

## Introduction

As part of its 2008 Universal Periodic Review, the Government of Nepal accepted recommendations intended to ensure that the conduct of its political, peace, and constitution-making processes were in line with international obligations. These included commitments to ensure broad and equitable inclusion in constitution-making, draft a constitution consistent with international standards and obligations, eliminate all forms of social discrimination, and bring national legislation in line with international standards. Nepal has ratified most U.N. human rights treaties, though in some cases with reservations. Of specific relevance to The Carter Center's recommendations, the country is party to the International Covenant for Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Political Rights of Women (CPRW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention against Corruption (UNCAC).

*The Carter Center in Nepal:* Between 2007 and 2014, The Carter Center conducted long-term political monitoring in Nepal, deploying observers throughout the country to collect primary data regarding the implementation of the peace process, the work of the Constituent Assembly, and electoral preparations. The Center also deployed an international election observation mission, which included long-term observation of voter registration from 2010-2013 and the addition of both long- and short-term observers from Sept. 2013 - Jan. 2014 surrounding the Constituent Assembly election held Nov. 19, 2013. It is on the basis of this work that we offer the following assessments and recommendations for Nepal's 2015 UPR review, including overarching recommendations for governance as well as more specific recommendations regarding the electoral process.

## Findings and Recommendations for Consideration

### Governance

- 1) *Focus on equitable economic development and inclusive growth in parallel to moving the country's political transition process forward.* Already in 2009, when optimism about the Constituent Assembly was at its height, Carter Center observers were finding in citizen interviews that citizens were "alienated from the constitutional process and [instead] prioritize basic needs such as irrigation, education, health, food, security, employment, and 'peace'." Six years later, such basic needs remain and continue to be higher priorities for many Nepali citizens than political developments, as they believe these issues can have a much more direct impact on their daily lives. Economic growth that is broad-based and expands opportunities for all Nepalis is an important part of ensuring peace, development, and inclusive democracy for Nepal.
- 2) *Continue to build accountable, democratic institutions and focus on good governance.* Nepal's democratic institutions remain weak and allow a culture of political impunity and patronage to continue to thrive. Nepali and international stakeholders should seek to support transparent and accountable governance that includes positive incentives to deliver services

effectively, ensuring that good behavior is rewarded instead of penalized.<sup>1</sup> Carter Center reports on local governance published in 2011 and 2014 determined that in the absence of local elections, local governing bodies were overly politicized and controlled by local political party representatives.

- 3) *Hold local elections to restore democratic legitimacy and accountability to local governance.* In line with Recommendation 2 above, one of the main challenges during the course of Nepal's political transition process has been the lack of credible, accountable governance structures at the local level. The last local elections in Nepal were held in 1997.<sup>2</sup> Local bodies are crucial for effective service delivery at the village level. In their absence, political parties have taken an oversized role in local governance, dividing power and resources amongst themselves. The establishment of functioning local governments could have a strong positive effect on the way citizens view the Nepali state.
- 4) *Ensure dignity, respect for diversity, and equal opportunity for all Nepalis in the new constitution and agree on a broadly acceptable federal state structure that will achieve these goals.* Nepali citizen views on the constitution and particularly on the question of federal restructuring varied significantly during the course of The Carter Center's observation. However, it was clear that Nepalis wanted their new constitution to enshrine equal rights and opportunities for all citizens, and dignity and respect for Nepal's immense diversity. There was a sense that any attempts to pit Nepal's caste and ethnic groups against each other could lead to future conflict. This was of particular concern to citizens in regard to the state restructuring debate. At the same time, many citizens noted the importance of full inclusion for Nepal's diverse groups and an end to discrimination by caste, ethnicity, gender, and other factors. They wanted a state structure that would bring government closer to them, that recognized and reflected Nepal's diversity, and that effectively facilitated economic growth and development.
- 5) *Take steps to address conflict-era land issues and prepare and implement land reform policies that will support equitable and inclusive development.* Land is central to the livelihoods of many Nepalis, and political struggles over land and its equitable distribution have a long history. Land was also a central feature of Nepal's decade-long conflict. In two separate reports in 2010 and 2012, Carter Center observers found outstanding conflict-era land cases that had the potential to cause local conflict. Furthermore, the inequitable distribution of land was a main concern to many rural citizens. Despite commitments in the Comprehensive Peace Accord, neither side has fully lived up to its promises on land issues. Addressing conflict-era grievances in a just manner and taking concrete steps to implement land reform policies that contribute to broad-based and inclusive growth could have a significant impact on many Nepali citizens and prevent the seeds of new conflict from being sown.
- 6) *Expand and deepen the participation of women, Dalits, and members of other marginalized groups in decision-making processes within political parties and elected bodies.* Thanks to the quota requirements in the proportional representation component of the electoral system,

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<sup>1</sup> U.N. Human Rights Committee, General Comment 25, para. 7..

<sup>2</sup> U.N. Human Rights Committee, General Comment 25, para. 9.

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.<sup>3</sup> 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 belong to the category Khas Aryan and others.

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.<sup>4</sup> 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 in order to achieve social inclusion. Proactive measures should be taken to democratize internal party structures to strengthen the participation of women, Dalits, and members of other marginalized groups in decision making processes.<sup>5</sup> 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.

## **Electoral Processes**

- 7) Reform the proportional representation side of the electoral system to utilize an open-list rather than closed-list system. 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. Although there is no electoral system prescribed by international law, The Carter Center recommends that, in the interest of inclusive processes, future elections held by proportional representation in Nepal use an open-list system.
  
- 8) Abolish appointed seats in the legislature-parliament or require that their appointment further the goal of diversifying representation. The nomination of 26 members of the Constituent Assembly by the Council of Ministers potentially undermines the right of the people to freely elect their representatives.<sup>6</sup> 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 select anyone it wishes. Moreover, this provision technically gives the executive branch authority over the composition of the legislative branch. The phrase "on

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<sup>3</sup> U.N., CEDAW, art. 7.

<sup>4</sup> U.N., ICCPR, art. 25(a); U.N., CEDAW, art. 4(1); CEDAW General Recommendation No. 23, para. 15; U.N. ICERD, art. 1.4

<sup>5</sup> U.N. Human Rights Committee, General Comment 25, para. 27.

<sup>6</sup> U.N., ICCPR, art. 25(b).

the basis of consensus” has been interpreted in practice to mean division of the mandates among major political parties.

- 9) Require that all political parties abide by diversity quotas. The use of special temporary measures, in this case quota provisions, has greatly expanded the scope of political participation and made the first Constituent Assembly one of the most inclusive national representative bodies in Asia.<sup>7</sup> 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.” This exception appears to deviate from the intention of the interim constitution to expand participation as broadly as possible.
- 10) Promptly revise constituency boundaries in line with census data. Nepal’s international obligation to ensure equal suffrage in determining constituency boundaries was not fully met for this election.<sup>8</sup> 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.
- 11) Conduct an audit of the voter register and take steps to ensure equal inclusion in voter registration. The voter registration program took important steps toward meeting Nepal’s international obligations to ensure universal and equal suffrage.<sup>9</sup> To address some of the problems identified in the 2008 election, when the voter lists were a major source of controversy, the Election Commission of Nepal (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.

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

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<sup>7</sup> U.N., CEDAW, art. 4(1); CEDAW General Recommendation No. 23, para. 15; U.N. ICERD, art. 1.4

<sup>8</sup> U.N. Human Rights Committee, General Comment 25, art. 21.

<sup>9</sup> U.N., ICCPR, art. 25(b); U.N. Human Rights Committee, General Comment 25, para. 11.

difficult to be on the voter list of the constituency in which they actually live.<sup>10</sup> 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.

- 12) Ensure that electoral regulations do not unduly restrict freedom of expression. In some aspects, the code of conduct for political parties, candidates, government, media, and nongovernmental organizations 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 in a specific format. Such provisions are at odds with Nepal's international obligation to restrict freedom of expression only when necessary.<sup>11</sup>
- 13) Ensure that legislation and practice fully reflect its international obligations to provide for transparency in campaign financing and for equitable campaign opportunities. Measures could include requiring disclosure of campaign and party finances by parties and candidates, more realistic campaign spending limits, regular public reporting, and increased enforcement powers for the ECN.<sup>12</sup>
- 14) Clarify the rights of election observers and remove undue restrictions on their eligibility and activities. ECN rules placed some undue restrictions on election 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.<sup>13</sup> In addition, the educational qualifications discriminated against women and marginalized groups, which historically have lower levels of education.<sup>14</sup> The rights of observers should be more clearly defined in legislation to eliminate undue restrictions on observers.
- 15) Amend electoral legislation to ensure that complaints are adjudicated in a timely way. 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. During the 2013 elections, 22 cases were filed with this court but were not resolved until well past the inauguration of the Constituent Assembly, undermining the right to effective remedy.<sup>15</sup>

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<sup>10</sup> U.N., ICCPR, art. 12.2

<sup>11</sup> U.N., ICCPR, art. 19(2).

<sup>12</sup> U.N., UNCAC, art. 7(3).

<sup>13</sup> U.N., ICCPR, art. 25(a).

<sup>14</sup> U.N., ICCPR, art. 2.1, art. 25.

<sup>15</sup> U.N., ICCPR, art. 2.3

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 resolved rapidly to ensure effective and timely remedies.

16) *Strengthen procedures and staff training to ensure the integrity of the vote.* For the most part, Nepal met its international obligations with respect to ensuring the integrity of the voting and counting process. Voting in some 90 percent of the polling centers visited by Carter Center observers took place in a peaceful environment that was, for the most part, free from intimidation or coercion.<sup>16</sup> In addition, observers noted 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 with ensuring the inking of voters' thumbs as a measure against potential multiple voting, while guaranteeing secrecy of the vote and adhering to other procedures, were observed in some polling centers.<sup>17</sup> 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.

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<sup>16</sup> U.N., ICCPR, art. 9

<sup>17</sup> U.N., ICCPR, art. 25.