

THE  
CARTER CENTER



FINAL REPORT OF THE CARTER CENTER  
LIMITED OBSERVATION MISSION TO THE

APRIL 9, 2009,  
LEGISLATIVE ELECTIONS  
IN INDONESIA

*Waging Peace. Fighting Disease. Building Hope.*

THE CARTER CENTER STRIVES TO RELIEVE SUFFERING  
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TO PREVENT AND RESOLVE CONFLICTS, ENHANCE FREEDOM AND  
DEMOCRACY, AND PROTECT AND PROMOTE HUMAN RIGHTS WORLDWIDE.

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# CONTENTS

|  |    |
|--|----|
| <b>Executive Summary</b> .....   | 3  |
| <b>Background to 2009 Legislative Elections in Indonesia</b> .....   | 7  |
| <i>The 1999 and 2004 Elections</i> .....   | 7  |
| <i>A Brief Political Background of Aceh</i> .....  | 8  |
| <b>Carter Center Election Observation in Indonesia</b> .....   | 9  |
| <i>Carter Center Limited Election Observation Mission to Indonesia, April 2009</i> .....                       | 9  |
| <i>Indonesia's International Commitments</i> .....   | 9  |
| <i>Long-Term Observation</i> .....   | 10 |
| <i>Election Day Observation</i> .....  | 10 |
| <i>Carter Center Limited Election Observation in Aceh</i> .....  | 12 |
| <b>Election Law</b> .....  | 14 |
| <b>Election Administration</b> .....   | 15 |
| <i>The National Election Commission (KPU) Structure and Mandate</i> .....                                      | 15 |
| <i>Lagging Public Confidence in the KPU</i> .....  | 17 |
| <i>Voter Registration</i> .....  | 19 |
| <i>Training for KPU Staff</i> .....  | 20 |
| <i>Vote Tabulation</i> .....   | 21 |
| <i>Allocation of Seats</i> .....   | 23 |
| <i>Observation of Election Administration and Vote Tabulation in Aceh Province</i> .....                       | 24 |
| <b>Campaign Finance</b> .....  | 27 |
| <i>Reporting Requirements</i> .....  | 27 |
| <i>Auditing and Oversight of the Income and Expenditure Reports</i> .....                                      | 30 |
| <i>Use of Money to Influence Voters</i> .....  | 31 |
| <i>Late Dissemination of Campaign Finance Rules and Regulations and Awareness of Procedures</i> .....          | 32 |
| <i>Observing Campaign Finance in Aceh Province</i> .....   | 33 |
| <b>Electoral Dispute Resolution</b> .....  | 34 |
| <i>Late Promulgation of Rules and Regulations for Dispute Resolution and Impact on the Process</i> .....       | 34 |
| <i>Mechanisms for Administrative and Criminal Violations Settlement and Challenges to Implementation</i> ..... | 34 |
| <i>Limited Role and Late Opening of Election Supervisory Body Offices</i> .....                                | 36 |
| <i>Short Time Frames and Difficult Reporting Requirements for Submission of Cases</i> .....                    | 38 |
| <i>Constitutional Court</i> .....  | 38 |
| <i>Electoral Dispute Resolution Case Studies</i> .....   | 40 |
| <i>Electoral Dispute Resolution in Aceh Province</i> .....   | 43 |
| <b>Conclusions and Recommendations</b> .....   | 45 |
| <b>Appendices</b> .....  | 50 |
| <i>Appendix A: Acknowledgments</i> .....   | 50 |
| <i>Appendix B: Carter Center Election Observation Delegation and Staff</i> .....                               | 52 |
| <i>Appendix C: Terms and Abbreviations</i> .....   | 53 |
| <i>Appendix D: KPU Certification</i> .....   | 54 |
| <i>Appendix E: 2009 Indonesia Election Day Checklists</i> .....  | 55 |
| <b>The Carter Center at a Glance</b> .....   | 61 |







# ACEH PROVINCE, INDONESIA



Map: International Crisis Group, 2009



## EXECUTIVE SUMMARY

The April 9, 2009, legislative elections in Indonesia marked the beginning of the third set of national elections since a return to democratic rule following the end of the New Order of former President Soeharto and the first based on an open-list system. This was the world's largest centrally administered, single-day election, with more than 171 million names on the voter register and approximately 519,000 polling stations. Thirty-eight political parties contested nearly 19,000 seats in national, provincial, and district assemblies, while an additional

six local parties competed for seats in Aceh province.

The results of the legislative elections had an impact on the July 8 presidential elections, with only parties or coalitions that won 25 percent of the popular vote, or 112 parliamentary seats, able to nominate presidential candidates. Of the 46 parties that contested the legislative elections, only Partai Demokrat individually met this threshold, resulting in multi-party coalitions competing for the presidency.



AMBER CHARLES

*Polling station and security staff unpack voting materials near Chimai, Java, to be ready for poll opening at 7:00 a.m.*



## 2009 INDONESIA ELECTIONS

### CARTER CENTER ELECTION OBSERVATION IN INDONESIA

The Carter Center previously observed both the 1999 and all rounds of the 2004 elections in Indonesia. The 2004 elections, widely considered to be well administered, successful, and respecting the will of the people, demonstrated Indonesia's commitment to democratic consolidation. However, since these elections, claims of corruption in government as well as economic hardship, sporadic instances of violence, and the 2004 tsunami have threatened the stability of Indonesia's democratic development. The Carter Center, seeking to demonstrate continued international support for Indonesia's democratization process, conducted a limited observation mission for Indonesia's April 9, 2009, legislative elections.

The Center's limited observation mission, which was welcomed by the National Election Commission (KPU), included the establishment of a field office in Jakarta in March 2009 and the deployment of a small team of long-term and short-term observers. Due to the limited scope of the mission, observers did not conduct a comprehensive assessment of the electoral process. Instead, they focused on three critical aspects of the election: election administration, campaign finance, and electoral dispute resolution, as well as the electoral process in the Aceh region. Observers regularly interacted with key election, government, and party officials, as well as international stakeholders. They also completed observation of campaign events and election-day voting procedures. The Center's mission was conducted in accordance with the Declaration of Principles for International Election Observation, which states that "Stand-alone specialized observation missions may also be employed, as long as such missions make clear public statements that their activities and conclusions are limited in scope and that they draw no conclu-

sions about the overall election process based on such limited activities."

The Carter Center maintained a presence in Indonesia through May 31, 2009, to consult with election officials, political parties, and civil-society stakeholders on issues such as campaign finance procedures, election administration, and electoral dispute resolution mechanisms. In this time, the Center released three additional postelection statements detailing findings on the campaign finance and electoral dispute-resolution processes.

### OBSERVATIONS

While not offering overall conclusions, the following observations are based on the Center's longstanding interest in the Indonesian electoral process and the

two-month period of observation in 2009.

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*The Carter Center mission focused on three critical aspects of the election: election administration, campaign finance, and electoral dispute resolution, as well as the electoral process in the Aceh region.*

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#### **Election Planning and Administration**

The 2009 legislative elections were marked by serious administrative problems, most notably with the voter register, which was based on outdated information from the Ministry of Home Affairs. Other problems affecting the planning and administration of the election included: the late promulgation of the election law of 2008,<sup>1</sup> which did not allow for the timely drafting and dissemination of the more than 50 regulations needed to expand upon articles in the law; late disbursements of funds for the KPU and the Election Supervisory Body (Bawaslu); late opening of the Election Supervisory Body at the national (Bawaslu), provincial, and district levels (Panwaslu); and inadequate training for KPU polling and tabulation center officials, as well as Bawaslu/Panwaslu staff. Additionally, Indonesia's complex multilevel

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<sup>1</sup> Law 10/2008, "Concerning General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council," March 31, 2008.





system of vote recapitulation led to difficulties in the determination of seat allocations, and the automated counting system, meant to determine provisional results within days, was eventually abandoned amid concerns over corruption in procurement and a lack of efficiency. The Center believes that with more careful and timely planning during the pre-election period, some of the challenges faced on election day and in the postelection period could have been prevented.

### Campaign Finance

Despite improvements in the area of campaign-finance reporting since 2004, there remains room for continued reform. According to the current law, the KPU does not have the authority to conduct discretionary or investigative audits beyond the analysis of information that is provided by the parties and candidates. In addition, although the recent change to an open-list system for seat allocation extends candidacy to individuals independent from their party, such candidates for the provincial and district coun-

cils (Regional People's Representative Councils or DPRD's) are not required by law to submit campaign-finance reports. Many stakeholders believe the bulk of campaign finance income and expenditures goes unreported. This is because individual candidates do not have to report financial expenditures, and also because only formal campaign teams, not informal ones, must provide financial reports. The Center released a report on campaign-finance procedures and recommendations for improvement on May 1, 2009. This report included suggested amendments to the election law that would provide greater clarity regarding the reporting requirements for individual candidates and informal, as well as formal, campaign teams and political parties. It also recommended granting the KPU additional powers to conduct investigative audits and request additional information from contestants.

### Electoral Dispute Resolution

A key component of a transparent and fair electoral system is the process for resolving electoral disputes.

For this reason, electoral dispute resolution was an area of focus for the Carter Center's limited observation mission for the April 9 legislative elections in Indonesia. Mechanisms in place for the resolution of electoral complaints and disputes were formalized late in the electoral cycle. This delay was due to a variety of factors, including the late passage of the election law, late disbursement of funds to the KPU,

ALAN WALL



*With only four polling booths allotted by the KPU per station, some areas of the country saw voters waiting for significant time periods before voting.*



## 2009 INDONESIA ELECTIONS

and disputes regarding the appointments of provincial- and district-level Election Supervisory Board (Panwaslu) members. The delay also hampered the capacity of the Bawaslu/Panwaslu and KPU staff at the provincial and district levels to properly employ such mechanisms across the country. On May 21, 2009, the Center released a report on the regulatory framework for electoral dispute resolution, its application, and recommendations for improvement.

### Elections in Aceh

The April 2009 elections in Aceh were a significant step forward for the province. Despite a pre-election environment marred by targeted violence and widespread intimidation, voting proceeded smoothly in almost all regions of Aceh. While there were significant postelection disputes about the results, these were resolved through the appropriate electoral and legal channels without a return to violence or conflict.

Overall, election day was generally peaceful. Polling stations were broadly accessible and calm, and procedures, while often delayed, were largely

respected. While few polling stations in Aceh opened on time, most stayed open well past the scheduled closing time of 12:00 p.m. to allow eligible voters to cast ballots. In each district, while the number of parties contesting the election varied, party witnesses (*saksi*) from about one third of contesting parties were usually present and generally did not interfere with the polling process. However, at polling stations along the east coast, Partai Aceh regularly provided multiple party witnesses, with one inside the polling station and one or more outside. In some cases, Carter Center observers noted that these party witnesses appeared to go beyond their role as monitors of the political process and directed voters to select a specific party. After election day, counting and recapitulation were a source of concern and confusion for parties.

### CONCLUSION

Although The Carter Center is not in a position to offer conclusions about the overall success of the elections, it notes that, as in 2004, the 2009 legislative elections took place in a generally peaceful atmosphere. This is a significant achievement.

Aspects of the Indonesian electoral system observed by the Center indicate continued democratic consolidation in the country. However, there remains significant room for improvement. The Carter Center believes Indonesia must continue to reform systems for campaign finance and dispute resolution, with an aim at streamlining legislation and better defining the roles of various stakeholders. In the wake of the significant administrative problems described above, and to improve credibility of the electoral process, The Carter Center also urges Indonesia's leaders to strengthen and increase the effectiveness of political institutions by ensuring that those responsible for irregularities in the 2009 elections are held accountable.



ALAN WALL

*The large size of ballots in Indonesia often made counting a time-consuming procedure as polling station staff looked for small pen marks and ensured the marking was valid.*



## BACKGROUND TO 2009 LEGISLATIVE ELECTIONS IN INDONESIA

On April 9, Indonesia conducted legislative elections in which 121 million voters participated. These elections were the beginning of the third round of elections since the end of authoritarian rule in Indonesia, and the first in which Indonesian citizens were able to vote for individual candidates of their choice.<sup>2</sup>

### THE 1999 AND 2004 ELECTIONS

The resignation of President Soeharto in May 1998, amidst massive street protests and civil strife, unleashed a dramatic wave of political transformation



EVERY DAVIS-ROBERTS

*A voter in Bogor, Java, casts his ballot.*

across Indonesia. After nearly 40 years of military-backed authoritarian rule, Indonesia began a difficult transition toward a more open and democratic system of government. In June 1999, the country held its first genuinely democratic legislative elections since independence. This process was monitored by The Carter Center and several other international organizations.

Although there was a delay of nearly two months between election day and the certification of results, The Carter Center and other international observers concluded that the process in 1999 was credible and reflected the will of Indonesian voters. Later that year, the People's Consultative Assembly, composed of the elected legislature plus representatives of the military and police, functional groups, and provincial assemblies, voted to elect Abdurrahman Wahid as president. (Wahid was an opposition candidate who garnered last-minute support from Golkar Party.) Less than two years into his term, however, in July 2001, the People's Representative Council (Dewan Perwakilan Rakyat or DPR) removed President Wahid from office. He was replaced by Vice President Megawati Sokarnoputri, following an extended conflict between the president and the national legislature regarding Wahid's alleged incompetence, mismanagement, and mishandling of state funds.

In the lead-up to the 2004 elections, as in 1999, Indonesians enjoyed an array of political liberties, including the right to form political parties, organize, and practice freedom of the press. However, in spite of the great optimism that reigned during the first year or two of the transition, Indonesians became increasingly disillusioned with the performance of their government and the country's steep economic decline.

<sup>2</sup> A decision by the Constitutional Court, which ruled that seats should be allocated to candidates who won the most votes, mirrors a Carter Center recommendation following the 2004 elections to reform the election laws in such a way that legislative seats better reflect the choice of the people.



## 2009 INDONESIA ELECTIONS

While the 2004 parliamentary elections saw a shift in support toward the new Democratic Party (PD), led by Susilo Bambang Yudhoyono, Golkar still won 128 seats in the People's Representative Council, making it the largest party. The Indonesian Democratic Party-Struggle (PDI-P), led by former President Megawati, also maintained a strong presence with 109 seats. In the second round of the presidential elections in September 2004, Susilo Bambang Yudhoyono of PD won the office of president with

61 percent of the vote. Despite some concerns about the inappropriate use of government resources and some restriction on the right to free assembly, the Indonesian public and the international community generally saw the election as a positive step. Staggered subnational elections were held beginning in 2005 and were noted to be generally competitive, with some 40 percent of incumbents being voted out of office in the first round.

### A BRIEF POLITICAL BACKGROUND OF ACEH

From 1976 until 2005, Aceh was engaged in a conflict between the Free Aceh Movement (GAM), which fought for Acehnese independence, and the government of Indonesia, which sought to maintain Aceh as part of the nation. After several unsuccessful peace efforts, steps toward an agreement were accelerated by the response to the tsunami disaster in 2004. On Aug. 15, 2005, a Memorandum of Understanding (MoU) was signed by the two sides in Helsinki.

To bring the conflict to a close, the MoU set forth a process for disarming, demobilizing, and reintegrating former rebels, while also reducing the presence of Indonesian military forces in Aceh. The MoU also provided for a key element of autonomy for Aceh: the ability to establish local political parties, which are banned elsewhere. This provision was reaffirmed in 2006 when the Indonesian legislature passed the Law on Governing Aceh. Also in 2006, Aceh held its first provincial elections since the peace agreement to choose the governor of the province and the district heads of most of the districts and cities. Supported by GAM, Irwandi Yusuf won the gubernatorial race in a landslide victory.

Peace in Aceh, however, remained fragile. Tensions between the region and the Indonesian government continued, and in the postconflict period there were high levels of unemployment, a rise in violent crimes, and allegations of inequitable

distribution of funds for the reintegration of GAM combatants. Most stakeholders who met with Carter Center observers during a December 2008 pre-election assessment mission indicated a special need for observers in Aceh as a means of promoting stability and illustrating international support for continued peace.

The 2009 elections were the first national-level elections held in the semiautonomous region of Aceh since the 2005 signing of the Helsinki agreement. With six local parties contesting the elections alongside 38 national parties, Aceh was seen as politically dynamic in the lead-up to the elections. The electoral period was marked by tension between parties and security forces in the region.



EUNSOOK JUNG

*Supporters of Partai Rakyat Aceh attend a campaign rally. Six local parties competed for seats in Aceh province, the only area of Indonesia where local parties were allowed to run.*





## CARTER CENTER ELECTION OBSERVATION IN INDONESIA

The April 2009 elections in Indonesia were the third round of national elections observed by The Carter Center. The Center's support for democratic transition and consolidation in Indonesia began in 1999 when the Center, in collaboration with the National Democratic Institute for International Affairs (NDI), deployed a 100-person delegation to observe the June national elections. During the course of that seven-month presence, The Carter Center and NDI issued a number of detailed public statements regarding the electoral process.

The Carter Center also conducted a comprehensive assessment of the 2004 electoral process, with an active presence during the April legislative elections and large delegations for both the first and second rounds of the presidential elections. The final report from 2004 as well as all public statements from the Carter Center's 1999 and 2004 election observation missions are available online at [www.cartercenter.org](http://www.cartercenter.org).

### CARTER CENTER LIMITED ELECTION OBSERVATION MISSION TO INDONESIA, APRIL 2009

The Carter Center conducts election observation in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005.

For the April 9, 2009, legislative elections, The Carter Center deployed a limited election observation mission. Unlike a comprehensive election observation mission, in which all aspects of the electoral process are to be assessed, a limited or targeted mission is one in which one or more discreet aspects of the process may be the subject of focus. In accordance with the Declaration of Principles for International Election Observation, a limited election observation should only comment upon those aspects of the electoral process observed.

Based on the findings of a pre-election assessment mission conducted in December 2008, The Carter Center decided to conduct a limited observation mission focusing on three principal aspects of the electoral process: (1) election administration, (2) campaign-finance reporting, and (3) postelection electoral dispute resolution. In addition, Center

observers were deployed to the Aceh province. Due to the limited scope of the mission, The Carter Center was unable to comment on the overall electoral process. Instead, it issued public statements on the topics of focus.

### INDONESIA'S INTERNATIONAL COMMITMENTS

The Carter Center's assessment of aspects of the April 9, 2009, legislative elections in Indonesia was based on the domestic legislation and international legal obligations of the country (see Table 1).

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*The Carter Center conducts election observation in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005.*

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## 2009 INDONESIA ELECTIONS

Table I. Status of Signatures and Ratifications in Indonesia\*

| Treaty/Declaration  | Status                  | Date                                  |
|---|-------------------------|---------------------------------------|
| International Covenant on Civil and Political Rights  | Ratified                | 2/23/2006<br>Reservation: Art. 1      |
| International Convention on the Elimination of All Forms of Racial Discrimination                             | Ratified                | 6/25/1999<br>Reservation: Art. 22     |
| International Convention on Economic Social and Cultural Rights   | Ratified                | 2/23/2006<br>Reservation: Art. 1      |
| Convention on the Elimination of All Forms of Discrimination Against Women                                    | Ratified                | 9/13/1984<br>Reservation: Art. 29(1)  |
| Convention on the Political Rights of Women   | Ratified                | 12/16/1958<br>Reservation: Art. 7 & 9 |
| International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families | Signed,<br>not ratified | 9/24/2004                             |
| Convention on the Rights of Persons with Disabilities   | Signed,<br>not ratified | 3/30/2007                             |
| Convention on the Rights of the Child   | Ratified                | 9/5/1990                              |
| United Nations Convention Against Corruption  | Ratified                | 9/19/2006                             |
| Universal Declaration of Human Rights   | Adopted**               | 1948                                  |

\*Indonesia is a member state of the Association of Southeast Asian Nations (ASEAN), the Organization of the Islamic Conference (OIC), the Inter-Parliamentary Union (IPU), and the United Nations.

\*\* As a declaration, the Universal Declaration of Human Rights has not undergone a process of ratification, but one of adoption. Although not designed as a legally binding treaty, the declaration is widely considered binding as customary international law.

## LONG-TERM OBSERVATION

Long-term observation formed the basis of the Center's limited mission. The Center deployed six long-term observers beginning on March 21, 2009, to report on the pre-election environment. As part of a limited mission, locations for deployment were chosen based on the assessment of "value added," with two teams located in Aceh province and an additional one serving a roaming function. Long-term observers were tasked with conducting stakeholder interviews, observing campaign events, and providing political analysis in their area of responsibility. In the post-election period, two observers remained in Jakarta to assess the legal framework for dispute resolution and the activities of the Indonesian Constitutional Court, while four observers redeployed to Aceh province and an additional long-term observer continued to travel

and conduct follow-up fact finding in Yogyakarta, Lombok, East Java, and Bali.

## ELECTION DAY OBSERVATION

As a limited observation mission, the Carter Center mission did not focus on election day proceedings. A small team of 15 observers, however, did observe polling-day activities in Aceh, Jakarta, Bandung, Bogor, and Denpasar. At each polling station visited, observers consulted with the presiding officer, accredited political party agents, domestic observers, and voters to identify any concerns about voting irregularities, voter intimidation, and improper campaigning. Observers reported most polling stations to be fairly well organized with few complaints. In the limited number of stations visited, many polling station offi-



CARTER CENTER ELECTION OBSERVATION IN INDONESIA

cials were not regularly checking identity documents or invitation letters, and rarely checked voters for ink marks on their fingers. In addition, there were several polling stations where apparently eligible voters who had voted at the same polling station in 2004 were not allowed to vote because their names were not on the list. While these instances concerned The Carter Center, it is important to note that the Center's mission was extremely small in both size and deployment area. Therefore, such findings may not represent overall trends or conclusions, and should be understood to be anecdotal.

Where possible, teams opened and closed at the same location, examining poll and ballot-box opening procedures and the availability of sensitive and non-sensitive election materials, such as ballots, ink, pencils, and voting booths. Observers remained at polling stations to observe ballot counting and were able to view all vote-counting and reporting procedures, including the sealing of ballot boxes and transportation of voting materials to the subdistrict-level (PPK) aggregation centers. No Carter Center observer directly witnessed acts of violence or intimidation on election day.



ALAN WAU

*Carter Center short-term observer Alexandra van den Bergh visits a district-level distribution center prior to election day.*



## 2009 INDONESIA ELECTIONS

### CARTER CENTER LIMITED ELECTION OBSERVATION IN ACEH

During the eight-week observation period, the Aceh-based teams of Carter Center observers visited 18 of the 23 districts and municipalities in the province, including areas on the east and west coasts and the central highlands. In each district visited, every effort was made to meet with the Independent Election Committee (KIP), the local election supervisory body (Panwaslu), the chief of police, and at least one national and one local party, as well as representatives from the media and civil society organizations. This was achieved in most cases, and in some districts, a dozen or more meetings were held with different stakeholders. In total, the Aceh-based observation teams conducted more than 200 interviews and observed voter education programs (socialization), various political party rallies, and election day voting. As with the Carter Center's election mission throughout Indonesia, the Aceh teams focused on election administration, campaign finance, and electoral dispute resolution.

#### Concerns About Pre-election Intimidation

When Carter Center teams arrived in Aceh, there were considerable concerns about pre-election violence and the security of the election in areas outside of Banda Aceh, the capital of the province. A number of party activists affiliated with Partai Aceh were killed prior to the election, but it remains unclear whether the killings were politically motivated. Less severe forms of intimidation were more common, such as text messages containing threats against voting for specific parties, destruction or removal of party flags and banners, and face-to-face intimidation at the village level.

In the lead-up to the elections, some local parties reported they were changing their campaign schedule due to intimidation. For example, in several cases vehicles bringing people to open campaign rallies were held up by unknown persons, caus-



ANTONIA STAATS

*Carter Center long-term observer Whitney Haring-Smith observes election day procedures in Aceh.*

ing parties to be cautious of assembling. In coastal regions, where Partai Aceh was strongest, many officials from other parties provided accounts of intimidation by Partai Aceh. This intimidation often prevented the other parties from recruiting witnesses to observe the voting or from mobilizing voters. Partai Aceh supporters also seemed to face widespread intimidation in multiple districts, allegedly undertaken by police and military forces. In several of the districts Center observers visited,





Partai Aceh candidates, and some other local party members, had stopped sleeping at home and were regularly changing location because of concerns about violence, abduction, and endangering their families.

As a result of the postconflict environment in Aceh, Carter Center observers noted a number of instances when statements that were not directly threatening were interpreted as intimidating by voters as well as candidates. This environment placed a special burden on the security services to ensure that their actions were interpreted as neutral or impartial. However, the perceived lack of police response to several of the killings in Aceh raised significant doubts among some parties that the security services were playing a neutral role. The scheduling of community workdays (*gotong royong*) by the Indonesian army (TNI) and the establishment of road checks (also known as sweeping) on or around days of local party rallies also raised concerns about the neutrality of TNI.

#### **Election Day Observations**

Despite pre-election concerns, election day occurred without significant incident. Many of the polling stations observed opened late, generally because party witnesses and polling station officials did not arrive on time. However, in all such cases observed by the Center, provision was made to ensure that voters in these polling stations were

able to cast ballots. In most areas, the environment around the polls appeared calm, with voters granted a reasonable opportunity to cast their ballots. In some places observed along the east coast, there were concerns about the active role played by Partai Aceh party witnesses inside the polling stations (TPS).

Although there were nationwide concerns about the state of the voter register, which in many cases turned out to be justified, Carter Center observers directly noted only a limited number of people who, after showing up to vote, were not on the voter register. It is unclear whether this was an indication of the quality of the voter register itself or the result of many people discovering prior to the election that they were not on the voter register or had not received an invitation letter to vote.

#### **Postelection Observations**

Overall, there was little violence during the post-election period. From interviews conducted by the Center, parties appeared to be seeking nonviolent means for resolving election disputes. While there were specific and notable exceptions to this generally peaceful postelectoral period, by the time Carter Center observers left Aceh, they noted that an effective transition of power had begun, with parties focusing on selecting the leaders of the newly elected legislative bodies.



## ELECTION LAW

Indonesia's April 9, 2009, elections were governed by the law on general elections (law 10/2008), adopted on March 31, 2008, and the law on election administration (law 22/2007, "On the Organizing Body of General Elections," April 19, 2007), as well as all regulations passed by the KPU. Although The Carter Center did not conduct a framework analysis of the full election law, based on assessments of the electoral process and analysis of pertinent aspects of the law, the Center offers the following observations.

Law 10/2008 is the successor to law 12/2003 ("Concerning General Elections for Members of People's Representative Council, Regional Representative Council, and Regional People's Representative Council," March 3, 2008). However, many stakeholders reported to The Carter Center that instead of improving upon law 12/2003, law 10/2008 created more challenges than it addressed. While law 12/2003 was relatively long, consisting of 150 articles, law 10/2008 is more than double that length, with 320 articles. As in 2003, the new law was prepared by the Ministry of Home Affairs, a government body possibly ill-fitted to the preparation of a set of laws requiring specific electoral and administrative expertise.

The number of articles in the election law and the many regulations that further elaborate upon them create a complex system of regulation that is difficult to implement. The laws governing elections, particularly articles regarding administrative procedures, are overly complicated. Ideally, regulations should

elaborate on general principles and guidelines established by the election law. Instead, because of the laws' detailed and specific nature, the administrative regulations produced by the KPU often simply repeat what is in the election law, rather than providing clarity.

Furthermore, under the Indonesian system, a new election law is prepared for every election. This requires that election officials familiarize themselves with new regulations and provisions for each election. In the case of law 10/2008, the challenges caused by the complexity and detail of the document were

compounded by the very brief training received by most polling officials. Due largely to the combination of these new laws and regulations and relatively poor training programs, observers noted challenges to proper implementation in observed polling stations, especially with regard to the counting and reconciliation of ballots.

The Carter Center is particularly concerned about the practice of adopting a new election law for each electoral cycle. The adoption of a law that remains applicable over several national elections and can be clarified and expanded upon as necessary with new regulations would allow for more timely implementation of the election process. Additionally, stability in the electoral law would ease the burden of training polling and counting staff and other election officials. It would also allow for voters to become more familiar with voting procedures, thereby potentially lessening the percentage of invalid votes.

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*The number of articles in the election law creates a complex system of regulation that is difficult to implement.*

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## ELECTION ADMINISTRATION

An independent and impartial electoral authority that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuine democratic election and that other international obligations related to the electoral process can be met.<sup>3</sup> Therefore, election administration was one of the areas of focus for the Carter Center’s limited election observation mission.

The National Election Commission (KPU) that administered the 2009 legislative elections did so with all new members, a weaker mandate, and a lack of adequate resources to effectively implement all

aspects of the electoral process. The revised mandate and structure of the KPU are discussed below, as are examples of serious shortcomings in the election process that resulted from the institutional challenges faced by the KPU.

### THE NATIONAL ELECTION COMMISSION (KPU) STRUCTURE AND MANDATE

In 2001, the People’s Consultative Assembly (MPR) adopted constitutional reforms that, among other things, established direct elections for the president and vice president, created the Constitutional Court,

and established the KPU as an independent body. In 2004, the Center and other international observation groups recognized the KPU as having managed the three national elections held that year in a largely professional and independent manner. However, in 2009 serious concerns emerged that the commission had not fulfilled its mandate in a fully effective or autonomous manner.

ALAN WALK



*Security forces in Indonesia played a major role in the distribution of election materials throughout the country. This distribution was delayed in many areas due to logistical difficulties faced by the KPU.*

<sup>3</sup> United Nations Human Rights Committee (UNHRC), General Comment No. 25, paragraph 20.



## 2009 INDONESIA ELECTIONS

The powers and responsibilities of the KPU are defined in law 22/2007 and law 10/2008. Under law 22/2007 the KPU is now responsible for organizing elections for all national, provincial, and regional legislative bodies; for president and vice president; and for the heads of provincial and district government. The new electoral law also establishes the national Election Supervisory Committee (Bawaslu) as a permanent body, while subnational-level Election Supervisory Bodies (Panwaslu) remain ad hoc in nature. (For more on the role of the Bawaslu, please see the section on Electoral Dispute Resolution.)

**The Selection of KPU Members**

According to law 22/2007, the seven KPU commissioners are selected by the MPR based on a list of 21 names put forward by a panel established by the president. While in 2004 the commission was made up of a secretariat and 11 commissioners, law 22/2007 changed the makeup, reducing the number of com-

missioners to seven. In addition, there are no professional requirements for the new members of the KPU under the law, nor does it differentiate between skills required for different levels of KPU membership, other than educational stipulations (e.g., a bachelor's degree for central and provincial-level KPU and high school for district-level KPU). (See Table 2 for an explanation of main provisions in law 22/2007.)

Article 11(e) of law 22/2007 requires KPU members to have knowledge and skills related to elections or experience with election implementation. However, it does not specify how many years or the level of experience necessary for each position. In practice, tests and other membership selection procedures for the 2009 commission failed to favor candidates with significant experience. While it is critical that KPU members have a proven record of integrity and neutrality to successfully fulfill the obligations of their office, they must also be able to demonstrate in-depth knowledge of basic election principles.

**Table 2. Requirements for KPU Members in Law No. 22, 2007<sup>4</sup>**

|  | KPU               | Provincial KPU    | Municipal KPU                     |
|--|-------------------|-------------------|-----------------------------------|
| <b>Number of Members</b>   | 7                 | 5                 | 5                                 |
| <b>Term of Office</b>  | 5 years           | 5 years           | 5 years                           |
| <b>Age (assuming no previous experience as a KPU member)</b>   | 35 years          | 30 years          | 30 years                          |
| <b>Loyalty to the Constitution Required</b>  | Yes               | Yes               | Yes                               |
| <b>Integrity, Honesty and Fairness Required</b>  | Yes               | Yes               | Yes                               |
| <b>Knowledge and Skill in Fields Related to the Implementation of Elections, or Experience Implementing Elections Required</b> | Yes               | Yes               | Yes                               |
| <b>Educational Requirements</b>  | Bachelor's Degree | Bachelor's Degree | High School Diploma or Equivalent |
| <b>Residency Requirements</b>  | In Indonesia      | In the Province   | In the Municipality               |
| <b>Physical and Mental Health Requirements</b>   | Yes               | Yes               | Yes                               |
| <b>Prohibition on Membership in Political Parties Within Last 5 Years</b>  | Yes               | Yes               | Yes                               |
| <b>Never Been Sentenced for a Criminal Act that Bears the Penalty of Imprisonment for 5 Years or More</b>                      | Yes               | Yes               | Yes                               |

<sup>4</sup> Law 22/2007, Article 11.





The intent of an electoral experience requirement would be better achieved by more specific provisions, outlining for each level of KPU membership the nature, scope, and minimum years of experience needed in an election-related field. Tests to determine the more subjective qualities of personality and loyalty to the constitution could be shortened or simplified. Additionally, intelligence tests could be eliminated altogether in light of the minimum education requirements for KPU membership. In general, the current legislation is overly vague and unlikely to result in a commission that meets necessary professional standards.

During the selection process, increased thought should be given to creating a team of election commissioners with a robust and diverse skill set so that the KPU members would have knowledge of accounting, information technology, electoral law, and other relevant fields. The 2009 commission lacked the diversity of skills that would have enabled it to manage a range of challenges in a well-informed and proactive manner. For example, although procurement is the responsibility of the KPU secretariat, the KPU members have responsibility for policy making, including matters related to information technology. Therefore, it is critical that some KPU members have knowledge of information technology so that they understand the full impact of such technology on the electoral process.

In addition, staggering the terms of different KPU members would likely enhance the effectiveness of the commission at all levels. Per current rules, every election is potentially administered by a new group of commissioners, rendering the accumulation of experience virtually impossible. Staggered terms would maintain a combination of old and new members, enabling institutionalization of election implementation experience.

## LAGGING PUBLIC CONFIDENCE IN THE KPU

As a consequence of changes to the structure of the KPU and although many former staff remained in place, all seven KPU commissioners were new to their positions for the 2009 electoral process. In addition, partly due to structural changes within the KPU that required the body's General Bureau to be responsible for media relations, the commission lacked a serious public outreach campaign, such as that which helped to build its reputation in 2004. This lack of public relations and professional experience, coupled with

voter register problems that began in April 2008, led to a general perception among electoral stakeholders that the 2009 KPU was not as credible an institution as it had been in the past.

The commission did not manage to build faith among the public and was considered by many political parties and other stakeholders as less inclusive and

proactive in addressing problems than its predecessor. Despite these concerns, it should be noted that some provincial election bodies (KPUD) appeared to enjoy a more positive public perception than the national-level commission (due to relatively successful provincial elections from 2005 to 2008). However, the combination of new regulations, late promulgation of national election laws, and poor funding seems to have created significant challenges at all levels of the KPU during the 2009 national elections.

After the successful prosecution and imprisonment of KPU commissioners in 2005 on charges of corruption related to electoral procurements, the KPU was stripped of its ability to procure election commodities. The mandate for material procurement was given to the KPU secretariat, under governmental control. Consequently, while members of the KPU are accountable for their own budget, responsibility for

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*Increased thought should  
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## 2009 INDONESIA ELECTIONS



AMBER CHARLES

*Although the KPU allotted four polling booths per station, many polling stations throughout Indonesia constructed additional voting areas to ensure the secrecy of the ballot and decrease the time voters waited in line.*

procurement and expenditure is limited to the secretariat. Although procurement procedures are intended to be responsive to the KPU's needs and procedures, KPU authorization for procurement was not required, resulting in budgetary confusion between the KPU and its own secretariat. The procedure for the distribution of funds was also problematic. Funds were distributed slowly and in small allotments, as opposed to large tranches, making it difficult for the KPU to plan ahead. The secretariat's role in procurement and distribution should be limited to better promote efficiency and the effective use of funds.

Furthermore, as a likely result of the imprisonment of former members, the new commissioners appeared to operate in a climate of extreme caution throughout the pre-election period regarding their interpretation and implementation of the electoral legislation. This narrow interpretation of their mandate negatively affected the quality of the process. For example, many logistical details and material allocations were left up to provincial- and district-level commissions, resulting in inconsistencies among them. The KPU also frequently consulted with the Ministry of Home Affairs prior to making decisions regarding the elec-



tion, which potentially prevented the KPU from proactively responding to obstacles and solving problems creatively.

These issues were compounded by the election law, which is at times very detailed in areas where it should perhaps give the KPU more flexibility and autonomy.<sup>5</sup> For example, the calendar for the different stages of the electoral process could have been determined by the KPU, thereby facilitating a more dynamic approach to managing the electoral process. The KPU would benefit significantly from greater autonomy, regarding both internal management and financial matters, such as procurement.

## VOTER REGISTRATION

Although several administrative problems affected the 2009 legislative elections, the most grave were those related to the voter register. The creation of an accurate voters register is an important means of promoting the right to vote.<sup>6</sup> As such, it is essential that the laws and regulations regarding registration be clear and reasonable and allow for regular maintenance of the register so that it can be as accurate as possible. When compared to law 12/2003, legislation in place for the 2009 election seems to have weakened the registration process.

Law 12/2003 established KPU control over the collection of voter data.<sup>7</sup> Article 53 of that law specified that voter registration was to be conducted by an officer who would visit voters' homes or that voters could register themselves at local KPU offices. It also provided that the voter register should be completed no later than six months prior to voting day and that procedures for registration should be determined by the KPU.

In comparison, articles relating to the voter register in the laws governing the 2009 elections markedly diminished KPU control over the quality of the data and left little room for flexibility regarding the time frame and procedure for the development of a voters register. Most notably, the 2008 election law, of which the Ministry of Home Affairs was the lead drafter, includes an article that changed the source of

data for the voters register from door-to-door registration of voters to population data from the ministry itself. In addition, law 22/2007 stipulates that the national- and regional-level KPUs have the responsibility for updating the voter register based on population data from the Ministry of Home Affairs.<sup>8</sup>



JEREMY WAGSTAFF

*A citizen who arrived to vote and found neither herself nor her family members on the voter register complains to the polling station head. This incident, observed by The Carter Center in Jakarta, Java, is an example of what many feared were widespread issues with the quality of the voter register.*

5 For example: Article 32 (2): "The population data as referred to in paragraph (1) shall be made available in no later than 12 (twelve) months prior to the polling day." Article 34 (2): "Voters data updating shall be completed in no longer than 3 (three) months after receiving the population data." Article 36 (2): "The preliminary voters register shall be established in no later than 1 (one) month after the completion of voters data update." Article 37 (2): "PPS shall revise the preliminary voters register resulted from revision based on the input and responses from the public and election contestants as referred to in paragraph (1) in no later than 3 (three) days after the end of the announcement." Article 38 (3): "The final voters register as referred to in paragraph (2) shall be determined in no later than 20 (twenty) days after the reception of revised preliminary voters registers from PPS." Article 40 (1): "The final voters register as referred to in Article 38 paragraph (2) can be completed with supplementary voters register in no later than 3 (three) days before polling day."

6 United Nations Human Rights Committee, General Comment No. 25, paragraph 11 states, "Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community."

7 Law 12/2003, Article 53.

8 Law 22/2007, Articles 8, 9, and 10.



## 2009 INDONESIA ELECTIONS

While budgetary and personnel constraints made continued door-to-door registration of voters impractical, the KPU should have retained control over the registration process. It was reported to The Carter Center that the data collected and provided to the KPU by the ministry was in many instances outdated and inconsistent. At this time, a national system does not exist to ensure the effective identification and removal from the list of duplicate names or the names of those who have died or moved. Consequently, the system cannot sufficiently guarantee an inclusive and correct register. While problems with the use of ministry data during the local elections in 2005–2006 highlighted these issues, effective changes were not made prior to the 2009 elections. The resulting use of outdated and erroneous information ultimately led to public distrust in the voters register and widespread reports of voter disenfranchisement.

The lack of an accurate and complete voters list has the potential to seriously undermine the fundamental right to vote.<sup>9</sup> In light of clear problems with the existing system for the production of the voters list, it will be essential for the government to review how this list is produced and to reallocate sole responsibility for its development to the KPU.

### TRAINING FOR KPU STAFF

A number of factors hindered training for KPU staff for the April 2009 legislative elections. These included the complexity of the new election law and regulations, a lack of funding to carry out training, and decreased international support for the administration of the election overall. The Carter Center recommends that poll-worker training for all levels of KPU administration be a greater priority in future election cycles.

One major challenge facing the successful implementation of training programs for KPU staff was the complexity of the voting system and the number of new regulations. Within the KPU structure, training was carried out from the higher to the lower level. However, an observed lack of familiarity with election day procedures by some KPU staff indicates that

these training sessions may have been insufficient to fully prepare staff. Carter Center observers also noted that internal training provided by the KPU exhibited a lack of organization and effectiveness. In addition, training for the presidential election was in some cases (for instance in Surabaya) conducted concurrently with legislative election trainings. While limited resources may have precluded conducting separate trainings, simultaneous training was likely a source of confusion for staff and could ideally be avoided in the future.

A lack of funding and logistical difficulties also affected KPU staffing. For example, KPU-Surabaya noted to Carter Center observers that funds and logistics during this electoral cycle were insufficient to provide training for all officials and staff members. In addition, polling staff had seldom achieved high levels of education and received only a small one-time salary of 100.000 Rp. (approximately US\$10).

International agencies carried out various training activities for KPU staff during the pre-election period. The Multi-Donor Support Program to the Elections (Elections-MDP) provided technical assistance to the KPU with a focus on procurement of goods and services, external communication strategies, and technical guidance for the voting and counting procedure. In addition, assistance was given in the form of various activities, such as workshops, trainings, consultancy, and provision of manuals. Despite these trainings, several KPU members commented that, compared to the 2004 elections, this election showed a marked decrease in attention and financial assistance from the international community.

Noting the decrease in international assistance, it is important that the government of Indonesia recognizes its responsibility to ensure training for poll workers. Such measures help to guarantee elections that are conducted impartially and in accordance with the law. Because international support for elections is not guaranteed, it is critical that the government of Indonesia adequately budgets for all recurrent

<sup>9</sup> International Covenant on Civil and Political Rights, Article 25.





AVERY DAVIS-ROBERTS

*Polling station staff are sworn in by the station head before poll opening.*

election-related costs, such as material procurement, voter education, and staff training. Continuous funding by the government for these essential components of the electoral process may help avoid many of the last-minute problems associated with ineffective or insufficient training.

## VOTE TABULATION

Vote counting represented another challenge for the KPU in the 2009 elections. The size and geography of Indonesia make the aggregation of votes a difficult logistical process. Additionally, Indonesia's recapitulation process includes complex multilevel aggregations of vote counts to determine national and subnational thresholds for seat allocation.

In previous election cycles, the tabulation and certification of election results took multiple weeks. Given this past experience and in an effort to safeguard results against fraud and deter tension, the KPU decided to use an automated vote-counting system to provide quicker, although unofficial, results. However, poor planning, late implementation, opaque procurement practices, and a lack of public and institutional understanding of technical issues impeded the effective use of this system.

One month before the 2009 parliamentary elections, the KPU adopted a preliminary count system based on intelligent character recognition (ICR), despite concerns expressed by both domestic and international organizations that the system would be inefficient and could not be properly implemented



## 2009 INDONESIA ELECTIONS

before the election.<sup>10</sup> The actual system was only set up on April 2, exactly one week before the election. While training was provided to KPUD-level officials, many of them indicated to The Carter Center that they did not have adequate time to convey information to their colleagues in the field.

would be possible to scan and send each polling station's data in five minutes.

The KPU secretariat added a level of complexity during the procurement process by choosing different vendors. Consequently, the system utilized four different software programs, types of hardware, training

programs, and configurations with which the help and support teams had to become familiar. While the reasons for such a procurement plan are unknown, it likely served as a significant impediment to the smooth implementation of the ICR system.

Although the KPU had high hopes that the ICR system would make vote counting more efficient and allow for the announcement of provisional results within days of the election, failure to realistically assess the amount of time necessary to use the technology and other logistical challenges proved a hindrance. On April 6, 2009, the KPU announced that provisional results would be known within four hours of counting the votes at the polling station, even though at that time only 73 of the 471 districts had managed to send test data to Jakarta.

This potentially indicates a lack of understanding of the technical difficulties associated with this system on the part of the KPU.

ICR systems require computer software to recognize a handwritten digit and convert this information into

EVERETT COLLECTION



*Technicians show Carter Center observers part of the ICR system designed to allow for quick tabulation of votes throughout Indonesia. Unfortunately, serious flaws in this system precluded its successful use in the 2009 elections.*

The ICR system worked by feeding a modified version of the polling station (TPS) voting tabulation form, C1 (C1-IT), through a Fujitsu scanner. According to ICR technology provider Rakreasi Teknologi Indonesia, the character recognition rate was 97 percent.<sup>11</sup> District-level KPU offices were responsible for scanning the pages (eight per TPS), converting them to data, and electronically transmitting the data over the KPU's private network to Jakarta. Simulations in four cities suggested that it

<sup>10</sup> The Bandung Institute of Technology suggested a more simplistic technology, optical mark recognition (OMR), which does not require handwriting recognition.

<sup>11</sup> <http://www.orchidform.com/bappengujian.pdf>.



a digitized grid, which must then be checked by a KPU official to ensure correctness. This process significantly decreased the system's efficiency. It could take anywhere from 40 seconds to six minutes to process sheets from one polling station, leaving aside time needed to smooth ruffled papers and line them up on the scanner. KPU calculations of total time per polling station failed to include time for the manual part of the process—wrapping the papers, certifying them, packing, sending, and then feeding the sheets into the scanner. KPU calculations also assumed perfect connectivity and no machine downtime. Media reports and Carter Center interviews with KPUD officials and staff from the Agency for the Assessment and Application of Technology (Badan Pengkajian Dan Penerapan Teknologi or BPPT), which was responsible for implementing the ICR system for the KPU, revealed an array of problems. Such problems ranged from inferior paper quality, issues with scanners, and hindrances transmitting a compressed file approaching 1.2 megabytes in size on a slow connection, all of which impeded the process.

The use of the automated system was abandoned after counting only 11 percent of the vote, compared to the 80 percent promised, and the Anti-Corruption Commission (KPK) is currently investigating the project.<sup>12</sup> The election administration should carefully consider shortcomings of the ICR system implemented in 2009. It should also review other forms of vote tabulation that can be implemented in an appropriate time line for future elections, such as a potential return to the key-entry system used in 2004.

Indonesia's ICR system is symptomatic of a larger problem with the overly complicated manual recapitulation processes that, in the past, have taken over a month to complete. While Indonesia employed automated systems in 2004 and 2009 to promote public confidence, simplification of manual count procedures, which would lower reliance on provisional results, is clearly necessary. In stations observed by The Carter Center, counting at the polling-station level often took several hours; poll workers were uncertain of how to correctly complete the com-



ALAN WAU

*Carter Center observers noted that due to a lack of training and difficult closing procedures, it often took polling stations late into the night to properly complete all forms.*

plicated and lengthy recapitulation forms. Such confusion continued at higher levels of vote aggregation, compounded by initial mistakes made in the completion of TPS-level forms. Given undue delays in certification, the complexity of the system of aggregation has the potential to undermine acceptance of electoral results and should be revised for future electoral processes.

## ALLOCATION OF SEATS

While the election law outlines a system of vote counting and subsequent seat allocation, there were concerns that, in practice, the procedure for seat allocation was not always followed and that the overall process lacked transparency. On May 9, the KPU announced the official results of the election. However, on May 13, the KPU announced revised results after meeting with various political parties. While a KPU member stated that the KPU may have made mistakes in the initial calculations, these

<sup>12</sup> During the 2004 legislative election, an electronic quick count system delivered over 90 percent of the results of the election in the same period. In the 1999 election, the official results came after 68 days. See The Jakarta Post, July 5, 2004: <http://www.thejakartapost.com/news/2004/07/05/kpu-launches-new-computer-counting-system.html>.



## 2009 INDONESIA ELECTIONS

changes to the allocation of seats and the fact that there were closed-door meetings with parties regarding the calculations could undermine public confidence in the process.

Following the KPU's final seat allocations on May 24, after at least two problematic calculations, five Indonesian political parties filed cases with the Constitutional Court of Indonesia on the grounds that the KPU violated the election law by allocating seats based on criteria other than the total number of valid votes won (including the case of Agung

Laksono, speaker of the house). The Constitutional Court, which decided this case on June 11, 2009, agreed with the complainants and, based on Article 205 of law 10/2008, invalidated the KPU's seat allocations.<sup>13</sup> As of June 13, 2009, the KPU chairman indicated the KPU would revise seat allocations in line with the Court's ruling and believed that up to five losing candidates would potentially regain seats. As of the time of this writing, it remains unclear whether the KPU will implement the court's decision and how that might affect the final legislative results.<sup>14</sup>

### OBSERVATION OF ELECTION ADMINISTRATION AND VOTE TABULATION IN ACEH PROVINCE

In Aceh, election administration was managed by the Komite Independen Pemilihan, or Independent Election Committee (KIP). KIP organized itself with committees at the provincial, district, subdistrict, and village level. At the provincial level, KIP in Aceh consisted of seven members (as opposed to five members in other provinces in Indonesia). At each district and subdistrict level in Aceh, KIP had three members, and at the village level, KIP had one member. The committee members were supported by a staff secretariat at the provincial and district levels.

At the provincial level, KIP officials appeared committed to the electoral process and were generally well respected. However, Center observers noted allegations of political bias of the part of some KIP members at the district and subdistrict level. These allegations damaged the credibility of

election authorities in a few districts throughout the province. In the postelection period, The Carter Center also noted widespread concerns about the fairness with which some subdistrict-level election officials (PPK) conducted vote recounts.

#### **Koran Proficiency Test**

Despite a dispute between local and national election officials over the matter in 2008, Muslim candidates for public office in Aceh were required to pass a Koran proficiency test. In general, political parties did not raise this test as a concern with The Carter Center. However, observers did find at least one area where candidates had been disqualified from running as a result of the test. Of the 1,368 candidates for provincial legislative office, there was only one non-Muslim candidate.<sup>15</sup> Exclusion from candidacy on the basis of a Koran proficiency

13 Cases were filed by Partai Gerindra (59/PHPU.A-VII/2009); Partai Persatuan Pembangunan (80/PHPU.A-VII/2009); Partai Amanat Nasional (74/PHPU.A-VII/2009); Partai Kebangkitan Bangsa (67/PHPU.A-VII/2009); and Partai Golkar (94/PHPU.A-VII/2009).

14 <http://www.thejakartapost.com/news/2009/06/13/kpu-revise-legislative-poll-results-despite-controversy.html>.

15 Simanjuntak, Hotli, "Aceh candidates must take Koran test to run: KIP," *The Jakarta Post*, Sept. 8, 2008. Available at: <http://www.thejakartapost.com/news/2008/09/08/aceh-candidates-must-take-koran-test-run-kip.html>.





test would appear to be counter to Indonesia's obligation to ensure all restrictions on the right to be elected are based on reasonable, objective, and nondiscriminatory criteria.<sup>16</sup> The test should be reconsidered by local election administrators prior to future elections.

### **Voter Registration**

The most prevalent administrative concern during the April 2009 elections was the voters register. However, it remains unclear how many people in Aceh were actually disenfranchised because of errors on the list. The Carter Center observer teams met with election officials at every level of administration in Aceh to discuss this issue. When The Carter Center left Aceh in May, KIP officials had begun reviewing and revising the voter register in anticipation of the presidential election in July. This is a positive step that could potentially improve the register for future electoral processes.

### **Voter Education and Poll Worker Training**

In the Center's pre-election interviews, there was widespread concern that the transition from marking the ballot by pushing a spike through the party symbol or the name of the candidate of choice to using a pen to make a check mark might be confusing to voters. There was a high invalid vote percentage at the national level. However, limited reports from Carter Center observers and other organizations suggest that these concerns do not appear to have materialized into any significant ballot disputes and that voters in Aceh generally seemed to make valid marks on their ballots. Through the combined efforts of election officials, political parties, and nongovernmental organizations, voter education appears to have been handled sufficiently. However, it is noted that election

authorities did not receive enough funds to conduct voter education by themselves.

Of greater concern was the training of election-day poll workers regarding procedures that had changed since the 2004 elections. In Aceh, as across the country, it was the responsibility of the election committee to ensure that poll workers were sufficiently trained in all aspects of vote casting, counting, and tabulation. Of the seven poll workers at each polling station, election authorities planned to train two of them, who would then train the remaining five. In the poll worker trainings that Carter Center observers attended, most poll workers had served in previous national or local elections. Consequently, many of the practical procedures from these previous elections — how to construct the polling station in the field, ensuring the secrecy of the ballot, marking voter lists, and dipping voters' fingers in ink — remained the same, and poll workers appeared quite comfortable with them. However, the newer procedures, specifically those relating to properly recording vote tabulations and providing certificates of the vote at the village level, were less familiar to poll workers. Based on limited information from the Center's observers, it appeared that training on these tabulation issues was weak or incomplete. This resulted in difficulties in the field on election day and during postelection dispute resolution.

### **Vote Counting and Tabulation**

The tabulation process in Aceh was observed by four Carter Center long-term observers. While tabulation was generally conducted appropriately, Center observers noted that recapitulation forms (C-1 forms) were inconsistently distributed to party witnesses at the end of vote counting in the stations visited. The C-1 forms officially document the vote

<sup>16</sup> United Nations Human Rights Committee, General Comment No. 25, paragraph 15 states, "The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objec-

tive and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation."



2009 INDONESIA ELECTIONS



ANTONIA STAATS

*Polling station staff prepare for voting near Bener Meriah, Aceh. Each voter in Indonesia received a separate ballot for each race, requiring four ballot boxes to be allocated per polling station.*

count at the polling station and are vital in preventing tampering with the vote aggregation as it moves from the polling station up to the provincial level over a three-week period. Without proper C-1 forms, parties were unable to ensure that vote totals had not changed. The reason that these forms were not always available remains unclear. However, many stakeholders interviewed by The Carter Center thought this oversight was the result of poor training of KPPS and KIP staff, and not necessarily an attempt to undermine the electoral process.

During the tabulation period, cases of aggregate data that did not match original TPS-level results, as well as incidences of parties being unable to receive certified copies of results, were reported to Center observers. Since the transferring of data from the TPS level to PPK and KIP is critical to

the resolution of electoral disputes, this also proved problematic because claims to the Constitutional Court (MK) potentially lacked evidence.

### Recapitulation Processes

During the provincial recapitulation in Aceh, observers noted that KIP members, Panwaslu officials, and designated party witnesses appeared to be well versed in the election law and regulations. However, they did not seem to have an understanding of specific procedures. As a result, the process lacked order, and the recapitulation took longer than anticipated. KIP officials had little control over the finalization of the election results, and their methods for settling disputes during recapitulation were inconsistent.



## CAMPAIGN FINANCE

The participation of political parties is a vital component of democratic politics, and funding is essential to ensure that parties are able to engage in competitive campaigns. However, corruption scandals and improper use of campaign funds remain serious impediments to the consolidation of democracy in many countries. Rigorous campaign finance rules, such as those included in the 2008 election law that Indonesia began to implement for the 2009 elections, are one way to lessen corrupt practices regarding electoral campaigns and to meet international commitments regarding transparency in campaign funding.<sup>17</sup>

As part of its limited observation mission for the April 2009 legislative elections in Indonesia, The Carter Center focused on key campaign finance issues. On May 1, 2009, the Center released a public statement of the mission's main findings and recommendations. This section of the mission's final report includes the text of that statement, as well as subsequent observations. The full text of the May 1, 2009, report is available on the Carter Center Web site.

### REPORTING REQUIREMENTS

In many ways, the campaign finance reporting regulations for the 2009 legislative elections were an improvement over those that governed the 2004 elections. The 2003 general election law<sup>18</sup> contained less stringent financial reporting requirements than those included in law 10/2008.<sup>19</sup> For example, during the 2004 legislative elections, an initial campaign finance report was not required. Additionally, the 2003 law did not specify sanctions for noncompliance regarding reporting requirements. (See Table 3 for a comparison of the 2003 and 2008 laws.)

Law 10/2008, on the other hand, requires that political parties and candidates for the Regional Representative Council (DPD) provide financial information in both the pre- and postelection periods. Seven days before the initiation of the campaign (the first campaign rally), parties and DPD contestants were required to provide an initial financial report consisting of a bank account number and the opening

balance.<sup>20</sup> On the national level, all parties submitted their reports. However, at the provincial level, three parties failed to do so.<sup>21</sup> According to the KPU, these were small and new parties, which were not yet sufficiently organized to meet the reporting deadline. As a consequence, some of their candidates were disqualified based on Article 138 of law 10/2008, which allows the KPU to prevent participation of parties in the

election if they do not submit precampaign financial information.

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*Rigorous campaign finance rules, such as those included in the 2008 election law that Indonesia had begun to implement for the 2009 elections, are one way to lessen corrupt practices regarding electoral campaigns.*

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17 Indonesia ratified the United Nations Convention Against Corruption (UNCAC) on Sept. 19, 2006. UNCAC entered into force on Dec. 15, 2005. Article 7 (3) of UNCAC states: "Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention in accordance with the fundamental principles in its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties."

18 Law 12/2003, "Concerning General Elections for the Members of People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council," Feb. 18, 2003.

19 Law 10/2008, "Concerning General Election of Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council," March 3, 2008.

20 Law 10/2008, Article 134.

21 The three parties that were disqualified in this case were the Partai Persatuan Daerah (Regional Unity Party) in Riau and two parties in East Kalimantan—Partai Indonesia Sejahtera (Prosperous Indonesia Party) and Partai Perjuangan Indonesia Baru (New Party of Struggle for Indonesia). According to Bawaslu data, 52 party chapters in 33 subdistricts across nine districts were disqualified for not submitting early financial reports, including some of the larger national parties like PDI-P and PAN.



## 2009 INDONESIA ELECTIONS

Table 3. Comparison of 2003 and 2008 Electoral Laws Regarding Campaign Finance Regulation

| Issue   | 2003 Electoral Law   | Article | 2008 Electoral Law  | Article          |
|---|--|---------|---|------------------|
| Financial Responsibility for Campaign Funding | —  | —       | Political party (DPR, DPRD, Regency DPRD)   | 129 (1)          |
| Permitted Sources of Funding                  | Members of the party, nonbinding sources   | 78 (1)  | Political parties, candidates, legitimate contributions from other parties (individuals, groups, companies, NGOs)                     | 129 (2)          |
| Prohibited Sources of Funding                 | Foreign parties, anonymous donors, government, or state-owned enterprises                            | 80 (1)  | Foreign parties, anonymous contributors, government or government-owned companies, villages or village-owned companies                | 139 (1)          |
| What Constitutes a Contribution?              | —  | —       | Money, goods, or services   | 129 (3)          |
| Accounting Requirements                       | —  | —       | Separate bank account required, separate ledgers for campaign and party finance   | 129(4)           |
| Time to Be Covered in Reports                 | —  | —       | Three days after confirmation as a candidate until one week before submission of report to accountant                                 | 129 (7)          |
| Individual Contribution Limit                 | 100 million rupiah   | 78 (2)  | 1 billion rupiahs (DPRD);   | 130 (1)          |
| Candidate Contribution Limit                  | —  | —       | 250 million rupiahs (DPD)   | 133 (1)          |
| Groups, Companies, NGO Contribution Limit     | 750 million rupiah   | 78 (2)  | 5 billion rupiah (DPRD); 500,000 rupiah (DPD)   | 130 (3); 133 (3) |
| Loans From an Individual or Entity Limit      | 100 million/750 million rupiah   | 78 (3)  | —   | —                |
| Auditing                                      | Registered public accountant shall be used (accredited by the Dept. of Finance – Decree No. 30/2004) | —       | KPU shall appoint public accountants to complete audit who are not affiliated with electoral contests or members of political parties | 136 (2)          |
| Who Pays for Audit?                           | —  | —       | State budget  | 136 (3)          |
| Identity of Contributors Declared             | Yes (implicit in prohibition on anonymous donors)  | —       | Yes   | 130 (3)          |





| Issue  | 2003 Electoral Law  | Article | 2008 Electoral Law   | Article |
|--|---|---------|--|---------|
| Campaign Prohibitions                              | Candidates are prohibited from giving money or other materials with the objective of influencing the voters | 77 (1)  | Campaign operators may not promise or give money or other materials to campaign participants as direct or indirect compensation in order: not to exercise right to vote, exercise right in a manner that makes vote invalid, to vote a certain contesting party, to vote a certain candidate | 87      |
| <b>Deadlines</b>                                   |   |         |  |         |
| Initial Report and Bank Account Info               | —   | —       | 7 days before first rally  | 134     |
| Income and Expenditure to Auditor                  | 60 days after the election  | 79 (1)  | 15 days after the election (April 24)  | 135 (1) |
| Deadline for Audit                                 | 30 days after acceptance of report  | 79 (2)  | —  | —       |
| Audit Result to KPU                                | 7 days after completion of audit  | 79 (3)  | 30 days after receipt (May 24)   | 135 (3) |
| Announcement of Audit Result to Contesting Parties | —   | —       | 7 days after receipt   | 135 (4) |
| Disclosure to Public by KPU                        | —   | —       | 10 days after audit result received (June 3)   | 135 (5) |
| Means of Dissemination by KPU                      | Mass media  | 78 (5)  | Unclear  | —       |
| <b>Penalties</b>                                   |   |         |  |         |
| Failure to Submit Initial Report                   | —   | —       | Cancellation as a contestant in relevant area  | 138 (1) |
| Failure to Submit Income and Expenditure Report    | —   | —       | Cancellation of confirmation as elected members of the DPR, DPD, DRPD, or Regency DPRD   | 138     |
| Campaign Prohibitions                              | Disqualification as a candidate   | 77 (2)  | Revoking the names of candidates from the candidate list, canceling the affirmation of the candidate as a member of the DPR, DPD, DPRD, Regency DPRD   | 88      |



## 2009 INDONESIA ELECTIONS

In addition to pre-election reports, parties are also required to submit an income and expenditure report within 15 days of election day. This is a marked change from the 60-day window scheduled for preparation of reports by parties in 2004, which raises questions about the ability of parties to complete and submit their reports on time. Article 138 of the 2008 law states that parties and DPD candidates would not be seated in national, provincial, and district legislatures if these reports were not submitted to KPU-appointed auditors by the April 24, 2009, deadline.<sup>22</sup>

As of April 27, the KPU reported that 30 of the 38 national parties had submitted their reports on time. On May 25, the KPU reported that 28 percent of the 1,116 DPD candidates (or 312 candidates) had not submitted their campaign fund reports to the KPU. Bawaslu also called for the disqualification of 27 parties at the provincial level for not submitting their reports on time. However, at the time of this writing, it remains unclear whether the KPU accepted Bawaslu's recommendations. Several regional KPU offices and public accountants reported to the Center that parties and DPD candidates who believed they had won seats had largely submitted financial reports, but that those contestants who did not win seats often did not submit reports. None of the unelected candidates submitted reports, and the law foresees no penalties for unsuccessful candidates who do not submit their financial reports.

Campaign finance reports submitted to public accountants provide details on the income and expenditures controlled by formal party campaign teams. However, many political party representatives and other stakeholders have told the Center that much campaign income and spending are done through informal campaign teams. These informal teams are not required to provide campaign income and expenditure reports as part of the financial reporting process.

Campaign finance reporting regulations for the general elections were also affected by recent changes in the method of seat allocation for the DPR and DPRD. In December 2008, the Constitutional Court found Article 214 of the 2008 general election law



EUNSOOK JUNG

*Ballot boxes at a district-level (PPK) office awaiting distribution prior to election day.*

unconstitutional.<sup>23</sup> Based on this ruling, seats won by a party are now allocated to those of its candidates who win the most votes. The new system has resulted in a substantial change in the nature of the campaign from being party-oriented to candidate-oriented. However, the law does not yet sufficiently reflect this development because it does not require individual DPR and DPRD candidates to submit their own campaign reports. With the exception of candidates for the DPD, there is currently no legal requirement for individual legislative candidates to report their campaign funds.

### AUDITING AND OVERSIGHT OF THE INCOME AND EXPENDITURE REPORTS

According to the election law, the role of the KPU with regard to the audit procedures is limited because it has no legal basis to do more than appoint public auditors based on a competitive bidding process, collect audit reports prepared by these firms, and then make the results of the audits public.

The KPU, at central and provincial levels, selected public accounting firms to receive and audit the income and expenditure reports of political parties and candidates for the regional representative

<sup>22</sup> Except in those cases where the polls were held later.

<sup>23</sup> Constitutional Court Decision No. 22/PUU-VI/2008, Dec. 23, 2008.



councils. The firms are required to state in writing that they are not affiliated directly or indirectly with any of the contesting political parties or DPD candidates. They must also state that they are not members or officers of a political party. The public accountants have 30 days from receipt of the financial reports (until May 23) to examine the reports and submit the results of their audits to the KPU.<sup>24</sup> By the May 23 deadline, accountants at the national level had submitted their audit reports for the 38 national parties. Reports from regional KPU offices to The Carter Center indicated that audits at the provincial level were also largely completed on time. The KPU then had seven days (until May 30) to notify the contesting parties of the audit results<sup>25</sup> and 10 days (until June 2) to announce the auditing results to the public.<sup>26</sup> The KPU posted the results of the audit to its Web site on June 3, 2009.

Criminal penalties, including imprisonment and fines, are to be laid against parties or candidates who intentionally provide false information as part of financial reports. However, as it is written now, the election law does not provide for the necessary range of administrative and electoral sanctions (such as the loss of seats) to be levied in cases of false reporting.<sup>27</sup> A variety of sanctions must be available to ensure the proportionality of the remedy to the particular violation. Additionally, in cases where financial reports are incomplete, late, or inaccurately filed, electoral sanctions may be overly burdensome (dependent on the severity of the violation) and appropriate administrative measures are absent from the law.<sup>28</sup>

On April 15, the KPU Web site listed the public accountant firms that had been selected through a competitive bidding process to conduct audits of political party finances at the central level. However, many memoranda of understanding were not signed with these firms until April 24—the deadline for

the submission of reports by parties. During the week prior to the reporting deadline, The Carter Center contacted several of the firms listed on the commission's Web site, but the accounting firms could not confirm whether they had been selected by the KPU to fulfill the auditing function. This led to questions about the ability of these firms to complete the audits in a timely manner. While the accounting firms were generally able to meet deadlines for the submission of their reports, advance notice of selection would allow them to better prepare for the influx of work.

### USE OF MONEY TO INFLUENCE VOTERS

Both the 2003 and 2008 electoral laws contain provisions regarding the use of money and material goods to influence voters. While the 2003 law stipulated that the punishment for improper allocation of money to potential voters during the campaign would lead to disqualification of candidates, Articles 87 and 88 of the 2008 law further elaborate this point. These articles state that, if found guilty ahead of the election, candidates will be removed from the candidates' list. If already elected, they will not be permitted to take office.

In practice, The Carter Center received numerous reports of the use of money to influence voters in areas observed, including in Aceh. Reports from media, and those from Carter Center observers, include stories of so-called "dawn attacks" in Aceh and elsewhere. In these instances, candidates or their campaign teams allegedly distributed envelopes containing sums of cash between Rp. 5,000 and 500,000 (between US\$0.46 and US\$47) along with the name

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<sup>24</sup> Law 10/2008, Article 135 (3).

<sup>25</sup> Law 10/2008, Article 135 (4).

<sup>26</sup> Law 10/2008, Article 135 (5).

<sup>27</sup> Law 10/2008, Article 281 (21).

<sup>28</sup> Law 10/2008, Article 138 (3–4).



## 2009 INDONESIA ELECTIONS

card of the legislative candidate. Carter Center observers also noted cases in which gifts were promised should a certain number of votes be obtained for a party in a particular location. In other instances, noncash items such as rice, women's headscarves, or staple goods were distributed at the village level.

In the lead-up to the election, a number of party representatives at the district level complained to Center observers that voters were expecting payment when approached by campaigning candidates. Some parties interviewed reported that money politics increased during the three-day "cooling off period" before the election. The extent to which such attempts to influence voters were successful is difficult to verify.



EUNSOOK JUNG

*Partai Demokrat supporters participate in a campaign rally. Parties spent money on T-shirts, posters, and billboards.*

By April 22, Bawaslu had officially recorded only 36 cases of "politik uang" (money politics) in their register of criminal cases. In Aceh, however, many of those interviewed suggested that most cases of money politics went unreported because the provincial election supervisory body, or Panwaslu, only opened in February 2009.<sup>29</sup>

### LATE DISSEMINATION OF CAMPAIGN FINANCE RULES AND REGULATIONS AND AWARENESS OF PROCEDURES

The 2003 election law established limits on individual contributions to political parties of Rp. 100 million (US\$9,350). For contributions from groups or companies, the limit established was Rp. 750 million (US\$70,125). The 2008 law significantly increases allowable contributions from individuals (Rp. 1 billion or approximately US\$93,000) and groups or companies (Rp. 5 billion or approximately US\$467,000).<sup>30</sup> On March 25 and 27, 10 days after the beginning of the official campaign period, the KPU released campaign finance audit guidelines. These guidelines stipulated that new limits on contributions from individuals and companies, to both political parties and DPD candidates, were to apply to the amount of a single transaction and not the total from an individual or company. This interpretation did not appear consistent with the law, and several civil society groups protested. Close to one month later, the KPU officially reversed this interpretation of the law with a regulation stating that individual and corporate contributions could not exceed the amounts listed in the election law.<sup>31</sup> The effectiveness of campaign finance regulations and instructions is often dependent on their predictability; late changes and mixed messages can cause confusion and, in this case, they may have affected how contestants reported income received between the initial release of the guidelines and the subsequent amendment.

In general, Carter Center observers noted that the parties felt a level of comfort with the campaign

29 The provincial Panwaslu were opened in a phased manner with the first group of eight to be opened on Aug. 29, 2008. Aceh, though meant to be part of this first phase, did not open until the end of December 2008. District-level Panwaslus did not open until mid-February. Delays in the establishment of the Panwaslu in Aceh were due to a debate about who would select Panwaslu members.

30 Contributions to DPD candidates can be made by individuals up to Rp. 250 million (approximately US\$23,350) and company contributions Rp. 500 million (US\$46,750).

31 KPU Regulation No. 38, 2009.





finance reporting format and were generally confident they would be able to submit their reports on time. However, several party representatives said that KPU representatives in areas of Carter Center observa-

tion were not able to provide additional guidance on the reporting formats, because they did not seem to understand the procedures very well themselves.

### OBSERVING CAMPAIGN FINANCE IN ACEH PROVINCE

In the many political party interviews that The Carter Center conducted, both before and after the election, stakeholders noted that the campaign finance reporting forms provided by KIP were, for the most part, well understood by party members. The pre-election campaign finance report, provided before the start of open campaigning, was generally submitted on time by parties. Carter Center observers noted, however, that it did not require disclosure on the part of donors, which would have potentially increased transparency. The postelection report requested the names and amounts of donors to the campaign. Parties reported that donations were not difficult to track because most campaigns were funded only by the national party and the candidates themselves.

Some of the political party representatives and civic organization leaders interviewed by The Carter Center suggested that campaign finance reports prepared by parties did not correspond with actual expenditures. In these cases, there were allegations that much more money was being spent than was reported and that money was being spent on different activities than those included.

In every district visited by Carter Center observers, there were allegations of “money politics”—the practice of providing goods or money in exchange for votes. However, very few successful cases were brought on this issue due to a lack of witnesses or

evidence. In addition, Carter Center teams found many areas in which voters did not perceive a problem with being provided with small goods from political parties or candidates. Some party officials even described being solicited by voters to build community projects, such as volleyball courts.

Carter Center observers noted with concern that the lines between political party financing and campaign financing were easily blurred. For example, the local legislative bodies allocate a set amount of money—usually about Rp. 19.5 million per seat per year—to parties currently sitting in the district legislature. This money is intended to help the party support itself, provide trainings, and maintain an office. It is not clear how much, if any, of the money allocated for incumbent parties by the legislature is spent during the campaign season. While most of the political candidates interviewed by The Carter Center reported that the monetary allocations were spent prior to the campaign, it would be useful to have clearer reporting and transparency on the use of funds.

After the campaign, parties that were not successful did not generally submit their final campaign finance reports. Since there were no penalties for losing candidates who do not submit reports, KIP officials at the local level did not appear to be actively soliciting submission.



## ELECTORAL DISPUTE RESOLUTION

A key component of an electoral system that is transparent and fair is the process for resolving electoral disputes. Such mechanisms are important to protect the rights of citizens and to help determine whether elections are a genuine reflection of the will of the people. Indeed, for an election to be credible, it is essential that voters and election contestants have access to electoral dispute mechanisms that are independent, impartial, accessible, and effective.<sup>32</sup>

For this reason, electoral dispute resolution was the third key area of focus for the Carter Center's limited observation mission for the April 9 legislative elections in Indonesia. On May 21, The Carter Center released a public statement of the mission's findings regarding electoral dispute resolution. The following section includes an update of that statement based on the mission's subsequent developments and findings.

### LATE PROMULGATION OF RULES AND REGULATIONS FOR DISPUTE RESOLUTION AND IMPACT ON THE PROCESS

Late declaration of the election law on March 31, 2008, affected the ability of the KPU to properly plan and draft the more than 50 regulations that were required based on the law. The election law stipulated that various regulations must be produced regarding, among other things, the resolution of disputes and the code of ethics for electoral officials. However, many regulations were enacted too late in the electoral process to be effective. Regulation 44/2008, which provided guidelines on the resolution of administrative violations, was signed on Dec. 30, 2008. Therefore, in 2008, when significant electoral activities were ongoing, there was no regulation in place. In addition, the new code of ethics for KPU and Bawaslu/Panwaslu members was not signed until October 2008 and so was not in place for the first six months of the electoral process, which began with the update of the voter register in April 2008.



AMBER CHARLES

*Party witnesses (saksi) were allowed in each polling station to observe voting and counting procedures. The presence of such witnesses increased the transparency of the process and potentially acted as a fraud deterrent.*

### MECHANISMS FOR ADMINISTRATIVE AND CRIMINAL VIOLATIONS SETTLEMENT AND CHALLENGES TO IMPLEMENTATION

As specified in law 10/2008,<sup>33</sup> there are two primary categories of electoral violations: administrative and

32 United Nations Human Rights Committee (UNHRC), General Comment No. 31, Nature of the General Legal Obligations on States Parties to the Covenant, U.N. Doc CCPR/C/21/Rev.1/Add.13(2004); UNHRC, General Comment No. 32, Right to Equality Before Courts and Tribunals and to a Fair Trial, U.N. Doc CCPR/C/GC/32. See also U.N. General Assembly Resolution 55/96, Promoting and Consolidating Democracy, U.N. Doc A/RES/55/96; U.N. Commission on Human Rights Resolution, Interdependence Between Democracy and Human Rights, E/CN.4/RES/2003/36; U.N. Commission on Human Rights Resolution, Promotion of the Right to Democracy, E/CN.4/RES/1999/57; U.N. Commission on Human Rights, Resolution Promoting and Consolidating Democracy, U.N. Doc E/C.4/RES/2000/47.

33 Law 10/2008, Articles 248 and 252.



criminal. Those who are eligible to file complaints are Indonesian citizens who have the right to vote, election observers, and electoral contestants.<sup>34</sup> Complaints can be made during each stage of the election process. According to election legislation, alleged violations should be reported to the Electoral Supervisory Body (Bawaslu) at the national level, to provincial and district Election Supervisory Bodies (Panwaslu), or to overseas election supervisors for

AVERY DAVIS-ROBERTS



*A polling station on the outskirts of Jakarta provides an example of how candidate lists were to be publicly displayed at each station, ensuring that voters were well informed of their choices.*

voters abroad.<sup>35</sup> Oral or written reports must be given to Bawaslu at the appropriate level no later than three days after the incident.<sup>36</sup> After reviewing the complaint, Bawaslu or Panwaslu determines whether the case is administrative or criminal and then passes it on to either the KPU or the police for decision or investigation, respectively.<sup>37</sup> The KPU must review and decide upon administrative cases within seven days of receipt of the complaint.<sup>38</sup> The police have 14 days to investigate and take criminal cases to the district attorney's office, should they have gathered sufficient evidence.<sup>39</sup> The district attorney must then submit the completed case file to the district court within five days of receipt. In cases of alleged administrative violations, the KPU is responsible for making final determinations.

As of May 10, 2009, Bawaslu had documented 7,347 cases nationally that the institution felt contained allegations of administrative violations. In

3,912 of these cases, there were sufficient grounds to forward complaints to the KPU for a decision.

Alleged administrative violations recorded by the Bawaslu included, among others, cases of government officials being involved in a campaign and inconsistencies within candidate lists. The bulk of cases filed in both administrative and criminal categories appeared to be claims that parties were campaigning outside of the official period. However, there were also high numbers of alleged violations concerning vote tabulation.

The law provides a mechanism for addressing alleged administrative and criminal violations. However, it does not provide any recourse to a judicial body for review of KPU determinations of alleged administrative violations or KPU decisions involving citizens' rights.<sup>40</sup> Though it is likely that such cases can be taken to state courts for resolution, the election law should ideally speak specifically to the right of complainants to have a hearing by a judicial body (rather than by the KPU alone) for administrative violations of rights.

Article 248 of law 10/2008 defines administrative violations to be any breach of provisions articulated in the election law or other KPU regulations, including noncriminal allegations of wrongdoing on the part of election administrators. Consequently, the KPU is at times tasked with adjudicating election disputes to which it is party. While election administration bodies are widely considered to be important stakeholders in the resolution of election disputes,

34 Law 10/2008, Article 247 (2); Bawaslu Regulation No. 05/2008.

35 Law 10/2008, Article 247 (3); KPU Regulation No. 44/2008, Article 10.

36 Law 10/2008, Article 247 (3,4).

37 Bawaslu may also determine that the complaint submitted does not warrant investigation based on insufficient evidence, but they are still obliged to inform the complainants and to keep a record of the case.

38 Law 10/2008, Article 250; KPU Regulation No. 44/2008, Article 16.

39 Law 10/2008, Article 253 (1).

40 United Nations Human Rights Committee (UNHRC), General Comment No. 31, Nature of the General Legal Obligations on States Parties to the Covenant, U.N. Doc CCPR/C/21/Rev.1/Add.13(2004); UNHRC, General Comment No. 32, Right to Equality Before Courts and Tribunals and to a Fair Trial, U.N. Doc CCPR/C/GC/32.



## 2009 INDONESIA ELECTIONS

obligations of impartiality and independence must be strictly applied to their functioning. To be considered impartial, a tribunal (in this case, the KPU) must not only be free from bias but must appear impartial to a reasonable observer.<sup>41</sup> The KPU's mandate to issue decisions on election disputes that relate to its own actions may therefore reasonably be considered to undermine the requirement of impartiality. The creation of an independent body tasked with the resolution of administrative disputes or the granting of adjudicative powers to Bawaslu/Panwaslu could better meet the principles of impartiality. It could also potentially increase the functioning of, and confidence in, Indonesia's nonjudicial election dispute processes.

Out of a total of 2,304 complaints containing allegations of criminal violations that were documented by the Bawaslu as of May 10, only 591 were forwarded for investigation by the police, and only 170 were taken to court. Alleged criminal violations recorded in connection with the legislative elections included the illegal use of money to influence voters; holding campaign rallies outside the scheduled dates; campaigning at schools, universities, or places of worship; slashing posters; and using public resources in campaigning. In the lead-up to the election, more serious allegations of criminal violations were reported to Center observers in Aceh, including assassinations, beatings, and the burning of homes. The Carter Center was unable to confirm whether these events were politically motivated.

According to the law, it is the role of the police to collect evidence and prepare cases for submission to prosecutors. In practice, however, it seems that much of this was undertaken by Bawaslu staff. Bawaslu staff told the Center that without Bawaslu follow-up, it is common for cases to remain unprocessed. For Bawaslu to effectively lead such investigative efforts, it is essential that adequate resources, both human and financial, be available.

Bawaslu has reported that at the national level, a high number of cases submitted to the police for investigation were rejected due to insufficient information. However, Carter Center observers reported that even in the instances where Panwaslu staff followed up on a case and met all necessary evidentiary requirements, the lack of coordination and follow-up between the institution and police forces often meant that the process faltered. Carter Center observers in

Aceh and Jakarta also noted a concern of some stakeholders that the police showed bias in determining whether, and which, cases were pursued. While the Center is not in a position to assess the extent of this alleged bias, it is an issue that merits further examination. An additional constraint on the process

of settling criminal cases is that all such cases related to the results of the election must be concluded five days before the results are announced.<sup>42</sup> Rather than expediting such cases, this short deadline likely has the effect of further discouraging serious investigation and prosecution.

#### LIMITED ROLE AND LATE OPENING OF ELECTION SUPERVISORY BODY OFFICES

The election law does not give Bawaslu an electoral dispute resolution role beyond issuing recommendations in cases of alleged administrative violations for the KPU and analyzing and preparing cases to be referred to the police. Bawaslu and Panwaslu are not empowered to ensure that cases are pursued by either the KPU or the police.

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*The creation of an independent body tasked with the resolution of administrative disputes could better meet the principles of impartiality.*

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41 United Nations Human Rights Committee (UNHRC) General Comment No. 32, paragraph 21 states, "The requirement of impartiality has two aspects. First, judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbor preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial."

42 Law 10/2008, Article 257.





While Article 129 of law 12/2003 law provided three concrete steps for the resolution of disputes by election supervisors, the 2008 election law foresees no rules or mechanisms for direct dispute resolution by Bawaslu or Panwaslu. All cases received by Bawaslu and Panwaslu are now categorized as either potential administrative or criminal violations, and are passed on to either the KPU or the police. Therefore, the role of Bawaslu or Panwaslu, even with regard to administration-related disputes that do not involve an alleged breach of the law, is simply to pass the case report along to the KPU with recommendations on follow-up.

at the provincial, district, and subdistrict levels, consists of only three.<sup>43</sup> Also of note in the 2007 law is the lack of specific requirements for recruiting from various fields. These changes represent a nearly 50 percent decrease in the numbers of managers for these offices who could have significantly affected the ability of the Bawaslu/Panwaslu to carry out their work effectively.

The late creation of provincial- and district-level Panwaslu has been widely criticized as hampering the timely resolution of election disputes. According to Article 71 of law 22/2007, Panwaslu offices in the provinces should have been established no later than one month before the first stage of the elections, which began with the update of the voter register on April 5, 2008. The original schedule had been for all provincial Panwaslu to be created at the same time. Since the first stage of the 2009 election process started on April 5, 2008, the deadline for the establishment of Panwaslu should have been March 2008.

In practice, however, the schedule did not follow the law, with Panwaslu offices established in a phased manner. This was reportedly due to a lack of funding at the time. On Aug. 29, 2008, Panwaslu offices were established in only eight provinces. On Sept. 28, all other provincial Panwaslu were established, except in Aceh, where a dispute with the provincial government over authority to choose Panwaslu members delayed its establishment until Dec. 31, 2008. District-level Panwaslu were generally established one month after the provincial establishment (with the exception again in Aceh, where the district Panwaslu was only established mid-February 2009).

Many cases occurred before the establishment of the bodies charged with receiving reports of violations and the resulting disputes. Therefore, a significant

AVERY DAVIS-ROBERTS



*As a security measure against duplicate voting, citizens dipped their fingers in indelible ink after casting ballots.*

In addition to an altered mandate, as compared to the 2003 election law,<sup>43</sup> the current law decreases the number of members in the Bawaslu and Panwaslu structure. In 2003 Bawaslu had nine members. Both provincial- and district-level Panwaslu had seven, and the Panwaslu at the subdistrict level had five. These members were recruited from a diverse range of professions, including the police, the attorney general's office, academia, the media, and public figures.<sup>44</sup> In law 22/2007, however, the membership of each election supervisory body was decreased significantly: Bawaslu consists of only five members, and Panwaslu,

43 Law 12/2003, "Concerning General Election for Members of People's Representative Council, Regional Representatives Council, and Regional People's Representative Council."

44 Law 12/2003, Article 124.

45 Law 22/2007, Article 73.



## 2009 INDONESIA ELECTIONS

number of complaints were not submitted and could not be resolved according to established deadlines. Weaknesses in the capacity of Panwaslu at district and subdistrict levels, as well as late disbursement of funds, also played a role in the lack of effective local dispute resolution. A related factor is that many Panwaslu members have no experience in preparing and investigating cases and often find it hard to prepare and make effective arguments as witnesses in court.<sup>46</sup> At the same time, Bawaslu was reluctant to significantly increase spending on training of regional Panwaslu members and staff, citing the temporary nature of Panwaslu operations and the high turnover of staff between elections.

### SHORT TIME FRAMES AND DIFFICULT REPORTING REQUIREMENTS FOR SUBMISSION OF CASES

According to Article 247 of law 10/2008, allegations of administrative and criminal violations must be reported to Bawaslu or Panwaslu within three days of the incident. The violation reports submitted by informants to Bawaslu or Panwaslu, for both administrative and criminal cases, must include the name and address of the informer; the name of the perpetrator; and the time, place, and description of the incident. As it is incumbent on the informant to provide data that is often difficult to collect, this three-day deadline appears too short.

The Bawaslu regulation on reporting violations specifies an additional requirement for the reports that was not foreseen in the 2008 law: the names and addresses of witnesses.<sup>47</sup> This appears to be residual from the 2003 election law, which required such information. Bawaslu staff members told The Carter Center that this information was not intended as a strict requirement for reports, but that these details should be included if available. In practice, when this information was not included in a violation report, it appeared to be grounds for the Panwaslu offices to dismiss a case. This additional information was often the most difficult for informants to produce because

witnesses did not want to give their names out of fear of intimidation or fear that goods received from campaign teams would be forcibly returned. In many of the electoral dispute resolution cases tracked by Carter Center observers, reports were dismissed by Panwaslu offices because they did not contain witness names. In some cases, informants told the Center that they did not pursue their cases because they were unable to provide this information. Considering that investigations of criminal violations should be conducted by the police, this requirement appears problematic.

### CONSTITUTIONAL COURT

The Constitutional Court<sup>48</sup> provides another avenue for the resolution of electoral disputes. However, according to Article 24(c) of the Indonesian Constitution, the Law on the Constitutional Court

ANTONIA STRAATS



*A member of Partai Bulan Bintang prepares a petition for the Constitutional Court on the final night of filing. Parties had 72 hours to file petitions with the court.*

46 Bawaslu noted that in the preparation of two cases in East Java and North Tapanuli related to the gubernatorial and mayoral elections in 2008, the relevant Panwaslus did not have enough capacity to appropriately answer questions by the judges and lawyers in court and so the cases were transferred to the Constitutional Court. Information on these cases is available at <http://www.mahkamahkonstitusi.go.id/eng/berita.php?newscode=2033> and <http://www.mahkamahkonstitusi.go.id/eng/berita.php?newscode=2029>.

47 Bawaslu Regulation No. 5/2008, Article 3 (2), Aug. 28, 2008.

48 The Constitutional Court was established by Presidential Decree No. 147/M/2003, Aug. 15 and heard cases on election results beginning with election in 2004.



and law 10/2008, the court's mandate is limited to hearing cases regarding the results of the election. The court is widely considered to be impartial and, therefore, since its establishment in 2003, has helped to resolve often politically charged disputes over election results.

The Court began receiving cases related to the 2009 legislative election results after their announcement by the KPU on May 9. With nearly twice as many parties competing for seats in 2009 as compared to 2004, the Constitutional Court was prepared to

the movement of votes from one candidate to another (“bubbling”) and the simple removal of votes from the tally of a candidate. However, there were also many cases regarding alleged violations by the KPU with regard to the candidates list. The Court has criticized the KPU for appearing to be unprepared for the trials.

A 2008 decision by the Constitutional Court found Article 214 of the 2008 general election law unconstitutional. Based on this ruling, the seats won by a party are now allocated to those of its candidates who win the most votes.<sup>49</sup> This decision, which in practice extended the meaning of “election contestants” beyond political parties to include individual legislative candidates, affected not only the electoral system, but also the broader legal framework for the electoral process. The necessary changes resulting from this ruling were at times inconsistently reflected in the law or other regulations. According to KPU regulation number 15/2009, only the central party board at the national level and DPD candidates can register a case with the Constitutional Court.<sup>50</sup> This regulation, as well as the article in law 24/2003<sup>51</sup> upon which it is based, could be interpreted as being inconsistent with the 2008 Court decision. To promote certainty regarding the legal framework and the dispute resolution process, it is important that rules and regulations align with the decision of the court before the next election.

In addition, the ruling of the court opened the door for internal party disputes on seat allocation. However, at this time, the law on the Constitutional Court, the election law, and related regulations do not provide a mechanism to resolve conflicts of this kind. Though they are considered electoral contestants according to the court decision, individual candidates cannot register an internal party dispute



*A petition for the Constitutional Court boxed in preparation for delivery. Because it was necessary to file 12 certified copies of the complaint as well as all applicable evidence in hard copy, each petition was extremely large, leading to difficulties in meeting the 72-hour deadline for filing.*

hear up to 1,000 cases. However, by the May 12 submission deadline a total of only 595 cases, including 110 cases from Aceh, had been registered with the court by 42 parties and 28 DPD candidates. Given the short time frame between the announcement of the results and the deadline for registering challenges, many political parties found it difficult to prepare the required 12 copies of the necessary documentation. The cases were divided among three panels, each of which consisted of three judges and 10 law clerks. The court could hold up to six sessions every day for each panel. The court also prepared video conferencing at 34 universities throughout Indonesia to allow parties outside of Jakarta to give evidence in cases. Panels were responsible for cases related to a number of specific parties and/or provinces (for DPD cases).

Most cases heard by the panels were in relation to

49 Constitutional Court Decision No. 22-24/PUU-VI/2008, Dec. 23, 2008.

50 KPU Regulation No. 15/2009, Article 97.

51 Law 24/2003, Article 74 on the Constitutional Court; KPU Regulation No. 15/2009, Article 97, “Technical procedures for the announcement of the official results of the General Elections to determine seat distribution for elected legislative members.”



## 2009 INDONESIA ELECTIONS

regarding the results with the court unless they have approval from their party board. The Center was told that this was an issue for some candidates who alleged that as a result of deals made, often at the subdistrict level, votes from one candidate “bubble up” (*peng-*

*gelembungan*) to another candidate within the same party at the subdistrict level during the recapitulation of such results. Candidates suggested that they should have a right to directly seek redress from the Constitutional Court.

## ELECTORAL DISPUTE RESOLUTION CASE STUDIES

During the postelection period, two teams of Carter Center election observers completed case studies on a limited number of randomly chosen election disputes originating within Aceh province. The limited nature of these case studies means that they should not be used to draw general conclusions about Indonesia’s dispute resolution processes as a whole. However, the case studies allowed The Carter Center to better understand the role and effectiveness of the administrative and criminal channels for dispute resolution in Indonesia.

Generally, the Carter Center’s long-term observers noted that most electoral stakeholders in their areas of observation had a high level of trust in the Constitutional Court, but felt that other avenues for dispute resolution were at times ineffective or nonresponsive. Many interviewees noted that the limited mandate of Bawaslu/Panwaslu curtailed their ability to investigate or address complaints and created difficulties in ensuring cases were thoroughly considered and brought to a satisfactory conclusion. Two case studies that exemplify these general themes and provide anecdotal examples of the strengths and weaknesses within Indonesia’s dispute resolution process have been excerpted below.

**Sixteen parties in Gayo Lues contest election results; claim significant procedural violations**

Following the announcement of results in Gayo Lues, Aceh, 16 parties formed a coalition to file a complaint on the basis of what they believed to be significant misconduct on the part of election administrators. This included allegations by 13 of the 16 parties that their candidates’ vote totals had

been altered. Specific allegations included village heads serving as members of PPS, insufficient material allocation on the part of KIP, party witnesses who were not allowed entrance to PPK recapitulation sessions, ballot boxes stored in the private homes of civil servants, vote buying, and the non-publication of election results.

In addition to the 16 parties who served as primary complainants, five to seven parties declined to sign the KIP recapitulation results. These parties cited a disagreement with totals but did not file a formal dispute. The coalition forwarding the complaint also included three parties that won seats—Partai Aceh, Hanura, and Partai Persatuan Pembangunan (PPP). The coalition arranged a protest in Blangkejeren on April 23 and sent a three-person delegation to Banda Aceh to meet with government officials. In addition, it filed copies of the official complaint with the KPU, Bawaslu, KIP Aceh, Panwaslu Aceh, KIP Gayo Lues, and Panwaslu Gayo Lues.

Carter Center observers attempted to follow up with the administrative bodies tasked with resolution of this complaint, including conducting meetings with the chair of KIP Gayo Lues, to assess whether the complaint in question was properly considered and, if necessary, whether effective redress was offered to the parties in question. However, KIP Gayo Lues indicated that they had never received a formal complaint from any Panwaslu body. They also indicated that a remedy for discrepancies occurring during the conduct of vote counting at the subdistrict and TPS levels was





beyond the mandate of KIP. Carter Center observers noted that in addition to the seeming lack of an administrative remedy, there was significant difficulty in successfully coordinating between the different bodies tasked with dispute resolution. As a result of conflicting and unclear mandates, limited information sharing, and weak oversight, the likelihood that complaints such as this one are properly addressed is small.

In the absence of an administrative remedy and seeking effective redress for the alleged violation, the coalition of parties indicated to Carter Center observers that they planned to file a case with the Constitutional Court.

### **Votes in Kuta Alam certified at the province level despite disputed recapitulation results**

Following the election, votes in Banda Aceh were aggregated on a subdistrict basis before being forwarded to the district and provincial level. In the Kuta Alam subdistrict of Banda Aceh, vote totals were aggregated and the recapitulation forms were certified by all party witnesses (*saksi*) in attendance. However, when these recapitulation forms reached the provincial level, a witness for the Partai Demokrat (PD) objected to the included vote totals, claiming the totals of Partai Persatuan Pembangunan (PPP) were inflated by 220 votes.



ALAN WALL

*Tabulation forms were large so that they would be publicly visible during the count, but their size often made the completion of recapitulation forms unwieldy and difficult for polling station staff.*



2009 INDONESIA ELECTIONS

ALAN WALL



*Party witnesses (saksi) observe vote counting in Dayah Muara, Aceh.*

Partai Demokrat filed an official complaint with Panwaslu, which Banda Aceh forwarded to KIP Banda Aceh and KIP Aceh for resolution. As the complaint was administrative in nature, it was within the mandate of the election administration body (KIP) to investigate and offer effective resolution for the alleged violation if it was found to have occurred. In an attempt to ensure the effectiveness of a potential remedy, KIP Aceh postponed the finalization of the recapitulation of election results from Banda Aceh, pending investigation.

Carter Center observers noted that all stakeholders involved in the dispute and its investigation acknowledged that it appeared additional votes had been added to the totals for PPP due to fatigue

on the part of TPS officials. Consequently, KIP Banda Aceh recommended to KIP Aceh that these figures be revised to reflect a true tally of the votes from Kuta Alam subdistrict. However, the PPP argued that all party witnesses, including from Partai Demokrat, had signed the initial recapitulation forms on the vote totals, making these totals official. They also asserted that Partai Demokrat had missed the filing deadline for complaints, meaning this case had no legal standing.

A final decision was issued by KIP Aceh in favor of PPP. KIP Aceh recognized the likely error in the results. However, they expressed the belief that it was outside of their mandate to revise lower-

level recapitulation results that had been signed off by party witnesses before being aggregated.

This case illustrates a possible lack of understanding by parties and election administrators of complaints procedures. Improper application of deadlines, such as those seen in this case, could potentially result in inconsistent case resolution. This could also act to underscore the perception of many Indonesians that dispute processes (aside from the Constitutional Court) are ineffective or partial. However, while time lines to file disputes are put in place to ensure efficiency, they appear at times to be overly restrictive. This is particularly true given varying degrees of socialization on the election law for subdistrict- and district-level party officials.



## ELECTORAL DISPUTE RESOLUTION IN ACEH PROVINCE

Election-related disputes in Aceh were handled as follows: First, complaints could be addressed to the election supervisory body, Panwaslu, which could then refer those reports either to KIP (administrative violations) or the police (criminal violations); second, for defamation and some other criminal matters, complaints could be taken directly to the police; third, for complaints potentially impacting the results of the election, parties had recourse to the Constitutional Court—directly in Jakarta or through video conference facilities available in Aceh—after election results were announced.

### Panwaslu

Based on the findings of the Center’s long-term observers, it appeared that Panwaslu at the pro-

vincial, district, and subdistrict level was generally viewed as lacking the investigative skills, administrative mandate, or political commitment to effectively track and report election violations. The Carter Center noted similar concerns regarding Panwaslu in their 2004 election report.

Many cases reported to Panwaslu did not proceed to the next level, usually because of a lack of evidence or witnesses, or because a suspect could not be identified. Local Panwaslu officials generally placed the burden of collecting evidence, finding witnesses, and identifying a suspect on those who made the report, rather than pursuing cases themselves. The short time frames for investigating and reporting cases also significantly reduced the number of cases submitted to, and pursued by, Panwaslu.



EVERETT DAVID ROBERTS

*Each of the four ballots per voter was signed by the polling station head before being distributed. This signature was required for a ballot to be considered valid during vote counting.*



## 2009 INDONESIA ELECTIONS

Political parties consistently said that they were unable to gather witnesses who would be willing to go through the process. Some witnesses were afraid of intimidation, unconvinced that their reports would lead to actual response from authorities, or were unwilling to go through the hassle of reporting the incidents. In cases of money politics, parties noted that it was difficult to persuade witnesses to provide evidence. This was usually because they did not want to give up the money or goods that they had received.

In general, Panwaslu appeared unresponsive to complainants seeking information about the status of cases at the district or subdistrict level. Many parties that reported cases to Panwaslu said they remained unclear on the status of their case. Poor initial interactions and the lack of response from Panwaslu also reduced parties' willingness to report cases later in the electoral process.

**KIP Resolution of Administrative Procedures**

Having KIP responsible for resolving administrative violations for which it was potentially responsible raises questions, because it puts KIP in the position of being partially its own enforcement agency. Because so few administrative violations were ever referred by Panwaslu to KIP, it is difficult to know how effective KIP would be in overseeing itself.

**Cases Reported to the Police**

Police in general appeared to have an interest in responding to cases referred to them by Panwaslu. However, they also struggled with the strict time lines for investigation. While these time lines were clearly intended to spur action, their effect was more often to disqualify or terminate potentially legitimate cases.

Regarding the election, police in some areas suffered a credibility problem because some stakeholders did not believe police were responding to potentially politically motivated killings with speed and determination. Whether or not this allegation

is true, it had a damaging effect on the reputation of, and confidence in, the police. As one political candidate said, "Why would I report destroyed banners when [police] can't find who killed my campaign staff?"

**Defamation**

The second category of election disputes appeared to surround a number of defamation cases that occurred as a result of the election. In these cases, the complainants could go directly to the police to seek redress. This procedure appeared to circumvent the Panwaslu process, but it did lead to faster response from authorities. Unfortunately, in most of the defamation cases followed by The Carter Center, the process appeared to chill political speech.

**The Constitutional Court**

The Constitutional Court was generally well-respected, and as a result often became the preferred place to bring cases even for those outside of the court's mandate. For example, in at least two districts, disputes emerged over the correct population figures, which could affect the number of seats in the district legislature. The means of resolving these cases under the current dispute structure were unclear, and so complainants intended to take their cases to the Constitutional Court.

To accommodate local parties in Aceh that did not have offices in Jakarta, three additional days were allowed for provision of hard-copy evidence to the Constitutional Court in Jakarta, provided cases were filed electronically within the original filing period. When Carter Center observers departed Aceh in May, cases were just being reported to the Constitutional Court. Consequently, The Carter Center was unable to follow up on this process at the local level. The Center, however, has offered observations about the role and conduct of the Constitutional Court more generally.





## CONCLUSIONS AND RECOMMENDATIONS

The Carter Center’s observation in Indonesia was limited in nature. As such, the Center is unable to offer observations and recommendations on the electoral process as a whole. However, in a spirit of cooperation with the people, government, political leaders, and electoral bodies of Indonesia, the Center offers the following summary recommendations. The recommendations cover those aspects of the electoral process that formed the core of the Center’s limited mission and have the potential to play an important role in guaranteeing the credibility of the process. The Center also notes some critical shortcomings that, if not addressed ahead of the next national elections in 2014, could impede the efficiency and effectiveness of the system.

### GENERAL RECOMMENDATION

#### 1. Ensure Timely Passage of the Election Law.

If Indonesia continues to require that new election laws be drafted in advance of each election, then the government should ensure the timely passage of the election law by the DPR. Timely passage would have improved the quality of the process in 2009 by allowing more time to conduct poll-worker training, enhancing clarification in campaign finance requirements, and establishing local Panwaslu offices according to the schedule defined in the law. In addition, more time would have been available to write and disseminate election regulations. Without regulations that expand upon articles in the current law in a timely manner, it was difficult for the KPU and other electoral stakeholders to effectively administer some aspects of the election within a reasonable time line. Indonesia may also consider the adoption of a more permanent election law that would remain

applicable over several election processes. The advantages of such a law are significant. They include stability, an opportunity for the law to be refined through amendment and adoption of new regulations, and the increased potential for familiarity with the law by administrators and poll workers.

### ELECTION ADMINISTRATION

#### 2. Review Selection Criteria for Members of the KPU.

The selection criteria for members of the KPU in the 2008 election law did not place enough emphasis on skills required for the KPU to function most effectively. KPU members at all levels must, in addition to integrity and impartiality, be able to demonstrate in-depth knowledge of basic election principles. In addition, increased thought should be given to creating a team of election commissioners with a robust and diverse skill set, to ensure that KPU members have knowledge of accounting, information technology, electoral law, and other relevant fields. The 2009 commission lacked the skills that would have enabled it to manage a range of challenges in a well-informed and proactive manner. Finally, staggered terms for KPU commissioners would maintain a combination of old

and new members and help enable institutionalization of election-implementation experience.

#### 3. Improve Quality of Voter Register.

The 2009 Indonesian legislative elections were marred by difficulties surrounding the voter register. Widespread reports indicated that the register, composed of 171 million names, was riddled with inaccuracies. The register was developed using Ministry of Home Affairs data rather than a KPU door-to-door

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*The 2009 Indonesian legislative elections were marred by difficulties surrounding the voter list.*

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## 2009 INDONESIA ELECTIONS

voter registration effort, as in 2004. This ministry data was often outdated and had not been verified. While the Carter Center's limited mission could not determine the overall effect the quality of this register had on enfranchisement, it clearly had a negative impact on public confidence in the KPU as well as on the administration of the election. The Carter Center recommends that responsibility for the creation and maintenance of the voters list be returned solely to the KPU. In turn, the KPU should discontinue use of Ministry of Home Affairs data unless it can be proven to be accurate and up to date. The KPU must also ensure that adequate time and financial resources are allocated to the development of the voter register in future electoral cycles.

### **4. Increase Transparency of Vote Tabulation and Seat Allocation Processes.**

Concerns over the lack of transparency in vote aggregation and seat allocation also impacted the 2009 legislative elections. Carter Center observers noted that many party witnesses (*saksi*) were not given official copies of C-1 forms. Therefore, parties could not substantiate if polling station results, when aggregated, were correct. Additionally, the allocation of some seats based on closed-door meetings with political parties had the potential to undermine public confidence in the transparency of the electoral process. The Carter Center urges Indonesia and the KPU to implement changes to ensure increased public access to these elements of the electoral process. The Center recommends that all meetings for the determination of seat allocation be public in nature, that election administrators ensure timely availability of vote tabulation totals at all levels of recapitulation, and that the KPU take significant steps to ensure access for all parties to official vote-count forms.

### **5. Improve Poll-Worker Training.**

A stronger commitment to training polling-station-level officials on election-day procedures and the electoral law is necessary to ensure effective admin-

istration of the election. Carter Center observers noted that complicated recapitulation forms often took hours for polling officials to complete and many TPS-level officials were unfamiliar with some election day procedures. The process of "training the trainers," utilized by the KPU in 2009, appears inadequate to ensure that all polling officials know their duties. Successful poll-worker training will require the KPU and the government of Indonesia to provide substantial monetary resources and staff time throughout the electoral cycle. Providing such training is vital to preserving the fairness and impartiality of the process at all levels.<sup>52</sup> The KPU may also consider providing open public trainings for party *saksi*. This would help to ensure a common understanding of the rules and procedures for election day. The Center's observers noted that the amount of training and information provided to witnesses varied widely by party.

### **6. Support Increased Gender Participation in Election Administration in Aceh.**

Carter Center observers in Aceh noted that women constituted less than 5 percent of those poll workers attending KIP trainings and state-run voter education meetings. Women also constituted less than 15 percent of those representing parties as witnesses in Aceh on election day. Positively, in polling stations observed by The Carter Center, women appeared to be voting in equal, or more than equal, numbers to men. However, women's participation must include an active role as contestants and election administrators as well. KIP should more actively urge the participation of women as polling station officials in Aceh, particularly in leadership roles. They should also provide greater focus on voter education efforts and worker trainings that include women.

<sup>52</sup> United Nations Human Rights Committee (UNHRC) General Comment No. 25, paragraph 20 states, "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially, and in accordance with established laws...."



**7. Increase Transparency in the Procurement of Election Technologies.**

The ICR counting system, intended to decrease the time needed to announce provisional results, was procured extremely late in the electoral process through nontransparent means. The difficulties with use, and eventual abandonment, of this system had a potentially adverse effect on public confidence in the capability of the KPU during vote tabulation. The KPU should give careful consideration to bidding and procurement practices for any automated counting technology employed in future elections.

CAMPAIGN FINANCE

**8. Revise Electoral Legislation to Include Reporting and Disclosure Requirements for Individual Candidates and Informal Campaign Teams.**

The Constitutional Court’s decision regarding Article 214 of law 10/2008 has extended the understanding of those contesting the elections to include individual candidates. A careful revision of electoral legislation related to campaign finance is therefore required before the next legislative elections. As part of this review, limits on campaign contributions, campaign finance reporting requirements, and related sanctions need to be defined in the law regarding individual candidates for the DPR and DPRD. The relationship between DPR or DPRD candidate campaign finances and party campaign finances also should be clarified. Additionally, the law should also be amended to require that informal campaign teams report their income and expenditures or alternatively amended so that the finances of informal teams fall within the reporting framework that regulates formal campaign finance. These amendments to the current regulatory framework would potentially decrease the amount of unreported campaign spending. To enhance

*Limits on campaign contributions, campaign finance reporting requirements, and related sanctions need to be defined in the law regarding individual candidates for the DPR and DPRD.*

transparency, it is further advised that donors to campaign funds be identified at each stage of the reporting process.

**9. Expand KPU Oversight of the Auditing Procedure and Available Sanctions for False or Incomplete Reporting.**

The KPU should have a more robust legal mandate as well as additional human and budgetary resources to conduct discretionary or investigative audits of financial reports submitted by parties through public accountants. The KPU should have the power to request additional information and supporting documentation based on the financial reports provided by the contestants. This information should be available to the appointed public accountants so that they can conduct more in-depth audits. The content of these

reports also should be made public. Further, to ensure that all campaign funds raised and spent by political parties and candidates are accurately and completely recorded in their campaign finance reports, the electoral law should include appropriate penalties for inaccurate, false, or incomplete reporting of campaign contributions and expenditures. It should

also include penalties for nonreporting by unsuccessful candidates and parties. In addition to the current criminal penalty for intentionally giving false information, a range of electoral and administrative penalties should be available as sanctions for improper filing of reports. Such a variety of sanctions can ensure remedies are appropriate and proportionate to the severity of the violation.

**10. Enact New Legislation and Enforce Current Regulations Concerning Allocation of Public Funding to Candidates.**

In advance of the next legislative elections, the government of Indonesia could consider enacting legislation that provides for public funding to candidates.



## 2009 INDONESIA ELECTIONS

EVERETT COLLECTION



*After voting ended at noon, polling station officials repackaged unused election materials for transport to the district-level office.*

Public funding could help to level the playing field among candidates and increase compliance with reporting requirements, particularly if the disbursement of public funds was reliant on timely submission of accurate and complete campaign finance reports. Indonesia may also consider the provision of non-monetary public support, such as through the allocation of free air time to candidates.

### **11. Regulate Donation of Material Goods to Voters During Campaign Period.**

The practice of donating money, rice, and other gifts to potential voters during campaigns has highlighted the need for further discussion in Indonesia about how these practices can be regulated. The practice of candidates and parties providing food for attendees at political rallies is very common and is not prohibited by the election law. While Indonesians vote by secret ballot, concerns remain that recipients of campaign

gifts may feel obliged to vote for the candidates and parties supplying the gifts.

### **ELECTORAL DISPUTE RESOLUTION**

#### **12. Reconsider Role of Bawaslu and Panwaslu.**

The role of Bawaslu and Panwaslu is currently limited to acting as an advisory and referral body. While The Carter Center recognizes the important contribution that Bawaslu and Panwaslu make to the electoral process, it is important to assess the value of the institution as a whole, given the constraints under which it operates. In preparation for the 2014 national elections, it will be important

to put in place an electoral dispute-resolution reform strategy that can be reflected in the future election law. This reform strategy could include increased independence and capacity within the KPU to make decisions and deal efficiently with electoral dispute resolution cases. It could also include a joint mediation and dispute resolution service that is perhaps within the KPU structure, but includes external elements and has the power to identify, investigate, and prosecute administrative and criminal breaches of the law.<sup>53</sup> Bawaslu and Panwaslu could contribute more to the effective functioning of the electoral dispute resolution systems (as they did in 2004) vis-à-vis disputes that do not constitute a breach of the law. The Carter

<sup>53</sup> For cases in which the KPU is the accused party, the mechanism could include a kind of "Honorary Council," which is an existing mechanism that investigates alleged breaches of the Code of Ethics by KPU staff. To improve the level of independence of council deliberations and decisions, however, the membership should consist of a majority of external members.





## CONCLUSIONS AND RECOMMENDATIONS

Center recommends that Bawaslu and Panwaslu have a mandate to mediate disputes to decrease the burden on the KPU and allow for more cases to be processed in a timely manner. It will be essential that, whatever the role of Bawaslu in future elections, sufficient human and financial resources be allocated to the resolution of electoral disputes.

### 13. Extend Filing Deadlines for Complainants.

While timeliness is essential to the effective resolution of electoral disputes, overly short deadlines may act to silence valid complaints and limit the ability of parties to seek redress. The three-day deadline for reporting administrative and criminal electoral violations reports to Bawaslu or Panwaslu is too brief and too rigid, not allowing any room for exceptions. Given the remoteness of some communities and the subsequent difficulties in gathering and submitting information, the Center recommends a review of these deadlines. In addition, completing the 12 necessary copies of complaint forms proved difficult for some complainants given the 72-hour filing period for the Constitutional Court. The Center recognizes legislation that allowed Aceh local parties an additional 72 hours to provide hard-copy complaints to the Constitutional Court if an electronic copy had been previously submitted and urges similar time extensions to be implemented in other aspects of the dispute process.

### 14. Extend Standing Before Constitutional Court to Individual Contestants.

According to the current Constitutional Court law and the KPU regulation on technical procedures for results, only the central boards of political parties

and DPD candidates can lodge a complaint with the Constitutional Court regarding election results. However, the 2008 decision by the Constitutional Court (which required seats won by a party to be assigned to those of its candidates who win the most votes) creates the possibility that a candidate and his or her party could be in conflict over an election result and seat assignment. In light of the court decision, the potential for conflict among candidates of the same party has increased significantly, making a dispute resolution mechanism for these conflicts essential. The Center recommends that this issue be addressed in the law before the next national elections, and recommends that consideration be given to allowing individual candidates the right to bring cases related to electoral results directly to the Court. Should such a change be made, it will be essential that the Court receives adequate resources to address a potentially high number of individual complaints.



ALAN WAIL

*During vote counting in Dayah Muara, Aceh, a polling station staff member marks vote tallies on publicly displayed tabulation sheets.*



## APPENDIX A

# ACKNOWLEDGMENTS

The Carter Center would like to thank a number of individuals and organizations whose support made the limited international election observation mission to the 2009 legislative elections in Indonesia possible. In particular, The Carter Center thanks the government of Indonesia and the National Election Commission (KPU) for granting The Carter Center permission to observe the April 9, 2009, elections. Additionally, the Center acknowledges the Indonesian officials, political party members, civic activists, journalists, and citizens who graciously welcomed the Center's observation efforts.

The Center is grateful for funding from the United States Agency for International Development, the Foreign and Commonwealth Office of the United Kingdom, and the Irish Aid Civil Society Block Grant. (Note: The ideas, opinions, and comments made in this report are entirely the responsibility of its authors and do not necessarily represent or reflect Irish Aid policy or that of other donors.) Their support allowed the Center to conduct an impartial assessment of targeted aspects of the Indonesian electoral process. The Center extends special appreciation to Stanley Harsha of the United States Embassy in Indonesia, who provided critical assistance to the mission.

The Carter Center recognizes the collaborative efforts of many international groups that actively supported Indonesia's electoral process. These include the Asian Network for Free and Fair Elections, the National Democratic Institute for International Affairs, IFES, and the European Union. The Center also recognizes the vital work of Indonesia's domestic observer groups, notably the Center for Electoral Reform (CETRO).

The Center offers special gratitude to Democracy International, whose cofounder and president, Eric

Bjornlund, served as both a short-term observer and electoral expert for the mission. He also provided critical assistance in the preparation of the final report. Special acknowledgment must also be given to Alan Wall, Democracy International's senior adviser for election processes, for his dedication of time and effort to the limited mission and the Carter Center's postelection statements, as well as this final report. In addition, the Center acknowledges the assistance of Magnus Ohman of IFES, who provided advice and guidance to the mission on campaign finance issues.

Sincere thanks go to the dedicated long-term observers who completed an eight-week observation of the pre- and postelectoral periods. They bore the brunt of observation and compiled data on the electoral process with unflagging diligence and care. The commitment and efforts exhibited by Sebastian Dettman, Jesse Grayman, Eunsook Jung, Whitney Haring-Smith, John MacDougall, Antonia Staats, and Ines Thevarajah were crucial to the mission's success. Additional thanks go to the Carter Center's short-term observer delegates who volunteered their time, expertise, and insights to the Center's mission in Indonesia.

The Carter Center was extremely fortunate to have a remarkable and talented Jakarta-based field staff. Field office operations were overseen by interim field office director Jeremy Wagstaff and field office director Sophie Khan. Significant substantive and logistical support was provided by our office coordinator Retno Palupi, logistics coordinator Sari Sudarsono, and financial officer Evi Novianty. The project would not have been possible without the extraordinary commitment of this team. The Carter Center extends sincere gratitude and thanks for the professionalism, dedication, and good humor exhibited by them all.



Carter Center Democracy Program staff in Atlanta had overall responsibility for the mission. Senior Program Associate Avery Davis-Roberts co-managed the project with Democracy Program Director David Carroll. Amber Charles served as program coordinator and provided critical support and assistance throughout. Administrative assistance was provided by Tynasha Green. Intern Surabhi Agrawal also assisted on the project.

The primary drafters of this report were Sophie Khan, Avery Davis-Roberts, and Amber Charles. Significant contributions were made by long-term observer Whitney Haring-Smith and interim field office director Jeremy Wagstaff, as well as Democracy Program graduate assistant Vanessa Tucker.



EVERETT COLLECTION

*During the count, each ballot was held up for review by all party witnesses (saksi) and citizens in attendance.*



## APPENDIX B

# CARTER CENTER ELECTION OBSERVATION DELEGATION AND STAFF

### LONG-TERM OBSERVERS

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## APPENDIX C

# TERMS AND ABBREVIATIONS

|                  |  |                 |   |
|------------------|--|-----------------|---|
| <b>Bawaslu</b>   | Election Supervisory Body  | <b>MK</b>       | Constitutional Court                          |
| <b>BPS</b>       | Indonesian government Statistics Board   | <b>MoU</b>      | Memorandum of Understanding                   |
| <b>BPPT</b>      | The Agency For the Assessment and Application of Technology                      | <b>MPR</b>      | People’s Consultative Assembly                |
| <b>CETRO</b>     | The Center for Electoral Reform  | <b>NDI</b>      | National Democratic Institute                 |
| <b>DPD</b>       | Regional Representative Assembly   | <b>NGO</b>      | Nongovernmental Organization                  |
| <b>DPR</b>       | People’s Representative Council  | <b>NTB</b>      | West Nusa Tenggara                            |
| <b>DPRD</b>      | People’s Representative Council (provincial/city/regency legislature)            | <b>OMR</b>      | Optical Mark Recognition                      |
| <b>GAM</b>       | Free Aceh Movement   | <b>PAN</b>      | National Mandate Party                        |
| <b>ICG</b>       | International Crisis Group   | <b>Panwaslu</b> | Provincial/District Election Supervisory Body |
| <b>ICR</b>       | Intelligent character recognition  | <b>PBB</b>      | Crescent and Star Party                       |
| <b>ICW</b>       | Indonesia Corruption Watch   | <b>PBR</b>      | Reform Star Party                             |
| <b>IFES</b>      | International Foundation for Electoral Systems                                   | <b>PD</b>       | Democratic Party                              |
| <b>JPPR</b>      | The People’s Voter Education Network   | <b>PDI-P</b>    | The Indonesian Democratic Party of Struggle   |
| <b>Kabupaten</b> | District   | <b>PDS</b>      | Prosperous Peace Party                        |
| <b>Kecamatan</b> | Subdistrict  | <b>PKB</b>      | National Awakening Party                      |
| <b>Kelurahan</b> | Village  | <b>PKPI</b>     | Indonesian Justice and Unity Party            |
| <b>KIP</b>       | Independent Election Committee (Aceh)  | <b>PKS</b>      | Prosperous Justice Party                      |
| <b>KPPS</b>      | Polling Station Committees   | <b>PPK</b>      | Subdistrict election committee                |
| <b>KPU</b>       | National Election Commission   | <b>PPS</b>      | Village-level election committee              |
| <b>KPUD</b>      | Provincial Election Body   | <b>SBY</b>      | Susilo Bambang Yudhoyono                      |
| <b>LoGA</b>      | Law on Governing Aceh  | <b>TNI</b>      | Indonesia military                            |
| <b>LP3ES</b>     | Institute of Research, Education, and Information of Social and Economic Affairs | <b>TPS</b>      | Polling station                               |
|                  |  | <b>UNDP</b>     | United Nations Development Program            |





# APPENDIX E

## 2009 INDONESIA ELECTION DAY CHECKLISTS

### POLLING STATION OPENING FORM

| INDONESIA LEGISLATIVE ELECTION - APRIL 9, 2009 |  |                 |                    |
|--|--|-----------------|--------------------|
|  | Observer Team Names:   | TPS #:          |                    |
|  | Location (e.g. Town):  | Arrival Time:   | am pm              |
|  | TPS Name/Location (e.g. Carter School):  | Departure Time: | am pm              |
|  |  |                 | Observed by<br>TCC |
|  |  |                 | Yes No N/A         |
| 1  | Is the polling area accessible to all voters including the disabled?   |                 |                    |
| 2  | Is the environment around the polling place peaceful?  |                 |                    |
| 3  | Is the polling place free from campaigning and campaign materials?   |                 |                    |
| 4  | Is the polling place and its surrounding environment free from obstructions to the free movement of voters, poll workers or others?  |                 |                    |
| 5  | How many people are registered to vote at the polling center? _____  |                 |                    |
| 6  | Were all polling staff (9) present before opening with sufficient time to set up the polling station for election day?   |                 |                    |
| 7  | Was the opening process free from interference? (including by security personnel and party agents)   |                 |                    |
| 8  | Were all election materials delivered to the polling place safely and securely?  |                 |                    |
| 9  | Were all the following lists publicly posted in or around the polling station? (check all that apply below)<br><input type="checkbox"/> Permanent Voters List <input type="checkbox"/> Supplementary Voters List<br><input type="checkbox"/> Permanent Candidate List of the National House of Representatives (HOR)<br><input type="checkbox"/> Permanent Candidate List for the Regional HOR <input type="checkbox"/> Permanent Candidate List of the Provincial HOR |                 |                    |
| 10   | Was the ballot box presented as empty to all present including party agents, candidates and observers?   |                 |                    |
| 11   | Was the ballot box locked after being shown to be empty?   |                 |                    |
| 12   | Did the Polling Center open at 07:00h? If not what time did it open? _____ If the polling station did not open at 07:00h, why not? (please check all that apply)<br><input type="checkbox"/> Polling staff lack of understanding of procedures <input type="checkbox"/> Insufficient materials<br><input type="checkbox"/> Late arrival of materials <input type="checkbox"/> Insufficient number of polling staff <input type="checkbox"/> Other _____                |                 |                    |
| 13   | Were party agents present at the polling place to observe opening? (please write in the names of parties that fielded observers below, and comment on whether any party agents were banned from observing for arriving after 7am)<br><br><b>Please indicate the total number of female party agents (e.g. 5/17):</b> _____ / _____   |                 |                    |
| 14   | Were domestic observers present at the polling place to observe opening? (please write in the names of organizations that fielded observers below)   |                 |                    |
| 15   | Were observers and agents able to actually observe the process?  |                 |                    |
| 16   | Was the process free from official complaints at the polling station level?  |                 |                    |
| 17   | If complaints were made were polling officials responsive to these complaints?   |                 |                    |



2009 INDONESIA ELECTIONS

| Overall Assessment  |  |
|---|--|
| <b>Instructions for this Section:</b> Put an 'X' next to the statement that best describes your assessment of the election environment and voting process for this polling station. If your response is "poor" or "very poor," it is important that you provide further explanation in the comments section.  |  |
| Very Good - No significant incidents or irregularities  |  |
| Good - A few incidents or some minor irregularities, but none that had a significant effect on the integrity of the process   |  |
| Poor - Incidents or irregularities that significantly affected the integrity of the process   |  |
| Very Poor - Incidents or irregularities of such magnitude that the integrity of the process is in doubt.  |  |
| Comments  |  |
| <b>Instructions:</b> In the box below, please provide details of any complaints or irregularities that occurred at the polling station that you observed. You must provide explanation for any observation question to which you answered "NO". If additional space is required, please continue to the back of the form and/or attach additional sheets of paper to the report form. |  |
|   |  |





## POLLING STATION OBSERVATION FORM

| INDONESIA LEGISLATIVE ELECTION - APRIL 9, 2009   |  |  |                                   |
|--|--|--|-----------------------------------|
|  | <b>Observer Team Names:</b> _____  |  | <b>TPS #:</b> _____               |
|  | <b>Location (e.g. Town)</b> _____  |  | <b>Arrival Time:</b> _____ am pm  |
|  | <b>TPS Name/Location (e.g. Carter School):</b> _____   |  | <b>Departure Time</b> _____ am pm |
|  |  |  | Observed by<br>TCC                |
|  |  |  | Yes No N/A                        |
| Outside the Polling Area   |  |  |                                   |
| 1  | Approximately how many voters are in line and in the seated area waiting to vote?: _____   |  |                                   |
| 2  | Approximately how long has the first person in the seated area been waiting to vote?: _____  |  |                                   |
| 3  | Is the polling area accessible to all voters including the disabled?   |  | Yes No N/A                        |
| 4  | Is the environment around the polling place peaceful?  |  | Yes No N/A                        |
| 5  | Is the polling place free from campaigning and campaign materials?   |  | Yes No N/A                        |
| 6  | Is the polling place and its surrounding environment free from obstructions to the free movement of voters, poll workers or others?  |  | Yes No N/A                        |
| Inside the Polling Area  |  |  |                                   |
| Note: Questions 7-11 will require you to speak directly to polling officials and domestic observers. Please do so <u>only</u> when this will not disrupt the voting process. |  |  |                                   |
| 7  | Did the polling place open at 07:00h? If not what time did it open? _____ If the polling station did not open at 07:00h, why not? (please check all that apply)<br><input type="checkbox"/> Polling staff lack of understanding of procedures <input type="checkbox"/> Insufficient materials<br><input type="checkbox"/> Late arrival of materials <input type="checkbox"/> Insufficient number of polling staff <input type="checkbox"/> Other _____ |  |                                   |
| 8  | How many voters are registered at this polling place (including on the supplementary voters list)? _____   |  |                                   |
| 10   | How many voters have voted so far? _____   |  |                                   |
| 11   | Were adequate election materials available for all registered voters?  |  | Yes No N/A                        |
| Were all the following lists publicly posted in or around the polling station? (check all that apply below)  |  |  |                                   |
| 12   | <input type="checkbox"/> Permanent Voters List <input type="checkbox"/> Supplementary Voters List<br><input type="checkbox"/> Permanent Candidate List of the National House of Representatives (HOR)<br><input type="checkbox"/> Permanent Candidate List for the Regional HOR <input type="checkbox"/> Permanent Candidate List of the Provincial HOR  |  | Yes No N/A                        |
| 13   | Is the environment inside the polling area peaceful?   |  | Yes No N/A                        |
| 14   | Was the process free from interference (including by security personnel and party agents)?   |  | Yes No N/A                        |
| 15   | Were all polling officials (9) present at the polling place?   |  | Yes No N/A                        |
| 16   | Were party agents present at the polling place to observe voting? (please write in the names of parties that fielded observers below)<br><br>Please indicate the total number of female party agents (e.g. 5/17): _____ / _____  |  |                                   |
| 17   | Were domestic observers present at the polling place to observe opening? (please write in the names of organizations that fielded observers below)   |  |                                   |
| 18   | Was a field election supervisor present at the polling station to observe the process?   |  | Yes No N/A                        |
| 19   | Were observers and agents able to actually observe the process?  |  | Yes No N/A                        |
| Polling  |  |  |                                   |
| 20   | Were voters' fingers checked for signs of indelible ink when entering the polling place?   |  | Yes No N/A                        |
| 21   | Were voters' fingers marked with indelible ink before leaving the polling station?   |  | Yes No N/A                        |
| 22   | Were all ballots that were issued to voters signed by the Chairman of the polling place? (please comment on how the chairman is signing ballots (e.g. in batches of 20, all ballots pre-signed in the morning, etc.))  |  | Yes No N/A                        |
| 23   | Were all ballots free from marks that could identify a cast ballot to a voter?   |  | Yes No N/A                        |



2009 INDONESIA ELECTIONS

|   |  | Observed by TCC |    |     |
|---|--|-----------------|----|-----|
|   |  | Yes             | No | N/A |
| 24  | Did all eligible voters that requested ballots receive one? If NO, why not (please check all that apply)<br><input type="checkbox"/> Additional evidence of eligibility requested and not available <input type="checkbox"/> Not on Voters Register<br><input type="checkbox"/> Not on Supplementary Voters List <input type="checkbox"/> Lack of voter ID <input type="checkbox"/> At wrong polling station<br><input type="checkbox"/> Other _____ |                 |    |     |
| 25  | If any ineligible voters attempted to vote, were they barred from doing so?  |                 |    |     |
| 26  | Based on your observations, does it appear that women are voting in equal/near equal numbers to men?   |                 |    |     |
| 27  | Did polling officials clearly explain voting procedures to voters?   |                 |    |     |
| 28  | Did voters appear to understand the process for correctly casting their ballots for all races?   |                 |    |     |
| 29  | Approximately how long did it take an average voter to complete and cast all four ballots? _____   |                 |    |     |
| 30  | Were voters free from pressure to reveal how they voted?   |                 |    |     |
| 31  | Were procedures followed by both poll workers and voters to protect the secrecy of the ballot?   |                 |    |     |
| 32  | Was impartial assistance given to all voters who required it?  |                 |    |     |
| 33  | Were poll workers adequately prepared to handle the volume of voters?  |                 |    |     |
| 34  | Were polling stations set up to facilitate orderly voting?   |                 |    |     |
| 35  | Did all polling officials appear to be doing their jobs effectively?   |                 |    |     |
| 36  | Did ballot boxes remain properly locked throughout the day?  |                 |    |     |
| 37  | Was the process free from irregularities as listed below? If NO please check all the occurred<br><input type="checkbox"/> Duplicate Voting <input type="checkbox"/> Ballot box stuffing <input type="checkbox"/> Interruption of voting <input type="checkbox"/> Underage Voting<br><input type="checkbox"/> Other _____   |                 |    |     |
| 38  | Was the process free from official complaints at the polling station level?  |                 |    |     |
| 39  | If complaints were made were officials responsive to these complaints?   |                 |    |     |
| <b>Overall Assessment of the Voting Process</b>   |  |                 |    |     |
| <b>Instructions for this Section:</b> Put an 'X' next to the statement that best describes your assessment of the election environment and voting process for this polling station. If your response is "poor" or "very poor," it is important that you provide further explanation in the comments section.  |  |                 |    |     |
| <b>Very Good</b> - No significant incidents or irregularities   |  |                 |    |     |
| <b>Good</b> - A few incidents or some minor irregularities, but none that had a significant effect on the integrity of the process  |  |                 |    |     |
| <b>Poor</b> - Incidents or irregularities that significantly affected the integrity of the process  |  |                 |    |     |
| <b>Very Poor</b> - Incidents of irregularities of such magnitude that the integrity of the process is in doubt.   |  |                 |    |     |
| <b>Comments</b>   |  |                 |    |     |
| <b>Instructions:</b> In the box below, please provide details of any complaints or irregularities that occurred at the polling station that you observed. You must provide explanation for any observation question to which you answered "NO". If additional space is required, please continue to the back of the form and/or attach additional sheets of paper to the report form. |  |                 |    |     |
|   |  |                 |    |     |



## POLL CLOSING AND VOTE COUNTING OBSERVATION OBSERVATION FORM

| INDONESIA LEGISLATIVE ELECTION - APRIL 9, 2009 |   |  |                                |
|--|---|--|--------------------------------|
|  | Observer Team Names:  |  | TPS #:                         |
|  | Location (e.g. Town):   |  | Arrival Time:          am pm   |
|  | TPS Name/Location (e.g. Carter School):   |  | Departure Time:          am pm |
|  |   |  | Observed by<br>TCC             |
|  |   |  | Yes No N/A                     |
| Poll Closing                                   |   |  |                                |
| 1  | Were all voters who were in line at 12:00h allowed to vote?   |  |                                |
| 2  | Were all voters who arrived after 12:00h turned away without voting?  |  |                                |
| 3  | At 12:00h; approximately how many voters were in line to vote? _____  |  |                                |
| 4  | Was the closing of the Polling station peaceful?  |  |                                |
| Counting and Reconciliation                    |   |  |                                |
| 5  | Prior to the commencement of counting, did polling officials reconcile unused and spoiled ballots with the number of voters who cast their votes and record these numbers on the results certificate?   |  |                                |
| 6  | Were polling officials equipped with all necessary materials to complete counting (i.e. lamps, appropriate forms)?  |  |                                |
| 7  | At what time did the count begin? _____ pm  |  |                                |
| 8  | When counting began, did it appear that the ballot boxes were free from tampering?  |  |                                |
| 9  | Did the polling official open each ballot box in the presence of candidates or their representatives?   |  |                                |
| 10   | Was the counting process free from efforts to link a particular ballot to a voter?  |  |                                |
| 11   | Was vote counting transparent and observable by party agents, domestic observers, and voters?   |  |                                |
| 12   | Was the counting environment peaceful?  |  |                                |
| 13   | Was the polling place free from the presence of unauthorized persons during counting?   |  |                                |
| 14   | Were all ballots accurately counted?  |  |                                |
| 15   | Was the validity of ballots determined in an impartial and objective manner?  |  |                                |
| 16   | Was the counting process free from challenges? If NO, on what grounds were these challenges based (please check all that apply)<br><input type="checkbox"/> Voter intent <input type="checkbox"/> Miscounting <input type="checkbox"/> Invalidation of valid ballots<br><input type="checkbox"/> Lack of signature on the ballot paper <input type="checkbox"/> Other _____ |  |                                |
| 17   | How many ballots were ruled invalid for each race (e.g. 5/400)?<br>DPR _____ / _____<br>DPD _____ / _____<br>Provincial DPRD _____ / _____<br>Municipal/Regency DPRD _____ / _____  |  |                                |
| 18   | How many cast ballots were blank in each race (e.g. 5/400)?<br>DPR _____ / _____<br>DPD _____ / _____<br>Provincial DPRD _____ / _____<br>Municipal/Regency DPRD _____ / _____  |  |                                |
| 19   | Did polling officials follow established criteria for determining the intent of the voter?  |  |                                |
| 20   | Were vote tallies recorded publicly throughout the counting process?  |  |                                |
| 21   | Was the counting process free from interference (including by the security personnel and party agents)?   |  |                                |
| 22   | Was the counting process free from official complaints?   |  |                                |



2009 INDONESIA ELECTIONS

|   |   | Observed by TCC |    |     |
|---|---|-----------------|----|-----|
|   |   | Yes             | No | N/A |
| 24  | Did polling officials complete the official report of voting and vote counting and the certificate of voting results?   |                 |    |     |
| 25  | Was the report and certificate signed by polling officials and party agents?  |                 |    |     |
| 26  | Was a copy of the official certificate and report shared with party agents and election field supervisors?  |                 |    |     |
| 27  | Did the Chairman of the polling station, in the presence of candidates or their agents, place the ballots, official report and certificate inside the ballot box and then seal the ballot box prior to transport? |                 |    |     |
| 28  | Were results announced publicly at that polling station level before transporting ballots to the next level of tabulation?  |                 |    |     |
| 29  | When were results from the polling place announced _____ am pm  |                 |    |     |
| <b>Overall Assessment</b>   |   |                 |    |     |
| <b>Instructions for this Section:</b> Put an 'X' next to the statement that best describes your overall assessment of the election environment and voting process for this polling station. If your response is "poor" or "very poor," it is important that you provide further explanation in the comments section.  |   |                 |    |     |
| Very Good - No significant incidents or irregularities  |   |                 |    |     |
| Good - A few incidents or some minor irregularities, but none that had a significant effect on the integrity of the process   |   |                 |    |     |
| Poor - Incidents or irregularities that significantly affected the integrity of the process   |   |                 |    |     |
| Very Poor - Incidents or irregularities of such magnitude that the integrity of the process is in doubt.  |   |                 |    |     |
| <b>Comments</b>   |   |                 |    |     |
| <b>Instructions:</b> In the box below, please provide details of any complaints or irregularities that occurred at the polling station that you observed. You must provide explanation for any observation question to which you answered "NO". If additional space is required, please continue to the back of the form and/or attach additional sheets of paper to the report form. |   |                 |    |     |
|   |   |                 |    |     |



# THE CARTER CENTER AT A GLANCE

**Overview:** 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 nongovernmental organization, the Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production.

**Accomplishments:** The Center has observed 76 elections in 30 countries; helped farmers double or triple grain production in 15 African countries; worked to prevent and resolve civil and international conflicts worldwide; intervened to prevent unnecessary diseases in Latin America and Africa; and strived to diminish the stigma against mental illnesses.

**Budget:** \$88.1 million 2008–2009 operating budget.

**Donations:** The Center is a 501(c)(3) charitable organization, financed by private donations from individuals, foundations, corporations, and international development assistance agencies. Contributions by U.S. citizens and companies are tax-deductible as allowed by law.

**Facilities:** The nondenominational Cecil B. Day Chapel and other facilities are available for weddings, corporate retreats and meetings, and other special events. For information, (404) 420-5112.

**Location:** In a 35-acre park, about 1.5 miles east of downtown Atlanta. The Jimmy Carter Library and Museum, which adjoins the Center, is owned and operated by the National Archives and Records Administration and is open to the public. (404) 865-7101.

**Staff:** 160 employees, based primarily in Atlanta.



MARTIN FRANK

THE  
CARTER CENTER



THE CARTER CENTER

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