence requirements should be reviewed to ensure that, to the extent possible, voters are able to vote where they actually reside, whether temporarily or permanently. Finally, the constituent assembly should consider addressing the citizenship

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33 World Bank, "Governing Labor Migration in Nepal," 2009

concerns of those who have resided in Nepal for a long period of time and claim they are citizens but who do not currently have proof of eligibility for citizenship.

Voter Education

Comprehensive and effective voter education is essential not only to inform the electorate of their rights but also to clarify procedures ahead of election day, thus ensuring that citizens can exercise their electoral rights.[34]

Although the ECN prepared an extensive voter education campaign—including providing television and radio broadcasts in 24 languages, distributing leaflets and posters, and conducting street theater and door-to-door campaigns using voter education volunteers—several elements made the voter education less comprehensive and effective than expected.

Observers across the country noted that the voter education materials were well-developed and comprehensive. However, there were major challenges for the 15,000 voter education volunteers, such as a lack of clear instructions and training, a delay in the distribution of materials from the central to local level, limited written materials in languages other than Nepali, and a short time frame to conduct voter education due to holiday periods. In spite of these challenges, the high number of local voter education volunteers, along with their local connections and knowledge,[35] made it possible to reach a large number of voters. Many voters interviewed by the Center's observers expressed satisfaction with the information provided to them. In most instances in which voters expressed dissatisfaction with voter education, they held political parties responsible rather than the ECN, stating that the parties were either insufficiently involved in voter education or that they provided incomplete information. This sentiment was echoed by local election officials, who explained that they had not received any instructions on working with political parties with regard to voter education.

In addition to basic voter education, the ECN also conducted a focused, special program for

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Poll workers check a man's name against the voter roll as he seeks to pick up his voter ID card. This particular polling station was entirely staffed by women, a point of pride for the community.

34 ICCPR, Article 25(b); and UNHRC, General Comment 25, paragraph 11

35 A majority of the voter education volunteers were childhood education teachers conducting voter education in their home districts.

constituencies in 22 districts in which the percentage of invalid votes was especially high during the 2008 constituent assembly election. Although the percentage of invalid votes did decrease slightly in some of the targeted constituencies,[36] observers noted that the targeted education program was conducted relatively late and, in some instances, was treated by district election officers simply as an additional resource for their regular voter education program. This misunderstanding can be attributed to a lack of communication and clear directives from the central level. The fact that a large number of votes were deemed invalid due to mistakes in marking the ballot papers also showed a certain lack of understanding about the voting process by the voters.

Deborah Hakes

A woman casts her vote in Kathmandu.

Despite the ECN's extensive voter education efforts, challenges remain with respect to ensuring that voters are adequately informed about the electoral process, especially regarding the right to a secret ballot and the correct procedures for marking a ballot. A long-term civic and voter education effort, with use of minority languages, should be considered to build voter awareness in advance of future elections.

Participation of Women, Minorities, and Marginalized Groups

Specific voter education efforts targeting minority groups such as Dalits, Janajatis, and women were commendable, and the results of these efforts were ostensibly reflected in the high number of women who voted on election day. However, this campaign also suffered from the short time frame in which voter education was conducted as well as from delays in the distribution of materials to the field and the lack of written materials in local languages.

Observers noted that the majority of voter education volunteers were women, making voter education the area of election management in which women were represented in the greatest numbers. The Carter Center commends this effort of including women in the electoral process and hopes it can be extended to other areas. However, it is necessary in the future to ensure that voter education volunteers receive sufficient and timely training to be able to conduct their tasks in an effective manner.

Candidate and Party Registration

Criteria to Stand for Election

The effective implementation of the right to stand for elective office ensures that voters have a free choice of candidates.[37] Therefore, any conditions placed on political party and candidate registration processes should be reasonable and nondiscriminatory.[38]

By law, candidates must be Nepali citizens who are at least 25 years old and not employed by the state or a state-funded body. They also must be registered voters, must not have a court conviction with a final verdict for specified crimes "involving moral turpitude," must not be

36 The targeted voter education campaign took place in 71 constituencies of 22 districts that had the highest rate of invalid ballots (an average of 7.2 percent) in 2008. In 2013, the percentage of invalid ballots in first-past-the-post races in these constituencies was lower by an average of 1.2 percentage points (to an average of 6 percent). However, the percentage of invalid first-past-the-post ballots actually increased in 12 of the targeted constituencies.

37 ICCPR, Article 25 (a). UNHRC, General Comment 25, paragraph 15

38 UNHRC, General Comment 25, paragraphs 15–17

serving a life sentence for murder, must not have defaulted intentionally on a loan, and must not have lost "mental balance."[39] The requirement that candidates not be employed by the state could be considered overly restrictive, as it applies to all such positions—even to lower-level positions such as teachers and postal employees—rather than only to positions that could create a conflict of interest.[40]

Not all of the requirements identified in the law are mentioned in the interim constitution: notably, being a registered voter, not having defaulted on a loan, and having mental capacity. Instead, the interim constitution states that one requirement for candidacy is "not being disqualified by any law."[41] This devolves the protection of fundamental candidacy rights away from the constitutional level and has the potential to permit limitations not consistent with international obligations.

The effective implementation of the right to stand for elective office ensures that voters have a free choice of candidates.

The law requires parties not represented in the previous constituent assembly to submit 10,000 signatures of registered voters in order to be registered for the election as a party. Additionally, monetary deposits are required for each first-past-the-post candidate and proportional representation candidate list. These conditions were not unreasonable, as evidenced by the high number of registered parties and candidates.

First-past-the-post candidates can stand from two constituencies if they wish to do so, although they cannot compete in both the first-past-the-post and proportional representation systems simultaneously. Should a candidate win both constituencies, the candidate needs to resign from one of those seats within 30 days of the first sitting of the constituent assembly. Subsequently a by-election will be conducted for the vacant seat.

Conduct of Party and Candidate Registration

Political 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. The initial political party registration and the registration of parties' proportional representation candidate lists were done by the ECN at the central level. First-past-the-post candidates were registered by returning officers in each constituency. Altogether, 10,709 candidates from 122 parties were registered on proportional representation lists, and 6,128 candidates were registered in the first-past-the-post constituencies, including 1,115 independent candidates.[42] The cases of refusal of registration (20 first-past-the-post candidates and 302 proportional representation list candidates) appeared to be well-grounded, and candidates and parties were given an opportunity to correct errors in their application documents. For proportional representation lists, the ECN mostly rejected candidacies because nominees were not registered to vote, were less than 25 years of age, or were on the candidate list of another party.

In some constituencies in eastern Nepal, first-past-the-post candidate registration was hampered or tense due to strikes or threats of violence by boycotting groups, but the process was ultimately successfully completed 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.

The application of quotas for women and other groups was complicated, in practice, for many parties. The ECN returned numerous proportional representation candidate lists to the parties for

39 Election to the Members of the Constituent Assembly Ordinance, Articles 18 and 19

40 UNHRC, General Comment 25, paragraph 16 states, "If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b) [of Article 25 of the ICCPR]."

41 Article 65 (cl)

42 One hundred thirty (130) parties registered their intention to participate in the election; ultimately 122 submitted candidate lists.

correction when they were deemed to include an insufficient number from any group. Some groups are legally defined, such as Janajati, while other groups, such as Madhesi and to some extent Dalits, do not have a legal definition.

Although the parties ultimately complied with the 50 percent quota requirement for women on their proportional representation lists, the number of female first-past-the-post candidates was very low. Only 667 of the 6,128 first-past-the-post candidates were women (10.8 percent). In addition, some women were reportedly assigned constituencies with a low likelihood of victory.

Overall, women made up 35.4 percent of the total number of first-past-the-post and proportional representation candidates combined, but the law also required that at least 33 percent of candidates put forward by each party are women (first-past-the-post and proportional representation candidates combined). Fifteen parties did not fully comply with this requirement.[43] The ECN accepted that these parties did not meet the legal requirement, in part because it had no clear enforcement mechanism. Most of these parties missed the quota by one or two women candidates, but five of them were even further below the legal quota. Notably, for the first time there was one third-gender candidate contesting the election.

With regard to participation of minorities, indigenous, and historically disadvantaged groups in the electoral process, the situation is more complex. In a number of districts in which a particular indigenous group or regional group is numerically strong—such as Gurungs in Lamjung, Thakalis in Manang, and Madhesis in districts of the eastern and central Tarai—Carter Center observers found them to be well-represented among first-past-the-post candidates. Conversely, Dalit representation among first-past-the-post candidates was low in most districts visited by long-term observers.

Overall, the registration process largely met Nepal's obligations to ensure the right of citizens to stand for election. There were, however, regrettably low numbers of women and Dalits among first-past-the-post candidates. In order for Nepal to comply fully with its international obligations with regard to the right to be elected and the right of citizens to choose their representatives, The Carter Center recommends setting the deadline for finalization of the proportional representation candidate lists earlier in the process, establishing a mechanism for consistently enforcing quota provisions, and reducing the scope of restrictions on the right to be elected to those positions that present a clear conflict of interest with candidacy. Political parties also should consider measures to strengthen the participation and representation of women, Dalits, and members of other marginalized groups as candidates in first-past-the-post races and in decision making and leadership positions within political parties. Such measures could include intraparty rules on quotas for members of these groups in party leadership positions at all levels and as candidates in local and national elections. Consideration also could be given to ensuring parity between women and men in elected councils at all levels.

Election Campaign

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.[44]

Despite occasional clashes among competing political parties and activities of the boycotting parties, candidates and parties (for the most part) could reach out to potential voters and freely convey their messages during the official campaign period.[45] In some areas in which problems had been reported in 2008—for example, in the eastern and central Tarai and the mountain districts of the east—the campaign environment was notably improved, although some

43 Some of these parties attempted to meet the combined quota by nominating more than 50 percent women candidates on their proportional representation lists. Though permitted in 2008, a rule change designed to increase the number of women participating as first-past-the-post candidates effectively closed this loophole before the 2013 election.

44 ICCPR, Articles 9, 12, 19, and 22; and UNHRC, General Comment 25, paragraph 25

45 Official campaigning ended at midnight on Nov. 16 to respect the legal silence period of 48 hours before election day.

serious incidents persisted. Also, a number of incidents by boycotting parties included disruptions of campaign events, attacks on candidates and party agents, arson attacks on vehicles, and road blockades. These disruptions climaxed in a 10-day nationwide strike prior to and including election day, called by boycotting parties. During this period, indiscriminate petrol bomb attacks were made on buses and public transport, and improvised explosive devices and fake bombs were planted—often near polling locations—in order to create a climate of fear.

Campaigning started with the nomination of first-past-the-post candidates on Oct. 3. Initially somewhat subdued, campaigning activities picked up after the end of the Dashain holidays, with breaks for the Tihar festival and the Chhath holiday in the Tarai. The slow start reflected the uncertainty regarding a potential postponement of the election and delays by political parties in finalizing their election manifestos. Observers in the field were frequently told that it was only after the relatively smooth conduct of candidate registration on Oct. 3 that political parties and the public were reassured that the election would indeed take place on the announced date.

Despite occasional clashes among competing political parties and activities of the boycotting parties, candidates and parties (for the most part) could reach out to potential voters and freely convey their messages during the official campaign period.

Election manifestos were mostly finalized in the second half of October. They outlined the parties' respective stances on outstanding issues of the constitution-drafting process, including the form of governance and federalism to be adopted under a new constitution. Encouragingly, major national parties promised to honor previous agreements reached during the first constituent assembly and to conclude the constitution-drafting process within a year or less (should they gain a majority). Given the failure to finalize a constitution during the last constituent assembly, a number of parties also outlined procedures on how to deal with contentious or unresolved constitutional issues at the end of the envisaged one-year period. In addition, party manifestos prominently included promises of economic development, and observers noted that candidates frequently raised issues of local concern, such as road-building and electrification.

The issue of federalism that had become so divisive in the run-up to the dissolution of the first constituent assembly played a reduced role in campaigning and, according to Carter Center observers, appeared to be relatively more important in Tarai districts and in the east. While the campaigning of the Nepali Congress was notable in the lack of emphasis it gave to federalism, observers noted that CPN–UML and UCPN–Maoist interlocutors were more eager to present the party's position on federalism. The campaign environment was much less polarized than in the run-up to the dissolution of the constituent assembly in 2012.

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 UCPN–Maoist and the *rath yatra* by RPP–Nepal. In general, observers noted that campaigning focused more on personal contact and door-to-door canvassing, particularly in the mountains and hills. This was sometimes attributed to the fact that the campaign period was during the busy harvesting and holiday season.

As campaigning intensified, reports of code-of-conduct violations increased across the country. Most of these concerned minor infractions, but they 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. To investigate such violations, the ECN dispatched monitoring teams to all five regions. Several

candidates were asked for clarifications or reprimanded, but no fines were imposed.

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. Candidates of RPP and RPP–Nepal, "monarchist" and "anti-federalist" parties that had frequently been prevented from operating in strongholds of Maoists or Limbuwan groups in 2008, reported that they were able to freely campaign.

As election day drew closer, observers noted a number of cases of cash or in-kind incentives being offered to voters, particularly in districts of the Tarai, but credible reports were sporadically also heard elsewhere.[46] The alleged practice included material gifts (mostly clothes and livestock linked with festival practices and traditions) and monetary gifts (cash disbursements). Allegedly, the party and/or candidates involved recorded the names of those given gifts, aiming to reach out to as many citizens as possible on the official voter lists to guarantee victory in the targeted polling centers. In one instance, observers in Dolpa noted that residents had received tin sheets for their roofs from one of the candidates. During a visit to Mahottari district, observers witnessed TMDP cadres asking voters to return money after they lost in the election.

A number of violent incidents involved supporters of competing parties. These incidents peaked in the week before Nov. 13 and included acts of vandalism, obstructions of campaign activities, fights, and serious assaults. 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 close race.

The activities of boycotting parties also had an adverse effect on the campaign environment. Carter Center observers across the country frequently noted that posters from CPN–Maoist and the Federal Democratic National Front (FDNF), affiliated with the Federal Limbuwan State Council (FLSC) in the east, were visible in villages across the hills and mountains, although the police had started to take them down in mid-October. Carter Center observers in the northeastern part of Jhapa and in Rolpa noted some cases where poll-opposing parties also used graffiti to spread their message and held ward-level meetings or organized demonstrations at the time of candidate registration on Oct. 3. The CPN–Maoist party sent letters to returning officers and district election officers across the country asking them to stop preparations for the election and, in some cases, they also delivered letters to individual candidates. Several times in late October and early November, police cracked down on the activities of boycotting parties, after which those parties' actions were performed at night and became more furtive and individual.

Overall, Nepal has made considerable progress since 2008 toward meeting its international obligations to ensure a free campaign environment in which voters, political parties, and candidates can exercise their fundamental rights. However, the instances of violence and intimidation that persisted to some extent during the campaign period indicate that further efforts are needed to ensure that the freedoms guaranteed under international law are fully realized. Efforts should not only include stronger enforcement action by the relevant authorities but also increased efforts on the part of political parties to prevent such incidents from occurring.

Campaign Finance

Clear and fair regulation of campaign finance is an important means for the state to balance the rights of citizens to participate in public affairs and the need for equity among candidates and parties.[47]

46 As of Nov. 17, the ECN had recorded 21 complaints of cash or in-kind incentives being offered to voters.

47 UNHRC, General Comment 25, paragraph 19: "Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party." In addition, the U.N. 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 candidates for elected public office and, where applicable, the funding of political parties."

Although the ECN's code of conduct sets limits on campaign spending, it has comparatively few provisions on campaign finance. It does not specify the permitted source of funds or require the sources of funding to be declared. All candidates must file postelection 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. There is no field monitoring of spending by parties or candidates.

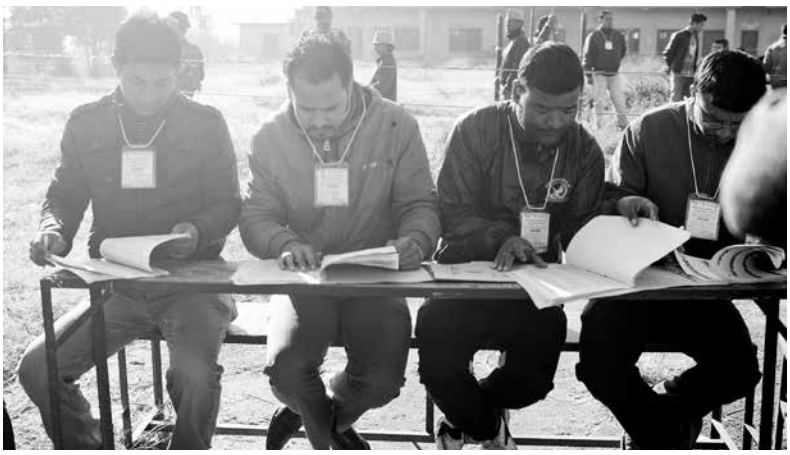
Regrettably, new draft provisions in the code of conduct intended to strengthen campaign finance regulations by obliging all candidates to disclose the sources of campaign funding were dropped from the final version.

Despite these minimal legal requirements, a considerable number of candidates failed to submit their expenditure details within the stipulated 35-day time frame.[48] In addition, Carter Center observers heard from numerous stakeholders that spending limits, set at NPR 1 million for each first-past-the-post candidate and NPR 70,000 for each proportional representation candidate, were unrealistically low, and some candidates indicated they were spending much more than the permitted limits.[49] The biggest expenses appear to have been incurred in providing food and lodging to volunteers on the campaign trail, vehicle costs in the Tarai, and transportation of senior politicians to mass rallies in support of local candidates.

As there is no public campaign financing in Nepal, political parties rely on party member contributions, the personal resources of nominated candidates, and/or cash or in-kind donations for campaign expenditures. Observers saw no evidence of forced donations being solicited by parties participating in the constituent assembly election. Cadre-based parties, such as Communist parties, were often said to have increased their membership fees or levied an extra charge during the election period. Candidates also collected contributions through networks of well-wishers, called in favors, or relied on logistical support from members of sister organizations to recover some of their campaign expenditures. However, observers also noted that most first-past-the-post candidates seemed to rely on their own resources and, besides campaign materials or loudspeakers, received little or no financial support from their parties. While this scenario also extended to major national parties, it appeared to be the case particularly for smaller parties such as RPP, RPP–Nepal, and the Federal Socialist Party–Nepal (FSP–Nepal). For candidates from smaller parties without personal wealth, this severely limited their campaign activity. At times, it was cited as a reason for the failure of political parties to nominate more women in the first-past-the-post races.[50]

There were also reports that poll-opposing parties were financing their boycott campaigns through extortion and "forced donations," but those reports were sporadic and generally difficult to verify. In the eastern region, observers were told that poll-opposing parties were targeting local businessmen and government officials, threatening to expose their involvement in corrupt practices. In Sankhuwasabha district, observers noted a case in which a local businessman had gone public after an extortion attempt.

Overall, further steps should be taken to ensure that Nepal's legislation and practice fully reflect its international obligations to provide



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Poll workers organize voter lists at a polling station the afternoon of election day.

48 On Jan. 10, 2014, the ECN directed the district election office in Kathmandu to seek clarification with 220 first-past-the-post candidates in the district concerning why they failed to submit their expenditure details.

49 In the past, enforcement of audit requirements and public disclosure mechanisms for political parties has been weak. See Martin Chautari, February 2012, "Political Finance and the Public Right," Briefing Paper No. 6.

50 A female candidate of FSP–Nepal in Nawalparasi district, for instance, told observers that her main method of campaigning was through microfinance groups for women, as she lacked the resources for a door-to-door campaign or mass gatherings.

for transparency in campaign financing and for equitable campaign opportunities. Such measures could include the declaration of income by parties and candidates, more realistic campaign spending limits, publication of campaign accounts, and increased enforcement powers for the ECN.

The Media

International obligations related to the media and elections included freedom of expression and opinion and the right to seek, receive, and impart information through a range of media.[51]

Several provisions of the ECN's code of conduct regulated the activities of mass media over the course of the electoral cycle. One provision stated that the transmission of news should be unbiased and based on facts, without giving special treatment to any one candidate or party.[52] The code of conduct further required media outlets to respect the legal 48-hour silence period. To monitor adherence, the ECN established a media-monitoring center. It also provided training to district-level journalists on how to report on election-related matters. While The Carter Center did not conduct comprehensive media-monitoring, it offers the following observations on the overall media framework.

Election-related news received broad coverage on television and radio and in the print media. Television and local FM radio stations frequently hosted candidate debates and question-and-answer sessions with the public, and a number of media outlets carried paid advertisements for political parties. Observers noted that local FM radio stations, in particular, were an important source of information in rural and remote areas where newspaper distribution is limited or delayed and the illiteracy rate is higher.[53] The ECN also made extensive use of electronic media for their voter outreach program.

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 noted that a number of media outlets—both at the district and national levels—were either directly owned, sponsored by, or perceived to be affiliated with a particular political party or candidate. 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.

Clear and fair regulation of campaign finance is an important means for the state to balance the rights of citizens to participate in public affairs and the need for equity among candidates and parties.

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.

With a few exceptions, The Carter Center noted that journalists were able to work freely. In some districts in the eastern region, considered to be strongholds of the FLSC, freedom of the press had notably increased compared to 2008. In Rukum and Rautahat, journalists reportedly received threats from particular parties or candidates after "unfavorable" reporting.

In the run-up to the election, the national media appear to have intentionally downplayed the impact of the transportation strike called by poll-boycotting parties, ostensibly not to polarize the situation any further.

Overall, while the Center did not conduct a comprehensive monitoring of the media, the

51 ICCPR, Article 19. UNHRC, General Comment 25, paragraph 25

52 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.

53 Although some of the most remote areas lack FM coverage.

mission found that the media were generally able to work in a free environment, allowing voters to have access to competing points of view. However, in some cases, details of incidents reported in the press were not sufficiently verified.

Election-Related Violence

The right to security of the person includes the protection of voters, candidates, polling officials, and observers from coercion, intimidation, and violence.[54]

Observers noted that the security situation in the districts visited was relatively calm compared to the 2008 election, when 50 individuals were killed in political and election-related violence, 1,286 individuals were injured, and 116 kidnapped. Improvements in the pre-electoral environment compared to 2008 may be attributed, in part, to a changed political scene and the development of the peace process but also to a well-coordinated security plan that the government put in place.[55]

Overall, while the Center did not conduct a comprehensive monitoring of the media, the mission found that the media were generally able to work in a free environment, allowing voters to have access to competing points of view.

The Carter Center noted marked improvements in certain areas, among them the security environment in the central and eastern Tarai, fewer restrictions on political space in former Maoist strongholds, and the ability of so-called "pro-monarchist" parties like RPP and RPP–Nepal to campaign freely across the country.

The absence of any significant activity by armed groups along the open southern border with India was particularly noteworthy. Although armed groups' activities had been in decline for some time, a July 2013 announcement by 12 armed outfits of their intention to unite in order to foil the November election fueled fears of an increase in violence. Unlike in 2008, the Center heard little evidence of political party youth wings being involved in intimidation or violent acts. Nevertheless, there were a number of election-related incidents including clashes between supporters of rival parties and violent activities of poll-boycotting parties.

Interparty Clashes

In district visits prior to the Dashain festival period in the second week of October, Carter Center observers noted that the security environment was relatively calm compared to the 2008 election. In some instances, intraparty rivalry spilled over onto the streets, as unsuccessful contenders for first-past-the-post nominations staged sit-ins in front of party offices or padlocked the premises on Oct. 3.

With the intensification of campaigning in the second half of October, reports of both minor altercations and more serious clashes increased. These included acts of vandalism, obstructions of campaign activities, fights, and serious assaults. Notable examples included a clash between activists of the TMDP and the MPRF–Democratic in Sarlahi district on Oct. 17, leaving 17 injured with five in critical condition; a clash between UCPN–Maoist and Nepali Congress in Rukum district on Oct. 22, leaving at least three injured; a confrontation between UCPN–Maoist and the Madhesi People's Rights Forum–Nepal (MPRF–Nepal) in Rautahat district on Nov. 14, reportedly involving the use of firearms and grenades; and an attack by UCPN–Maoist supporters on a CPN–UML

54 ICCPR, Articles 9 and 25; UNHRC, General Comment 25: "People entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind."

55 In total, the government deployed 49,000 Nepal Police; 32,019 APF; 61,995 Nepali Army; 45,000 temporary police; and approximately 1,850 National Investigation Department personnel under the integrated security plan. Each polling station was assessed according to security criteria as highly sensitive, sensitive, or normal.

campaign event in Baitadi district on Nov. 15, injuring at least six.

Clashes between supporters of different parties, while sporadic, were nevertheless spread across the country, particularly in constituencies with a history of electoral violence or where the electoral race was expected to be highly competitive. Such incidents peaked in the week before Nov. 13.

On Oct. 4, Mohammad Alam, a candidate of the CPN–UML in Bara constituency 4 and a prominent Muslim leader, was shot and subsequently died from his injuries. Although it is unclear whether the killing was directly related to the election, observers noted that the shooting, which took place one day after candidate nomination, created considerable apprehension among candidates in the neighboring Tarai districts and among Muslim candidates in particular. There were at least two more murders with a suspected political or election-related background, although not of candidates.[56]

Incidents Involving Poll-Boycotting Parties

The activities of boycotting parties also had an effect on the campaign environment. Despite assurances from the CPN–Maoist that their boycott campaign would remain peaceful, both the CPN–Maoist and the FDNF-affiliated FLSC increasingly resorted to forceful obstruction and aggressive tactics, particularly in the eastern region. In early October, several incidents took place involving the destruction or vandalism of ECN voter education materials. In some instances, CPN–Maoist cadres in remote areas also seized and destroyed campaign materials of political parties. In one incident, a female UCPN–Maoist cadre sustained severe burn injuries in Nuwakot on Oct. 23 as she tried to retrieve party campaign materials that had been set ablaze.

From mid-October onward, an increasing number of arson attacks were carried out on parked vehicles used by candidates on the campaign trail. By late October, CPN–Maoist had shifted their focus to the obstruction of campaign activities of candidates, in particular those of senior leaders of major parties. The most frequently used tactic was the imposition of regional strikes ahead of leaders' campaign visits, often targeting the UCPN–Maoist chairman. However, as observers in the far-western and eastern regions noted, these strikes were only partially enforced, in part because the police increasingly resorted to pre-emptive arrests.[57]

The FDNF-affiliated FLSC declared a ban on candidates entering their constituencies in nine districts of the eastern region from Oct. 19 onward. FDNF-affiliated FLSC and CPN–Maoist cadres attacked and temporarily disrupted some campaign activities in districts including Panchthar, Taplejung, Ilam, and Dhankuta, but the impact was in each case isolated and short-lived.[58]

Overall, election violence decreased compared to 2008 and, most likely, also compared to previous elections.

Poll-opposing parties called for a general strike from Nov. 11–20. After the first day of the general strike, it was converted into a transportation strike. With the arrest of a number of strike enforcers, and due to the strike's waning impact, the 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 were detected and rendered inoperable by security forces, but there were some reports of injuries, including four Nepali Congress members being injured by shrapnel when a bomb went off in Makwanpur district on Nov. 13. Buses and trucks that defied

56 On Nov. 5, the body of a Nepali Congress youth wing member in Dailekh district was found; he was apparently beaten to death. Police arrested four supporters of a rival party in connection with the incident. The body of a Nepal Sadbhawana Party supporter was found in Mahottari district on Nov. 6 with multiple knife injuries. It was not clear if the killing was politically motivated.

57 Pre-emptive police action was cited as causing the cancellation of an FDNF-affiliated FLSC procession and "show of strength" planned in Jhapa and Morang for Oct. 24. Organizers had announced their intention to gather 10,000 supporters from Morang and Jhapa districts.

58 Campaigning by all parties was prevented outright only in Lungrupa Village Development Committee of Panchthar and Thawang VDC of Rolpa, in both cases by CPN–Maoist.

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A Nepali boy greets President Carter outside a polling station on Nov. 19 in Kathmandu.

the strike were targeted for attacks and arson. 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 on Nov. 12, injuring a child. A truck driver injured in a petrol bomb attack in Bara district on Nov. 14 died of his injuries three days later. With many migrant citizens returning to their home districts to vote, such incidents were intended to instill fear and decrease voter turnout.

Despite these incidents, overall, election violence decreased compared to 2008 and, most likely, also compared to previous elections. The Carter Center recommends a thorough review of the factors that led to this comparatively peaceful environment so as to build on them for future election violence mitigation strategies.

Citizen Observation

The transparency provided by election observation is an important component of electoral integrity. The right of citizens to participate in the public affairs of their country, including through election observation, is a key international obligation for democratic elections.[59]

Election observation is provided for by the interim constitution and by legislation. As such, 31,654 domestic (citizen) observers from 46 organizations and 249 international observers from three organizations were accredited. In practice, citizen observers were able to observe most aspects of the process. However, legislation does not clearly define the rights of observers and opens the possibility for election officials to deny access to

59 ICCPR, Article 25(a); UNHRC, General Comment 25, paragraphs 8 and 20

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 by either 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 any given time. Moreover, the law does not require returning officers to allow observers to be present in the counting centers 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 rules 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 were more stringent than the requirements to become a voter and, therefore, impinged 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, which historically have lower levels of education.

Following a lawsuit filed with the Supreme Court by the Election Observation Committee, a domestic observer group, the committee decided in October to modify another restrictive provision that required observers to observe outside their home constituency. The provision was changed to apply only to the polling center where an observer was registered on the voter roll. This change was commended by The Carter Center.

Election observation is an important aspect of building and maintaining public confidence in the integrity of the electoral process. Nepal largely respected its international obligation to provide for independent observation. However, some improvements are needed to make all steps of the process fully open to observers. The rights of observers should be more clearly defined in legislation to ensure transparency in all aspects of the electoral process, and undue restrictions on observers, including some educational requirements, should be eliminated.

Electoral Dispute Resolution

Efficient electoral dispute mechanisms, including the provision of a fair and public hearing before a tribunal, are essential to ensure that effective remedies are available to redress violations of fundamental rights related to the electoral process.[60] Therefore, effective dispute resolution mechanisms are an integral part of ensuring that the will of the people is upheld during an electoral process.

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 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 how to file complaints or that they did not have confidence in the process.

Between July 23 and Nov. 17, the ECN received 187 complaints regarding violations of the code of conduct. In most cases, the ECN's response was to issue warnings or to request parties and candidates not to repeat the violation. The commission did not impose any fines, although it had 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 actions in response to these violations.

The ECN received seven complaints about candidates not meeting legal qualifications, and two of these were upheld. In one case, a

60 ICCPR, Article 2(3): "Each state party to the present covenant undertakes: (a) to ensure that any person whose rights or freedoms are herein recognized as violated shall have an effective remedy, notwithstanding that the violation has been committed by people acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies when granted." UNHRC, General Comment 32, paragraph 25: "The motion of fair trial includes the guarantee of a fair and public hearing."

constituent assembly member elected in 2008 was disqualified as a candidate under a new legal provision that barred convicted murderers who have been sentenced to life in prison. Another candidate was disqualified for holding an official position legally incompatible with candidacy.[61] The remaining complaints were rejected for lack of evidence. The law does not provide for the appeal of commission decisions regarding candidacy. However, under the interim constitution, any citizen may apply directly to the Supreme Court regarding alleged denial of rights. This right provides a venue for judicial review of decisions but does not necessarily provide for a timely remedy.

A woman casts her vote in Kirtipur.

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The Supreme Court heard several cases regarding the pre-election day period. These concerned the rights of domestic citizen observers, the constitutionality of the chief justice of the Supreme Court simultaneously 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. The Supreme Court did not take any final decisions prior to election day, although it did issue a stay order against the 10-day strike. On Jan. 5, the Supreme Court directed the government to formulate appropriate laws for the provision of a "right to reject" (or "vote against all") in any future election, although the court rejected the demand filed by the petitioner in October to declare the ECN's decision to print ballot papers without such a provision for this election as null and void.

61 As a result of an ECN investigation, a first-past-the-post candidate in Lamjung district also was disqualified the day before election for holding a position incompatible with his candidacy (postal employee).

Election Day

The quality of voting operations on election day and the respect for fundamental electoral rights are crucial in determining the extent to which a country has upheld its obligations to conduct democratic elections. In this respect, core obligations under international law are that elections shall be held by the secret ballot, free of coercion, under the principle of "one person, one vote."[62] Collectively, these are recognized as a means of ensuring that the will of the people is expressed freely, that a cast ballot cannot be connected with a voter to avoid intimidation and political retribution, and that each ballot cast has the same value as every other ballot. Nepal appears to have largely met these important obligations in the Nov. 19 election.

Key aspects of the election rules in Nepal that related to these obligations were that voters were required to show a photo ID in order to prevent voter impersonation and that voters had their thumbs marked with indelible ink to prevent multiple voting. Voter identity was also visually checked against the photograph of each voter printed in the voter lists. By law, polling officials must strictly ensure secrecy of the vote, although people needing and requesting assistance could have someone help them.

The basic unit of the voting process in Nepal is the polling center. Voting took place at 18,438 polling centers located in 10,013 locations. There were an additional 337 temporary polling centers for security forces and government officials deployed for the election. Each polling center could have up to 900 voters and was staffed by a polling officer, an assistant polling officer, and up to nine staff, depending on the number of voters on the voter list. There were also additional security personnel responsible for line management, both inside and outside the polling center. Most polling centers were located outside and relied on natural light; therefore, all polling operations took place in daylight hours. Polling centers were required to remain open from 7 a.m. to 5 p.m.

In this respect, core obligations under international law are that elections shall be held by the secret ballot, free of coercion, under the principle of "one person, one vote."

Following the close of voting, all materials were to be securely packaged and transported in the presence of party/candidate agents and observers to a centrally located counting center

62 UDHR, Article 21(3); ICCPR, Article 25(b); UNHRC, General Comment 25, paragraph 20: "...States should take measures to guarantee the requirement of the secrecy of the vote during elections .... This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted and from any unlawful or arbitrary interference with the voting process. UNHRC, General Comment 25, paragraph 21: "...The principle of one person, one vote, must apply...."

in the constituency. Counting centers are used, in part, due to the lack of electricity at many polling stations, but they also centralize security during the counting process. Counting procedures, which mix ballots from different polling centers, are designed to prevent potential intimidation or retribution against voters, especially in rural areas. The use of counting centers has the drawback of requiring the transport of unopened ballot boxes at night, often over long distances and mountainous terrain, making observation difficult.

Most polling centers adhered to procedures during the voting process, with Carter Center observers assessing the voting process positively in 90 percent of observed polling centers.

The Carter Center observed opening, polling, and closing procedures at 336 polling centers in 31 of Nepal's 75 districts. In accordance with the Center's observation methodology, observers were deployed in teams of two or more, with each team jointly submitting detailed checklists for each visit via electronic handheld devices when feasible. The observations detailed in each checklist were aggregated at the central level. The Center deployed observer teams to each of Nepal's developmental and geographic regions and to a diverse range of districts.

Opening

Polling centers were supposed to open at 7 a.m., with all necessary opening procedures completed beforehand. These procedures included setting up the polling center and filling out protocols to verify that all materials had been received —including the voter list, ballots, ballot boxes, ballot box seals, ink and stamps for marking the ballots, indelible ink for marking voters' fingers, secrecy screens, and other materials. Each polling center was provided with two sets of ballots—blue ballots for the first-past-the-post election and red ballots for the proportional representation election—and two separate ballot boxes.

Carter Center observers reported that only 10 of the 31 observed polling centers opened on time, but that most of the remainder had opened by 7:30 a.m. At polling centers visited later in the day, 80 percent reported having opened on time. In most cases, delays in opening appeared to have been caused by the late arrival of party agents, as polling officers were reluctant to start in their absence. Despite these delays, almost all observer teams assessed opening procedures positively. The observed polling centers had received all necessary materials, and polling staff were present.

Polling

Despite the boycott and threats of violence, voters turned out in relatively high numbers in most parts of the country. According to the ECN, voter turnout nationwide stood at 78.34 percent for the first-past-the-post races.[63]

Most polling centers adhered to procedures during the voting process, with Carter Center observers assessing the voting process positively in 90 percent of observed polling centers. Overall, observers based their positive assessments on the peaceful environment, the smooth conduct of voting, the uniform practice of checking voter identity, the impartiality of polling staff, and receipt of necessary materials in almost every polling center. Agents representing various parties and candidates were present at almost all polling stations visited. In the polling centers visited, approximately one-third of the polling staff were women, well below the ECN's target of 50 percent.

The new voter lists with photographs contributed to the overall good conduct of polling procedures and represented a major improvement in the process since the 2008 election. The lists were alphabetized by first name, and polling staff generally did not have difficulty in locating voters on the list. Party agents were often seated behind the polling staff as voter identity was being verified,

63 The lowest turnout was in Baitadi constituency 2 with 67.3 percent; the highest was in Dolpa constituency 1 with 89.5 percent.

and agents had a clear view of the process. An additional benefit of the new voter lists was that parties, for the most part, did not set up booths outside polling centers to assist voters in finding their names on the list. This was a significant issue in 2008.[64] Party booths were observed at only 14 percent of visited polling centers, and there were only three cases in which the party personnel at these booths were campaigning or pressuring voters.

Nevertheless, some problems were observed during the voting process. The most common issue was that in 20 percent of observed polling centers, indelible ink was applied to the wrong thumb or was not applied at all. This concern did not directly affect the conduct of voting, but it undermined safeguards against multiple voting. In 7 percent of observations, unauthorized people were present in the polling center, and 7 percent of the observed polling centers were reported to be overcrowded.

The secrecy of the vote was not fully ensured in 7 percent of polling centers visited. Lack of secrecy was often due to the inadequate layout of polling centers but, at times, party agents or security personnel were situated where they could see voters marking their ballots. In one polling center in Siraha district, police and polling staff were observed marking and folding ballots for voters. In some instances, visually impaired voters were assisted improperly.

Voters were required to sign ballot counterfoils before receiving a ballot or to mark them with a thumbprint if unable to write. In 23 percent of visited polling centers, the thumbs of voters marked in this way were not consistently cleaned of remaining ink. Observers also noted that in some polling centers, all voters were required to mark ballot counterfoils with a thumbprint, even if they were able to write. Possibly, this contributed to the high rates of invalid ballots in some constituencies, since observers noted that during counting some ballots were invalidated due to being marked by a fingerprint rather than by the swastika stamp as provided by law.

The voting process was generally calm and free from disruption in almost all observed polling centers. However, there were incidents in other locations. According to the ECN, voting was cancelled in one polling location in Jumla district due to disruption by CPN–Maoist cadres, and a re-vote was held on Nov. 22. After a discrepancy in the reconciliation of ballot papers in one polling location in Saptari constituency 2, a re-vote was held there on Nov. 23. In Dailekh district, a clash and disruption at one polling location on the morning of election day led to immediate repolling. Voting was temporarily disrupted in one polling center each in constituencies in Rautahat, Gorkha, Parbat, and Humla districts.

In at least 23 constituencies, political parties filed complaints with the ECN that there were instances of "booth capture," which refers to a situation in which supporters of one party/candidate take over the process and do not allow supporters of other parties to vote (or oblige voters to vote for a particular party or candidate). In at least two constituencies, Carter Center observers found credible indications after election day that booth capture did, in fact, take place.

The voting process was generally calm and free from disruption in almost all observed polling centers.

Although the distribution of voter ID cards was not supposed to take place on election day, observers found that they were being distributed at 11 percent of visited polling centers. This was usually being done by polling staff, 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, however, observers found that almost all voters who came to vote were on the voter roll.

64 In the 2008 election, the presence of party booths contributed to overcrowding and to suspicions that multiple voting or voting by ineligible people was taking place.

A poll worker checks a voter's ID card and prepares a ballot.

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There are gaps in the polling procedures as outlined in the election regulations. There is no explicit requirement to check voters for indelible ink before providing them with ballots, despite a requirement to apply ink. This could easily be done by a polling staff member at the entrance to the polling station. There is also no provision for spoiled ballots, meaning that voters who realize that they have made a mistake in stamping a ballot are unable to cast another ballot for that race.

Finally, ballots do not have the names of parties and candidates competing in the election; only their assigned symbols are used. As no posters were available at polling centers so voters could confirm symbols assigned to candidates and parties, there was a potential for voter confusion. Although the use of symbols is an important measure to help illiterate voters and speakers of minority languages vote independently, this use would not prevent including the names of parties and candidates on the ballot as well.

Closing and Transport of Ballots to Counting Centers

Voting ended at 5 p.m., although voters waiting in the queue at closing time were allowed to vote. The closing process was assessed positively in all but one of the 34 polling centers observed. Procedures were followed in most instances, although there was confusion at a few polling centers about how materials should be packed. In two instances, the unused ballots were not packed securely. Party agents were often actively involved in the packing process and, in two cases, were interfering. In a polling center in Kathmandu, police took over the job of packing materials when the polling officer did not appear to know the procedures.

When the closing process had finished, the sealed ballot boxes and other materials were taken to the constituency counting center. In some cases, they were taken directly from the polling center to the counting center. In other cases,

security plans specified that the materials were to be taken to a police station first and that the materials from several polling centers would be transported together. Party agents and observers were entitled to accompany the materials and did so in at least 24 of the observed polling centers.

The storage of ballot boxes at police stations, even though observers were present, reduced transparency and could undermine perceptions of the integrity of the process. While no concerns were raised with Carter Center observers regarding the transport of ballot boxes and materials, UCPN–Maoist subsequently claimed that large-scale fraud had taken place during the transport of ballot boxes. In Rupandehi district, police and UCPN–Maoist cadres had a minor altercation over the question of access of party agents to ballot boxes during storage of the boxes.

Security

In view of the threat of boycotting parties to disrupt the polls, a heavy security presence was deployed, with police forces present at almost all polling centers visited by observers. Election day itself was largely peaceful: Carter Center observers assessed the environment at polling locations and in the immediate vicinity as calm in almost all visits. However, the ECN did report several clashes among political party supporters and a number of security incidents apparently caused by boycotting parties, including a bomb that seriously injured a child in Kathmandu.

In one constituency in Kapilvastu district, the movement of one observer team was repeatedly delayed due to the discovery of a number of explosive devices at polling centers and on the road. This team also reported that residents of one village had been threatened by CPN–Maoist cadres and that turnout for this village was much lower than in the surrounding area. The ECN does not compile voter turnout figures below the constituency level, but postelection day observation indicated that, at least in some instances, voter intimidation led to drastically reduced turnout at some polling locations in a few other districts. For instance, in two remote village development communities in Panchthar, threats and pressure from poll-opposing parties resulted in an exceptionally low turnout (less than 2 percent), and observers noted that two weeks after the election, citizens of one of the communities were still fearful of reprisals against those who had managed to vote. In Rolpa, one polling location saw no votes cast under the first-past-the-post system after a sustained boycott campaign by the CPN–Maoist that included door-to-door visits, public threats, and intimidation before the election as well as the manhandling and temporary detention of known supporters of the UCPN–Maoist in a jungle area until voting closed.

In view of the threat of boycotting parties to disrupt the polls, a heavy security presence was deployed, with police forces present at almost all polling centers visited by observers.

Access for Citizen Observation Groups

Transparency is an important element in ensuring the integrity of election-day processes, and observation by domestic citizen groups is a well-established means of providing independent scrutiny.[65] Citizen observers were generally able to access polling centers. During voting, they were present at 74 percent of polling stations visited by Carter Center observers, although often only one or two were present. The group most frequently present in polling centers visited was the National Election Observation Committee, followed by DEW–Nepal. However, there were problems with

65 UNHRC, General Comment 25, paragraph 20: "...There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes...."

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A woman has her finger inked before casting her ballot on election day.

respect to observer access in 5 percent of polling centers observed by The Carter Center, where party agents or domestic observers were restricted in their work, usually because they were denied entry to polling centers or were asked to leave by the polling officer. Such denial of access, though sporadic, was observed during all phases of the election day process.

For future elections, Nepal should ensure that election observers—especially citizen observers but also international observers—have adequate access to all key processes of the election, including signature verification during party registration, ballot printing, polling, and counting. Rights of observers should be specified explicitly in rules and regulations.

Postelection Developments

Vote Counting and Tabulation

The accurate counting of votes plays an indispensable role in ensuring that the electoral process is genuinely democratic and reflects the will of the voters. International obligations require that the vote-counting process be fair, impartial, and transparent.[66] These obligations were largely met during the counting process, although counting procedures determined by law were not uniformly followed.

In accordance with the law, all ballots cast in a constituency are to be counted at the counting center for that constituency. After the ballot boxes from all polling centers are brought to the counting center, the serial numbers and seal numbers of the ballot boxes and other materials should be recorded and compared with the polling center record. Each box should be opened in the presence of party agents and the ballots counted face down in order to establish the number of ballots in the box. Subsequently, ballots should be mixed with ballots from other polling centers and then separated into piles for each party or candidate as well as 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 certified by the returning officers and made public. A certificate is presented to the winning first-past-the-post candidate, and the results of the proportional representation election are transmitted electronically to the ECN for nationwide tabulation.

Counting took several days in most constituencies, and the start of counting was often delayed. Observers noted that not all counts proceeded according to the law and ECN rules. In 11 of the 34 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.

The accurate counting of votes plays an indispensable role in ensuring that the electoral process is genuinely democratic and reflects the will of the voters.

In five cases, ballots were counted by the polling station and were not mixed together as required by law. This appeared to be done at the insistence of political party agents.

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 of proportional representation ballots. To speed up the process during the proportional representation counting, ballots for different parties often were counted simultaneously. This appeared

66 UDHR, Article 21; ICCPR, Article 25(b); UNHRC, General Comment 25, paragraph 20

to be acceptable to officials and parties alike, even though party agents could not observe the entire process as a result. These inconsistencies did not appear to impact the integrity of the counting or the confidence of stakeholders present, particularly when the changes were a simple matter of expediency. Nevertheless, it perpetuated the practice of sidelining the law by political consensus.

In a few cases, observers noted a failure to accurately record ballot box seal numbers in the counting center. Given concerns raised by some parties alleging irregularities with regard to the security and integrity of the transport of ballot boxes after election day, 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. Although ballot validity is covered by law and ECN directive, the ECN issued a circular to returning officers on election day, mostly to clarify the determination of ballot validity. As long as the intent of the voter was reasonably clear, returning officers were instructed to count as valid a) ballots signed by polling officers with nonblack ink; b) those slightly torn or with the counterfoil still attached; c) those where ink from a thumbprint or swastika stamp had transferred accidentally onto the ballot.

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

By far, the most common reason for invalidating a ballot was the presence of stamps of two different symbols on the same ballot. Presumably, these voters knew that 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 proportional representation system, despite the larger ballot paper. Other commonly noted reasons for invalid votes were the swastika stamp not being placed properly on the symbol, a ballot not stamped with the swastika, a ballot not signed by a polling officer, or a fingerprint or other mark used instead of the swastika stamp. At times, the rules were inconsistently applied. In general, however,

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A polling worker secures a ballot box lid before the start of polling.

procedures were followed, and inconsistencies appeared to be unintentional.

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.[67] Moreover, the state is required to take necessary steps to help realize this right and, therefore, access to the counting process should be fully defined in law.[68]

The law specifies that returning officers "may allow" party agents, observers, and others to be present during counting, but it does not require them to do so. The majority of Carter Center observers reported that they were able to adequately observe the counting process, despite uncertainty from returning officers in several constituencies. In a few counting centers, Center observers were initially told that they would not be allowed inside for more than a few minutes at a time but were then allowed to stay throughout the process. Notable exceptions were in Banke district, where the Center's observers were only allowed to stay for one hour; Kathmandu, where observers only were allowed in for short periods at a time; and Baitadi district, where election officials ordered observers to leave at around 3 a.m. on the morning of Nov. 21.

Domestic citizen observers appeared to have been granted access to the counting centers in most cases and were present during the counts. However, Carter Center observers noted on several occasions that returning officers asked citizen observers to leave the counting center after a short period of time. This is not in accordance with the law, which allows returning officers to expel those present only if they obstruct the counting process.[69]

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 entire process. However, the number of party agents significantly decreased as the counting went on, with only a few remaining toward the end of the proportional representation count.

As preliminary results in some constituencies became known, UCPN–Maoist 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 that alleged fraud during the transfer of ballots be investigated. All Carter Center observers present in counting centers reported that the party's agents left without undue disruption. Some UCPN–Maoist party agents returned intermittently to counting centers on later days but did not sign the forms required to acknowledge the process.[70]

Domestic citizen observers appeared to have been granted access to the counting centers in most cases and were present during the counts.

For future elections, Nepal should ensure that the electoral regulations provide explicit language regarding the rights for election observers, especially citizen observers, to observe all aspects of ballot transport, vote tabulation, and counting.

All-Party Meetings

According to the ECN's directive on vote counting, returning officers should inform political parties and candidates about the procedures related to vote counting and make any agreements

67 UNHRC, General Comment 25, paragraph 20: "The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes."

68 ICCPR, Article 2(2) says that states must "adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present covenant."

69 Election to the Members of the Constituent Assembly Ordinance, Article 50(2)

70 In constituencies 6 and 7 of Morang district, two political parties, MPRF–Nepal and MPRF–Democratic, left the counting centers, alleging fraud. Both later rejoined the counting process.

prior to the beginning of counting. This sharing of information and making of agreements are usually conducted in an all-party meeting. The stated purpose of the meetings was for returning officers to outline the formal counting process and determine validity in the eyes of party agents, make necessary agreements on arrangements, and address possible grievances and questions arising from the election process.

Overall, the Center found that these meetings were useful in facilitating a shared understanding of the counting process. Optimally, all-party meetings should result in a shared understanding of the rules and regulations 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.

Observers were able to attend meetings on all but a very few occasions (i.e., Parsa and Chitwan districts). Information varied from district to district regarding observers' rights to enter and observe meetings. In general, observers should have full access to any meetings involving election officials during the electoral process.

Election Results

Counting of first-past-the-post ballots concluded on Nov. 25, and winning candidates were issued certificates on the spot. The Nepali Congress emerged as the biggest winner in the first-past-the-post race, winning 105 of 240 seats, closely followed by CPN–UML and UCPN–Maoist with 91 and 26 seats, respectively.

Counting for the proportional representation system was finalized on Nov. 28. On Dec. 3, the ECN notified the 30 parties that won seats under this system and asked them to submit the names of those candidates to be selected from their closed lists. The ECN extended this deadline three times—first to Dec. 18, then Dec. 25, and finally to Dec. 30—in response to the requests of political parties to give them more time for internal deliberations and for negotiations with UCPN–Maoist to convince them to take part in the process. The gridlock was resolved on Dec. 24 with the signing of a four-point agreement among eight political parties in which the UCPN–Maoist and various Madhes-based parties committed to take part in the constituent assembly process.[71]

All parties except MPRF–Nepal and FSP–Nepal submitted the selected names from the closed list by the end of the extended deadline on Dec. 30. The commission accepted the submissions of these two parties shortly thereafter. The ECN asked the Rashtriya Janamukti party, which had won two seats, to amend its selection in order to meet the diversity criteria. On Jan. 2, 2014, the ECN submitted the official results to the president, and they were published subsequently in the Nepal Gazette. Certificates for members of the constituent assembly elected through the proportional representation system were given by the ECN to the respective parties to distribute.

Given the low number of women candidates (only 10) elected in the first-past-the-post system, the ECN requested that political parties ensure that submission from their closed lists under the proportional representation system include at least 50 percent women candidates. However, it had no legal means to enforce this request, given that the law allows a 10 percent variation in the prescribed proportional representation quotas.

In the combined results from both the first-past-the-post and proportional representation systems, the NC (with 196 seats) and CPN–UML (with 175 seats) together were just short of the two-thirds majority required for constitutional changes. The UCPN–Maoist came in third with 80 seats and lost its position as the largest party in the constituent assembly. RPP–Nepal, the only national party calling for a declaration of a Hindu state and a referendum on constitutional monarchy, did not win a single seat under

71 It was agreed to 1) form a parliamentary commission to look into allegations of electoral fraud; 2) form a commission comprised of "top leaders of major political parties in order to assist in the remaining tasks of the peace process and constitution drafting"; 3) prepare a constitution within six months and promulgate within a year in line with the spirit of the 12-point agreement the CPA and the interim constitution; and 4) establish a Commission for Investigation of Disappeared People and a Commission of Truth and Reconciliation as soon as possible.

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Poll workers seal a ballot box for transfer to a counting center. A cloth bag is put over the ballot box, which is then sewn shut.

first-past-the-post. However, it emerged as the fourth biggest party under the proportional representation system (and in the combined results) with 24 seats, a significant increase from the four seats that it won in 2008.

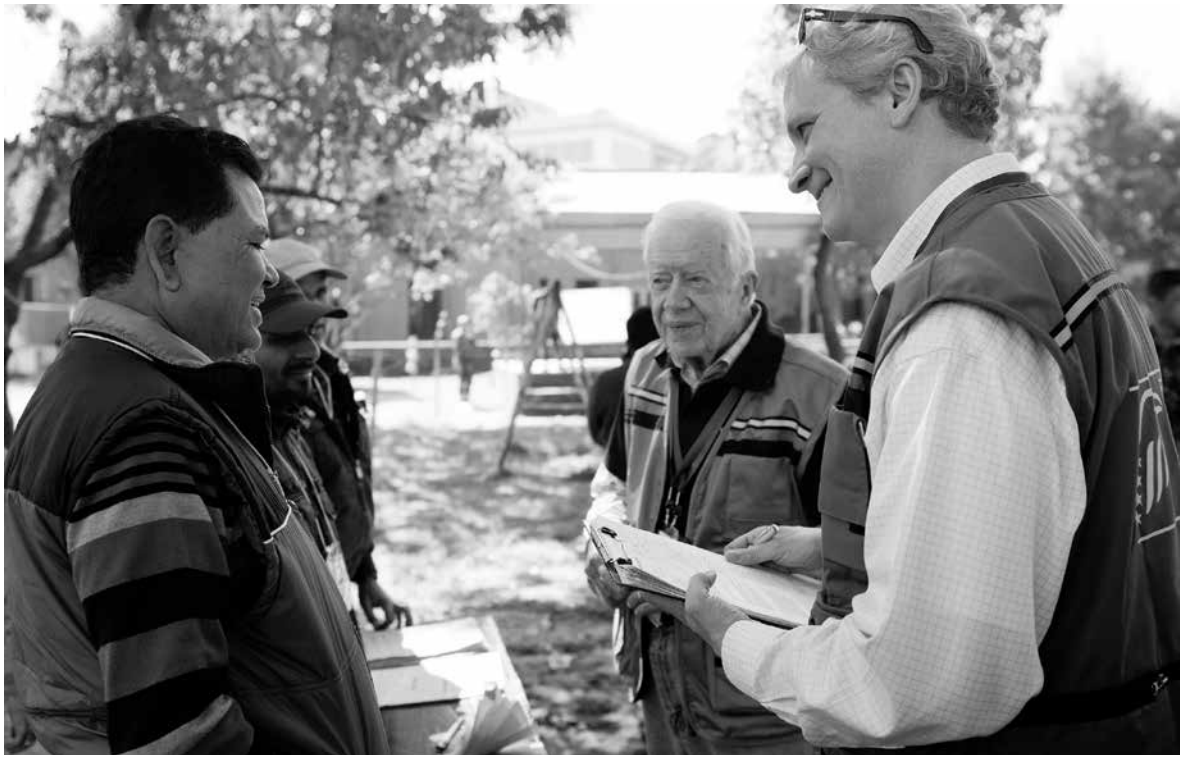
Madhes-based parties, which in 2008 won a combined 83 seats, were weakened by splits and emerged with only 50 members in the constituent assembly, although their share in the popular vote decreased only marginally. (In 2008, four Madhes-based parties contested; in 2013, there were 13.) Four members of the constituent assembly were elected from two constituencies each, which necessitated by-elections in four constituencies.

Thanks to the proportional representation quota system, the constituent assembly elected in 2013 is the most inclusive legislative body in South Asia, but it is marginally less so than the constituent assembly elected in 2008. In terms of gender distribution, 30 percent of the elected constituent assembly members are women (172 women out of 575 elected deputies), compared to the 191 female members (of which 30 were elected under the first-past-the-post system) during the first constituent assembly.

Regarding caste and ethnicity, 7 percent of the 575 elected members are Dalit, 34 percent Janajati, 18 percent Madhesi, and 41 percent from the category Khas Aryan and other.[72] Particularly, the decline in the representation of marginalized groups or women among both candidates and winners in first-past-the-post races, where no legal requirement is set, underlines the continuing need for measures of affirmative action as well as a democratization of internal party structures to achieve the goal of social inclusion.

The aftermath of the election has also revealed some of the key weaknesses of the unranked list element of the proportional representation system. One of the main reasons for the repeated extension of the deadline for submission of the names selected from the closed lists was the difficulty parties faced in selecting their candidates. In

72 According to a calculation done by IFES. Figures can differ slightly as not all categories are clearly defined by law.



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Former U.S. President Jimmy Carter and Carter Center Field Office Director David Hamilton speak with polling station officials on election day in Kathmandu.

several parties, the selection process and the manner in which it was handled by the respective leadership created considerable internal discontent. In the case of RPP–Nepal and UCPN–Maoist, dissatisfaction played out publicly in the media, and the dissenting faction of the RPP–Nepal submitted a rival list of members selected to the ECN and filed a case at the Constituent Assembly Court.

The Carter Center regrets that a number of parties used the process of selection of candidates to fill constituent assembly seats in an attempt to gain leverage in political negotiations by threatening not to submit the names to the ECN and walk out of the constituent assembly process, should their demands not be met. For future elections, the Center recommends that if proportional lists are used, parties should not be allowed to choose after election day those candidates who receive mandates.

In addition, the Center recommends steps be taken to ensure that women's quota provisions for candidates are fulfilled and to consider specifying target numbers of women and marginalized groups elected to the constituent assembly beyond the proportional representation system.

In its postelection statement released on Dec. 19, 2013, The Carter Center noted that it found the counting process and election result for Nepal's 2013 constituent assembly election credible and that procedural inconsistencies had not affected the integrity of the counting or the confidence of stakeholders present. The Center also urged the respective parties to resolve disputes by legal peaceful means.[73]

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 electoral complaints.[74] The law allows

73 See Appendix E for the full text of the statement.

74 UNHRC, General Comment 25, paragraph 20: "There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes."

complaints about election day violations to be filed both with the ECN and the Constituent Assembly Court, a constitutional body that is only composed for the constituent assembly election. The court has specific jurisdiction over certain types of complaints, namely qualification of elected deputies and cancellation of elections and electoral offenses, but this overlaps with the ECN's jurisdiction. The lack of clarity in the law can raise uncertainty as to which body to address, although bringing a complaint to the ECN does not preclude bringing it to the court.

On election day, different political parties filed 28 complaints with the ECN. Of these, 25 complaints outlined 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 ballots. The ECN did not investigate but limited itself to asking election officials if they could corroborate the allegations. In only two cases were reports of irregularities corroborated by reports from election officials, and repolling was scheduled for those two polling centers. For remaining complaints, the ECN directed returning officers to continue counting, after short inquiries failed to substantiate the claims.

The ECN did not conduct an independent inquiry into these allegations, nor did it provide written decisions or the grounds for its decisions to the complainants. The ECN encouraged complainants to petition the Constituent Assembly Court if they were not satisfied with the ECN's decision.

To date, 22 cases have been filed at the Constituent Assembly Court—19 regarding first-past-the-post races and three concerning the proportional representation component of the election—and, in some cases, the plaintiffs have approached citizen observer groups for their observation data to bolster their case. At the time of writing, hearings were ongoing at the Constituent Assembly Court, but no final decisions had been made. In one case, the court issued a stay order to keep one provisionally elected member from taking his seat. There is no deadline for resolution of cases, and current cases are likely to extend well beyond the inauguration of the constituent assembly. In an electoral context, such lengthy court proceedings may undermine the right to an effective and timely remedy.

No cases were filed at the Constituent Assembly Court regarding the UCPN–Maoist and Madhes-based parties' allegations of systematic vote-rigging during the transport of ballot boxes to counting centers, as they disputed the court's jurisdiction in this case. Instead, they demanded an inquiry by an independent commission.

Nepal has an international obligation to provide effective remedies for violations of rights and to ensure that there are adequate venues for addressing electoral complaints.

The ECN reported that it received numerous complaints alleging either that individuals selected from the closed list by the party leadership were ineligible—as they did not belong to the identity category indicated—or that there were irregularities in the party's internal selection process. The ECN stated that it does not consider such complaints.

The Carter Center was not able to fully assess the postelection complaints process and its compliance to international obligations, since cases brought before the Constituent Assembly Court were still ongoing at the time of writing. The law does not clearly delineate the roles of the ECN and the Constituent Assembly Court with respect to deciding complaints, and the ECN appeared to defer to the court for the most part. The court did not issue final decisions prior to the inaugural session of the constituent assembly, and as the court's time frame for deciding complaints is not specified, there is the potential for cases brought before it to be decided well into the term of the assembly. This would undermine the right of effective remedy in the event that duly elected candidates are not seated in a timely manner.

Conclusions and Recommendations

The watchwords for Nepal's 2013 constituent assembly election were "well-conducted," "peaceful," and "improved." The election provided an opportunity for the people of Nepal to express their will after five years of stalled negotiations and political infighting. The Center hopes that the renewed energy and enthusiasm of the Nepali people will be harnessed by their elected representatives to set aside partisan differences and to finish the business of drafting a new constitution. The trust that voters have placed in their representatives comes with the responsibility to deliver results. All citizens of Nepal deserve to be congratulated, especially those candidates and parties who failed to win seats but who accepted the results.

The election provided an opportunity for the people of Nepal to express their will after five years of stalled negotiations and political infighting.

The preparations and conduct of the election showed a marked improvement over 2008, which was a landmark achievement in the peace process but was marred by extensive violence and other problems. The 2013 election was relatively more peaceful and well-conducted and, overall, reflected a serious effort to adhere to Nepal's international obligations for genuine democratic elections. Nevertheless, the Carter Center's international election observation mission has identified areas in which further reforms and improvements are needed to ensure that future elections are fully in accordance with Nepal's international commitments.

Conclusions

Legal Framework

Overall, Nepal generally fulfilled its obligations to ensure that a sufficient legal framework was in place for the 2013 election. However, the adoption of the main electoral law by an ordinance passed by the president, although necessary in the context of dissolution of the constituent assembly, was outside accepted democratic practice in which laws are voted by duly elected representatives of the people. The legislation has remained largely unchanged since the 2008 constituent assembly election, and there will be a need for considerable reform of electoral legislation after the new constitution is adopted. The complexity of the legal framework—with its numerous laws, directives, regulations, and codes of conduct—at times made it difficult for stakeholders to interpret.

Other areas in the legal framework needing reform include elements of the electoral system, delimitation of first-past-the-post constituency boundaries, voter registration eligibility, candidacy rights, observer rights, campaign finance regulation, gaps in election-day rules, and provisions regarding the postelection nomination of

candidates. The binding code of conduct for election participants contained a number of positive measures, especially in preventing the abuse of state resources during the campaign and in reinforcing the rights of women. However, some provisions were overly restrictive in regulating the campaign activities of parties and candidates in spite of Nepal's obligations to restrict freedom of expression only when necessary.

The Carter Center recommends building on the experiences of the 2013 election and continuing to consolidate electoral reform well in advance of the next election by addressing these points.

Electoral System

The current electoral system has broadened participation in Nepal's democratic institutions. The new constitution may introduce changes that require modification of the electoral system. In this case, The Carter Center hopes that any such changes would protect and extend the advances already made in promoting the participation and representation of women, indigenous groups, minorities, and other groups.

Some aspects of the current system, however, do not fully correspond to democratic principles. Notably, these points include a) the provision for political parties to select after election day which candidates from the unranked proportional representation lists receive mandates and b) the provision for the Council of Ministers to nominate 26 members of the constituent assembly. The Center hopes that under the new constitution, the electoral system will ensure that all deputies in at least one house of Parliament are elected by popular vote. If proportional lists are used, parties should not be allowed to choose after election day those candidates who receive mandates.

Election Management

The Election Commission of Nepal did a commendable job of planning, preparing, and conducting a credible election—despite the political crisis, a boycott by some political parties, and uncertainties as to whether the election would take place at all. Most stakeholders in the pre-election period were satisfied with election preparations, although the late distribution of voter ID cards created some concern. However, the ECN's decision not to allow observation of ballot printing was a missed opportunity to build confidence in the process. The ECN now has a solid foundation to build upon this success. For the next elections, the ECN should improve regulations to address issues such as clarifying election rules; improving voter education, outreach, and training of polling and counting officials; increasing the effectiveness of the complaints mechanism; increasing the number of female election officials; and enhancing the transparency of ECN's decision making.

Constituency Boundary Delimitation

The interim constitution provides for the delimitation of first-past-the-post boundaries to ensure that both the distribution of constituencies among Nepal's administrative districts and the number of voters per constituency reflect the population as determined by the census. Although the 2011 census should have led to adjustments to constituency boundaries, conflicting requirements for delimitation outlined in the interim constitution meant that there was little the Constituency Delimitation Commission could do in terms of reassigning constituencies among districts, leaving the Tarai region slightly underrepresented. The commission did not adjust constituency boundaries within districts. Consequently, a few constituencies had a considerably higher population than neighboring constituencies within the same district, affecting the equality of the vote. Constitutional provisions for the delimitation of constituencies should be reviewed and constituency boundaries adjusted ahead of the next election based upon data from the latest census—to ensure that constituency populations are as equal as possible.

Voter Registration

The voter registration program took important steps toward meeting Nepal's international obligations. The new biometric voter register was a major improvement over the 2008 election, as stakeholders had confidence that those on the voter lists were eligible to vote and that voters could be properly identified on election day. This confidence was reinforced by providing access to

parties and others who wished to check the accuracy of the register.

However, several issues must be addressed regarding voter registration before it can be said to fully meet international obligations. The voter register has fewer voters than what the ECN initially expected to register and even less than the potential number of eligible voters as suggested by the 2011 census. No audit was conducted to determine the extent of nonregistration among residents in Nepal to assess the reasons for not registering, and to check the technical accuracy of the register. Eligibility requirements make it difficult for some married women and disadvantaged people without documents to prove citizenship. Citizens residing temporarily outside Nepal are unable to register, and citizens who have migrated within Nepal often find it difficult to register in the place where they actually live.

Finally, citizenship rules leave a considerable number of people living in Nepal unable to prove citizenship. Therefore, they are ineligible to register. The Carter Center recommends that the government, the constituent assembly, and the election commission take the steps necessary to provide for a fully inclusive voter register. This includes conducting an audit of the voter register, steps to expand voter registration to include all adult citizens, and proactive measures to ensure that necessary ID documentation is available to those lacking such documents, especially married women and people lacking proof of citizenship.

Voter Education

The ECN undertook extensive voter education efforts involving the use of mass media at national and local levels as well as the mobilization of around 15,000 voter education volunteers. These efforts were, to some extent, hampered by the holidays that took place during the election period, but they were also limited in many locations by materials not being published or available in local languages. Voters appeared to be aware of requirements that they would need a photo ID to vote; however, the percentage of invalid ballots remained high, decreasing only marginally from 2008. This indicates that a considerable number of voters remained unaware of basic procedures related to voting and that their ability to express their choice of representatives in the constituent assembly was consequently limited. To address such issues, The Carter Center recommends that long-term voter and civic education be conducted and that voter education volunteers should receive training well in advance of the next election. Voter education materials of any media type should be more inclusive of minority languages.

Registration of Candidates and Political Parties

The registration of parties and candidates was inclusive and gave voters a wide range of choice. The registration process generally met Nepal's obligations to ensure the right of citizens to stand for election. However, the deadlines for registration of proportional representation candidate lists were set very close to election day, giving voters little time to familiarize themselves with the candidates. Parties met the 50 percent quota for women on the proportional representation candidate lists, but there were a low number of women as first-past-the-post candidates. Unfortunately, not all parties complied with the legal requirement that women comprise at least one-third of each party's total number of candidates.

Some of the qualification requirements for candidacy, particularly the prohibition of candidacy for anyone who is employed by the state, unduly restricted the right to be elected. Legal requirements for candidate registration should be amended to limit restrictions on people employed by the state only to those in positions with a potential conflict of interest. The deadline for finalization of the proportional representation candidate lists should be set earlier in the process to give voters an opportunity to become familiar with the candidates. Enforcement provisions for women's quota among candidates should be improved.

Electoral Campaign

Overall, the campaign environment was observed to be open, and despite occasional clashes, political parties (for the most part) could reach

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An election official shows a marked ballot to party representatives during the counting in Kathmandu.

out freely to voters and disseminate their message. In general, the campaign environment notably improved compared to 2008. Although the ECN came under criticism for not taking more stringent actions to curb violations of the code of conduct, many reported violations concerned relatively minor transgressions. There were, however, a number of more serious incidents involving supporters of competing parties, including acts of vandalism, obstructions of campaign activities, fights, and serious assaults.

As election day approached, campaigning was increasingly overshadowed by the activities of poll-boycotting parties, which climaxed in a 10-day nationwide strike. During the strike, boycotting parties resorted to violence and scare tactics, with a number of explosive devices being planted at strategic locations. Buses and trucks that defied the strike were targeted for attacks and arson. Such incidents resulted in several casualties and at least one fatality, and incidents were intended to instill fear and decrease voter turnout, especially among migrant citizens returning to their home districts to vote. The Carter Center recommends a review of the ECN's monitoring mechanisms to ensure that in the future penalties are imposed for serious violations of the code of conduct.

Campaign finance proved to be one of the weakest areas regarding campaigning. Although the code of conduct set limits on spending and required all candidates to file postelection spending statements, the legal framework effectively allowed candidates and parties to circumvent the ceiling in practice and did not require declaration of funding sources. A number of instances were observed of cash or in-kind incentives being offered to voters. For future elections, the Center recommends that more stringent campaign finance regulations and the prevention of vote-buying be made priority areas for reform. This recommendation includes the strengthening of campaign finance regulations to ensure increased transparency in campaign funding, realistic campaign spending limits, and increased enforcement power for the ECN.

Citizen Observation

A large number of observers were deployed by civil society organizations prior to, during, and after election day. These citizen observers were able to observe most aspects of the process in practice, and their efforts made a positive contribution toward enhancing transparency and building public confidence in the integrity of the election. However, the legislation does not clearly define the rights of observers, and there were instances in which election officials denied them access. Election commission rules were overly restrictive regarding nomination of observers, although one of the most restrictive rules was repealed after a citizen observer group filed a lawsuit. To enhance transparency, The Carter Center recommends that observers be assured access to all parts of the electoral process, including meetings of election officials at national and local levels, printing of ballots, voting, and counting. Further, the criteria for being a citizen observer should be brought in line with qualifications for being a voter.

Voting and Counting

Nepal generally met its international obligations with respect to ensuring the integrity of the voting and counting processes. The Center's observers had a positive assessment of the conduct of voting in some 90 percent of polling centers visited, noting an overall peaceful environment free from intimidation or coercion, the uniform practice of checking voter identity, the impartiality of polling staff, and the presence of necessary materials. The new voter lists contributed to the generally smooth conduct of voting, and transparency was ensured in most locations by the presence of party and candidate agents and citizen observers. According to the ECN, voter turnout nationwide was 78.34 percent.

However, there were problems in some polling centers with ensuring the secrecy of the vote and adhering to the procedures established by law and ECN regulations: in particular, the inking of voters' thumbs as a measure against potential multiple voting. In a few constituencies, there were indications of "booth capture," in which

Deborah Hakes

Election commission staff prepare to sort ballots on the floor of a counting center.

supporters of one party/candidate take over a polling center and compromise the integrity of voting. The ECN reported that there were scattered security incidents connected to attempts of boycotting parties to disrupt the election, regrettably including a severe injury to a child as a result of a detonation of an improvised explosive device as well as clashes among supporters of candidates and parties.

Counting procedures were not uniformly followed at some of the observed counting centers, and, in some cases, agreements reached at all-party meetings caused counting procedures to deviate from the law. Nevertheless, the integrity of the counting process did not appear to be affected. There was a high rate of invalid ballots, especially for first-past-the-post ballots (4.96 percent were invalid). A few parties, including UPCN–Maoist, pulled their observers and agents out of counting centers, alleging wide-scale fraud during the transport of ballot boxes to counting centers.

The Carter Center makes a number of recommendations to strengthen existing procedures for voting and counting. These include systematically checking voters for indelible ink in order to prevent potential multiple voting, including names of parties and candidates on ballots, developing procedures for spoiled ballots, and establishing counting procedures well in advance and in more detail, so as to ensure uniformity in counting. Ahead of the next election, a review should be conducted to understand the reasons for the high number of invalid ballots, and corresponding measures should be taken to reduce the rate of invalid ballots, whether through voter education, changes to the way ballots are marked, or other measures.

Tabulation and Declaration of Results

Despite the withdrawal of party agents of the UCPN–Maoist and various Madhes-based parties from the counting process, the preliminary results were finalized by Nov. 28, 2014. The ECN extended the deadline for submission of the names of those candidates to be selected from the closed proportional representation lists three times. In several parties, the selection process and the manner in which it was handled by the respective leadership created considerable internal discontent, underlining the need to reform this particular provision. The Center regrets that a number of parties used the process of selection of candidates to fill seats in an attempt to gain leverage in political negotiations. Such issues highlight the Center's recommendation that parties should not be allowed to choose after election day those candidates who receive mandates.

Electoral Dispute Resolution

For the most part, Nepal appears to have made a good faith effort to address its international obligations to provide effective remedies for violations of rights and to ensure that there are adequate venues for addressing election complaints. However, lack of clarity in the law meant that parties and candidates were sometimes uncertain about which body to address. Complaints regarding campaign violations were often dealt with informally and generally resulted only in warnings. The ECN appeared to address complaints about candidate registration more rigorously.

In case of complaints to the ECN regarding election day, the commission did not investigate the complaints but limited itself to asking election officials if they could corroborate the allegations. Complainants were encouraged to petition the Constituent Assembly Court if they were not satisfied with the commission's decision. The transparency of ECN procedures could be improved by providing written decisions or the grounds for its decisions to the complainants.

Hearings in the Constituent Assembly Court are currently ongoing, and its proceedings cannot yet be assessed conclusively. However, as the court's time frame for deciding complaints is not specified, there is the potential for cases brought before it to be decided well into the term of the constituent assembly. This would undermine the right of effective and timely remedy in the event that duly elected candidates are not seated in a timely manner. The Center recommends that a more rapid system for determining postelection day complaints be put in place to ensure that complainants have effective remedies.

Women and Marginalized Groups

The legal minimum representation quotas for women, members of indigenous groups, and others are positive steps toward promoting inclusiveness of political representation, partially fulfilling Nepal's international obligation to ensure the ability of all citizens to participate in public affairs, and taking positive practical measures to end discrimination or lack of opportunities for participation.

Women were notably active within political parties and party structures, but their participation in positions of senior leadership or among first-past-the-post candidates was limited. (Only 10.8 percent of first-past-the-post candidates were women.) In addition, while women were well-represented among voter education volunteers in districts throughout the country, most district election offices had few female staff, and mostly, they were in relatively junior positions. Efforts should be made to include a greater number of women among ECN secretariat leadership positions, district election officials, and returning officers.

The situation with regard to participation in the electoral process of ethnic, caste, and historically disadvantaged groups is more complex. In a number of districts where a particular indigenous group is numerically strong, the Center noted that these groups were well-represented among first-past-the-post candidates. Conversely, and regrettably, Dalit representation among first-past-the-post candidates was generally low.

Owing to the proportional representation quota system, this constituent assembly is the most inclusive legislative body in South Asia, but it is marginally less so than the assembly elected in 2008. Particularly, the decline in representation of women and marginalized groups among both candidates and winners in the first-past-the-post races, where no legal requirement is set, underlines the continuing need for temporary special measures as well as a democratization of internal party structures in order to achieve the goal of social inclusion. Proactive measures should be taken to strengthen the participation of women, Dalits, and members of other marginalized groups in decision-making processes within political parties, and target figures for women and Dalits elected beyond the proportional representation system should be considered. The drafting of the new constitution is an opportunity to further develop inclusion policies and ensure equal participation of women in elected bodies. In addition, civil society should strengthen social inclusion through outreach, lobby, and training programs for historically marginalized groups.

Recommendations

For future elections, The Carter Center makes the following recommendations:

To the Government of Nepal and the Constituent Assembly

Reform Electoral System

- Under the new constitution, the electoral system should ensure that all deputies in at least one house of Parliament are elected by popular vote. If proportional lists are used, parties should not be allowed to choose after election day which candidates receive mandates.

Delimit Constituency Boundaries To Ensure Equal Suffrage

- Constituency boundaries should be adjusted well ahead of the next election, based upon data from the 2011 census, to ensure that constituency population sizes are as equal as possible.

Ensure Gender Parity in All Elected Councils

- In developing the new constitution, the constituent assembly should consider ensuring parity of women and men in elected councils at all levels.

Address Proof of Citizenship Requirement

- Citizenship and voter registration laws should be reviewed to ensure that married women, indigenous people, the landless, and other vulnerable categories do not face obstacles which make it more difficult for them to register. Consideration should be given to addressing the citizenship concerns of those who have resided in Nepal for a long period of time but do not currently have proof of eligibility for citizenship.

Amend Eligibility Criteria for Candidates

- Legal requirements for candidate registration should be amended to ensure that the right to stand as a candidate for people employed by the state is not unnecessarily restricted.

Review Proportional Representation System Deadline

- The deadline for the finalization of the proportional representation candidate lists should be set earlier in the process to give voters an opportunity to become familiar with the candidates.

Create Mechanism To Enforce Quota Provisions

- A mechanism should be established for enforcing quota provisions for women, indigenous groups, and other specified groups.

Strengthen Campaign Finance Regulations

- Legal provisions on campaign financing should be strengthened to ensure increased transparency in campaign funding, realistic campaign spending limits, and increased enforcement power for the ECN.

Legislatively Define Observer Rights and Ensure Observer Access

- The rights of observers should be more clearly defined in legislation to provide greater transparency in all aspects of the electoral process.

Review Complaints and Appeals Mechanism

- The complaints and appeals system for alleged election day and postelection day violations should be reviewed to clarify potential overlaps in the jurisdiction of the ECN and the Constituent Assembly Court. A more rapid system for determining these cases should be put in place to ensure that complainants have effective remedies.

Conduct Local Elections Soon

- Necessary conditions for the conduct of local elections should be established as soon as possible.

To the Election Commission of Nepal

Conduct Voter Registration Audit

- An independent audit of the voter register should be conducted as soon as possible to better understand the reasons more citizens have not registered as well as the nature and extent of any technical problems with the register.

Distribute Voter Identification and Provide Citizenship Documents

- Provision should be made for all citizens who reach 18 years of age by election day to have access to the necessary ID and/or citizenship documentation needed to vote. Proactive measures should be implemented to ensure that necessary ID documentation is available to those lacking such documents, especially married women and people lacking proof of citizenship.

Expand Voter Registration for Citizens Abroad

- Voter registration should be continued and expanded to eligible citizens living abroad.

Review Proof of Residency Requirements

- To facilitate registration and voting by migrants, proof-of-residence requirements should be reviewed to ensure that, to the extent possible, voters are able to vote where they actually reside.

Continue Voter ID Card Distribution

- The voter identification card distribution program should be continued to ensure that every voter has obtained a card prior to the next election. Voter cards should be given directly to individual voters. Distribution of the cards should be part of the ECN's overall electoral calendar.

Conduct More Voter Education

- Voter and civic education should be conducted over the long term to ensure that all voters are aware of their right to a secret ballot and the procedures for marking ballots. To this end, voter education materials of any media type should be more inclusive of minority languages.

Strengthen Voter Education Training

- Voter educators should receive training further in advance of the next election and have specific targets for outreach.

Train Polling Officials on Ballot Secrecy

- Greater emphasis should be made in the training of polling officials on ensuring secrecy of the vote.

Print Appropriate Numbers of Ballots

- The number of ballots printed should be only a small percentage more than the number of registered voters.

Refine Information on Party Symbols

- Ballots should contain the names of parties and candidates; not respective symbols only. Information for the identification of parties and candidates should be readily available at polling centers.

Develop Procedures for Spoiled Ballots

- Procedures should be developed to allow for spoiled ballots.

Safeguard Against Multiple Voting

- To strengthen existing procedures for preventing multiple voting, ECN rules should explicitly provide that voters' thumbs be checked for indelible ink.

Allow Out-of-Country Voting

- Consideration should be given to allowing out-of-country voting.

Conduct Study of Invalid Ballots

- A review should be conducted to understand the reasons for the high number of invalid ballots, and corresponding measures should be taken to reduce the rate of invalid ballots, whether through voter education, changes to the way ballots are marked, or other measures.

Determine Counting Procedures in Advance

- All procedures for counting and tabulation of votes should be established well in advance and better detailed to prevent inconsistencies.

Train on Counting Procedures

- Prior to election day, returning officers could organize briefings in each constituency for candidates, party agents, and citizen observers to ensure that the counting process is understood in advance by all participants and is conducted uniformly nationwide.

Address Location of Counting

- Counting of votes should ideally be done at polling centers to provide for increased transparency and a more rapid announcement of results. If counting centers are used in the future, however, the transport of ballot boxes from polling centers should be done in such a way as to ensure maximum transparency. Ballots boxes should not be temporarily stored at intermediate locations en route but brought directly to the counting centers.

Assure Observers' Access

- Citizen observers and international observers should be assured access to all parts of the electoral process, including meetings of election officials at national and local levels, printing of ballots, voting, and counting. Minutes of ECN meetings could be published on its ECN website.

Bring Observer Qualifications in Line

- The criteria for being a citizen observer should be brought in line with qualifications for being a voter.

Clarify Roles and Procedures for Dispute Resolution

- The role and responsibility of election officials in deciding complaints should be clarified to ensure that parties, candidates, and voters know where to submit complaints and that all complaints are dealt with transparently.

Publish Complaints and Decisions

- To increase transparency, information on complaints received and how they are dealt with should be made publicly available, for instance on the ECN website.

Address Deployment at Polling Centers

- ECN regulations should not allow security forces to be present inside polling centers unless their presence is required by the polling officer. If their presence inside is necessary, regulations should ensure that they should not be stationed in such a way that could compromise the secrecy of the vote or give the appearance of doing so. Weapons should not be carried inside polling centers.

Increase Participation of Women in the Election Administration

- Efforts should be made to include a greater number of women on the commission and among ECN secretariat leadership positions, district election officials, and returning officers.

To Candidates and Political Parties

Strengthen Participation of Women and Marginalized Groups

- Parties should consider measures to strengthen the participation and representation of women, Dalits, and members of other marginalized groups as candidates and in decision-making and leadership positions within political parties. Such measures could include intraparty rules on quotas for members of these groups in party leadership positions at all levels and as candidates in local and national elections. A concerted effort should be made to increase internal party democracy, with a focus upon issue-based politics.

To Civil Society

Expand the Constitution-Drafting Process

- Actively engage in policy discussions and debates on outstanding issues of the constitution drafting process, including debates on the future electoral system.

Outreach to Marginalized Groups

- Strengthen social inclusion through outreach, lobby, and training programs for historically marginalized groups.

Train and Educate Voters

- Use the period between elections to coordinate and conduct voter education campaigns as well as training programs for voter registration, participation of women, and historically marginalized groups. On other electoral issues, train well before the next elections.

To the Security Forces

Clarify Roles and Training

- The roles of the police, armed police forces, and army should be more clearly defined prior to the election, and they should receive training on their legal and constitutional roles and responsibilities during the entire electoral process.

Appendix A

Acknowledgments

The Carter Center gratefully acknowledges the support of the organizations and individuals whose vital contributions enabled the electoral observation mission in Nepal. The Center thanks the United States Agency for International Development, the Norway Ministry of Foreign Affairs, and the United Kingdom Department for International Development. Their contributions enabled the Carter Center's sustained electoral engagement in Nepal.

The Center expresses its appreciation to the government of Nepal and the Election Commission of Nepal for inviting it to observe the election. Carter Center observers reported good access and a warm welcome across Nepal from government and election officials, representatives of political parties, civil society organizations, and the people of Nepal.

The Center recognizes the efforts of the two other international election observer groups, the European Union and ANFREL, with whom it regularly exchanged views on the electoral process. The Center also notes the vital importance of citizen observer organizations, which deployed long- and short-term observers throughout the country. Not only did their efforts inspire confidence on the part of the Center about the capacities of citizen observers, but also their findings provided an important register against which we could check the quality of our own observations.

The Center is particularly grateful for the leadership of His Excellency Dr. Surakiart Sathirathai, former deputy prime minister of Thailand, who served as delegation co-leader with former U.S. President Jimmy Carter.

The Center also acknowledges the leadership of David V. Hamilton, field office director, for overall management of the entire mission in Kathmandu. Trude Johansson served as deputy field office director and manager of field operations, handling the office and overall in-country operations as well as observer transport and accommodation. Administrative and financial management was provided by Mamta Acharya, while logistical support was provided by Toya Sapkota. Fergus Anderson, security manager, designed and managed the security for the mission, observers, and staff through a very challenging environment in Nepal. Curtis Palmer was the observer coordinator responsible for orientation and debriefing of observers and managed all of their reporting as well as deployment logistics. Dr. Friso Hecker and Ghanashyam Ojha provided invaluable political analysis to the mission, and Jonathan Stonestreet provided the legal analysis. The Kathmandu office was additionally staffed by Swornika Balla, Sabita Thapa, Srish Khakurel, Kalpana Singh, Naresh Gongal, Saugat Gautam, and Sita Thapa. Finally, it is important to recognize the excellent work of the regional coordinators, translators, and drivers.

In Atlanta, the project was managed by Democracy Program Associate Director Dr. David Pottie. Ambassador Peter Burleigh provided invaluable consultations and acted as the senior adviser to President Carter. A number of staff and

interns provided crucial support to the mission, including Jennifer Russi, Tessa Stromdahl, Deborah Hakes, Ramiro Martinez, William Hassall, Lauren Gilliss, and Christian Sierra.

This report was compiled with input from many members of the mission under the direction of David V. Hamilton. Ambassador Peter Burleigh, Dr. David Carroll, Jennifer Russi, and Travis Linger edited and prepared the final version of the report.

Appendix B

The Carter Center Observation Delegation and Staff

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The Honorable Dr. Surakiart Sathirathai, Former Deputy Prime Minister of Thailand

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Appendix C

Common Terms and Abbreviations

ANFREL	Asian Network for Free Elections
APF	Armed Police Force
CPA	Comprehensive Peace Agreement
CPN–Maoist	Communist Party of Nepal-Maoist (led by Mohan Baidya)
CPN–UML	Communist Party of Nepal (Unified Marxist–Leninist)
Dalit	Historically marginalized caste groups
DEW–Nepal	Democracy and Election Watch
ECN	Election Commission of Nepal
FDNF	Federal Democratic National Front (Limbuwan, Khambuwan, and others)
FLSC	Federal Limbuwan State Council
FSP–Nepal	Federal Socialist Party–Nepal (led by Ashok Rai)
IEC	Interim Election Council
IFES	International Foundation for Electoral Systems
Jana Andolan	People's movement
Janajati	Nationalities
MPRF	Madhesi People's Rights Forum; *Also known as Madhesi Janaadhikar Forum (MJF)*
MPRF–Nepal	Madhesi People's Rights Forum–Nepal (led by Upendra Yadav) *Also known as Madhesi Janaadhikar Forum–Nepal (MJF–Nepal)*
MPRF–Democratic	Madhesi People's Rights Forum–Democratic (led by Bijay Gachhadar)
NC	Nepali Congress
NEOC	National Election Observation Committee
NSP	Nepal Sadbhawana Party (led by Sarita Giri)
PLA	People's Liberation Army (Maoist)
RPP	Rastriya Prajatantra Party
RPP–Nepal	Rastriya Prajatantra Party (Nepal) (royalist party-led by Kamal Thapa)
SPA	Seven-Party Alliance (includes NC, UML, NSP(A), NC(D), Janamorcha Nepal, NWPP, and ULF)

Tarun Dal	Youth wing of NC
TMDP	Tarai Madhes Democratic Party (led by Mahanta Thakur) *Also known as TMLP (Tarai Madhes Loktantrik Party)*
UCPN–Maoist	Unified Communist Party of Nepal (Maoist)
UDMF	United Democratic Madhesi Front
YCL	Young Communist League (youth wing of UCPN–Maoist)

Appendix D

Nepal Project Timeline

The following timeline outlines key dates and publications during the time period in which The Carter Center worked in Nepal.

2004

- Carter Center staff meets with royal and government officials and representatives from other national organizations to discuss possible solutions to the civil conflict and avenues of mediation.
- Carter Center holds several rounds of conflict resolution training for political party representatives and civil society leaders and conducts bridge-building sessions with Maoist representatives in Nepal, working in broad cooperation and coordination with international organizations engaged in Nepal.

2006

- July: Carter Center conducts a pre-election assessment.

2007

- January: Carter Center establishes presence in Nepal.
- March: Carter Center deploys long-term observers in anticipation of elections.
- June: President Carter visits Nepal.
- November: President Carter visits Nepal.

2008

- April 10. President and Mrs. Carter, along with former Deputy Prime Minister of Thailand Hon. Dr. Surakiart Sathirathai, lead the short-term delegation as the Center observed Nepal's first constituent assembly election and issue a preliminary and final report.
- June: Carter Center Democracy Program staff from Atlanta return to Nepal to conduct a post-election follow-up.

2009

- Carter Center launches its postelection activities by deploying 10 international and five national observers around the country.
- April 13. Report released: Carter Center Observers Note Largely Peaceful By-Election Day, Progress in Electoral Conduct, Some Areas for Improvement.
- May: Report released: Observing the 2008 Nepal Constituent Assembly Election.
- June: Carter Center Democracy Program staff from Atlanta visit Nepal to assess political climate and progress of project.
- July 10. Report released: The Carter Center Continues Support to Nepal's Peace Process.
- Aug. 26. Report released: The Carter Center Urges Progress on Nepal's Peace and Constitutional Processes, Increased Attention to the Local Level.

- October: Carter Center Democracy Program staff from Atlanta visit Nepal to assess political climate and progress of project.
- Nov. 6. Report released: Carter Center Observations on Local Peace Committees.
- Nov. 30. Report released: Carter Center Notes Poor but Improved Tarai Security Environment in Nepal.

2010

- Carter Center deploys 10 international and five national observers around the country to monitor political activities.
- January: Democracy Program staff visit Nepal to assess political climate and progress of project.
- Feb. 22. Report released: Nepalis Want New Constitution To Promote Decentralization and Equality.
- April: Democracy Program staff from Atlanta visit Nepal to assess political climate and progress of project.
- June 22. Report released: Land Commitments in Nepal's Peace Process Only Partially Fulfilled.
- October: Democracy Program staff from Atlanta visit Nepal to assess political climate and progress of project.
- Nov. 23. Report released: The Carter Center Urges Swift Resolution to Nepal's Political Deadlock, Issues Report on Local Political and Peace Process.
- Dec. 30. Report released: Brief Overview of Political Dispute Resolution at the Local Level in Nepal.

2011

- Carter Center deploys 10 international and five national observers around the country to monitor political activities.
- January: Democracy Program staff from Atlanta visit Nepal to assess political climate and progress of project.
- Feb. 28. Report released: Carter Center: Clashes Between Nepal's Political Party Youth Wings Have Decreased but YCL and UML Youth Force Continue To Seek Financial Gain.
- April 19. Report released: Carter Center Notes Progress in Nepal's Ongoing Voter Registration Process, Offers Suggestions To Address Key Challenges Ahead.
- May 10. Report released: Carter Center: Local Peace Committee Functioning Has Improved, But Overall Effectiveness Remains Unclear.
- May 30. Report released: Statement by The Carter Center on the Extension of Nepal's Constituent Assembly.
- July 7. Report released: Second Interim Statement on the Election Commission of Nepal's "Voter Register With Photograph" Program.
- Aug. 4. Report released: Political Space in Nepal Has Improved Since Constituent Assembly Election but Challenges Remain, Sustainability Still in Question.
- September: Democracy Program staff from Atlanta visit Nepal to assess political climate and progress of project.
- Nov. 3. Report released: The Carter Center Welcomes Agreement by Nepal's Political Parties.
- Nov. 23. Report released: Carter Center Observations on Political Parties in Local Bodies.

2012

- Carter Center deploys 10 international and five national observers around the country to monitor political activities.
- January: Carter Center Democracy Program staff from Atlanta visit Nepal to assess political climate and progress of project.
- Jan. 31. Report released: Over 10 Million Nepalis Registered To Vote, Ensuring Access for Remaining Unregistered Voters Crucial.
- March 14. Report released: Open Letter From Former U.S. President Jimmy Carter to the People of Nepal.
- May 9. Report released: The Carter Center's Information Sessions on the Election Commission of Nepal's Voter Registration With Photograph Program.

- May 24. Report released: Statement by Former U.S. President Jimmy Carter on Nepal.
- June: Long-term observers conduct regional briefings on voter registration report with election officials, civil society organizations, and political party representatives.
- June 20. Report released: Land Commitments in Nepal's Peace Process: An Update on Implementation.
- July: Carter Center Democracy Program staff from Atlanta visit Nepal to assess political climate and progress of project.
- July 26. Report released: Carter Center Urges Election Commission of Nepal To Continue Efforts To Increase Turnout, Improve Data Quality on New Voter Register.
- December: Carter Center Democracy Program staff from Atlanta visit Nepal to assess political climate and progress of project.

2013

- Jan. 8. Op-ed by President Carter released: Nepal's Peace Process Needs Elections.
- Feb. 28. Report released: The Carter Center Commends Nepal Election Commission's Voter Registration Outreach Efforts, Also Highlights Areas of Concern.
- March 13. Report released: The Carter Center's Long-Term Observation in Nepal Indicates That Identity-Based Political Activity Has Decreased.
- March–April. President and Mrs. Carter visit Nepal to meet political leaders and encourage progress toward elections before the end of 2013.
- May–June: Long-term observers conduct regional briefings on voter registration report with election officials, civil society organizations, and political party representatives.
- September. Carter Center Democracy Program staff from Atlanta visit Nepal to assess political climate and progress of project.
- Sept. 25. The Center deploys 12 international long-term observers to join 12 national coordinators in order to conduct pre-election observation. The political observation mission officially transforms into an international election observation mission.
- Oct. 1. Report released: The Carter Center Applauds Nepal Election Commission's Efforts To Improve Voter Roll; Key Challenges Remain.
- Oct. 31. Pre-election statement released: Carter Center Notes Progress and Concerns Ahead of Nepal's Nov. 19 Election.
- Nov. 16. President Carter, along with former Deputy Prime Minister of Thailand Hon. Dr. Surakiart Sathirathai, lead the International Election Observation Mission as The Carter Center observes Nepal's second constituent assembly election. The Center deploys 54 international short-term observers to join the long-term observers throughout the country.
- Nov. 19. Election day
- Nov. 21. Preliminary Statement released: Carter Center Congratulates Nepal on Well-Conducted Election Process.
- Dec. 15. Long-term observers finish their observation in Nepal; regional offices close.
- Dec. 19. Postelection statement released: The Carter Center Finds Nepal's Counting Process and Election Results Credible.

2014

- January. Carter Center Democracy Program staff from Atlanta visit Nepal to assess political climate and progress of project.
- Feb. 20. Carter Center staff deliver the final report on the Nov. 19 constituent assembly elections to the Election Commission of Nepal.

Appendix E
Statements

NEWS
THE CARTER CENTER
ONE COPENHILL ATLANTA, GA 30307

Oct. 31, 2013
FOR IMMEDIATE RELEASE
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Carter Center Notes Progress and Concerns Ahead of Nepal's Nov. 19 Election

In a report released today, The Carter Center offered a series of recommendations to Nepal's election commission, candidates and parties, and government to support the conduct of a credible constituent assembly election on Nov. 19.

The recommendations are based on the findings of 12 Carter Center long-term observers from eight countries who have reported on pre-election preparations across Nepal since Sept. 25. They will be joined in mid-November by 51 additional short-term observers representing 27 countries to monitor voting and counting.

The Center reports that the technical aspects of electoral preparations are largely on schedule, and the campaign environment generally has been open. The Center is concerned though about the tight schedule for electoral preparations, the still unresolved issues surrounding voter identification, sporadic and increasing incidents of confrontations between supporters of rival candidates, and the looting of campaign and voter education materials. In addition, there continues to be uncertainty surrounding the activities and plans of poll-opposing parties, including the *bandh* (strike) announced for Nov. 11-20.

As election day approaches, The Carter Center calls on political parties and their candidates to abide by the Election Commission of Nepal's Code of Conduct, and on the election commission to ensure the timely delivery of materials and to resolve outstanding issues of voter identification. The Center also urges protesting parties to respect the right to freedom of movement and the right of all citizens to participate in public affairs.

The Carter Center is observing Nepal's constituent assembly election at the written invitation of the Election Commission of Nepal and Chairman of the Interim Council of Ministers Khil Raj Regmi. The Center will provide an impartial and independent assessment of the electoral process to be made available to the Nepali public and the international community through periodic statements and reports, 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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THE
CARTER CENTER

Pre-Election Statement of the International Election Observation Mission to Nepal's 2013 Constituent Assembly Election

The Carter Center

Oct. 31, 2013

On June 6, 2013, the Interim Election Council of Ministers announced the date of Nov. 19, 2013, for Nepal's second constituent assembly election. This announcement was followed by a prolonged stalemate over the formation of a government for the election period, as well as the date and system for the election. The first constituent assembly had been dissolved without the promulgation of a new constitution on May 27, 2012.

Carter Center observers report that the technical aspects of the electoral preparations are largely on schedule, and the campaign environment thus far, in general, has been open, allowing candidates and parties to freely organize public rallies to convey their message to potential voters. The Center is nevertheless concerned about the tight schedule for electoral preparations, the still unresolved issues surrounding voter identification, sporadic incidents of confrontations between supporters of rival party/candidates, and the looting of campaign and voter education materials. In addition, there continues to be uncertainty surrounding the activities and plans of parties opposed to the polls, which have called for a 10-day *bandh* (strike) from Nov. 11-20.

As election day approaches, the Center calls on political parties and their candidates to abide by the Election Commission of Nepal's (ECN) Code of Conduct and on the election commission to ensure the timely delivery of materials and to resolve outstanding issues of voter identification. The Center also urges protesting parties to respect the right to freedom of movement and the right of all citizens to participate in public affairs.

The Carter Center launched its international election observation mission to Nepal on Sept. 25 with the deployment of 12 long-term observers from eight countries. In mid-November, 51 short-term observers from 27 countries will join them to observe voting and counting.

The Carter Center is observing the November 2013 Nepal constituent assembly election at the written invitation of the ECN and the chairman of the Council of Ministers, Khil Raj Regmi.

The Center will provide an impartial and independent assessment of the electoral process to be made available to the Nepali public and the international community through periodic statements and reports, 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.[1]

Introduction

Nepal is currently preparing for its second constituent assembly election to be held on Nov. 19, 2013. The election aims to restart the country's stalled constitution drafting process after the failure of the first constituent assembly to adopt a new constitution within its regular and extended tenure that ended on May 27, 2012.[2] On March 13, 2013, leaders of four major political parties signed an 11-point agreement to end Nepal's prolonged constitutional and political crisis, after political parties had earlier failed to agree on an electoral government. The agreement led to the formation of an Interim Election Council (IEC), chaired by the sitting chief justice Khil Raj Regmi, replacing the caretaker government, and the passage of a 25-point ordinance by the president to remove constitutional hurdles. A High Level Political Committee (HLPC), a loose alliance of Nepal's largest political parties, was subsequently formed to support the council. On June 13, 2013, the IEC announced that the constituent assembly election would be held on Nov. 19, 2013. Both the appointment of the chief justice as chair of the IEC and the announcement of the election date was publicly opposed as unconstitutional and illegitimate by several smaller parties, including a 33-party alliance led by the Communist Party of Nepal-Maoist (CPN-M), which continues to call for its boycott. After several rounds of negotiations with the government and HLPC failed, the CPN-M and the Federal Democratic National Front affiliated Federal Limbuwan State Council (FDNF affiliated FLSC) in eastern Nepal have intermittently threatened to disrupt the election.[3]

[1] 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, and UN Human Rights Committee (UN HRC) General Comment 25.

[2] Elections to a Constituent Assembly had been part of the Comprehensive Peace Agreement between the CPN(Maoist) and the Seven Party Alliance interim government in November 2006 that officially ended the decade-long armed conflict in Nepal. After several postponements the election were eventually held on April 10, 2008. The Constituent Assembly failed to promulgate a Constitution within the tenure following intense disagreements over the form of federalism and system of governance to be adopted.

[3] Several parties who originally opposed the election, including Madhesi People Rights Forum-Nepal (MPRF-Nepal) and Federal Socialist Party-Nepal (FSP-Nepal) have since agreed to join the electoral process.

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.[4] The legal electoral framework in Nepal has its base in the interim constitution of 2007 and various separate laws and ordinances. 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 of 2007, which originally foresaw only one constituent assembly election, was modified by a presidential order in March 2013 in order to remove legal barriers to holding a new constituent assembly 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 very similar to that of 2008. Despite an agreement to adjust the electoral system, negotiations to facilitate the participation of a number of smaller parties which had been threatening to boycott the election led to a reversion in September 2013 to the same mixed system that was in place for the 2008 constituent assembly 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 by the council of ministers.

Under international standards for democratic elections, voters must be able to freely choose their representatives. 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.[5] Similarly, the provision for 26 members to be selected by the government after the election undermines the basic right of representation.[6]

The legal framework overall provides for all major aspects of the election process; however, the lack of cohesiveness makes it somewhat difficult to understand for candidates, voters, election officials, and observers, and there are repetitions, conflicts, and occasional gaps in the directives and regulations. 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. Gaps in the legal framework include a lack of reference to observers during the opening of polling stations, no explicit requirement to check voters for indelible ink before providing them a ballot (despite a requirement to apply it), no provision for spoiled ballots, and no ballot reconciliation procedure mandated during the counting process.

[4] ICCPR, article 2; UN HRC General Comment 25, paragraphs 5, 7, 9, 19, 20.
[5] Despite an ECN proposal, this aspect of the law was not changed prior to the 2013 elections.
[6] 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…"

The Code of Conduct for political parties, candidates, government, media and NGOs is positive overall, in that it sets clear ground rules for participants which if enforced will contribute greatly to an election process in line with international standards. For instance, several articles deal with the prevention of abuse of state resources during the campaign, including interference by officials. In some instances, however, the Code of Conduct is overly restrictive, including a ban on opinion polls during the campaign period, a ban on graffiti paintings and banners, and requirements that election materials (pamphlets, flags) be of a specific format. Such provisions are at variance with Nepal's international obligation to restrict freedom of expression only when strictly necessary. Regrettably, new draft provisions in the Code of Conduct to strengthen campaign finance regulation by obliging first-past-the-post and proportional representation candidates to disclose the sources of campaign funding were dropped from the final version.

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.[7] Election observation is provided for by Nepal's legislation. However, the 2013 ECN directive on election observation is problematic in terms of restrictions placed on observers, particularly national observers. The directive requires that observers 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. The initial provision that required observers to observe outside their home constituency has, however, been changed to apply to only the polling center where an observer is supposed to cast his/her vote, after strong criticism from observer groups and international organizations. This positive change is commended by The Carter Center. The Supreme Court had earlier agreed to hear a lawsuit filed by EOC, a national observer group, against the ECN policy.

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.[8] The complaints and appeals system was assessed in 2008 as being confusing and often non-transparent. It was therefore underutilized, meaning that claims of electoral violations were often not dealt with appropriately. During the current electoral process, few written complaints have been filed at the constituency level. Nevertheless, Carter Center observers have noted that returning officers do not have a uniform understanding of the complaints mechanism and that some political parties have stated that they do not have sufficient information on filing complaints or that they do not have confidence in the complaints and appeals system.

Election Management

An independent and impartial election management body that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are

[7] ICCPR, Article 25 (a). UN HRC General Comment 25, paragraphs 20 and 26.
[8] ICCPR, Article 2.3, and UN HRC General Comment 25, paragraph 20.

able to participate in a genuinely democratic electoral process.[9] 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.[10] After a brief period in early 2013 with no commissioners, the ECN is now fully functioning with five commissioners appointed, and decisions are made on the basis of consensus. This contributes to building public confidence in the integrity of the election.

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, the ECN has thus far kept the technical side of the process largely on schedule while acting in an impartial manner. There are still major challenges to be addressed in ensuring adequate voter education, in the distribution of all materials and the effective training of polling and counting officials, especially in the face of ongoing security threats. The ECN has prepared an extensive voter education campaign. Although ECN public service spots are being aired on TV and local FM stations, other voter education campaign efforts have been limited with low visibility in the field. The Center's observers have been informed of ongoing or completed training of voter education volunteers in several districts visited, but little activity was taking place as most interviewed district election officers (DEOs) reported that they had not yet received the voter education materials. Where voter education was already underway, observers noted that volunteers had no specific targets for numbers of voters to contact and were largely left to devise their own program.

While the ECN has worked transparently for the most part during election preparations, it has not permitted observers to be present for the printing of the ballots, citing security concerns. Making all steps of the process fully open to observation is an important step in building and maintaining public confidence in the integrity of the process, as well as a central point in the *Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers.*

Party and Candidate Registration

The effective implementation of the right to stand for elective office ensures that voters have a free choice of candidates.[11] For this reason, any conditions placed on political party and candidate registration processes should be reasonable and non-discriminatory.[12] Overall, party and candidate registration took place under conditions that allowed parties and individuals to register without undue obstacles, giving voters a wide choice of political options (over 122 parties were registered for the proportional representation race and 6,128 first-past-the-post candidates, among them 667 women and 1,115 independent candidates). The few cases of refusal of registration (eight parties and six first-past-the-post candidates) appeared to be well grounded. In some constituencies in eastern Nepal, first-past-the-post

[9] UNHRC, General Comment No. 25, paragraph 20.
[10] UN HRC General Comment 25, paragraph 20.
[11] ICCPR, Article 25 (a). UN HRC General Comment 25, paragraph 15.
[12] UN HRC General Comment 25, paragraphs 15 – 17.

candidate registration was hampered or tense due to strikes or threats of violence by boycotting groups but was successfully conducted throughout the country.

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.[13] This applies to all persons, but there are additional specific international obligations regarding the rights of women and indigenous groups.[14] In this context, the minimum representation quotas for women, members of indigenous groups and others introduced in the legal framework for the 2008 are positive. However, relatively few candidates for the first-past-the-post races are women or from indigenous groups, and some of those who have been nominated have reportedly been assigned constituencies with a low likelihood of victory. The ECN returned most of the initially submitted proportional representation candidate lists to the political parties for correction due to not meeting the quotas.

The ECN postponed the deadline for the registration of candidates [for the first-past-the-post races] by one week at the request of the council of ministers.

Voter Registration and Voter Identification

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.[15] 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 Nepali voters, based on the 2011 census. A positive step resulting from the March 2013 amendment of the interim constitution of 2007 has been that most 18 year olds are now eligible to vote, this being in accordance with a Carter Center recommendation. By ECN decision, all registered citizens who turned 18 years of age by July 15 are eligible to vote.

Under Nepal's international obligations, it is required to facilitate registration and remove barriers to registration. 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 excluded non-Nepali citizens, 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's decision, the authorities took steps to improve access to this document,

[13] UN HRC General Comment 18, paragraph 10.
[14] ICCPR, Art 3; CEDAW, Art 7; and ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), Art. 6.1(b)
[15] ICCPR, Article 25(b); and UN HRC General Comment 25, paragraph 11.

including sending mobile distribution teams to each district, amending the citizenship law to allow children of people who obtained citizenship by naturalization to obtain citizenship, and amending voter registration rules to allow people registered for the 2008 constituent assembly election to be included on the voter list without a citizenship certificate.

The ECN instituted an "out of district" 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. It is unclear to what extent this measure will effectively enfranchise migrants, however, since they must vote in their home constituency and may be unable to travel for election day. While voter registration was conducted correctly overall, often in difficult conditions, the percentage of errors – e.g., misassigned polling locations, incorrect identifying information – is unknown as no audit of the voter register was conducted prior to this election.

Voter identification remains an issue. The new voter rolls contain a photograph of each voter, which will assist polling staff in identifying voters. After some mixed messages regarding the distribution of voter ID cards, the ECN has recently indicated that it is going ahead with a plan to print and distribute the 12.1 million voter ID cards by election day, in some cases by making them available at polling stations. Most DEOs met by Carter Center observers have expressed concern about the delay in distributing voter ID cards. If distribution goes ahead, considerable control will be necessary to ensure that each voter's ID card is distributed only to that voter in order to prevent fraudulent usage. It is unclear whether or not the ECN will have an education campaign to deal with potential confusion by voters as to whether or not the ID cards are necessary to vote.

No steps have been taken to prevent parties from setting up tables at polling locations to assist voters in finding themselves on the voter roll. In addition to this being unnecessary with the new format of the voter rolls, this practice led to problems in some polling locations in 2008, and The Carter Center recommended that it be eliminated in future elections.

Campaign Environment

In addition to being open 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.[16]

Carter Center observers report that in general the campaign environment thus far has been open, allowing candidates and parties to organize public rallies and assemblies freely and to convey their message directly to potential voters. Reported violations of the ECN's Code of Conduct mostly referred to unauthorized vehicle use by candidates on the campaign trail. However, a number of more serious violations have been reported; among them sporadic confrontations between supporters of rival party/candidates and incidents of looting of

[16] ICCPR, Articles 9, 12, 19, 22; and UN HRC General Comment 25, paragraph 25.

campaign or voter education materials by poll-opposing parties.[17] Lately, there have also been arson attacks on parked vehicles used by candidates and poll-opposing parties have tried to hamper visits of top-level national leaders of the four major parties to more remote districts by announcing and enforcing regional-level *bandhs.* Yet, these sporadic and increasing incidents, and attempts at obstructions have not to date had a significant impact on the campaign environment overall.

There is no public campaign funding in Nepal, and political parties therefore rely on party member contributions, the personal resources of nominated candidates and/or donations for campaign expenditures. Many first-past-the-post candidates rely on their own resources for campaign expenditures and receive little or no financial support from their parties. This is at times cited as a reason for the failure of political parties to nominate more women in the first-past-the-post races. Although specified spending limits are in place, monitoring compliance is a continuing challenge.[18] The Carter Center urges parties and candidates to adhere to spending limits and urges the ECN to publish campaign finance reports after they are received in order to make this element of the process more transparent.

Security Environment

The right to personal security is a fundamental right and includes the protection of voters, candidates, poll workers, and observers from coercion, intimidation, and violence during an election.[19] In the 2008 election, Nepal experienced acts of electoral violence, voter intimidation, and booth capturing. More recently, poll-opposing parties obstructed the voter registration process in March 2013.

In district visits prior to the Dashain festival period (in the second week of October), Carter Center observers reported that the security environment was calm. This also held true for districts the government had classified as sensitive. Since then, a number of reports of confrontations between supporters of rival parties/candidates and sporadic incidents of looting of campaign or voter education materials by poll-opposing parties have emerged. (See campaign section.)

The activities and plans of poll-opposing parties, chief among them the CPN-M and the FDNF-affiliated FLSC in eastern Nepal, present the biggest element of uncertainty in the security environment for these elections. There have been mixed messages regarding their strategy and whether they will attempt to actively disrupt, or peacefully boycott the election. In spite of assurances by CPN-M chairman, Mohan Baidhya, given on Oct. 10 that the party

[17] The investigation in the shooting on Oct. 4 of Mohammad Alam, a candidate for UML from Bara district and prominent Muslim leader, - arguably the most serious incident thus far - is still ongoing and it is unclear whether the assassination was related to the election or not.
[18] In the past enforcement of audit requirements and public disclosure mechanism has been notoriously weak. See Martin Chautari, February 2012, "Political Finance and the Public Right", Briefing Paper No. 6.
[19] ICCPR, Art 9. "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

will adopt a "gentle" approach and not forcefully disrupt the election, reports of sporadic incidents of looting or destruction of campaign or voter education materials or assaults continue.[20] The FDNF-affiliated FLSC in the east appears to have taken a more aggressive stance, having announced a program to 'ban' candidates from entering their constituencies in the east starting from Oct. 19. Significantly, both groups have called for a nationwide shutdown from Nov. 11- 20, potentially impacting logistical preparations for the election. The Carter Center urges all protesting parties to do so peacefully and to respect the rights of all citizens to freedom of movement, peaceful assembly, and participation in public affairs.

The Center's observers noted that particularly in mountain districts and remote areas of the hills (but also to some extent in the Tarai), the difficult terrain and lack of road access poses challenges for security forces to respond as well as for the transportation of sensitive polling materials. Several interlocutors expressed concern that voter intimidation or obstructions on election day might not occur at the polling location, but rather on the way there, with the scope and ease of such obstructions amplified in rural and remote areas.[21] Conversely, in the eastern and central Tarai, the open border with India and links of certain candidates to armed groups and criminal gangs is understood to be a potential security risk.

Carter Center observers also heard of plans by party representatives to mobilize their youth-wings not only for the canvassing of votes, but also to provide protection for candidates, guide voters to the polling locations, and guard ballot boxes and booths against potential interference. Some told observers that members of their youth-wings are currently undergoing training in crowd management and booth protection. While most assured that their youth wings would be mobilized with restraint, the possibility of large crowds of youth gathering outside the polling location is of some concern. The Carter Center urges political party leaders and candidates to use the official mechanism of the complaints process should any complaint arise and to take measures to calm their supporters.

In view of past experiences and the factors mentioned above - including continuing threats of potential poll disruption - the government in September unveiled an integrated security plan for the election. According to the plan, 40,000 personnel from the Nepal Police, 25,000 from the Armed Police Force and 40,000 Army personnel will be deployed to provide election security. In addition, 45,000 temporary police personnel have been recruited and are currently undergoing a 15-day training to fulfill auxiliary roles during the election. The Ministry of Home Affairs has also ranked different constituencies and polling locations according to their sensitivity.

[20] This included an incident where a female UCPN(M) cadre sustained severe burn injuries in Nuwakot on Oct. 23.

[21] For instance, in Jogbudha VDC of Dadeldhura, a police official pointed out that the access route to some polling locations in the VDC is such that a small number of people with sticks would be able to block the way.

The security of polling officials and materials, candidates, voters, and other stakeholders prior to and during polling day is of utmost importance to the conduct of a credible election and the Center commends the government on taking measures to mitigate the risks.

The Carter Center understands that the recruitment of temporary police and the deployment of the army for the purpose of election security has been a matter of debate. In addition, a clash between temporary police recruits and the police in Bara district on Oct. 21 followed by nationwide demonstrations by recruits the day after an announcement of the reduction of their tenure raises some concern. The Carter Center urges that adequate training is given to temporary police personnel before their deployment and that security at the polling location should be arranged in such a manner that it guarantees that the presence of armed personnel, while acting as deterrent against disruptions, does not intimidate voters or influence them in any manner while exercising their democratic rights.

Recommendations

The Carter Center international election observation mission to Nepal's 2013 constituent assembly election offers the following recommendations to support the conduct of a credible election.

To the Election Commission of Nepal:

- Ensure that accredited international and citizen election observers have access to all parts of the electoral process, including such pre-election activities as the ballot paper printing, all aspects of polling, closing and counting, important public briefings, and post-election activities such as national tabulation of votes.
- Ensure polling officials receive adequate training in advance of election day, especially on the identification of voters, preventing the entry of unauthorized persons, and enforcing voter secrecy.
- Ensure that voter ID cards are distributed personally and only to the individual voter. The ID card should not be a requirement for being able to vote. An education campaign on the ID cards also should be conducted.
- Ensure that polling officials and not political party volunteers identify voters at polling centers.
- Ensure that counting staff are fully trained and consider making provisions for ballot box reconciliation procedures
- Build on efforts to improve voter education, including targeted voter education for specific audiences.
- Ensure that all complaints are dealt with according to law and established procedures.

To Candidates and Political Parties:

- Continue to respect the Election Commission of Nepal's Code of Conduct and reinforce fair practices among party supporters.
- Ensure that party rallies or protest and boycott programs respect the freedom of assembly, freedom of movement and the right to participate in public affairs of all citizens.
- Use official complaint mechanisms for election complaints that may arise and take measure to calm their supporters and call for patience.
- Instruct supporters and youth-wing members to refrain from crowding polling locations or its access routes on election day.

- Ensure transparency of campaign finances.
- Refrain from intimidation or asking for donations forcefully.

To the Government of Nepal:

- Respect the right to abstain from voting and to call for a peaceful boycott, but prevent any disruptions that would prevent citizens from exercising their fundamental civil and political rights.
- Ensure safety and security of voters and candidates.
- Ensure that security arrangements are done in such a manner that they do not intimidate voters.
- Ensure adequate training is given to temporary police personnel before deployment.

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NEWS
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FOR IMMEDIATE RELEASE
Nov. 7, 2013
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Jimmy Carter to Lead Carter Center Delegation to Nepal's Nov. 19 Election

Atlanta…The Carter Center announced today that former U.S. President Jimmy Carter and former Deputy Prime Minister of Thailand Dr. Surakiart Sathirathai will co-lead the Carter Center's delegation to observe Nepal's Nov. 19 constituent assembly election. The Center's mission will include more than 50 observers representing 27 nations deployed throughout the country.

President Carter, Dr. Sathirathai, and the Carter Center leadership team will meet with key stakeholders, political parties, independent candidates, civil society organizations, government officials, and the international community, and will observe polling and counting on Nov. 19-21.

The Carter Center is observing Nepal's constituent assembly election at the written invitation of the Election Commission of Nepal and Chairman of the Council of Ministers Khil Raj Regmi.

Working to build peace in Nepal since 2003, the Center observed the country's first constituent assembly election in 2008, and then conducted long-term political and constitutional monitoring until June 2013. The Center's findings were compiled into more than 20 public reports that were shared with government, the media, and civil society, in an effort to give all Nepalis a voice in their country's future.

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.

The Carter Center releases periodic reports of its findings in Nepal, available at www.cartercenter.org.

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THE
CARTER CENTER

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.[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. 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.[2]

[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.

[2] 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.

Political Background

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.[3] The legal electoral framework in Nepal has its base in the interim constitution of 2007 and several separate laws.[4] 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

[3] ICCPR, article 2; UN HRC General Comment 25, paragraphs 5, 7, 9, 19, 20.
[4] 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.

which candidates will be selected by the parties. Similarly, the provision for 26 members to be selected by the government after the election undermines the basic right of representation.[5] 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…"[6]

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.[7]

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.[8] 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.

[5] 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…"
[6] Interim Constitution of Nepal, Art. 63(3)(c).
[7] 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.
[8] 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.[9] 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.[10] 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.[11] 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.

[9] UNHRC, General Comment 25, paragraph 20.
[10] UN HRC General Comment 25, paragraph 20.

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.[12] 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.[13] 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.[14]

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.

PARTY AND CANDIDATE REGISTRATION

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

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-postb (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.[17] 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 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.[18] 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 (FDNF 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.[19]

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.[20] This applies to all persons, but there are additional specific international obligations regarding the rights of women and indigenous groups.[21] 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.[22] 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.[23] 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.

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.[24]

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.[25] 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.[26] 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.[27] 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.[28]

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.[29] 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 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.[30] 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.[31] 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.

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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THE
CARTER CENTER

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

[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.

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

[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."

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.

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

[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."

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.

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

[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

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

[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;"

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

[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

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

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 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

[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).

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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Appendix F

Election Day Deployment Teams

Region	Districts	Team	Observer Team	Nationality
Far Western	Kailali	LTO	Jon Hartough	USA
			Hannah Rose Holloway	UK
	Baitadi	STO	Anna Papikyan	Armenia
			Borislav Spasojevic	Serbia
	Dadeldhura	STO	Anke Kerl	UK
			Mohammad S. Talukder	Bangladesh
	Kanchanpur	STO	Deborah Rudolph	USA
			Amb. Andrew Hall	UK
	Achham	STO	Ines Ayari	Tunisia
			Jennifer Anderson	USA
Mid Western	Banke	LTO	Natasha Rothchild	USA
			Jon Jeppsson	Sweden
	Daleikh	STO	Martina Garbuglia	Italy
			Buster Zalkind	USA
	Surkhet	STO	Amy Johnson	USA
			Peter Clayton	UK
	Bardiya	STO	Dee Aker	USA
			Edward Horgan	Ireland
	Dang	STO	Lena Michaels	Germany
			T. Kumar	USA

Region	Districts	Team	Observer Team	Nationality
Western	Kaski	LTO	Rachel Moles	UK
			Luvy Rocha Rappaccioli	Nicaragua
	Baglung	STO	Sasha Pajevic	Montenegro
			Prof. David Gellner	UK
	Kapilbastu	STO	Teodora Todorova	Bulgaria
			Chris Groth	USA
	Nawalparasi	STO	Cecilia Bylesjö	Sweden
			Shahid Malik	UK
	Gorkha	STO	Sarah Kiani	USA
			Oliver Housden	UK
Central	Nuwakot	LTO	Jana S. Nolle	Germany
			Tadzrul Tahir Adha	Malaysia
	Kathmandu	STO	Sarah Levit-Shore	USA
			Win Kyi	Myanmar
			Tun Tun Oo	Myanmar
	Kathmandu	STO	Connie Moon Sehat	USA
			Stephen Beale	UK
	Chitwan	STO	Anna Taquet	France/USA
			Ahmad Razuli	Kyrgyzstan
	Dolakha	STO	Ron Rudolph	USA
			Bob Hope	USA
	Kathmandu	STO	President Carter	USA
			Amb. Peter Burleigh	USA
			David V. Hamilton	USA
	Kathmandu	STO	Dr. Surakiart Sathirathai	Thailand
			Dr. John Hardman	USA
	Kathmandu	STO	Amb. Kobsak Chutikul	Thailand
			Dr. David Pottie	Canada

Region	Districts	Team	Observer Team	Nationality
Tarai	Parsa	LTO	Dr. Tiago Faia	Portugal
			Dewanti Subijantoro	Indonesia
	Rautahat	STO	Maria Krause	Romania
			Avni Dervishi	Kosovo
	Saptari	STO	Stina Larserud	Sweden
			Amb. Ralph Frank	USA
	Dhanusha	STO	Dina Sadek	Egypt
			Stefan Krause	Greece
	Siraha	STO	Ellen Shustik	Canada
			Roger Bryant	UK
Eastern	Morang	LTO	Ben Dunant	UK
			Tessa Stromdahl	USA
	Dhankuta	STO	Francesca Boggeri	Italy
			Dwight Pelz	USA
	Sunsari	STO	Cordy Beckstead	USA
			George Wariu	Kenya
	Jhapa	STO	Sophie Khan	Canada
			Sam Aucock	South Africa
	Panchthar	STO	Shafeea Riza	Maldives
			Hans Haddal	Norway
	Sankhuwasabha	STO	Nikolina Staleska	Macedonia
			Jean Louis van Belle	Belgium

Appendix G
Checklists

	THE CARTER CENTER ELECTION OBSERVATION MISSION - Nepal 2013 **OPENING**			
	1. GPS Location: 2. Arrival Time (24 Hour Clock): 3. Region: East Central [illegible] West Mid-West Far West 4. District: 5. Constituency number: 6. VDC/Munic.:			
	7. Polling Location Name ____ 8. Polling Center Code____ 9. Is your Polling Location: Urban or Rural 10. Number of registered voters at the Polling Center____			
	11. Was the constituency classified as: Highly Sensitive Normal Sensitive Unknown 12. Was the Polling Location in: Terai Hill Mountain			
	Polling Location			
		Yes	No	N/A
13	Was the environment surrounding the Polling Location calm?			
14	Was the Polling Location and its surrounding area (within 100 meters) free from campaigning, including campaign materials?			
15	Were there any party youth wings present? UCPN (Maoist) Nepali Congress CPN(UML) RPP RPP-Nepal MPRF-D TMDP Other None			
16	Did any parties exhibit disruptive behavior? UCPN (Maoist) Nepali Congress CPN(UML) RPP RPP-Nepal MPRF-D TMDP Other None			
17	Was police/Armed Police Force (APF) present at the Polling Location?			
18	If yes, was the police/security/army presence at the Polling Location in accordance with the procedures?			
19	Was the queue management inside the Polling Location effective?			
20	Were voter ID cards distributed at the Polling Location?			
21	If yes, by whom: Polling Staff Social Mobilizer Party Representative Voter Education Volunteer Security Personal Other			
	Polling Center			
23	Was the environment inside the Polling Center calm?			
24	Was the Polling Center free from unauthorized persons?			
25	Was the Polling Center set up according to ECN procedures?			
26	Was the Polling Center accessible to disabled voters?			
27	Were all the poll workers present at Polling Center?			
28	If no, Please select the poll worker(s) that were absent: PC Queue Controller Identification Officer 1st Ballot Paper Issuer 2nd Ballot Paper Issuer Polling Staff Asst. Polling Officer			
29	How many workers were present at Polling Center?			
30	How many were women?			
[illegible]	Were all the election materials delivered safely and securely?			
	Opening Procedures			
[illegible]	What time did the Polling Center open? a. 6:50 - 7:10 b. 7:10-8:00 c. After 8			
[illegible]	If not 6:50-7:10, why did the Polling Center open late? Missing Materials Lack of Poll Workers No Polling Officer Other			
[illegible]	If materials were missing, which materials? Voter List Ballot Papers Ballot Boxes Ballot Box Seals Indelible Ink Other Poll Book Swastika Voting Stamps Voting Screens			
[illegible]	Did the Polling Officer fill in all four reconnaissance deeds?			
[illegible]	Were the ballot boxes presented as empty to all present including party agents, candidates and observers?			
[illegible]	Were the ballot boxes sealed with numbered seals?			
38	Were identifying stickers put on the ballot boxes?			
39	Has the Polling Officer begun the process of signing the ballots?			
[illegible]	Were the party/candidate agents and omestic observers able to record the number of seals?			
41	Was the Polling Center free from interference?			
42	Which political party/candidates were represented among the agents present in the Polling Location? Select multiple: a. UCPN(Maoist) b. Nepali Congress c. CPN(UML) d. RPP e. RPP-Nepal f. MPRF-Nepal g. MPRF-D h. TMDP i. Other			
[illegible]	Was the number of political party agents present restricted to one as per procedures?			
44	If no, which party had more than one agent? a. UCPN(Maoist) b. Nepali Congress c. CPN(UML) d. RPP e. RPP-Nepal f. MPRF-Nepal g. MPRF-D h. TMDP i. Other			
45	How many political party/candidate agents were present in total?			
[illegible]	How many domestic observers were present?			
47	Which organizations are represented among domestic observers present in the Polling Location? NDOC EOC DEW INSEC DEOC Other None			
48	Were authorized persons restricted from their work?			

Opening Checklist
(Continued)

92	If yes, which persons were restricted? Party Agents Domestic Observers International Observers Poll Workers			
93	Were the poll workers performing in an impartial and non partisan manner?			
94	Were all Polling officials wearing ID cards?			
95	Were any official complaints lodged at the Polling Center up to the time of your departure?			
96	If yes, who was the complainant? Party Agents Candidate Voter Other			
97	If yes, were the complaints addressed?			

Overall Assessment of the Opening Process

Instructions: Put an 'X' next to the statement that best describes your assessment of the election environment & voting process for this station. If your response is "poor" or "very poor," it is important you provide further explanation in the comments section below.

- o Very Good - Procedures are conducted in a professional manner. No major irregularity. Most Qs were positively evaluated.
- o Good - Procedures were respected. Minor problems. Solutions were found to address them. Positive observation.
- o Poor - Some of the procedures were not respected. Nevertheless, the overall voting process was not badly affected.
- o Very Poor - Problems observed had a negative impact on the voting process. Many or key Qs were negatively evaluated. The validity of the result from this PS could be in question.

98	OBSERVER A, select the option that best describes your assessment of the election environment & polling process for this Polling Center:	Very Good	Good	Poor	Very Poor
99	Observer B, select the option that best describes your assessment of the election environment & polling process for this Polling Center:	Very Good	Good	Poor	Very Poor
100	What is the joint assessment of the election environment and polling process for this Polling Center?	Very Good	Good	Poor	Very Poor
101	What are the main reasons for the ratings your team selected?				
102	Departure Time (24 Hour Clock):				

Comments

Instructions: Please provide details of any irregularities that you witnessed in the Polling Center you observed, or any incidents reported to you by those present in the Center. You must provide an explanation for any observation questions to which you answered "NO". The Comments section below should also be where you include any 'NOTED' observations that information you receive that is important to your assessment that is not already observed by the team. Indirect observations should not be reflected in the following response boxes. If additional space is needed, please attach additional sheets of paper to the report form.

THE CARTER CENTER ELECTION OBSERVATION MISSION - Nepal 2013 POLLING				
1. GPS Location 2. Arrival Time (24 Hour Clock) 3. Region: East Central Tarai West Mid-West Far-West 4. District Code 5. Constituency #				
6. VDC/Munic. ______ 7. Polling Location Name ______ 8. Polling Center Code ______ 9. Is your polling location: Urban Rural				
10. Number of registered voters at the Polling Center ______ 11. Number of voters who have already voted ______ 12. Have any tendered ballots been cast? Yes No N/A				
13. Was the Constituency classification: Highly Sensitive Normal Sensitive Unknown 14. Was the environment surrounding the Polling Location calm? Yes No N/A				
15. Was the Polling Location and its surrounding area (within 300 meters) free from campaigning, including campaign materials? Yes No N/A				
16. Were there any party youth wings present? UCPN (Maoist) Nepali Congress CPN(UML) RPP RPP-Nepal MPRF-D TMDP Other None				
Polling Location				
		Yes	No	N/A
17	[illegible]			
18	If yes, was the environment surrounding the Polling Location calm?			
19	Did you observe any attempts to give identification slips to ineligible voters?			
20	Did any parties exhibit disruptive behavior? a. UCPN(Maoist) b. Nepali Congress c. CPN(UML) d. RPP e. RPP-Nepal f. MPRF-Nepal g. MPRF-D h. TMDP i. Other			
21	Was police/Armed Police Force (APF) present at the Polling Location?			
22	If yes, was the police/security/army presence at the Polling Location in accordance with the procedure?			
23	Was the queue management at the Polling Location effective?			
24	Were voter ID cards distributed at the Polling Location?			
25	Were identities for voters receiving voter ID cards verified?			
26	If yes, by whom: Polling Staff Social Mobilizer Party Representative Voter Education Volunteer Security Personnel Other			
Polling Center				
27	Was the Polling Center set up according to ECN procedures?			
28	Was the environment inside the Polling Center calm?			
29	Was the Polling Center free from unauthorized persons?			
30	Was the Polling Center overcrowded?			
31	Was the Polling Center accessible to disabled voters?			
32	What time did the Polling Center open? a. 6:50 - 7:10 b. 7:10-8:00 c. After 8			
33	Were all the poll workers present at the Polling Center?			
34	If no, please select the poll worker(s) that were absent: PC Queue Controllers Identification officer 1st Ballot Paper Issuer 2nd Ballot Paper Issuer Polling Staff Asst. Polling Officer			
Voting Procedures				
35	How many workers were present at the Polling Center?			
36	How many were women?			
37	Were all essential materials available at the Polling Location?			
38	If no, which materials were missing? Voter List Ballot Papers Ballot Boxes Ballot Box Seals Indelible Ink Swastika Voting Stamps Poll Book Voting Screens Other			
39	Were all voters checked for ink on the left thumb?			
40	Did polling staff verify the identity of every voter, either by visual comparison with a photo on the voter roll or by checking a voter's ID document?			
41	Was each voter's name checked off on the voter roll?			
42	Was any voter denied the right to vote?			
43	If yes, why? Not on voter roll Eligibility Challenged Name already on Voter Roll Other			
44	Was every ineligible voter turned away?			
45	Has the Polling Officer begun the process of signing ballots?			
46	In all cases where voters signed the counterfoils by thumbprint, were thumbs cleaned with a cloth before voting?			
47	Was every voter marked on the thumb on the left hand (unless not possible due to disability)?			
48	Were the ballot boxes properly sealed?			
49	Was the secrecy of voting maintained?			
50	Did you observe any of the following irregularities of the voting process? Multiple voting Ballot Stuffing Interruption of voting Voter Intimidation Illicit assistance Under age voting Other None			

51	Were the poll workers performing in an impartial and non partisan manner?			
52	Was the assisted voting procedure being followed?			
53	On average, how long does it take a voter to complete the voting process (from the time of starting identification procedure)?			
54	Which political party/candidates were represented among the agents in the polling center? a. UCPN(Maoist) b. Nepali Congress c. CPN(UML) d. RPP e. RPP-Nepal f. MPRF-			
55	Was the number of political party agents present restricted to one as per procedures?			
56	If no, which party had one or more agent? a. UCPN(Maoist) b. Nepali Congress c. CPN(UML) d. RPP e. RPP-Nepal f. MPRF-Nepal g. MPRF-D h. TMDP i. Other			
57	How many political party/candidate agents were present in total?			
58	How many domestic observers were present?			
59	Which organizations are represented among domestic observers present in the Polling Location? a. NEOC b. EOC c. DEW d. INSEC e. DEOC f. Other g. None			
60	Were authorized persons restricted from their work?			
61	If yes, which persons were restricted? Party Agents Domestic Observers International Observers Poll Workers			
62	Were all Polling officials wearing ID cards			
63	Were any official complaints lodged at the Polling Center up to the time of your departure?			
64	If yes, who was the complainant? Party Agents Candidate Voter Other			
65	If yes to question 63, were the complaints addressed?			

Overall Assessment of the Polling Process

Instructions: Put an "X" next to the statement that best describes your assessment of the election environment & voting process for this station. If your response is "poor" or "very poor," it is important you provide further explanation in the comments section below.

o Very Good - Procedures are conducted in a professional manner. No major irregularity. Most Qs were positively evaluated.
o Good - Procedures were respected. Minor problems. Solutions were found to address them. Positive observation.
o Poor - Some of the procedures were not respected. Nevertheless, the overall voting process was not badly affected.
o Very Poor - Problems observed had a negative impact on the voting process. Many or key Qs were negatively evaluated. The validity of the result from this PL could be in question.

66	Observer A, select the option that best describes your assessment of the election environment & polling process for this Polling Center: Very Good Good Poor Very Poor
67	Observer B, select the option that best describes your assessment of the election environment & polling process for this Polling Center: Very Good Good Poor Very Poor
68	What is the joint assessment of the election environment and polling process for this Polling Center: Very Good Good Poor Very Poor
69	What are the main reasons for the rating your team assigned?
70	Departure Time (24 Hour Clock):

Comments

[illegible]

THE CARTER CENTER ELECTION OBSERVATION MISSION - Nepal 2013

CLOSING

1.GPS Location:_____ 2.Arrival Time(24 Hour World Clock):_____	3. Region: East Central Tarai West Mid-West Far West 4. District:_____ 5. Constituency #:_____
6. VDC/Munic.:_____ 7.Polling Location Name_____	8. Polling Center Code:_____ 9. Is your Polling Location: Urban Rural
10. Number of registered voters at the Polling Center:_____	11. Was the Constituency classified as: Highly Sensitive Normal Sensitive Unknown
12. Was the Polling Location in: Tarai Hill Mountain	13. Total number of voters who voted:_____

Closing

		Yes	No	N/A
14	Did the polls close on time at this Polling Center?			
15	Were all voters who joined the queue prior to the closing of polls allowed to vote?			
16	Were any voters allowed to join the queue after the polls closed?			
17	At what time did the last voter vote?			
18	Was the Polling book record made?			
19	Was the closing of the Polling Center peaceful and free of disruptive or violent incidents?			
20	Were all the unused signed and unsigned ballots placed in a sealed envelope?			
21	Were any of the following omitted from the Pollin Book record? Serial numbers of seals Names of election officials Party agents Present Complaints/Objections			
22	Were ballot box slits sealed before being transported to the Counting Center?			
23	Were senesitive materials packed apropriately?			
24	Was the Polling Officer present at the Polling Center during the closing process?			
25	Were security personnel present at the Polling Center during the closing process?			
26	Was the closing process free from intimidation inside or outside the Polling Center?			
27	Did the party agents and/or observers follow the ballot box from the Polling Center to the Counting Center?			

Overall Assessment of the Process

Instructions: Put an 'X' next to the statement that best describes your assessment of the election environment & voting process for this station. If your response is "poor" or "very poor," it is important you provide further explanation in the comments section below.

o Very Good - Procedures are conducted in a professional manner. No major irregularity. Most Qs were positively evaluated.
o Good - Procedures were respected. Minor problems. Solutions were found to address them. Positive observation.
o Poor - Some of the procedures were not respected. Nevertheless, the overall voting process was not badly affected.
o Very Poor - Problems observed had a negative impact on the voting process. Many or key Qs were negatively evaluated. The validity of the result from this PL could be in question.

28	Observer A, select the option that best describes your assessment of the eletion environment & polling process for this Polling Center: Very Good Good Poor Very Poor
29	Observer B, select the option that best describes your assessment of the election environment & polling process for this Polling Center: Very Good Good Poor Very Poor
30	What is the joint assessment of the election environment and polling process for this Polling Center: Very Good Good Poor Very Poor
31	What are the main reasons for the rating your team assigned?
32	Departure Time (24 Hour Clock):_____

Comments

Instructions: Please provide details of any complaints or irregularities that occurred at the Polling Center you observed, or any incidents reported to you by those present in the Center. You must provide an

Counting Checklist

THE CARTER CENTER ELECTION OBSERVATION MISSION - Nepal 2013

COUNTING

1.GPS location:___ 2.Arrival Time(24 Hour World Clock):___ | 3.Region: East Central Tarai West Mid-West Far West

4. District:_____ 5. Constituency name:_____ | 6. Counting Location Name:_____

7. Was the constituency classified as: Highly Sensitive Normal Sensitive Unknown

Retrieval and Reception

		Yes	No	N/A
8	Were all ballot boxes received and processed before the count started?			
9	Prior to start of counting, did the Returning Officer publish a notice regarding the time of the start of vote counting?			
10	Prior to start of counting, did the Returning Officer check every ballot box?			
11	Prior to start of counting, did all security seal numbers match those recorded at polling centers?			
12	Prior to start of counting were all ballot boxes correctly sealed and free of damage?			

Counting

13	What time did the count start (24 hour world clock)?			
14	Which political party/candidates were represented among the agents present in the polling center? a. UCPN(Maoist) b. Nepali Congress c. CPN(UML) d. RPP e. RPP-Nepal f. MPRF-Nepal g. MPRF-D h. TMDP I. Other			
15	How many political party/candidate agents were present in total?			
16	How many domestic observers were present?			
17	If answer to question 16 is greater than 0, which organizations are represented among domestic observers present in the Counting Location? NBOC ECC DEW INSEC DEOC Other None			
18	Were authorized persons restricted from their work?			
19	If yes, which persons were restricted? Party Agents Domestic Observers International Observers Poll Workers			
20	Were any unauthorized persons present?			
21	Was the count delayed due to re-polling?			
22	Did the counting staff count all the ballots face down to confirm the total number of ballots in the box?			
23	After opening each ballot box did the Returning Officer record in Form 7 the number of ballots in each ballot box?			
24	Were ballots from different Polling Centers mixed before counting?			
25	Did the counting staff separate the ballots into groups by category of valid ballots, invalid ballots, blank ballots and contested ballots?			
26	After start of counting did counting staff show all ballots to party/candidate agents and observers?			
27	Were recognizance deeds (Form 15) filled in at the end of vote counting for both FPTP and PR?			
28	Were the decisions to invalidate ballots made in accordance with the rules?			
29	Were disputed ballot papers put aside for verification?			
30	Did party/candidate agents request any recounts?			
31	Did the Returning Officer post information on the results of FPTP and PR counts on a notice board for public viewing?			
32	What was the percentage of invalid ballots?			
33	Was the count a continuous process?			
34	Where the count was not finished, were the ballots placed in boxes and securely stored?			
35	At the end of the count, did party agents sign the final documents?			
36	Were the counting staff familiar with the procedures that they were required to follow?			
37	Did the Counting Officers fill in the counting form and sign it?			

38	Were any official complaints lodged at the Counting Center up to the time of your departure?			
39	If yes, were the complaints addressed according to procedure?			
40	Who was the complainant? Party Agents Candidate Voter Other			
41	Were you able to observe all aspects of count process?			

Overall Assessment of the Process

Instructions: Put an 'X' next to the statement that best describes your assessment of the election environment & voting process for this station. If your response is "poor" or "very poor," it is important you provide further explanation in the comments section below.

o Very Good - Procedures are conducted in a professional manner. No major irregularity. Most Qs were positively evaluated.
o Good - Procedures were respected. Minor problems. Solutions were found to address them. Positive observation.
o Poor - Some of the procedures were not respected. Nevertheless, the overall voting process was not badly affected.
o Very Poor - Problems observed had a negative impact on the voting process. Many or key Qs were negatively evaluated. The validity of the result from this PL could be in question.

42	Observer A, select the option that best describes your assessment of the election environment & polling process for this Polling Center: Very Good Good Poor Very Poor	
43	Observer B, select the option that best describes your assessment of the election environment & polling process for this Polling Center: Very Good Good Poor Very Poor	
44	What is the joint assessment of the election environment and polling process for this Polling Center: Very Good Good Poor Very Poor	
45	What are the main reasons for the rating your team assigned?	
46	Departure Time (24 Hour Clock): _____	

Comments

Instructions: Please provide details of any complaints or irregularities that occurred at the Counting Center you observed, or any incidents reported to you by those present in the Center. You must provide an explanation for any observation question to which you answered "NO". The Comments section below should also be where you include any INDIRECT observations - i.e. that information you receive that is reported to you secondhand but is not directly observed by the team. Indirect observations should not be reflected in checklist responses above. **If additional space is needed, please attach additional sheets of paper to the report form.**

Appendix H

Letter of Invitation

Chairman
Council of Ministers

Kathmandu, Nepal

8th September 2013

Excellency,

It is a pleasure and honor for me to recognize your passionate interests in Nepal and the Nepalese people as well as the active involvement of the Carter Center in the promotion of peace and stability in Nepal over the last decade. I recall your recent visit to Nepal in March this year during which you personally took so much interest in the preparedness for fresh elections to a Constituent Assembly.

Following the expiration of the term of the erstwhile Constituent Assembly without final delivery in May 2012, a series of endeavors were made by the political parties to find a resolution to the protracted political problems. However, these endeavors fell short of meeting a common ground. Finally, through collective wisdom of the major political parties, a decision to form a neutral and non-partisan electoral government under my leadership was made primarily to hold elections to the Constituent Assembly in a free and fair manner.

The Government under my leadership has directed all its efforts to hold elections on November 19, 2013. Necessary preparations are either complete or ongoing in full swing. We believe that the elections provide fresh mandate for making the new constitution and reaching a logical conclusion to the peace process as aspired by the Nepalese people.

The Carter Center has a long experience in election observation. It played an important role in observation of the Constituent Assembly Elections in Nepal in 2008. In view of long-term association of the Center with Nepal, and your personal passion for Nepal's peace, progress and stability, it is my honor to extend you an invitation to visit Nepal as an international observer during the Constituent Assembly elections.

Please accept, Excellency, the assurances of my highest consideration.

Khila Raj Regmi

Chairman

His Excellency Mr. Jimmy Carter
The Carter Center
Atlanta, Georgia

The Carter Center at a Glance

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 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. Please visit www.cartercenter.org to learn more about The Carter Center.

Martin Frank

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