

# THE CARTER CENTER



## **Submission to the United Nations Universal Periodic Review of Nepal**

### **Third Cycle Thirty-Seventh Session of the UPR January 2021**

*The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. 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.*

*The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored more than 100 elections in 39 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democratic Election Standards (DES) initiative aims to build consensus on standards for democratic elections, based on state obligations under public international law.*

## **Introduction**

1 - With the adoption of a new constitution in 2015, Nepal has taken important steps to implement recommendations accepted by the Government of Nepal from the 2015 Universal Periodic Review, especially regarding an inclusive constitution-making process and the adoption of a constitution consistent with international standards and obligations. The new constitution created a federal system with provinces (states) each having their own elected assembly. New local level entities were created as well. Notably, the new constitution made efforts to ensure respect for women's rights, promote freedom of religion and protect the rights of sexual and gender minorities. Elections were held for the federal and provincial levels in two phases in November and December 2017. Additionally, local elections were also conducted for the new municipal bodies in 2017, the first local elections in almost 20 years. These sets of elections contributed to building new democratic institutions, affording new opportunities for citizens to exercise the political participation rights guaranteed under Nepal's international obligations.

2 - 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).

3 - **The Carter Center in Nepal:** In 2008, The Carter Center observed Nepal's first constituent assembly elections. The Center then conducted long-term political monitoring until 2013, including deploying observers throughout the country to collect data regarding the implementation of the peace process, the work of the Constituent Assembly, and electoral preparations, in particular voter registration. The Center also deployed an international election observation mission for the Nov. 19, 2013 constituent assembly elections. In 2017, The Carter Center returned to Nepal to observe the first federal and provincial elections under the new constitution. It is on the basis of this work that the Center offers the following recommendations for Nepal's 2020 UPR review, focusing on the electoral process.<sup>1</sup>

## **Findings and Recommendations for Consideration**

4 - *Take measures to increase women's representation.* Constitutional inclusion policies and quotas for female candidates have helped to increase female representation. The constitution establishes that, in all assemblies, women should constitute at least one-third of the members, and there are requirements that women comprise 50 percent of each party's proportional representation candidate list. Despite these positive provisions, women's participation in the electoral process could be further improved:

- Notably, the constitutional provision is interpreted as applying to the parliament as a whole, rather than each chamber individually, contributing to complications in identifying which candidates were elected.
- Political parties have not committed to full representation of women as candidates in the first-past-the post component of the electoral system, for which no legal quota measures apply.

- Election day observation indicated that the number of women polling staff, and particularly polling officers, was still considerably less than that of men.

5 - Consistent with Nepal's obligations to take temporary special measures to promote de jure equality for women, The Carter Center recommends that the Government of Nepal build on steps already taken to improve women's representation by addressing remaining obstacles to women's participation as candidates, especially in the first-past-the-post component of the electoral system; that political parties do more to promote meaningful inclusion of women as candidates and party officials; and that the Election Commission of Nepal (ECN) increase the number of women election officials.<sup>2</sup>

6 - Ensure steps are taken to ensure equal inclusion in voter registration. For the 2017 electoral cycle, the ECN updated the 2013 registration database. This exercise showed impressive results, adding close to 1.4 million voters to the register for the provincial and federal elections. However, several issues remain to be addressed for voter registration to fully meet international obligations for universal suffrage. Among these issues:

- Women comprise more than 50 percent of Nepal's adult population, but they constitute only 49.5 percent of registered voters. This indicates a need to increase voter registration outreach to women.
- Legal provisions make it difficult for some married women, disadvantaged people, and others without documents to prove citizenship and be included in the voter register.
- 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.<sup>3</sup>

7 - The Carter Center recommends that the Government of Nepal take 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 have access to documents needed for voter registration, especially married women and other people lacking proof of citizenship.

8 - Ensure that all registered voters are able to cast a ballot. In 2017, hundreds of thousands of polling staff and security personnel were unable to exercise their right to vote, as the ECN did not ensure the right to vote for staff deputized for polling duties outside their home constituencies, despite a Supreme Court decision that their right to vote should be provided for. The Carter Center recommends that appropriate measures be adopted to ensure that all eligible voters, including poll workers and security personnel, are able to cast ballots in line with Nepal's obligations under Art. 25 of the ICCPR. Although Nepalis abroad were not able to vote in 2017, the Center welcomes a subsequent Supreme Court decision to expand voting rights to this group of citizens and recommends its implementation prior to the next general election.

9 - Expand voter education efforts. Comprehensive voter education is essential to inform the electorate of their rights and to clarify procedures ahead of election day, thus ensuring that citizens can exercise their electoral rights.<sup>4</sup> Voter education efforts during the 2017 election process were insufficient in part because of the compressed electoral timeframe and late decisions on ballot

design. According to Carter Center observers, voter education in many districts frequently seemed to be left to party activists or were not visible at all. The ECN's voter education focused on showing voters how to mark the ballot. While this was an important task given the changes in the voting process, The Carter Center recommends that more extensive voter education be undertaken, including providing information to voters about the powers and responsibilities of the elected bodies under the new constitution.

10 - Increase transparency in the electoral process. There were limitations on transparency during the 2017 electoral process. These included closed ECN decision-making processes, the lack of publication of complete results data, and restrictions concerning domestic and international observation. Ballot printing was not open to observation, and there were several instances of polling or counting officials limiting or refusing access to international observers, despite ECN instructions to facilitate the presence of international observers. The presence of observers is integral to ensuring the transparency and integrity of an election and The Carter Center recommends ensuring that accredited observers are able to have full access to the election process.

11 - Ensure that legislation and practice fully reflect Nepal's international obligations to provide for transparency in campaign financing and for equitable campaign opportunities. During the 2017 election period, there was a lack of enforcement of campaign expenditure limitations. Some candidates' campaign spending clearly exceeded the prescribed ceiling. The Carter Center recommends that measures be undertaken to regulate campaign finance to ensure a fair election process, including requiring disclosure of campaign and party finances, realistic campaign spending limits, regular public reporting, and increased enforcement powers for the ECN.<sup>5</sup>

12 - Ensure that electoral regulations do not unduly restrict freedom of expression. The code of conduct, in some cases, was overly detailed and restrictive for political parties, campaigns, government, media, and nongovernmental organizations. This led to excessive limitations on the use of media and electoral advertising, bans on opinion polls during the campaign period and requirements that election materials (such as pamphlets and flags) be in a specific format. The Carter Center recommends that restrictions on campaigning be reviewed and modified to ensure that they are in line with Nepal's international obligations under article 19 of the ICCPR.<sup>6</sup>

13 - Increase access to the electoral process for persons with disabilities. Access to the electoral process was often difficult for persons with disabilities, including voter registration, polling, and voter education. Although the ECN made some efforts to conduct voter awareness meetings with organizations representing people with disabilities, it was widely felt by these groups that these measures were insufficient and that the electoral procedures were not accessible. The restriction on vehicle mobility during election day was often mentioned as hindering the voting rights of people with disabilities, as provisions for vehicle passes for persons with disabilities could not be used by most because of bureaucratic difficulties involved in obtaining the pass. The Carter Center recommends that greater efforts be made to promote access to the election process by persons with disabilities, including increasing the number of accessible polling centers, improving voter education for disabled persons and reviewing procedures consistent with Nepal's obligations under Art. 29 of the CRPD.

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<sup>1</sup> Find the Carter Center's Preliminary Statement on Nepal's 2017 elections at this [link](#).

<sup>2</sup> U.N., CEDAW, art. 4; U.N., CEDAW Committee, General Recommendation No. 23, para. 15

<sup>3</sup> U.N., ICCPR, art. 12.2.

<sup>4</sup> ICCPR, Article 25(b); and UNHRC, General Comment 25, para. 11.

<sup>5</sup> U.N., UNCAC, art. 7(3) and U.N., General Comment 25, para 19.

<sup>6</sup> U.N., ICCPR, art. 19(2).