



Nepal

FINAL REPORT

**Constituent Assembly Election
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I. EXECUTIVE SUMMARY

Elections were held on 10 April 2008 to elect 575 members to a Constituent Assembly that will draft a new constitution and act as an Interim Parliament. Following an invitation from the Interim Government of Nepal the European Union (EU) established an Election Observation Mission (EU EOM) in Nepal to assess the election. The EU EOM opened on 2 March 2008 and remained in Nepal for the duration of the election process, until 10 May 2008. Its mandate was to conduct a comprehensive assessment of the election in accordance with international standards and best practices as well as the laws of Nepal. The Chief Observer was Jan Mulder, Member of the European Parliament. The EU EOM deployed the largest international mission with 120 observers from 22 EU Member States and Norway and Switzerland present in 62 of the 75 districts.

The 2008 election to the Constituent Assembly represents a crucial step towards the restoration of representative democracy in Nepal. It was generally organised in a professional and transparent manner meeting many international standards. The overall environment for the election, however, did not fully meet international standards in some areas including restrictions to the right of freedom of assembly, freedom of movement and freedom of expression. Despite these restrictions the people of Nepal turned out in large numbers to select their representatives demonstrating popular support for a return to accountable and elected multiparty democracy. On election day there were a limited number of incidents of violence, intimidation and overt attempts to disrupt the poll in parts of the country, but overall polling went smoothly. In contrast, the campaign environment was tense across the country and there were numerous incidents of violence involving political parties. In this respect, a general climate of fear and intimidation prevailed in many parts of the country during the campaign period.

The legal framework generally provided for a democratic and inclusive election process in line with international standards. The Interim Parliament and Election Commission have introduced numerous improvements to the legal framework to provide comprehensive and in most areas, detailed provisions, for the conduct of the election. Whilst improvements are evident, the legal framework has a number of shortcomings that are not fully in line with best practice. These include a lack of a consolidated election act, clear deadlines for the publication of results; as well as concise rules for the display of these results at polling stations and inconsistent knowledge of procedures for counting at district level. There is also a lack of clarity in the mechanisms for appeals.

The Election Commission has acted as an independent body with integrity and competence. Logistical and technical preparations were generally conducted in an effective manner and key components were delivered according to the timetable. The Election Commission acted in a largely transparent manner consulting political parties and other stakeholders on issues. It also developed an open media strategy. Whilst in its administrative capacity the Election Commission performed well there were some shortcomings in its activities largely related to ensuring the provisions of the Code of Conduct were respected.

A special voter registration drive was conducted in January-February 2007. This programme was generally considered successful, although there were some obstacles caused by violence and bandhs in the eastern Terai and cases of unlawful seizure of the registers in the Kathmandu region, which led to the registration period being extended in the affected areas. The exercise increased the number of registered voters to a total of 17.6 million, representing

an increase of 15 per cent from 2006. Even with the postponement of the previously planned elections, the sequence of events and lack of political will did not allow for an update of the register. This meant that persons who reached the age of 18 after the cut off date of 15 December 2006 were excluded from voting in this election. There is also a lack of adequate mechanisms for regular maintenance and auditing of the voter register to identify multiple entries and other anomalies.

There were no overly restrictive requirements for candidates to stand for election and it was contested by a wide range of 9,648 candidates. A total of 3,947 candidates from 55 political parties contested the 240 seats allocated by the first-past-the-post race in the single member constituencies. The closed lists of 54 political parties with a total of 5,701 candidates were approved by the Election Commission, for the proportional representation race, to contest 335 seats. The legal framework provided for independent candidates to contest the single member constituencies allowing broader participation. The amount of deposits required for contesting a single member constituency based or the proportional representation election did not constitute unreasonable obstacles.

The human rights situation in many parts of Nepal remains highly problematic. Whilst fundamental rights are enshrined in the Interim Constitution, respect for these rights is wantonly absent: there are frequent violations of human rights including incidents of extortion, excessive use of force and intimidation. In this regard, during the campaign period political parties and candidates did not always enjoy the full rights afforded by the principles of freedom of assembly, freedom of movement and freedom of expression due to lack of law and order and poor security environment across much of the country. There were numerous incidents of violence and a significant number of clashes between supporters of political parties as well as killings. The campaign environment has been characterised by a high degree of tension leading to campaign activities being restricted in some areas. All these incidents have contributed to a general atmosphere of fear and intimidation and at times seriously undermined the right to campaign freely. According to EU EOM observers there were complaints of widespread voter intimidation and some attempts at vote buying by political parties.

Overall, the legal provisions concerning political party financing are detailed, however, there is little tradition for enforcing the law related to party or campaign financing. Although there have been no formal complaints related to finances the scope and content of the election campaign of larger political parties suggest that they may have breached upper ceilings. Political parties and regulatory structures lack adequate mechanisms to ensure these legal provisions are met.

Freedom of speech for the media was generally respected for most of the campaign period. The environment for journalists remained relatively fair compared to the period that preceded the election campaign. However, at times attacks and threats to journalists continued during the campaign period undermining the right to freedom of speech. The media, overall, provided diverse coverage of the main political parties and their campaigns, but at the same time, the state owned media failed to provide balance in certain programming that fell short of international standards and impartiality requirements.

Election day generally went smoothly across many parts of the country and the environment on election day was largely calm, though there were a limited number of incidents that led to the cancellation of polling in 106 of the affected polling stations from a total of 20,889

polling stations nationwide. Voting was generally conducted in a peaceful and orderly manner throughout the 239 constituencies where polling took place on election day. The re-polling was successful and without major incident and was concluded swiftly, as was polling in the one constituency where polling was postponed before election day. However, there were incidents of violence on election day that did not provide for a conducive environment for voters in some areas, but overall these did not affect the credibility of the election. Also the role of the political parties in assisting voters with identifying their details on the voter register by the entry points to polling stations was not adequate and opens up the possibility for voter intimidation and influence. The role played by party agents and party volunteers went beyond acceptable standards and at times their influence was too great at polling stations. There were also incidents of minors being allowed to vote and voter impersonation that were not adequately identified by polling officials and this problem was compounded by the poor quality of the voter register.

The quota system has guaranteed unprecedented levels of representation of women and traditionally marginalised groups. The Constituent Assembly will therefore be composed of representatives from a diverse and broad range of social groups. Despite quotas aimed at increasing representation in the Constituent Assembly some sections of the traditionally marginalised communities and female candidates did face particular financial and social constraints in campaigning. The domination of political parties by male members of elite groups also remained an obstacle in the absence of a greater presence of females and traditionally marginalised communities in the party hierarchies.

Nepal has a developing civil society, which does however, lack capacity and coordination and in some parts of the country their work is restricted by the security situation. On election day, 148 civil society organisations were involved in observing and monitoring the election and the Election Commission accredited 61,854 observers throughout the country. Their efforts represented the largest domestic observation of elections ever witnessed in Nepal which was supported by the international community. The presence of domestic observers in a high number of polling stations during election day contributed to building confidence around the exercise. The EU EOM did receive reports of some intimidation of domestic observers and attempts to deny them access to polling stations in remote locations, but on the whole, their role was positively accepted by all stakeholders. Greater coordination and organisational synergy would have increased the role of domestic observation groups and provided for even more transparency in these elections. A total of 28 international observation missions also registered to monitor the election with 856 international observers.

A relatively small number of formal complaints were lodged as compared with the numerous informal complaints about violations of the Code of Conduct that have been brought to the attention of the EU EOM. The majority of complaints related to breaches to the rules governing governmental employees, misuse of state resources, violations to the rules for media coverage and electoral violence during the campaign period. The Election Commission failed to act in an appropriate manner in processing these complaints and in most of these cases, limited itself to calling for candidates and political parties, to respect the regulations in order to avoid applying sanctions. For the campaign period there was also a lack of an adequate appeals process to challenge the Election Commission's decisions after rejection of jurisdiction by the Supreme Court.

Vote counting was not conducted at polling stations following the closing of polling but was arranged by constituency and undertaken at district level under the direct supervision of

Returning Officers. A thorough series of safeguards were not fully in place and the lack of detailed legal provisions for reconciliation led to significant inconsistencies in counting. Clear provisions for reconciliation are lacking in the law, however, there are regulations that do provide rules for the verification of polling station inventory forms during the counting process. Whilst these regulations provided for reconciliation between the number of ballots counted and those cast on election day, this was not included in all subsequent instructions for polling officials and was not carried out in a large number of cases.

A comprehensive set of detailed recommendations is included at the end of this report for consideration by the relevant authorities in order to improve certain areas in the election process. Key recommendations include:

- Legislation related to elections should be consolidated bringing the diverse range of legal provisions presently in force into a single act governing all key aspects of the electoral process.
- A broad national debate should consider reforming and simplifying the electoral system so as to accommodate the need for workable and accountable political representation while ensuring affirmative action and inclusiveness of social and regional groups in Nepalese society.
- The Election Commission should undertake a nationwide capacity building programme for its permanent field structures. It needs to continue to consolidate long term activities including civic education, increasing the professionalism of staff, and the quality of voter registration. Greater transparency and more open access to the Election Commission should also be introduced in its rules of procedure. Furthermore, the Election Commission should ensure that it is better equipped to enforce the legal requirements to guarantee provisions are respected by political parties and candidates in future elections.
- A comprehensive review of the voter register is required to ensure greater inclusiveness, reliability and accuracy. The modernisation of the civil registry and the introduction of a secure national identification card scheme are essential to improve the quality of the voter register for future elections.
- Political parties should make a real commitment to end the culture of coercive campaigning and ensure their campaigns reflect the provisions of the Code of Conduct and allow voters freedom of choice in whom to vote for. The authorities should end the culture of impunity for election offences.
- A review of the legal framework should be undertaken to provide a legal system for the media sector that respects key elements of the principle of freedom of speech, whilst at the same time provides for greater legal certainty. The new constitution should include provisions for protecting freedom of the media in line with the highest international standards in this field.
- Increased representation of women and traditionally marginalised groups in public and political life should continue to be supported to guarantee their participation in the decision-making process and higher levels of political party structures. Special

provisions should be made to allow for the participation of special categories of voters in the election process such as displaced people, migrant workers, housebound and the physically disabled.

- The Election Commission should streamline the complaints process whilst ensuring that all stakeholders are fully aware of the procedures and grounds upon which complaints can be submitted. A revised election act should provide specific and adequate time limits for the resolution of complaints and appeals. Particular attention should also be paid to establishing and enforcing appropriate mechanisms for appeals against any decision of the election administration.
- Legal and regulatory provisions should include requirements for greater security and transparency measures in the tabulation and results process. Increased measures include open and transparent reconciliation and prompt publication of detailed results in each constituency.

II. INTRODUCTION

Following an invitation from the Interim Government of Nepal the European Union (EU) established an Election Observation Mission (EU EOM) in Nepal for the 10 April 2008, Constituent Assembly election. The EU EOM opened on 2 March 2008 and remained in Nepal for the duration of the election process, until 10 May 2008. Its mandate was to conduct a comprehensive assessment of the election in accordance with international standards and best practices as well as the laws of Nepal. The Chief Observer was Jan Mulder, Member of the European Parliament. The EU EOM deployed the largest international mission with 120 observers from 22 EU Member States and Norway and Switzerland present in 62 of the 75 districts on election day. The EU EOM is independent in its findings and conclusions and adheres to the *Declaration of Principles for International Election Observation* commemorated at the United Nations in October 2005. The EU EOM was joined by a seven member delegation from the European Parliament, led by Josep Borrell Fontelles, Member of the European Parliament. On election day observers visited 517 polling stations in 83 constituencies to observe voting. They remained stationed across the country during counting and re-polling.

III. POLITICAL BACKGROUND

A. Political Context 1990-2008

Multiparty democracy was introduced to Nepal in 1990 following a popular uprising, the Jan Andolan (People's Movement), against autocratic rule.¹ This first experience with multiparty democracy witnessed a number of general elections in 1991, 1994 and 1999 with changing governments apparently unable to address crucial policy challenges in the country. Nepal has maintained a highly centralised state structure with concentration of the political, economic and administrative centres within the Kathmandu valley. Continuous discrimination and exclusion of historically marginalised groups, poor infrastructure development and social

¹ Democracy was briefly introduced from 1959-1962 by King Mahendra who subsequently dismissed an elected parliament and introduced the authoritarian 'Panchyat' system.

service delivery and lack of fundamental socio-economic reform have been constant themes in past governments.

The poor record of past governments led to one of the smaller political parties, the Communist Party of Nepal (Maoist) (CPN-M), embarking on an armed insurgency on 12 February 1996. Since the start of this insurgency there have been two failed peace negotiations in 2001 and 2003² and CPN-M and their associated groups have expanded their control in areas of Nepal restricting the capacity of the state to operate in these areas. In a significant area of the country a parallel state structure had emerged under the authority of CPN-M. A low point in contemporary Nepalese democracy was on 1 February 2005 when King Gyanendra imposed authoritarian rule and suspended key fundamental rights established in the 1990 Constitution. This further fuelled the conflict in the country and the worsening human rights situation led the United Nations Office of the High Commissioner for Human Rights in Nepal (OHCHR) to deploy a large human rights monitoring mission. Political change was initiated in November 2005 as a seven-party alliance (SPA) consisting of mainstream political parties signed a 12-point agreement with the CPN-M aimed at re-establishing full democracy. This agreement marked CPN-M's first step towards re-entering the political sphere and a commitment to multiparty democracy. Popular protests in April 2006 followed the signing of the agreement demanding the restoration of democracy and after 21 days of protest, the King was forced to hand over power to the SPA. Following this an Interim Government was appointed and the parties entered peace negotiations that led to a declaration of a cease fire.

An elected Constituent Assembly to undertake constitutional reform has been a central and long standing demand by CPN-M and other political parties and it has subsequently been a principal element in all political agreements between the SPA and the CPN-M. The signing of a Comprehensive Peace Agreement (CPA) on 21 November 2006 foresaw the holding of an election to a Constituent Assembly by the middle of 2007. Among other important issues, the CPA declared an end to the civilian conflict, provided for the establishment of an Interim Parliament, an Interim Government and the adoption of an Interim Constitution. Also, it included arms management and cantonment provisions monitored by the United Nations Mission in Nepal (UNMIN). Following the verification of the Peoples' Liberation Army's (PLA) soldiers and arms by UNMIN, the CPN-M formally joined the Interim Government in May 2007.

An original date for the Constituent Assembly election was established for mid-June 2007. However, during the period before the scheduled election large ethnically based groups expressed growing dissatisfaction with the performance of the Interim Government. Madhesi political leaders from the southern Terai region were particularly vociferous in their claims that central political authorities continued to ignore Terai interests.³ In early 2007, their protest campaigns took a serious and violent turn and as many as 37 people lost their lives following clashes mainly with the police. The Madhesi's demands for inclusion had resonance among a variety of other political and pressure groups (based mostly on ethnicity, caste and region) whose voices to a large extent had remained unheard in Nepal's democratic history and who also called for a greater role in the framing of Nepal's political future.

² The first round of peace talks took place between 3 August- 23 November 2001 and the second round 29 January- 27 August 2003.

³ It is estimated by several experts that approximately 40 per cent of Nepal's current population lives in the Terai.

Their demands included the establishment of a federal structure of government, greater regional autonomy, and increased representation of traditionally marginalised groups in the government and the Constituent Assembly. They also called for citizenship to be granted to parts of the population that historically were not afforded this right including Madhesi. Coupled with the increasingly vocal calls, the logistical challenges, political disagreements in Kathmandu and the lack of adequate preparations, including detailed legal provisions for a mid-June 2007 election date, meant that the election was postponed. This was despite opposition to postponement by the public. A new date of 22 November 2007 was chosen to hold the election. The Interim Government took gradual steps to address the mounting pressure but it was not until two major agreements were negotiated and subsequently signed in August 2007 that the groups felt their demands were taken seriously. In this context, the agreement signed in August 2007 between the Nepal Federation of Indigenous Nationalities (NEFIN) and the Interim Government also stipulated that indigenous groups not represented in the Constituent Assembly would be afforded some of the 26 nominated seats.

In the period preceding the November 2007 election date the parties to the peace process failed to make progress on their agreements that fostered new levels of mistrust and criticism. On one side there was growing frustration among the traditional political parties at the CPN-M refusal to abide by democratic norms, while the CPN-M, on their side, blamed the traditional elites for lack of commitment to fundamental socio-economic reforms and the restructuring of the state, particularly in relation to integration of CPN-M members from the PLA into the Nepalese Army. Other stumbling blocks included a new set of demands by CPN-M that Nepal be declared a republic and the adoption of a fully proportional representation election system. This increasingly acrimonious political situation led to a CPN-M decision in September 2007 to leave the Interim Government. With the withdrawal of CPN-M participation both in the Interim Government and the election the planned November Constituent Assembly election would have gone ahead without one of the key parties to the CPA. Reflecting a growing political crisis the larger parties did not submit their lists of candidates before the deadline for registration. This effectively forced the postponement of the November date set for the election.

After lengthy negotiations, the political deadlock was broken on 23 December 2007 with leaders of the main political parties signing a 23-point agreement that led to CPN-M rejoining the government. The agreement included *inter alia* a commitment to hold the Constituent Assembly election in mid-April 2008. On 28 December, the Interim Parliament approved a bill for the third amendment to the Interim Constitution, which increased the number of seats to be elected by proportional representation and the total of appointed members of the Constituent Assembly. It also declared Nepal a republic, subject to ratification at the first meeting of the new Constituent Assembly and this met a central demand of CPN-M in return for their participation in the election. The Cabinet announced on 11 January 2008 a date for the election for the third time as 10 April 2008. However, Madhesi leaders frustrated with lack of progress in granting them greater recognition in the political sphere and more representation in state structures in February 2008 called for strikes and blockades in the Terai region and threatened to boycott the election. These actions blocked main supply routes to Kathmandu and other parts of the country in protest actions. There was some initial resistance by the Interim Government to give in to new demands raised by the Madhesi groups; however, additional agreements were reached on 28 February and 1 March 2008 ending the threat of boycott.

The backdrop to the election has therefore been one of almost constant disputes between rival political parties as well as disruptions created as a result of ethnic groups demanding increased rights and recognition. The final agreements both between the political parties and these parties and the mainstream Madhesi parties finally established the conditions for an inclusive election process with all major societal groups and political parties participating in the contest for seats in the Constituent Assembly. Armed militant groups opposing the election are, however, still active in the country. Given the overall lack of law and order, the security situation has remained a central concern throughout the peace process, not least in the context of election preparations. This is coupled with a poor human rights record and a culture of impunity in the country.⁴ While the country has therefore made important strides in ending the 10-year insurgency, the presence of the state is still very weak in many parts of the country and problems of security, prosecuting criminal activities and protecting human rights persist.

B. Key Political Actors

Political parties were legalised in 1990 with the introduction of democracy. Several political parties, however, operated underground decades earlier gradually building up support for change to the political system. Nepal's political landscape is characterised by a wide array of political parties and factions that over the years have further splintered into new parties. Most parties have associated trade unions, youth wings and a myriad of financial, institutional and societal supporters including civil society organisations. Whilst there are numerous political parties Nepalese politics has been influenced by a handful of larger national political parties most of which reflect the traditional and still predominantly hierarchical societal structures. In the 1990s, two larger political parties, the Nepali Congress (NC), the Communist Party of Nepal United Marxist-Leninists (CPN-UML) and a grouping of more traditionalist Royalist leaning parties dominated the political arena but in recent years with the CPN-M and new identity-based political parties gaining support, this balance has shifted towards a more plural political system.

NC is led by Girija Prasad Koirala who has served as Prime Minister and led the Interim Government since April 2006 and held this position in several previous governments. NC came out of the 1991 and 1999 national elections as the largest party winning 53.6 per cent and 55.1 per cent of the votes respectively. Although NC played a significant role in Nepal's early political struggle for democracy, defection, factionalism, and external pressures have weakened its position. NC is a conservative centrist party and until recently, the party strongly supported the institutions of constitutional monarchy and parliamentary democracy. Following the royal takeover in February 2005, NC gradually moved to its current official position whereby the party is no longer committed to a constitutional monarchy. This does however, not change the fact that within NC a strong royalist leaning faction still exists, though this faction played a minor role in this election.

CPN-UML was created in 1991 with the merger of two communist parties. The most prominent recent leader of CPN-UML is Madhav Kumar Nepal, who has held the position as General Secretary since 1993. Despite being a communist party, CPN-UML is widely perceived as basing its policies on social democratic values as it advocates a blend of capitalist and socialist economic policies and promotes public and private enterprise. Its soft

⁴ See reports of the National Human Rights Commission of Nepal and United Nations Office of the High Commissioner for Human Rights (OHCHR) in Nepal.

communist stance has always been criticised by radical communist parties. CPN-UML is one of the few Nepalese parties with relatively good internal structures but with a strong degree of centralisation of decision-making. It also has a more transparent party financing system than the other political parties. CPN-UML has been part of several governments since 1990 and emerged from the 1994 election as the largest political party with 41.46 per cent of votes and it came second in the 1999 parliamentary elections with 33.2 per cent. In 2005-2006, CPN-UML played a central role in forging the SPA. During peace negotiations and the period following the signing of the CPA in November 2006, CPN-UML has often been a key mediator among other parties to the CPA – NC and the CPN-M.

CPN-M was formed following a split in another small communist party, and being a minor political party the launch of a People's War in 1996, did not attract much attention from other political parties at the time. The party leadership includes several leaders, dominated by the party Chairman, Prachanda, who is also 'Supreme Commander' of the PLA. The ideological foundation of the CPN-M draws inspiration from different radical communist movements across the world. From a minor party in the mid-1990s, CPN-M has developed into one of Nepal's main political players partly due to its success in mobilising popular support during the insurgency. CPN-M supporters and affiliated groups have been accused of carrying out frequent human rights abuses in the country during the 10-year insurgency and are widely perceived to have been involved in intimidation and extortion in areas under its control. This party has developed a strong local network and, despite its coercive tactics, it has been credited for raising awareness of neglected issues such as caste discrimination and exclusion of marginalised groups. Furthermore, CPN-M has advocated for a federal state and more inclusive recruitment policies of state institutions such as central administration, the police and army. A frequent criticism raised against CPN-M, is that even though it signed a ceasefire agreement and the CPA, it still employs coercive political tactics such as extortion and abduction. In the aftermath of the conflict, it is the CPN-M affiliated Young Communist League (YCL), which is seen as the main architect behind these activities.

Royalist parties, formed after the establishment of multiparty democracy, have a recent history marked by continuous splits and reunions. The oldest royalist party, Rastriya Prajatantra Party (RPP), was created in 1990 by former members of the conservative Panchayat system. In the 1993 mid-term election RPP won 20 parliamentary seats emerging as the third largest political party and a role as coalition government partner in the NC led government. This party faced internal disputes ahead of the 1999 general elections and fared relatively badly. In 2005, during the King's rule, the most recent royalist party to be formed, Rastriya Jansakti Party (RJP), was established and the RPP split into two factions; one supporting the King's move another taking a more critical stance. Three main royalist parties competed in the Constituent Assembly election: the RPP led by Pasupati SJB Rana, the Rastriya Prajatantra Party Nepal (RPP-Nepal) led by Kamal Thapa and RJP whose leader is Surya Bahadur Thapa. These three parties agree the fate of the monarchy should be decided by a referendum and not a Constituent Assembly.

The Nepal Sadbhavana Party (NSP) established in 1985 is the oldest Terai based political party advocating on behalf of the Madhesi community. After a split in 2003 the party reunited in 2007 under the name NSP (A). The party is an SPA member and also a member of the United Democratic Madhesi Front (UDMF), the new political alliance of Madhesi parties. Another major political actor in the Terai region is the Madhesi Janadhikar Forum (MJF) also known as the Madhesi People's Rights Forum (MPRF) established in 1997 and initially

registered as a civil society organisation.⁵ It developed as a cross-party intellectual forum to discuss and promote Madhesi issues as well as reaching out to Indian leaders. The MJF emerged as a leading force in the Madhesi movement in the Terai in 2007 demanding autonomy and self-determination for its people and in April 2007 it registered as a political party. The current MJF leader, Upendra Yadav, has previously been associated with CPN-UML and CPN-M. Although it seeks to build a Madhesi-wide base, most leaders come from the eastern Terai, and its central committee consists largely of upper and intermediate caste Hindus, with a predominance of Yadavs. The Madhesi parties are appealing to the Terai-based populations and several of the current leaders have defected from NC.

IV. LEGAL ISSUES

A. *Legal Framework*

The legal framework has generally provided for a democratic and inclusive election process in line with international standards. The Constituent Assembly election in Nepal was governed by a diverse range of legislation that includes the Interim Constitution of Nepal, five statutory Acts,⁶ a Code of Conduct and numerous detailed regulations issued by the Election Commission. Nepal has either ratified or acceded to all of the major treaties containing international standards for elections.

B. *The Interim Constitution*

The Interim Constitution was promulgated on 15 January 2007. This Constitution has been amended three times since its adoption by the Interim Parliament.⁷ The most recent of these amendments introduced in December 2007 were the result of CPN-M demands in return for their participation in the election. Subsequently, these amendments proclaimed Nepal to be a republic and abolished the monarchy, subject to ratification by the new Constituent Assembly. The amendments also included an increase in the number of both seats elected to the Constituent Assembly by proportional representation and members to be appointed. A new date for the election to take place by mid-April 2008 was also established by amendment.

A broad range of human rights are protected by the Interim Constitution and it offers increased protection of fundamental rights than that was afforded in the 1990 Constitution. These rights include the right to freedom of expression, the right to freedom of association and freedom of assembly as well as the right to be elected by universal suffrage. Other rights afforded citizens of Nepal include a right to a fair trial based on principles such as a presumption of innocence and the right to legal council upon arrest. The Interim Constitution

⁵ The UDMF is a loose political alliance that includes NSP (A) and the Terai Madhes Loktantri Party (TMLP). The alliance did not however, register candidates in these elections.

⁶ The Election of Members of the Constituent Assembly Act (2007); The Law on the Functions, Duties and Powers of the Election Commission (2007); The Act Relating to Electoral Rolls (2006); The Election Offences and Punishment Act (2007) and The Constituent Assembly Court Act (2007).

⁷ The first amendment was on 18 February 2007 to establish an Electoral Boundary Delineation Committee (ECDC). The second amendment introduced on 14 June 2007 to provide for elections to the Constituent Assembly no later than 15 December 2007, increasing the number of Constituencies to 240 and requesting the ECDC to review its initial report.

also prohibits both the practice and legal concept of ‘untouchability.’⁸ The rights of traditionally marginalised communities to participate in state affairs and government are also recognised based on the principle of inclusiveness.⁹ These latter rights are also extended to representation in the Constituent Assembly. The Interim Constitution has therefore created the legal basis for a broad based Constituent Assembly whose members include sections of traditionally marginalised groups that have been historically excluded from public and political life.

C. The Constituent Assembly

Members of the Constituent Assembly are elected by universal, secret and equal suffrage according to Article 63 (6-7) of the Interim Constitution. All Nepalese citizens of 18 years of age and above are guaranteed the right to elect representatives. A Nepalese citizen has to be a minimum age of 25 years to stand as a candidate. The Interim Constitution provides that the term of the Interim Parliament expires following the first meeting of the Constituent Assembly. At this point, the powers of the Interim Parliament are to be exercised by the Constituent Assembly. The Constituent Assembly will sit for a two-year period with an option of a six month extension if the term is interrupted by a state of emergency, unless it passes a resolution on its dissolution. Its members will vote on each article of the new constitution. To pass an article, at least two thirds of Constituent Assembly members have to be present and should pass the motion unanimously. If a unanimous decision is not reached, the leaders of the political parties that are members of the Constituent Assembly will consult within 15 days to develop consensus and a new vote is taken within seven days from the date of the completion of the consultations amongst the parties. The preamble to the new constitution or any article should then be approved by two-thirds of the members present provided there is a quorum of two-thirds of the total members of the Constituent Assembly. The existing Interim Constitution does not specifically require a referendum on the new constitution and in the event that the members of the Constituent Assembly do not agree to hold a referendum the decision for the approval of the new constitution lies entirely in the hands of the political majority in the Constituent Assembly at the current time. The Interim Constitution does however contain provisions for referendums to be held in specific cases.

D. Universal and Regional Standards

Nepal has ratified or acceded to the main human rights treaties: the 1966 ‘*International Covenant on Civil and Political Rights*’ (ICCPR) (and the Optional Protocol), the 1979 ‘*Convention on the Elimination of All Forms of Discrimination against Women*’ (CEDAW), the 1966 ‘*International Convention on the Elimination of All Forms of Racial Discrimination*’ (CERD), the 1966 ‘*International Convention on Economic, Social and Cultural Rights*’ (CESCR) and 1989 ‘*International Labour Organization Convention No. 165 on Indigenous and Tribal Peoples in Independent Countries*’ (ILO Convention 169). The above mentioned human rights instruments guarantee the equal right of all citizens to political participation. They also stipulate other essential preconditions for the exercise of political rights, such as the right to freedom of expression, assembly and association. The

⁸ Part 3 Fundamental Rights, Articles 12 (3), 14, 20 & 24 of the Interim Constitution.

⁹ Article 63 (4) of the Interim Constitution requires political parties to ‘take into consideration’ the principle of ‘inclusiveness’ in selecting candidates from traditionally marginalised groups such as women, Dalit, oppressed communities and indigenous groups, Backward regions and Madhesi.

international treaties ratified and acceded to by Nepal are therefore an integral part of the Nepalese legal framework and have a higher status than domestic laws.¹⁰

E. Other Applicable Election Legislation

The Interim Parliament and Election Commission have introduced numerous improvements to provide comprehensive and in most areas, detailed legal provisions, for the conduct of the election.¹¹ Where there were gaps in the legal framework, the Election Commission introduced regulations in most areas to provide for improvements. Overall, positive measures were introduced including rules for campaigning such as a prohibition on vote buying, intimidation or obstruction and the use of state resources in campaigning activities as well as ceilings for campaign expenditure. Measures for handling complaints have also been introduced providing some recourse for aggrieved parties, though the mechanisms for the right of appeal were not fully extended. Finally, a key innovation in the election laws has been the introduction of a quota system for women and marginalised groups.

Whilst some improvements are evident the legal framework does contain a number of gaps and weaknesses that need to be addressed. The legal framework is highly fragmented and in the absence of a consolidated election act, legislation is contained in numerous laws and regulations and therefore lacks clarity.¹² Although legislation addresses most aspects of the election process legal provisions for some fundamental parts such as the rules for registration of political parties were not regulated by statutory legislation. The Election Commission relied on *ad hoc* regulations that were open to change and some were issued very late which did not provide legal certainty.¹³ It therefore often exercised its regulatory competence as if having *de facto* legislative powers. This had a significant impact on the electoral process since it resulted in conflicting interpretations and inconsistencies in the application and enforcement of relevant legislation in a number of instances including reconciliation steps and jurisdiction of the Constituent Assembly Court.

Notable areas that fail to provide clear legal guidelines include an absence of provisions for the display and publication of results, as well as concise rules for deadlines for the display of these results,¹⁴ registration procedures and special needs voting. The latter includes migrant

¹⁰ Article 156 of the Interim Constitution establishes that ratification, accession or acceptance is subject to the approval of the Interim Parliament. According to the Speaker of the Parliament all these human rights obligations have already been approved by the Parliament. Therefore, they are legally binding to the government or the state of Nepal.

¹¹ Sections 74-75 of the Election Commission Act grant the Election Commission the powers to issue and enforce regulations, procedures and directives to complement these statutory laws.

¹² The legislation has become further fragmented by additional ordinances issued by the Prime Minister. See Organization for Security and Cooperation in Europe (OSCE), Guidelines for the Legal Framework for Elections “The legal framework should be structured so that it is readily accessible to the public, transparent, and addresses all the components of an electoral system necessary to ensure democratic elections.” (While the OSCE is responsible for setting standards in the framework of its participating states, its standards can also be taken as best practice outside of these member states).

¹³ See the Venice Commission of the Council of Europe, Code of Good Practice in Electoral Matters, 2002 that states “The Electoral law should have the rank of statute law. Rules on interpretation, in particular those on technical questions and matters of detail can be in the form of regulations.”

¹⁴ ICCPR Free Expression of Will, United Nations Human Rights Commission, General Comment No. 25, paragraph 19. Best practice includes that detailed results, broken down to the polling station level (or counting centre where this is the lowest level), are swiftly and publicly displayed at all levels of the Election Management Board as well as on the Internet.

workers, internally displaced persons and those unable to access polling stations due to physical incapacity or hospitalisation.¹⁵ A further concern is the insufficient provisions for the transparency of the election administration such as rules of procedure regulating its work and decision-making. There are contradictions between the laws on campaign finance and the Code of Conduct in terms of deadlines for submitting accounts and related complaints that make these rules largely unenforceable. Moreover, there is also a lack of an appeal mechanism to challenge some Election Commission decisions, after rejection of the Supreme Court of jurisdiction (see Complaints and Appeals section).

F. The Electoral System

The new Constituent Assembly is comprised of 601 members, of whom 575 representatives are elected by a mixed electoral system: 240 seats allocated by single member election constituencies on the basis of a first-past-the-post system and 335 members elected through a proportional representation system with one, single nationwide constituency. The remaining 26 members are appointed by the Council of Ministers on the basis of consensus, drawn from distinguished persons and indigenous groups.¹⁶ The Interim Constitution does not specify when these appointments are to take place. Polling was conducted in 20,889 polling stations across the country. According to the Interim Constitution adopted on 15 January 2007, the Constituent Assembly will be charged with drafting a new constitution and determining Nepal's future state structures.

The Interim Constitution establishes inclusiveness as a central principle and subsequently the 2007 Constituent Assembly Election Act¹⁷ introduced a complex quota system.¹⁸ When submitting their list of candidates the political parties were required to comply with quotas for traditionally marginalised groups: Madhesi, Dalits, Oppressed and Indigenous groups, Backward regions and ‘Others.’ Since there was no objective way to determine whether someone actually belonged to a given group, the quota system was based on self-identification. According to the law women should constitute 50 per cent of each of these groups and at least one third of the overall number of candidates nominated in both the proportional representation and single member constituency races were required to be female. The 11 political parties that fielded candidates for less than 30 per cent of the total number of seats under the proportional representation system were exempted from following the quota for all groups with the exception of women allowing ethnically based parties to bypass the quota provisions.¹⁹ To allocate seats for the proportional representation race a mathematical formula: a modified version of the Sainte-Lague formula, was employed. The result-based quotas were however achieved in an opaque manner in the proportional representation system that allowed the central committees of the political parties to select candidates included on

¹⁵ Article 25 ICCPR guarantees Universal Suffrage, United Nations Human Rights Commission, General Comment No. 25, paragraphs 4, 10, 11 & 13 “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right.”

¹⁶ The Interim Constitution states ‘political consensus’ means the political consensus reached between the SPA.

¹⁷ See Schedule 1 of the Constituent Assembly Election Act (2007).

¹⁸ For the proportional representation system, the candidates’ lists should include Madhesi (31.2 per cent), Dalit (13 per cent), Oppressed and Indigenous tribes (37.8 per cent), Backward regions (4 per cent) and Others (30.2 per cent). A margin of 10 per cent either side of the target figure was accepted.

¹⁹ On 1 March 2008, the Prime Minister, on behalf of the SPA and the government, signed an agreement with the United Madhesi Democratic Front to, among other things, increase from 20 per cent to 30 per cent the ceiling under which a party is not required to follow the quota. The Act was subsequently amended through an Ordinance.

their closed lists after the election, once the Election Commission had allocated the seats to the parties.

Whilst there has therefore been marked improvements in the legal framework aimed at increasing the diversity of representation, this representation is not afforded all groups equally and there are a number of issues regarding this framework that raise concerns: 1) The post-election selection of candidates seriously dilutes the relationship between voters and elected representatives and lacks transparency.²⁰ 2) The ‘Others’ category in the quota system has no adequate and specific rules for which ‘others’ the quota system should apply. The interpretation of the Interim Constitution to include all groups in this category that were not included specifically in the quotas means that the representation of the underprivileged groups that this category could have benefited, is undermined. 3) The legal provisions regarding the principle of inclusiveness in the single member constituencies and proportion representation races of Dalits and indigenous people within the Madhesi quota did not provide clarity as to how these provisions should be interpreted. They were as a result unenforceable. 4) The quota system was also not extended to parties that contested below 30 per cent of the total seats in the proportional representation election. Therefore, in a scenario whereby the smaller parties received large amounts of votes, the quota could have been weakened; and 5) An outdated and inaccurate census that requires updating also meant the quotas may not fully reflect actual social demographics.

G. Delineation of Constituency Boundaries

A revision of constituency boundaries was undertaken following civil unrest in the southern Terai districts in late 2006, as the Madhesi groups demanded that their representation in the Constituent Assembly reflect more closely their population weight. Established boundaries did not reflect population density and consequently the highly densely populated Terai was under-represented in terms of seats as compared to the less populated mountainous areas. On 18 February 2007, the first amendment to the Interim Constitution provided for representation in the Constituent Assembly to reflect demographic patterns. It established a five-member Electoral Constituency Delineation Commission (ECDC) to review constituency boundaries according to population and geographical diversity, without breaking up the lowest administrative levels and the Village Development Committees (VDCs). Amid accusations by marginalised groups of gerrymandering following its first report, the ECDC issued a revised report, as mandated by a second amendment to the Interim Constitution. The number of constituencies was subsequently increased from 205 to 240, adding 35 new constituencies in 25 of the 75 districts of the country, mainly in the Terai. While distortions remain due to specific geographical features, the new delineation of boundaries for constituencies allows for a more balanced distribution of voters. The ECDC was, however, criticised for a lack transparency and failing to consult marginalised groups during the process in which it created these new constituencies.

²⁰ Article 25 ICCPR guarantees the Free Expression of the Will, United Nations Human Rights Commission, General Comment No. 25, paragraph 7 “Where citizens participate in the conduct of public affairs through freely chosen representatives, those representatives are able to exercise governmental power and are accountable through the electoral process for the exercise of that power.”

V. ELECTION ADMINISTRATION

A. *Structure and Composition of the Election Administration*

The Election Commission is established as a permanent and independent body responsible for organising all elections and referenda in Nepal. Its range of competences and structure are established in the Interim Constitution and further regulated by the 2007 Law Relating to the Functions, Duty and Powers of the Election Commission. Wide ranging powers are afforded to the Election Commission to manage the entire election process. These include developing and enacting regulations, rules and directives, preparing the voter lists, registering political parties, conducting voter education and adjudicating on complaints with powers of sanction. The Chief Election Commissioner and four Commissioners were appointed in the second half of 2006 by the Prime Minister for a six-year period, upon recommendation of the Constitutional Council. The Election Commission's decisions are implemented by a central secretariat and an administrative structure established in all five regions, 75 districts and 240 constituencies. Significant technical assistance was also provided for the election by UNMIN nationwide.

District Election Offices were established to function as semi-permanent branches of the Election Commission and oversee its administrative, technical and logistical preparations at district level. Prior to the election the Election Commission established five Regional Resource Centres and a Joint Electoral Operation Centre to facilitate the coordination and exchange of information with all field activities. This field structure provided administrative support to the work of 240 Returning Officers who acted as chief election officials in their constituencies under the direct authority of the Election Commission.²¹ Returning Officers, who were seconded judges and officers from the judiciary, have wide ranging powers, including the authority to validate or void nomination and ballot papers and to declare the results following vote counting.

These structures relied not only on cooperation between the different tiers but also with the public sector including security services such as the police. In this respect, the Chief District Officers played a significant role even though they were not election officials. At times this influenced the decision-making process in some districts questioning its independence. Whereas the Returning Officers were solely responsible for appointing polling officials they had to rely on a pool of seconded civil servants and teachers. Due to the high rates of illiteracy amongst marginalised communities this led to these groups being under-represented not only in the central administration of the Election Commission but also at district and local levels. In some districts there was also criticism that the recruitment process lacked consultation with local groups and this raised suspicions of the civil servants who acted as polling officials having political biases.

Comprehensive training for polling officials was carried out down to the district level in 2007. This training was revised and updated for a second stage of training for election officials in the weeks before the election. The manual for polling officials was published by the Election Commission prior to the election and the last phase of cascade training for some 44,000 polling officers and assistants was assessed positively. During the campaign period the Election Commission mobilised senior Secretaries and Secretary level civil servants to

²¹ In districts with several constituencies, a Chief Returning Officer was appointed to coordinate between constituencies. They also acted as a Retuning Officer for one of the constituencies in the district.

monitor the electoral process to complement the Code of Conduct District Coordination Committees established by Chief Returning Officers at district levels.

B. The Administration of the Election

The Election Commission has acted as an independent body with integrity and competence. It has managed all stages of the election process in an open and effective manner that has ensured the credibility of the election. Administrative and technical preparations were conducted in an efficient manner and were delivered according to the timetable in the face of significant logistical challenges. The quality of logistical planning allowed the Election Commission to ensure timely delivery and recovery of election material, for the first time without the full support of the Nepalese army. Regular consultations with political parties and other stakeholders on issues together with an open media strategy have meant the Election Commission has retained the confidence of central actors in this election. District and local levels of the election administration also actively consulted stakeholders. In this regard, they acted in an important mediatory capacity in assisting to resolve a number of disputes. This has ensured confidence in the administration at local as well as national levels. Access to the Election Commission's meetings would have enhanced accountability and transparency in the absence of rules of procedures to define its decision-making process and the publication of its decisions,²² but nonetheless its performance in terms of transparency has been crucial.

A degree of flexibility to ensure greater inclusiveness of the election process by extending deadlines for the registration of political parties and the nomination of candidates following political agreements was demonstrated by the Election Commission. It also actively used its powers granted by the Interim Constitution to develop and enact regulations to complement the legal framework, particularly in areas where there was a legal vacuum such as the registration of political parties and rules for campaigning. Regulations, directives and manuals issued by the Election Commission however, remain fragmented, difficult to access and in some areas there are inconsistencies. The Election Commission also failed to react adequately to complaints and violations to the Code of Conduct as it managed a delicate balance between delivering an election in a highly volatile political environment and ensuring that legal rules were respected by the political parties and candidates (see Complaints and Appeals section). In this respect, it showed a reluctance to apply the sanctions at its disposal to punish breaches of the Code of Conduct and other legal measures, electing instead, to opt for a more mediatory approach. The role of political party agents at polling stations in assisting voters identify their details in the voter register would have also been unnecessary had polling staff been assigned this role (see Election Day section).

²² Article 25 ICCPR, Genuine Elections, United Nations Human Rights Commission, General Comment No. 25, paragraph 20. Best practice for transparency measures include: publication of all decisions and minutes, open sessions, press conferences, and regular consultative meetings with stakeholders.

VI. VOTER REGISTRATION

A. *The Right to Vote*

The 2006 Act Relating to the Electoral Roll and subsequent regulations issued by the Election Commission provided for an update of the voter register prior to the Constituent Assembly election. The law established universal suffrage for all Nepalese citizens over 18 years of age.

B. *Voter Registration Procedures*

Voter registration is continuous in Nepal and annual updates are conducted under the supervision of the Election Commission. A special registration drive based on a door-to-door household survey was conducted in January-February 2007 mobilising 22,630 registration clerks throughout the country. There were some obstacles caused by violence and bandhs in the eastern Terai and cases of unlawful seizure of the registers in the Kathmandu region, which led to the registration period being extended in the affected areas. The exercise was generally considered successful by stakeholders as it increased the number of registered voters to a total of 17.6 million. This represents an increase of almost 15 per cent from 2006 with some variance between regions.

Significant numbers of eligible voters among marginalised groups were however, left disenfranchised. Although the issuing of citizenship certificates was distinct from the voter registration process, this distinction was unclear to voters with little access to information and the confusion prevented them from registering on the voter register. Also, given the fluid migration patterns of Nepalese society and the number of internally displaced persons, the permanent residency criteria to qualify for registration excluded sections of this part of the population from the voter register. Even though the elections have been postponed twice, the sequence of events and lack of political will did not allow for an update to the register. This meant that persons that reached the age of 18 after the cut off date of 15 December 2006 were excluded from voting in this election, as well as many individuals who acquired citizenship since the 2006 deadline.

Among the large number of names added to the register in 2007 were many internal migrants who were allowed to register a second time in the VDC where they were located in at the time, without being required to provide the necessary documentation or having deregistered from the VDC that they had originally registered in. The absence of any reliable population figures since the last general census held in 2001, the lack of identification cards and an outdated registration methodology all created problems in the voters' register. Moreover, registration procedures allowed registration clerks to rely on heads of households to register all family members that created numerous omissions, mismatches and cases of multiple entries.²³ There is also a lack of adequate mechanisms for regular maintenance and auditing of the voter register to identify multiple entries and other anomalies.

²³ In many cases, eligible voters were registered as members of one family and therefore entitled to vote where the family resides. Individuals, who wished to register and had changed their place of residence during the registration period, were either disenfranchised or, in some cases, listed in two different VDCs.

VII. REGISTRATION OF CANDIDATES/POLITICAL PARTIES/LISTS

A. *Registration of Political Parties*

The Interim Constitution guarantees political pluralism and the right to freedom of association. It prohibits restrictions on the formation and activities of political parties with the exception of registration requirements and, significantly, lifts a prior prohibition on parties formed on the basis of religion, community, caste, ethnicity or region that allowed Madhesi parties to participate in these elections.²⁴ While there was a failure to adopt a new law on political parties in time for the election, in its absence the Election Commission issued a regulation, to allow for the registration of parties on the basis of constitutional provisions. Political parties are required to adhere to the principles set out in the preamble of the Interim Constitution, abstain from any discrimination²⁵ and be regulated by statutes and rules that provide for a democratic, inclusive and disciplined organisation.²⁶ These however, remain formal requirements as there is no scrutiny on the actual degree of internal democracy and inclusiveness of executive committees.

To qualify for registration political parties are also required to submit signatures of at least 10,000 registered voters supporting their application. The decisions of the Election Commission are final, with no appeals mechanism. In addition to the 15 political parties represented in the Interim Parliament, the Election Commission registered 47 new parties in 2007. Following the decision to reschedule the Constituent Assembly election for 10 April 2008, party registration was reopened. That allowed an additional 13 parties, mostly groups from the Terai, to register, raising the total number of registered parties to 74.²⁷

B. *Registration of Candidates*

There were no overly restrictive or discriminatory requirements for candidates to stand for election and a large number of candidates stood for election. Qualification criteria set by constitutional provisions included citizenship, a minimum age of 25 years, not having been or being punished by law on criminal charges and a prohibition to hold simultaneously an office for profit.²⁸

The legal framework provided for independent candidates to contest the single member constituencies allowing for broader participation. Furthermore, the amount of deposits required for contesting a single member constituency or a proportional representation

²⁴ Article 112 (3) of the 1990 Constitution provides for the Election Commission to “withhold recognition from any political organisation or any party formed [...] on the basis of religion, community, caste, ethnicity or region.”

²⁵ Article 142 (4) states that the Election Commission shall not register a party that has discriminated against applications for membership on the basis of religion, caste, tribe, language or gender, or if its name, objective, insignia or flag is of a nature to disturb religious or communal harmony or to divide the country.

²⁶ Article 142 (3) states that their constitution and rules must provide for the election of office-bearers at least once every five years, for the discipline of its members and for the inclusion of women, Dalit and members of neglected/oppressed groups at all levels of the executive committee.

²⁷ Two parties merged: the NSP with the NSPA and NC with the NCD and the Sabdahwana Party splintered into two factions: Ananda Devi and Gupta.

²⁸ Article 65 of the Interim Constitution.

allocated seat did not constitute unreasonable obstacles.²⁹ In the former case, the amount even appeared insufficient to limit the number of candidacies that may not have been serious. In view of late agreements reached with emerging political groups in the Terai threatening to boycott and disrupt the election process and subsequent amendments to the electoral framework, the calendar initially set for the submission of candidacies was revised twice for both races to allow for even broader inclusiveness in the election process.³⁰

Legal and regulatory provisions provided for independent candidates and candidates standing for political parties to submit nomination papers to Returning Officers for scrutiny in the single member constituencies. This process also allowed the public to challenge candidacies. As in the case of party registration there is no appeal mechanism. There is however, a provision in the 2007 Election Offences and Punishment Act whereby wrongful disqualification of a candidate can lead to the annulment of an election. Candidates were allowed to run in two different single member constituencies leading to the possibility of by-elections in cases where a candidate wins in two constituencies. In spite of localised attempts to disrupt the nomination process it was conducted in an efficient and generally transparent manner, although the election administration published little information on the challenges received in each constituency. A total of 3,947 candidates from 55 political parties contested 240 single member constituency seats, a significant increase from previous elections. The central committees of the political parties played a key role in selecting candidates and this led in some instances to disputes. With the notable exception of the CPN-M, women candidates nominated by political parties to meet the quota requirements were generally contesting in constituencies considered non winnable. A large number of 258 candidates withdrew from the nominations³¹ amid local negotiations and in some cases intimidation. Only the three major political parties, the NC, CPN-M and CPN-UML fielded candidates in all 240 constituencies.

A total of 55 political parties filed closed lists of candidates for the 335 seats allocated in the proportional representation race. Seven political parties filed lists to contest all 335 of these seats. Complex candidate registration procedures were set out in the Constituent Assembly Election Act and subsequent regulations. Registered parties were required to submit their closed lists meeting the quota requirements. Many of them initially failed to comply with the quotas and were notified by the Election Commission to submit their final, corrected list within seven days. A list of one party was disqualified for failing to comply with the female quota before the seven-day period for corrections expired. The Election Commission received only three objections against four candidates but scrutinised all 6,000 candidates for eligibility. From the 54 final closed lists 285 candidates' names were removed. One hundred and eleven of these were contained in the two lists submitted by the RPP and RPP-Nepal. Most of these candidates failed to submit a certificate of citizenship or were found to be underage. The remaining candidates had registered on closed lists of two political parties at the same time or for both the single member constituencies and proportional representation races.

²⁹ 3,000 NPR (€30) per candidate for the single member constituencies and 10,000 NPR (€99) per list for the proportional representation election.

³⁰ Submission of the closed lists for the proportional representation race was initially set to end by February 2008 and the nomination of candidates for single member constituencies by 25 February 2008. Both re-opened on 2 & 6 March, respectively.

³¹ Fifteen independent candidates withdrew their nomination papers in Kathmandu Constituency 10 where CPN-M Chairman, Prachanda stood.

VIII. ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT

A. *Background to the Election Campaign Environment*

The human rights situation in many parts of Nepal remains highly problematic. Whilst fundamental rights are enshrined in the Interim Constitution, respect for these rights is wantonly absent: there are frequent violations of human rights including incidents of extortion, excessive use of force and intimidation. The frequency of these acts is compounded by a culture of impunity towards perpetrators of such abuses and crimes and a weak state infrastructure to guarantee these rights are protected. The National Human Rights Commission of Nepal and the OHCHR in Nepal report numerous incidents of human rights abuses throughout the country prior to the campaign period. These include cases of torture and beatings in police custody and a break down in law and order in parts of the country. Furthermore, political groups and their affiliates in certain areas have also been responsible for obstructing basic freedoms such as those of assembly and freedom of speech by using intimidation and force. In line with the general situation in the country a culture of impunity has prevailed throughout the campaign period with only a few incidents where perpetrators were detained by a police force that lacks both capacity and a culture of proactively enforcing the law. The lack of police action during the election campaign period appears to be in contrast with the use of excessive force in some instances.³²

B. *Overview of the Election Campaign*

The main campaign strategy of the political parties was to campaign on a door-to-door basis and hold small meetings on the corner of streets. There were some larger rallies, but these were limited to larger cities. The parties generally lacked policy driven manifestos, and, with the exception of some CPN-M candidates that campaigned on social issues and equality, the parties' campaigns were personality driven and lacked any substantive discussion of issues. Campaigning also lacked any discussion of the purpose of the Constituent Assembly with candidates presenting themselves as parliamentary candidates to govern the country.

C. *Election Related Violence*

The most significant characteristic of the campaign period was therefore the levels of violent incidents across the country. In this respect, political parties and candidates did not always enjoy the full rights afforded by the principles of freedom of assembly, freedom of association, freedom of movement and freedom of expression due to the lack of law and order and the poor security environment across much of the country during this period. There were numerous incidents of violence and a significant number of clashes between supporters of political parties which led to numerous injuries of those involved. The environment has been characterised by a high degree of tension with campaigning activities at times restricted

³² On 24 March, over 400 people were arrested and over 20 other people were injured when police intervened in a peaceful demonstration against the situation in Tibet. Allegedly, the police were directed to prevent any disturbances during the Constituent Assembly election process. The National Human Rights Commission of Nepal and the international community issued statements requesting the government respect the right of individuals to peaceful assembly and protest.

in some areas. Serious incidents during the campaign period included nine killings, the majority of which were CPN-M supporters. There were also a number of bomb explosions, numerous assaults on candidates, party activists, journalists or election staff and abductions. A total number of three candidates were also killed from CPN-UML, RJP and Rastriyam Janamorcha parties. All these incidents have contributed to a general atmosphere of fear and intimidation and have seriously undermined the right to campaign freely.

Reports of voter intimidation were also widespread with voters experiencing pressure both in their homes and in public places. Most of the reported threats occurred during door-to-door campaigning. The EU EOM received several reports of CPN-M supporters threatening villagers claiming that they would face reprisals if they did not vote for this party. Some voters in the areas most affected by the conflict reported to the EU EOM that they would vote for CPN-M because the alternative would be a return to conflict, a belief propagated, at some CPN-M rallies by candidates. Intimidation was also reported in the eastern and central Terai, where armed groups issued several threatening statements that were followed by more targeted attacks.

Despite the high levels of violence political parties did campaign in many parts of the country though the conditions for campaigning varied in districts. An upsurge in violence in certain areas led the authorities to ban public meetings in some places. Several curfews were imposed following clashes between supporters of CPN-UML, NC and CPN-M. In some cases this resulted in both sides refraining from campaigning in the strongholds of their opponents to avoid hostile receptions. Much of the disruption to campaign activities and assaults to candidates and activists involved CPN-M and affiliated groups as well as armed groups in the Terai. However, EU EOM observers also reported there were also other political parties which instigated violence, specifically CPN-UML and NC in areas where they were dominant.

The campaign period has witnessed numerous breaches of the Code of Conduct by the political parties without an adequate response to these breaches by the authorities. In addition to the violence and intimidation, a clear reflection of how openly the Code has been violated, were the publicly displayed posters and banners evident throughout the country in clear breach of its provisions. There have been complaints to EU EOM observers of misuse of state resources for campaign purposes, attempts to buy votes and a large number of children involved in campaign activities particularly, though not exclusively at CPN-M rallies, as they were also observed actively assisting at CPN-UML and NC campaign events.

While campaign activities officially ended on 8 April, the period of the moratorium witnessed the most serious incidents during the days prior to election day. There was an increase in reports of abductions (particularly by CPN-M members); violent clashes between political party supporters, as well as threats and intimidation by members of several political parties and armed groups against candidates and party workers. On 8 April, the police killed seven people in Dang and 12 were injured during clashes between CPN-M and NC supporters. Two people were also killed in Constituency 1 Surkhet, including a CPN-UML candidate. In Rautahat and Saptari there were a number of explosions between the 9-10 April and armed groups opposing the elections operating in the Terai continued their campaigns of bombings.

D. Use of State Resources

The Election Offences Punishment Act bans the use of state resources for campaigning as does the Code of Conduct that prohibits the use of state resources for campaign purposes in Articles 50-53. Throughout the election campaign several political parties accused the three larger political parties of misusing state resources such as the state owned media, governmental transport and security personnel. As was the case in other areas the Election Commission failed to take adequate action. It reacted to formal complaints by requesting political parties to abide by the Code of Conduct.

Senior political party leaders were mostly associated with breaches. The Secretary General of NC, Sushil Koirala and two other NC ministers were accused of using government vehicles and employees in their campaigns in Banke, Sunsari and Jhapa districts. This activity was not however, limited to NC members, as in Lamjung a CPN-UML minister was observed using his ministerial car on his campaign. In a number of districts, EU EOM observers received reports that the local administration was used to influence voters through improvements in social services and distribution of goods.³³ EU EOM observers also received many reports that there was unequal access to the security forces for the protection of candidates. Candidates from CPN-UML and NC enjoyed greater access to security while some candidates felt security inadequate and others refused security services. The Home Ministry has stated that the allocation of security personnel to candidates was made on the basis of threat evaluations conducted by District Security Committees and specific requests filed by political parties and their candidates.³⁴ Five senior political leaders were considered as priorities for special security arrangements, though this does not mitigate the fact that there was unequal distribution and access to these state resources.³⁵

E. Campaign Finance

The legal framework regulating financing of political parties and their campaigns is comprehensive and detailed.³⁶ The Constituent Assembly Members Election Act and the Election Commission Act stipulate that the Election Commission shall establish ceilings for campaign expenditures as well as enforce these limits. The Interim Constitution prescribes that a political party registering for elections shall provide details and sources of funding to the Election Commission when applying for registration. This reinforces the provisions contained in the Political Parties Act that requires registered political parties to maintain accounts of income and expenditure and report these to the Election Commission. The Code of Conduct also establishes ceilings related expenses in a number of its provisions.³⁷ The ceilings for campaign expenditures were set at 459,500 NPR (€4549)³⁸ per candidate contesting the single member constituencies and 50,000 NPR (€495) per candidate fielded by

³³ In Far Western Nepal, NC was accused of using vehicles belonging to the local electricity company. In Parsa district, NC was reportedly involved in facilitating the extension of electricity lines and engaging government engineers in other infrastructural activities in specific VDCs.

³⁴ The District Security Committee is composed of the Chief District Officer, District Chiefs of Nepal Police, the Armed Police Force, Nepal Army and the National Intelligence Committee.

³⁵ Sher Bahadur Deuba, Sushil Koirala, Madhav Kumar Nepal, Prachanda, and KP Oli.

³⁶ Interim Constitution, Articles 141-142, Regulating Political Parties Act 2002, Articles 11-13 and Draft Bill Designed to Amend and Consolidate the Laws Concerning Political Parties entitled 'The Political Parties Act, 2063' discussed in the Interim Parliament in 2007 but not yet passed (unofficial translation).

³⁷ Chapter 2 (Articles 3-45), Chapter 5-6 (Articles 80-94).

³⁸ Exchange rates are calculated as of 3 May 2008 InfoEuro.

political parties for the proportional representation election. Candidates and political parties have to submit statements of expenses to the relevant District Election Officer within 35 days of the declaration of the final election results. The District Election Officer forwards the reports to the Election Commission. Overall, the legal provisions concerning political party financing are detailed, however, there is little tradition of enforcing the law related to party or campaign financing.

All political parties registered with the Election Commission hold an official bank account but political parties do not generally submit annual financial reports to the Election Commission as required. Also the funding of political parties is not transparent and there are accusations that some parties use extortion as a means to raise funding. Political parties have consistently complained to the EU EOM about breaches to the Code of Conduct by other political parties on financing issues ranging from vote buying (distributing money, goods and food), making donations to local sports clubs, to the use of party finance to restore cultural and religious sites. Although there have been no formal complaints related to finances the scope and content of the election campaign of larger political parties suggest that they may have breached upper ceilings. In this respect, political parties and the regulatory structures lack adequate support to ensure these legal provisions are met. In addition, the political parties have not taken a proactive role in making their finances transparent and it is unclear how revenues are distributed within the parties themselves.³⁹ The Constituency Development Fund that grants each political party 1NPR million (₹9,900) annually for each member of parliament for investment in constituencies is also a source of inequality between candidates.⁴⁰ A Supreme Court ruling on 23 March 2008 suspended the transfer of these funds after concluding that any use of these revenues for campaigning would be a violation of the Code of Conduct.

F. Voter Education

The Election Commission delivered an ambitious voter education programme with assistance from UNMIN and other members of the international community. A large number, 8,568, of Voter Education Volunteers (VEVs) worked on the programme conducting public outreach to local communities. Although VEVs have encountered numerous obstacles and cases of intimidation over the past months, the programme was delivered in all 75 districts, reportedly without any major obstruction or incidents. The official voter information campaign was complemented with broader civic education initiatives facilitated by civil society organisations. A number of novel formats for voter education have been employed, including street drama and the production of television and radio programmes across national and local media. Notwithstanding the scale of these efforts the level of awareness of the role of the Constituent Assembly as well as the polling procedures amongst the public remained insufficient.

³⁹ Article 33 (c) of the Interim Constitution stipulates that the state has responsibility to ensure that political parties are transparent and accountable in their activities.

⁴⁰ The Constituency Development Fund was introduced in 1995 and was allocated to each Member of Parliament to fund local development projects such as infrastructure, economic and social welfare development implemented through District Development Committees.

IX. MEDIA AND THE ELECTIONS

A. *Media Environment*

The media in Nepal has expanded within an environment where freedom of speech has been frequently violated. Attacks on journalists have been common during 2007/2008 with journalists experiencing physical assaults, kidnappings and a large number of threats. Even with the poor conditions for journalists there has been a resurgence of growth in the media sector with increasing liberalisation. Since the establishment of the Interim Government in 2006 some of the more restrictive media laws have also been removed. The level of professionalism of journalists is generally low and the poor working conditions and low salaries remain problems for the sector in general. Whilst journalists are therefore enjoying unprecedented levels of freedom and independence from the state, the climate in which they work in remains difficult due to pressures from groups associated with political parties and factions and poor financial resources. In parallel to the move towards a more liberal legal framework the Interim Government has issued a large number of licenses for FM radio frequencies, which are mainly held by community radio stations as the Nepalese authorities seek to introduce some levels of independence and pluralism in the media sector.

Radio is the most popular media in Nepal and the growth of FM radio stations has consolidated this position. There are eight domestic television channels, two of which are owned by the state and managed by Nepal Television: NTV1 and NTV2. There are six further domestic commercial channels: Kantipur, Image Channel, Channel Nepal, Sagarmatha, Avenues TV and Shangrila. However, despite the relatively high number of domestic channels, television penetration is limited, due to poor electricity supplies in parts of the country. There are presently approximately 286 radio stations operating throughout the country, many of which are community based and produce programming in minority languages. The main radio stations are the state owned Radio Nepal and commercial and community stations Kantipur FM, Image Radio, Kalika FM, Sagarmatha FM and Nepal FM, two of which are owned by horizontally integrated media houses. There are also over 2,000 newspapers registered and approximately 89 of these titles are published daily in a number of languages including Nepali and English.

B. *Legal Framework for the Media and Elections*

The Interim Constitution guarantees the right to publish without prior censorship pursuant to Article 12 (3a) and Article 15 (1) on the condition that such publications remain within the parameters of the law of defamation and do not threaten national security and stability. There are nine main statutory laws that relate to the media, covering a range of issues, from licensing to registration, to programme standards and the protection of reputation.⁴¹ The central statutory law for broadcasters is the Broadcasting Act, though this does not cover the state owned broadcaster, Nepal Television. This act provides for standard legal provisions such as licensing and programme obligations in support of cultural and democratic life (Article 11) that broadcasters are obliged to fulfil. There are also requirements for

⁴¹ Radio Act 2014 (1957), National News Agency Act 2019 (1962), Press and Publications Act 2048 (1992), National Broadcasting Act 2049 (1993) and Libel and Defamation Act 2016 (1959), Gorkhapatra Corporation Act 2019 and RSS Act 2019, Working Journalist Act, 1995 (amended 2007) and the Communication Corporation Act 2028 (1986). A Right to Information Act was also adopted in July 2007, though the administrative modalities have yet to be decided by the Government.

broadcasters to provide accurate and impartial programming as well as powers granted to the government to censor, though these latter provisions are made technically redundant by the Interim Constitution's provision guaranteeing the right to publish without prior censorship. The Press Council, which is established by statute also, has a Code of Conduct, for newspapers.⁴²

Chapter 4 of the Election Commission's Code of Conduct introduced a number of measures pertaining to media coverage during the election campaign period. Provisions such as impartiality and accuracy are central to the Code established in Article 61 et seq., which covers both print and broadcast media. Furthermore, there is also a provision for state owned broadcasters to provide free airtime for political parties during three phases of the campaign period calculated on the number of candidates each party has standing for seats based on proportionality. These slots should be between 5-20 minutes radio time in the first phase; 2-5 minutes television airtime in the second phase and; finally one-minute of radio and television airtime for each party immediately prior to the moratorium that has been established by the Code as 48 hours before election day (Articles 72-73). The Code of Conduct also requires the state owned media (print and broadcast) to grant airtime or space to a full range of political parties and remain impartial throughout the campaign period.

C. *Conditions for Journalists*

Freedom of speech was largely respected for most of the campaign period. In this respect, the overall climate for journalists remained relatively fair compared to the period that preceded the election campaign. During the period March 2007-March 2008 the Nepali Federation of Journalists report that 400 journalists were either obstructed from reporting, arrested, kidnapped or assaulted, largely by groups related to political parties. During the deployment of the EU EOM although these incidents reduced in numbers there were threats and some cases of intimidation of journalists in Achham and Chitwan. Moreover, towards the end of the campaign period CPN-M supporters reportedly kidnapped a journalist in Kaski and assaulted another journalist in Parbat.⁴³ The media also experienced pressures from political parties claiming bias in the media in an effort for the individual parties to receive greater amounts of coverage, violating the right to freedom of speech and to report without constraint.⁴⁴

⁴² There are areas in the media laws that are overly restrictive. The penalties for defamation and libel include penal sentences and it remains an offence to publish material that is 'disrespectful' of either the Royal Family or government. These provisions are not proportional and are unnecessary in a democratic society and fail to meet international standards. See the Joint Declarations International Mechanisms for Promoting Freedom of Expression by the United Nations Special Rapporteur on Freedom of Opinion and Expression et al., 1999 & 2004. The 2004 Declaration states "Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws..... civil sanctions should not be so large as to exert a chilling effect on freedom of expression [...] and should be strictly proportionate to the actual harm caused."

⁴³ A Joint Declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression et al. , in December 2006 stresses that "states have an obligation to take effective measures to prevent such illegal attempts to limit the right to freedom of expression." i.e. violence against journalists in any form.

⁴⁴ Article 19, ICCPR.

D. Monitoring of Media Coverage of the Elections⁴⁵

There was wide coverage in the mass media of the election campaign. The state owned television channel, NTV1, provided a range of coverage with two of the main parties, CPN-M and NC, receiving almost equal amounts of airtime on this channel as CPN-M received a 35 per cent share of overall coverage of political actors and NC 34 per cent. CPN-UML received a 16 per cent share of airtime. In contrast, the coverage of Radio Nepal was not as balanced and this station granted CPN-M the highest percentage share as it received 42 per cent share of coverage followed by NC with 34 per cent and CPN-UML 15 per cent. However, a number of programmes were highly unbalanced on the state audiovisual channels. A talk show aired on Radio Nepal, 'Guatna Ra Bichar,' was particularly controversial and was the source of a complaint filed to the Election Commission due to the dominance of CPN-M in the programme. The Election Commission subsequently issued a Directive to Radio Nepal requesting the station to abide by the Code of Conduct. This had little impact on the programme's content during the campaign period and generally the lack of regulatory capacity to ensure public accountability of the state funded channels and the transmission of specific programming that lacked adequate balance falls short of international standards and best practice.⁴⁶ Overall, the coverage of the state broadcast media was positive or neutral in tone.

CPN-M was also afforded the largest share of coverage by private television broadcasters as this party received a total of 39 per cent share of airtime. It was followed by NC that received an average of 25 per cent and CPN-M 24 per cent. Sagarmatha TV granted CPN-M 35 per cent share of coverage followed by NC with 29 per cent and CPN-UML 25 per cent. Kantipur TV provided almost equal coverage of CPM-UML and CPN-M with the parties receiving 36 and 38 per cent respectively and NC was afforded 17 per cent share of coverage of political actors on this channel. Image Channel TV however, granted CPN-M 50 per cent share of coverage followed by NC with 22 per cent and CPN-UML 16 per cent. The private radio stations monitored by the EU EOM granted CPN-M the largest share of airtime. This party received a high of 55 per cent share of coverage on Ujyalo FM and 33 per cent and 34 per cent share of coverage on Kantipur FM and Nepal FM respectively. NC was the party to receive the second highest share of airtime as it received 31 per cent share on Kantipur FM, 30 per cent on Nepal FM and 9 per cent on Ujyalo FM. CPN-UML was afforded 35 per cent share of coverage on Ujyalo, 18 per cent on Nepal FM and 24 per cent on Kantipur FM. As was the case for state media the tone of coverage for the private media was largely positive or neutral, though a small percentage of this coverage was critical of CPN-M.

The state owned newspaper, *Gorkhapatra* also lacked balance in its coverage in terms of space. This newspaper, granted a 38 per cent share of its coverage of political actors to CPN-M, with NC receiving 26 per cent, CPN-UML 18 per cent and the remaining parties collectively receiving 15 per cent. The coverage of the privately owned print media

⁴⁵ The media monitored by the EU EOM from 23 March-7 April 2008 consisted of the state owned broadcasters Nepal Radio and Nepal Television and the private broadcasters Kantipur TV, Image Channel TV, Sagarmatha TV, Radio Nepal, Kantipur FM, Ujyalo FM and Nepal FM (06.00-10.00 & 18.00-22.00 hours). The state owned newspaper *Gorkhapatra* and the private newspaper titles *Kantipur Daily*, *Nepal Samacharpatrika*, *The Himalayan Times* and *Naya Patrika* were also monitored daily.

⁴⁶ See UNESCO, Public Service Broadcasting, A Best Practices Source Book, 2005 and Council of Europe Recommendation No. R (99) 15, of the Committee of Ministers to Member States on Measures Concerning Media Coverage of Election Campaigns, 1999.

demonstrated similar trends and overall, CPN-M received 33 per cent share of coverage across titles, NC 26 per cent and CPN-UML 21 per cent share of space.

The free access scheme for party political broadcasts introduced by the Election Commission in its Code of Conduct on Nepal Television and Nepal Radio was implemented according to the principle of proportionality as established in the Code. Whilst this element of campaign coverage was successful in granting parties access to television and radio the coverage of broadcasters breached several provisions of the Code of Conduct by failing to achieve balance in programming and at times airing aggressive language. There were also breaches to the moratorium by television broadcasters. The Election Commission, as the body responsible for ensuring adherence to the Code of Conduct, did not use its powers to sanction that resulted in a regulatory vacuum.

X. PARTICIPATION OF WOMEN AND TRADITIONALLY MARGINALISED COMMUNITIES IN THE ELECTORAL PROCESS

A. Women and Traditionally Marginalised Communities

Historically, political and social life in Nepal has been characterised by inequality with marked differences among a variety of socio-economic groups and religious based castes. The traditional dominance of elite groups has led to the marginalisation of large numbers of ethnic communities and females who have also been excluded from public office. As these groups have become more aware of their rights there has been increasing pressure to open up the political sphere to wider representation that reflects the diversity of Nepalese society. In this context, the Constituent Assembly election has provided for unprecedented levels of representation for these groups. Not only were these groups guaranteed a minimum number of seats in the Constituent Assembly afforded to them by the quotas applied to the proportional representation election, but they were also fairly well represented in the nomination process of CPN-M for the single member constituency seats and won in a number of constituencies. Even with quotas aimed at increasing representation in the Constituent Assembly some sections of the traditionally marginalised communities and female candidates, however, did face particular financial and social constraints in campaigning. They also experienced problems campaigning with the poor security situation and absence of security measures tailored to their needs. Although there have therefore been some improvement the domination of political parties by male members of elite groups also remained an obstacle in the absence of a greater presence of females and traditionally marginalised communities in the party central committees.

B. Participation of Women

Nepal has ratified the 1979 CEDAW and the Interim Constitution provides for equal opportunities for women and men to stand for election. The Constituent Assembly Election Act stipulates that at least one third of the overall number of candidates nominated under both the proportional representation and single member constituency components of the election should be women. A high number, 50 per cent of candidates, both nominated and selected by the parties under the proportional representation system should also be women according to the law, with a margin of 10 per cent permitted to parties. With the exception of CPN-M the

political parties have not improved the number of nominated females or traditionally marginalised groups in the single member constituencies where quotas were not mandatory.

Of the 575 directly elected members of the Constituent Assembly 191 are women (33.2 per cent). Therefore, the percentage of women in the Constituent Assembly is much higher than the 17.2 per cent of females of the previous Interim Parliament. In respect to the single member constituencies 30 out of 240 of the candidates elected are women. Twenty three of these women belong to CPN-M and represented 19.2 per cent of this party's candidates to be elected. Only 5.4 per cent of the candidates that were elected as members of NC were female.⁴⁷ In terms of the proportional representation system a total of 161 females were selected from the closed lists of the political parties.

The turnout of female voters was approximately 52 per cent of voters in polling stations observed. This should be seen in the context of a high number of males working outside their place of registration. In spite of this the absence of women from every official level of the electoral process is striking. There were only two female Returning Officers from a total of 240 and participation of women in polling station committees was also very low. There was also only a single female acting as an Election Commissioner. Women did however, play an active role in domestic election observation and women's groups have successfully lobbied for the female quota and monitored its implementation. They have also actively explained to the political parties a range of gender issues in an effort to increase policy awareness of these. Very little of these latter efforts were satisfactorily taken up by the political parties themselves and female candidates were generally neglected in terms of support from these parties.

C. Participation of Traditionally Marginalised Communities

Nepal has acceded to the 1966 CERD as well as the 1989 ILO Convention 169, with the latter providing for the free participation of indigenous peoples in elected national institutions. As is the case for women the quotas in the proportional representation election guaranteed the representation of traditionally marginalised groups in the Constituent Assembly. Although the election in the single member constituencies did not require compliance to a quota for these groups results show an increase of elected Madhesi and Janajati candidates. A total of 74 Madhesi were elected in the first-past-the-post single member constituencies and 77 Janajati. A further 22 members were elected from Backward regions and 101 'Others.' CPN-M was the party where these groups had the highest representation with 39 Hill Janajati and 11 Madhesi Janajati candidates elected. In contrast, there were only seven Dalit candidates elected (one of them a Madhesi Dalit), all of them from CPN-M. Many of the Madhesi elected in the single member constituencies were, however, from higher castes and the physically disabled and smaller minority groups were excluded from the process due to the imprecise nature of the 'Others' category in the quotas. In the proportional representation race the traditionally marginalised communities received a greater number of seats: the Madhesi received 122 seats, Dalits 40, Janajati 115, Backward regions 10 and 'Others' 95.⁴⁸

⁴⁷ The CPN-UML and the TMLP had only one female elected each and this represented 3 per cent and 11.1 per cent of elected candidates for the respective parties in the single member constituencies. Women that were elected as members of the MPRF represent 6.4 per cent of this party's elected candidates.

⁴⁸ An individual can belong to a number of these groups at the same time e.g. individuals can be both Madhesi and Janajati.

The social conditions of these groups posed challenges to the Election Commission in organising the election. There were numerous examples reported by EU EOM observers of under-registration of these communities and on election day itself polling stations were situated at long distances from voters in the remoter rural communities. The lack of political awareness and understanding of elections in these communities left these voters particularly vulnerable to being manipulated. Traditionally marginalised groups were, however, represented at higher levels of the Election Commission and from the Commissioners there was one member who was Janajati and a Madhesi.

XI. PARTICIPATION OF CIVIL SOCIETY

Nepal has a developing civil society, which has played a crucial role in monitoring the impact of the conflict and the recent transition to peace. The sector does however, lack capacity and coordination and in some parts of the country their work is restricted by the security situation. Reflecting the strong public interest in the election many civil society organisations have undertaken civic education programmes on the role of the Constituent Assembly. This includes the production of radio programmes, discussion groups on the role of the Constituent Assembly and themed initiatives discussing the future agenda of the Constituent Assembly. The inclusive approach by these groups has also targeted women, Janajati, Dalit, Madhesi and other excluded groups raising awareness amongst these communities of their rights. Given the high number of first time voters, estimated by the voter register to have been as many as 15 per cent, and the lack of awareness of the general population of the role of the Constituent Assembly and voting procedures this work was an invaluable contribution to the election. During the campaign period several civil society groups also actively condemned and discouraged the intimidating campaign tactics and violent clashes between political parties and constantly reminded all parties of their responsibilities in contributing to ensure the environment was conducive to a peaceful election.

On election day, 148 civil society organisations were involved in observing and monitoring the election. The Election Commission accredited 61,854 observers and the four larger observer groups deployed more than 45,000 observers throughout the country. The four biggest civil society networks to observe the election were the National Election Monitoring Alliance (NEMA), National Election Observation Committee (NEOC), Democracy and Election Alliance Nepal (DEAN) and General Election Observation Committee (GEOC). Their efforts represented the largest domestic observation of elections ever witnessed in Nepal which was supported by the international community. The presence of domestic observers in a high number of polling stations during election day contributed to building confidence around the exercise. The EU EOM did receive reports of some intimidation of domestic observers and attempts to deny them access to polling stations in remote locations, but on the whole their role was positively accepted by all stakeholders. Greater coordination, efficient data collection and organisational synergy would have increased the role of domestic observation groups and provided for even more transparency in these elections. A total of 28 international observation missions also registered to monitor the elections with 856 international observers.

XII. COMPLAINTS AND APPEALS

A. *Electoral Offences*

Election offences are set out in the 2007 Election Offences and Punishment Act. This act classifies offences into categories and specifies appropriate sanctions for each type of violation. The institutions responsible for enforcing the law and applying penalties for offences are the Election Commission, lower levels of election officials and the Constituent Assembly Court.⁴⁹ Sanctions include fines that range from 500 to 50,000 NPR (€495), a maximum prison term of two years or both.⁵⁰ The sanctions are in general well defined and proportional. The Election Commission has the power to appoint investigators and refer cases to the Attorney General and subsequently the Attorney General can refer these to the Constituent Assembly Court. These infringements include offences of defamation, intimidation, undue influence or vote buying. Returning and Polling Officers, as well as monitoring teams also have the power to order the arrest of any person found to be committing an offence that may obstruct voting and/or counting processes. The act clearly establishes the responsibility of security forces to assist officials and enforce their arrest orders. In some cases, the Election Commission may also impose disciplinary and corrective measures on government and security officials.

The Election Commission has developed a comprehensive set of enforceable rules and regulations governing the campaign period established in the Code of Conduct. This Code includes offences already contained in the Election Offences and Punishment Act as well additional offences such as a prohibition on the use of state resources, employing governmental employees in campaigning activities or using state events for campaigning. It also includes rules for campaign material, mass meetings, coverage of the mass media and the responsibilities of governmental bodies and office holders. While most of these rules provide necessary safeguards, some appear excessively detailed or restrictive, going as far as to set precise formats for flags to be used in processions.⁵¹

The 2007 Election Commission Act confers powers of sanction upon the Election Commission in respect to violations of the Code of Conduct. These include provisions for sanctions, ranging from financial penalties up to 100,000 NPR (€990) to disqualification of candidates in cases where a violation is deemed to affect the integrity of the election.⁵² Moreover, in cases of serious violations to the rules on campaign expenditures or frequent breaches to the Code of Conduct the Election Commission may also suspend the right of a person to stand for an election for up to six years or revoke the mandate of an election official. These decisions can be appealed before the Supreme Court. As the Election Commission is an administrative institution rather than an independent tribunal based organ its extensive power, which it did not use, is technically problematic in view of some of the human rights guarantees which Nepal has accepted. In particular due process guarantees are

⁴⁹ Section 25 of the Election Offences and Punishment Act establishes that the Constituent Assembly Court holds exclusive responsibility to rule on all offences related to the Constituent Assembly election.

⁵⁰ The Election Commission, Returning Officer, the Polling Officer and the Monitoring Team have the authority to sanction a fine which can be a maximum of 10,000 NPR (€99) whilst other sanctions are to be solely applied by the court.

⁵¹ Article 17 of the Code of Conduct states: “The persons taking part in any procession in the course of election canvassing [...] may carry at their hands flags up to the size of 10x18 maximum.”

⁵² Law on Functions, Duties and Powers of the Election Commission Act, Sections 29 & 31 (2007).

jeopardised.⁵³ This also challenges other international standards, according to which a restriction of political rights is only permissible if it is based on a criminal conviction by courts for a serious offence and is in conformity with the principle of proportionality.⁵⁴

B. Complaints and Appeals

Given the lack of regulations regarding procedures for complaints in the electoral laws, the Election Commission adopted its own procedures for lodging and handling complaints within its jurisdiction.⁵⁵ These procedures are generally adequate and broadly meet international standards. It is generally understood that any person, candidate or political party can submit a complaint in the absence of clear rules on this matter within a limited period of 24 hours. The regulation sets out which types of complaints should be dealt with by the respective election officials. A record of these complaints should be kept and a report published three months after the election. However, the regulation lacks precise timelines within which the Election Commission should deal with cases. The Election Commission also established a complaints and dispute management committee, which *inter alia*, held responsibility for dealing with complaints and disputes as well as overseeing compliance to the Code of Conduct.⁵⁶ At district levels, Chief Returning Officers set up Code of Conduct District Coordination Committees to deal with violations of the Code of Conduct. The legal framework establishes that the decisions of the Election Commission on voter registration and registration of political parties and candidates are final and may not be subject to any appeal procedure that falls short of international standards.⁵⁷

As the Supreme Court has responsibility for constitutional matters and issues related to fundamental rights; as well offering legal recourse for issues not covered in specific laws it should act as a key mechanism of redress according to Article 107 (2) of the Interim Constitution. In this context, given the lack of an appeal mechanism for decisions of the Election Commission complainants had the possibility to submit challenges to this court. Prior to election day two appeals against decisions of the Election Commission were submitted to the courts: one to the Constituent Assembly Court and another to the Supreme court. In both cases the two courts concluded that they did not have jurisdiction to assess the complaints. The Constituent Assembly Court because it had no right to make a judgment on the disqualification of candidates. The Supreme Court rejected a petition referring to Article 118 (4) of the Interim Constitution that forbids raising any case in court, with the intention to disrupt, the Constituent Assembly election. The judgement of the Supreme Court and its

⁵³ See the right to fair trial as established in Articles 9 & 14 of the ICCPR.

⁵⁴ See Article 25 ICCPR, United Nations Human Rights Committee, General Comment No. 25, 1996, paragraphs 4 & 14 “The exercise of these rights (stipulated in Article 25 ICCPR) by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.”

⁵⁵ Manual on Settlement of Petitions and Proceedings Related to Election (2007).

⁵⁶ The Complaints and Disputes Committee is headed by one of its members and include four additional members: two from its own staff, one from the ministry of justice and one from the Attorney General’s office.

⁵⁷ The law specifically prohibits the submission of any appeal related to the registration process before any courts. ICCPR Article 2 (3) (a) & (c) Right to an Effective Remedy “All persons whose rights or freedoms are violated shall have an effective remedy, including in circumstances where the violation has been committed by persons acting in an official capacity. Article 25 ICCPR, Guarantees for Genuine Elections, United Nations Human Rights Commission, General Comment No. 25, paragraph 20 “There should be access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.”

refusal to acknowledge jurisdiction is based on Article 118 (4) of the Interim Constitution but contradicts other provisions of the Interim Constitution including Article 107 (2) resulting in the lack of redress for possible violations of fundamental rights in the Supreme Court.

A relatively small number of formal complaints were lodged as compared to the numerous informal complaints about breaches of the Code of Conduct that have been brought to the attention of the EU EOM. Election officials have kept records but no evidence could be found of an official response to complaints. The Election Commission, in most of these cases, limited itself to calling for candidates and political parties to respect the regulations in order to avoid applying sanctions. It also requested the Home Ministry to respond to numerous violations to the Code of Conduct related to violence. At district level the degree of satisfaction of stakeholders regarding the handling of complaints varied depending mainly on the personal skills and degree of commitment of election officials. Returning Officers also failed to refer election related criminal cases to the district courts.

Among the reasons given for the low number of formal complaints were the absence of trust in legal mechanisms and a lack of confidence that individual complaints would be processed in an appropriate manner. Further reasons for the relatively few complaints included fear of reprisals, the difficulty in obtaining evidence and insufficient legal knowledge about how to lodge a complaint. Subsequently the majority of complaints were addressed and resolved in an informal manner by *ad hoc* committees involving political parties, election authorities, security forces and the civil administration. Most of the complaints were resolved through discussions between political parties and mediated by election officials. In some cases, the parties agreed on compensation payments and apologies. Although this dispute resolution mechanism was in general positively assessed by stakeholders, the lack of a culture of complaining via formal legal channels left some individuals without redress.

During the campaign period 229 formal and 74 informal complaints were submitted to the Election Commission. The majority of complaints related to breaches to the rules governing governmental employees, misuse of state resources, violations to the rules for media coverage and electoral violence. Ninety eight of these complaints were submitted by CPN-UML, 72 by NC and 59 CPN-M. The Election Commission addressed most of these cases by requesting the competent state authorities take appropriate action or by calling on the candidates and parties to respect the rules. The Election Commission did receive four complaints against three NC nominated candidates who had not resigned as governmental employees and were therefore not entitled to stand in the election. The three candidates were disqualified. Where infringements of the Code of Conduct were confirmed the Election Commission did not apply any sanctions against offenders and at district level complaints were not properly investigated before being dismissed.

There were approximately 50 complaints referred by Returning Officers relating to election day to the Election Commission. These complaints sought annulment of the election in some or all polling stations in specific constituencies. The majority (27), of these complaints were lodged jointly by a number of political parties. Main grounds for complaints were violence, booth capturing and impersonation. More specifically, these complaints related to the use of violence to attempt to force people to vote for a particular political party, intimidation and harassment of party agents and voters by supporters of political parties as well as abduction. They also included complaints about campaigning in polling stations, unlawful conduct of polling officials, fraudulent thumb printing of ballot papers, and broken seals on ballot boxes or forgery of results. Some of these complaints led to the cancellation of polling in 106

polling stations where re-polling was ordered. The nullification of an election in a specific constituency was only granted in cases where reports from election officials endorsed the grounds for the complaint and there was no adequate investigation and formal process behind these decisions.

These were also very few complaints involving criminal activities related to elections reported to the police. In some cases the police informed EU EOM observers that an investigation had been initiated but these were limited to the most serious cases of killings and in other cases they failed to open up case files. At times the police denied having received complaints. At the time of writing very few cases involving criminal charges and election offences were reported to have been prosecuted and perpetrators held accountable. In general, stakeholders complained about the passiveness and ineffectiveness of the police.

C. Petitions

Pursuant to the Constituent Assembly Election Act, the Constituent Assembly Court has jurisdiction for issues related to the disqualification of members of the Constituent Assembly, invalidation of the election of a member of the Constituent Assembly and offences relating to members of the Constituent Assembly. It has the power to declare the election null and void when serious electoral offences have been committed that have undermined the impartiality of the election. The decisions of the court are final. A petition can be submitted to the Constituent Assembly Court directly or through the District Election Officers. The Election Offences and Punishment Act establishes that only aggrieved candidates can file election petitions seeking the annulment of an election within 15 days of the date of the alleged offence. However, the law does not specifically regulate who can file petitions related to the disqualification of members or offences committed by members of the Constituent Assembly nor timelines for these petitions. It is, therefore, understood that any person, interested organisation, political party or candidate can file a petition and it can be submitted during the entire lifetime of the Constituent Assembly.⁵⁸

At the time of writing 12 petitions had been filed before the Constituent Assembly Court all related to the election in the single member constituencies. In most cases the complainants requested annulment of the election in the relevant constituency. One of the petitioners requested a recount of ballots. Three petitions were filed jointly by all or some of the losing candidates. One by MPRF and two by CPN-M, four by NC, one CPN-UML and TMDP submitted the final petition. The main grounds for these petitions were electoral irregularities including booth capturing, threats and intimidation. All petitioners requested the court issue an interim order to defer the elected candidates in the affected constituencies from taking the Oath of Office, and in three of these cases: two in Mahottari and one in Bara, this was issued where strong evidence was presented. The respondents filed their replies within the specified time period. The Election Commission also provided the court with relevant documentation for the petitioner to sustain their allegations. There is general agreement that the courts are acting impartially so far with regard to these petitions.

⁵⁸ The Constituent Assembly Court Act establishes that petitions will be dealt with according to the procedures established in the Summary Trial Act (1971). This act sets a three month limit from the date the hearings are concluded for the conclusion of a petition.

XIII. ELECTION DAY

A. *Overview of Voting*

The EU EOM deployed the largest international mission with 120 observers stationed throughout the country. On election day, they visited 517 polling stations in 83 constituencies. Polling took place in 239 constituencies after the death of a candidate in Surkhet leading to the postponement of elections in this constituency.⁵⁹ Voting was generally conducted in a peaceful and orderly manner throughout these constituencies. There was however, some localised incidents and violence though in most cases this did not stop voters, who turned out in large numbers.

Polling stations generally opened on time throughout the country with some minor cases of small delays due to the late arrival of polling staff. The full assignment of essential election material was present in all polling stations visited and opening procedures were conducted correctly and transparently. Polling generally started in a calm and orderly manner with large numbers of voters waiting in queues outside polling stations prior to their opening. The overall environment remained largely calm throughout the day and the presence of security personnel was generally adequate. The accreditation of 61,854 domestic observers and the deployment of a large number of these on election day also contributed to the transparency of the process.

Polling procedures were assessed positively in 89 per cent of polling stations visited by EU EOM observers. The polling staff was committed, efficient and generally well trained in most polling stations visited. The largely peaceful and orderly conduct of the poll, generally in accordance with regulatory procedures, allowed people to vote in satisfactory conditions. The layout of polling stations was adequate in order to allow efficient processing of voters as well as protecting the secrecy of voting. Voters demonstrated a fair understanding of the voting process although in some areas the relatively high number of invalid ballots (5.15 per cent in the single member constituency race and 3.66 per cent in the proportional representation one) highlighted some insufficiencies as voters either marked ballots with their fingerprint instead of the stamp or double marked the first ballot paper. Indelible ink was applied to the fingers of voters consistently and proved to be an important safeguard against multiple voting. There were, however, incidents of minors being allowed to vote and voter impersonation that were not adequately identified by polling officials and this problem was compounded by the poor quality of the voter register.

The role of political party volunteers and agents outside and inside polling stations went beyond acceptable standards. Non-officially prescribed filtering was observed outside numerous polling stations with political party volunteers setting up tables to assist voters to locate their name and details in the voter lists. Subsequently the volunteers handed voters a slip with these details filled in. These slips frequently contained the respective political party's symbol. Although this practice was tolerated as it assisted in the flow of voters it was not adequate and opens up the possibility for voter intimidation and undue influence. Furthermore, the lack of consistent procedures for checking voter identification meant political party agents played too greater role in identifying voters and at times party agents took on the prerogatives of polling officials. In cases of dispute consensual decisions between the large numbers of party agents representing a variety of different parties generally

⁵⁹ The election was conducted on the 19 April 2008 in Surkhet Constituency 1.

constituted an important safeguard. However, there were also a number of polling stations where a full range of party agents were not present.⁶⁰ In such cases, crucial decisions on the polling process were excessively reliant on bargaining between the interests of particular parties.

Cases of localised irregularities and disruptions were reported on election day and during the following days, but with no significant impact on the overall credibility of the poll. Election officials generally responded promptly to the most serious cases. Complaints by political parties and candidates as well as *ex officio* decisions by Polling Officers, Returning Officers and the Election Commission led to the decision to organise re-polling in 106 polling stations in 21 constituencies from a total of 20,889 polling stations nationwide. The re-polling was successful and without major incident and was concluded swiftly by 19 April, as was polling in the one constituency where polling was cancelled before election day under a heavy security presence.

XIV. RESULTS

A. *Counting and the Announcement of Results*

As in previous elections, vote counting was not conducted at polling stations immediately following the closing of polling but was arranged per constituency at district level under the direct supervision of Returning Officers. The reasons for this procedure are concerned with amongst other issues, security. With the result announced at constituency level rather than individual polling stations the voting patterns of individual polling stations is protected. Therefore the practice of mixing ballot papers from a single constituency before counting allows for increased secrecy of the vote at polling station level and militates against any targeted intimidation against voters registered at a specific polling station. Whereas the reasons for counting at district level appear justified in the current Nepalese context, it raises concerns as to the adequacy of safeguards established to guarantee the security of ballots during the period between the end of polling and the start of counting at the district counting centres. A thorough series of safeguards is therefore required together with adequate reconciliation mechanisms to ensure transparency and integrity in these processes. These were not fully in place and the lack of detailed regulatory provisions for reconciliation led to significant inconsistencies in counting. Whilst clear provisions are absent in the law for reconciliation there are regulations that do provide rules for governing the verification of polling station inventory forms during the counting process.⁶¹ And, while the regulation issued by the Election Commission unambiguously provided for reconciliation between the numbers of ballots counted and those cast on election day, this was not included in all subsequent instructions and manuals designed for polling officials.⁶²

⁶⁰ The number of party agents was below three in more than 20 per cent of polling stations observed.

⁶¹ Article 10 (1) of the Election of Members of the Constituent Assembly Act (2007) relating to the secrecy of documents related to election, unambiguously stipulates that “out of the documents used in the election, those required for the purpose of the counting of the votes shall be opened and looked into and sealed after the completion of the counting of the votes and, thereby, shall be kept in custody of the District Election Officer.”

⁶² Both Articles 43 & 44 of the Regulation state that “the ballot papers of each polling station shall be counted in accordance with the provisions as set forth in the Manual on Election to the Members of the Constituent Assembly, 2064 (2007)” but also “the counting shall be verified with the total number of votes cast at that polling station, and details thereof shall be recorded separately and retained safely.” The total number of votes cast in a polling station is deducted from its inventory form (Form 55).

Counting commenced once the full number of ballot boxes from each constituency had arrived in the district counting centres under the prerogative of the Returning Officers. Tensions in the district counting centres were high during the initial phases as crowds gathered at the centres in reaction to some parties' demands for re-poling, leading to a few localised incidents.⁶³ Due to the difficult terrain and poor infrastructure in the majority of districts counting did not start immediately on the evening of election day, but was delayed until the full number of ballot boxes were delivered from each constituency in most areas. Counting only started on the evening of election day in a small number of urban constituencies. In the days following polling the full number of ballot boxes were delivered to district counting centres and counting commenced across the country. Despite the re-poling in the 106 polling stations the counting process continued with no major obstacles in the remaining constituencies, with the ballots from the single member constituencies being counted first. The counting was completed for the whole country on 23 April. Notwithstanding the lack of reconciliation procedures election officials did attempt to provide transparency and polling agents and domestic observers were present at counting centres.

The counting process was conducted with varying degrees of organisational efficiency between districts, at times in a rather chaotic manner. Initial problems of gaining access to observe counting for domestic and international observers were reported in some districts.⁶⁴ EU EOM observers also reported some cases of careless handling of ballot boxes, at times transported by security personnel without polling officials, and of broken security seals on ballot boxes.⁶⁵ Related complaints from party agents were dismissed by Returning Officers. The lack of adequate and detailed regulatory provisions for the reconciliation of figures led to significant inconsistencies in the first steps of counting. In the majority of counting centres observed, staff did not attempt to reconcile the number of votes counted with the number of ballots cast on election day as specified in the polling station inventory forms (Form 55). The envelopes containing polling forms required for such reconciliation remained sealed in the majority of cases. Some Returning Officers stated that one reason reconciliation was not undertaken was that if discrepancies were identified then increased tension would lead to disputes. Significant discrepancies amounting to several thousands of ballots were however, alleged by party agents in Dadeldhura and Mahottari, well over the margins by which candidates were elected under the first-past-the-post system in these single member constituencies. One complaint was subsequently submitted to the Constituent Assembly Court in regards the lack of proper reconciliation. More generally the lack of an adequate reconciliation process could be critical where margins between candidates are small.

The results were announced as counting was completed at district levels and presented periodically by the Election Commission. The results for the single member constituencies were released first followed by the results of the proportional representation race. Partial results posted on the Election Commission's website did not provide any details of the total number of votes cast nor the number of invalid ballots. The parties whose closed lists were elected had until 2 May 2008 to submit their candidates from their lists to the Election

⁶³ On 11 April crowds were dispersed by the police at counting centres in Bara, Sarlahi and Dhanusha districts. On the same day, a small explosive device was thrown over the main gate of Rautahat's counting centre. Fights between party agents inside counting centres in Mahottari and Dhanusha led to the intervention of the police on 11 April and 13 April.

⁶⁴ In the districts of Dolakha, Dadeldhura, Dhanusha, Biratnagar and Sunsari full access for EU EOM observers was granted only following intervention of the Chief Election Commissioner.

⁶⁵ In Nuwakot Constituency 2, many ballot boxes were delivered with broken seals and open envelopes. Despite protests by party agents, the Returning Officer did not cancel these ballots.

Commission for verification that they complied with the quota system. On 8 May 2008 the Election Commission announced that the candidates put forward by the parties had met the requirements of the quota and were therefore declared elected.

B. Political Overview of the Election Results

In terms of the total number of elected seats to the Constituent Assembly, CPN-M has secured a total of 220 seats (38.3 per cent), NC 110 seats (19.1 per cent), CPN-UML 103 seats (18.1 per cent) and the Madhesi parties combined have a total of 81 seats (14 per cent). The total number of political parties represented in the Constituent Assembly is 25 out of the 55 that contested the election. In the single member constituencies CPN-M have won 120 (50 per cent) of the 240 seats. NC received the second largest number of votes and won 38 seats (15.8 per cent) while CPN-UML secured 33 seats (13.8 per cent). Among the Terai-based Madhesi political parties, MJF won 32 seats, the TMLP nine seats and NSP four seats – or collectively 43 seats. The Nepal Workers and Peasants Party (NWPP) and the Peoples Front won two seats each while the Rastriya Janamorcha party and two independent candidates also secured a seat each. Five candidates, representing CPN-M (2 candidates), NC (1 candidate) and MJF (2 candidates) won seats in two constituencies. By-elections in these five constituencies are expected in June/July 2008. In addition, women have secured 30 of the 240 single member constituency seats. Reflecting this pattern in the proportional representation race CPN-M received the most seats winning 100 seats (29.8 per cent) of the total 335 seats allocated by proportional representation. NC secured 73 seats (19.1 per cent) closely followed by CPN-UML with 70 seats (18.1 per cent). Among the Madhesi political parties, MJF secured 22 seats (8.8 per cent), TMLP 11 seats (3.5 per cent) and the Sadbhawana party five seats (1.6 per cent) – collectively 38 seats. The Royalist parties only secured a combined number of 13 seats from the proportional representation elected seats. The remaining 41 seats are shared among 16 smaller political parties.

The results of the election bring unprecedented levels of representation of women and ethnic groups in the Constituent Assembly. The strong performance of CPN-M at the poll has reversed the power constellation in Nepalese politics with the two traditionally strongest parties: NC and CPN-UML now, in terms of the popular vote, secondary to CPN-M. However, no party received the two-thirds majority required according to the Interim Constitution to adopt articles of the new constitution. At the same time CPN-M are the only party to have the one third of seats required to block any articles granting it significant influence in the Constituent Assembly. As a consequence consensus will have to be sought between the parties to undertake constitutional reform.

Key figures in the two traditionally strongest parties, the NC and CPN-UML, also failed to be elected to the Constituent Assembly among them the General Secretary of CPN-UML Madhav Kumar Nepal and senior NC leader Sushil Koirala. The Madhesi based political parties performed strongly in the polls granting them significant representation in the Constituent Assembly; and, the quotas not only further strengthened the representation of the Madhesi as well as other traditionally marginalised groups but also women, that ensured a diverse elected assembly. The traditionally royalist leaning parties were only elected to a small number of seats. To some extent a new generation of representatives have been elected. However, the political parties themselves retain immense power over representatives as the Interim Constitution confers primacy to political parties over the individual members of the

Constituent Assembly. As a consequence when a member of the Constituent Assembly is either expelled or resigns from a party they automatically lose their seat.

XV. RECOMMENDATIONS

The following recommendations to improve the electoral process and related areas are offered for consideration and action by the Constituent Assembly, Election Commission, Nepalese authorities, political parties, civil society and the international community.

Legal Framework

1. Legislation related to elections should be consolidated bringing the diverse range of legal provisions presently in force into a single act governing all key aspects of the electoral process. A consolidated act should also include areas currently covered by the Election Commission's regulations, minimising the use of *ad hoc* measures in future elections.
2. A complete set of election related legislation and subsequent regulations should also be made available to the public through publication on the Election Commission's website.
3. The Election Commission should ensure consistency of regulations, directives and manuals and their timely dissemination and avoid last minute changes so as to enable election officials, political parties and voters to be familiar with their contents.

Electoral System

4. A broad national debate should consider reforming and simplifying the electoral system so as to accommodate the need for workable and accountable political representation while ensuring affirmative action and inclusiveness of social and regional groups in Nepalese society.
5. More transparent alternatives to the post-election selection of candidates by political parties in the proportional representation system should be considered to guarantee the implementation of the targets set for minimum representation levels in elected bodies. This should include measures to ensure a closer link between candidates and voters such as ranked lists. The law should be amended so that candidates can only run in one constituency in any one election in order to avoid by-elections. The powers of the political parties in respect to elected members of the Constituent Assembly should also be reduced to enable members who resign or are expelled from these parties to retain their seats.

Election Administration

6. The Election Commission should undertake a nationwide capacity building programme for its permanent field structures. It should also continue to consolidate long term activities including civic education, increasing the professionalism of staff, and the quality of voter registration.

7. Meetings of the Election Commission should be open to political parties and accredited observers. The agendas and minutes of its meetings and decisions should be made available to the general public in a timely manner. The Election Commission should also ensure that clear and updated information is made available to all stakeholders on the counting process. All decisions of the Election Commission should also be clearly explained.
8. There is the need for increased consistency of the regulatory provisions in areas pertaining to polling and counting procedures that should limit the prerogatives of Returning Officers in their interpretations and ensure a more uniform approach throughout the country.
9. The Election Commission should ensure necessary resources are allocated to departments responsible for implementing the Code of Conduct. Adequate deadlines and guidelines for processing complaints should be reinforced and clear steps published for the Code's enforcement.
10. The Election Commission should ensure polling stations are situated in accessible locations, particularly in remote areas, where access to polling stations was difficult for some communities. Improved access should also be provided for the disabled.
11. The role of party agents and volunteers whilst providing an important safeguard should be reduced outside of polling stations. The tradition of assisting voters identify their details on the voter register by party volunteers should be prohibited. Election officials should be posted to assist in this capacity.

Political Parties and Candidates

12. Legal provisions pertaining to the requirement that political parties guarantee internal party democracy and ensure inclusive decision-making at all levels should be monitored so as to ensure effective compliance with legal provisions.
13. The Political Parties Act of 2001 should be replaced with a more comprehensive law that details political party financing, annual audits and enables the Election Commission to sanction parties. These reports should be published in the public domain. New legislation should also contain effective measures to ensure the provisions are implemented in line with the recommendations of the 1999 *ad hoc* report reviewing elections in the 1990s. The parties themselves should also be required to have internal monitoring mechanisms for their funding and spending.
14. The provisions for the possibility of the de-certification of a candidacy and suspension of political rights should have greater guarantees of access to due process for defendants in independent and impartial courts.
15. Political party and candidates' agents should receive training in key legal aspects of the election such as how to file complaints properly. Greater awareness of formal channels as well as how to report offences should also be supported.

Voter Registration

16. A comprehensive review of the voter register is required to ensure greater inclusiveness, reliability and accuracy. The modernisation of the civil registry and the introduction of a secure national identification card scheme are essential to improve the quality of the voter register for future elections. Combined improvements of the voter and civil registries should be planned in the medium term.
17. Greater efforts to ensure accuracy in registration should be made to prevent errors and multiple entries. This should include individual registration only and cessation of practices allowing members of households to register other members of their families except in cases where this is justified on health or physical grounds. An adequate mechanism for maintenance and audit of the register should also be established, taking into account available technologies.

Campaign Environment

18. Political parties and associated groups should make a real commitment to end the culture of coercive campaigning and ensure their campaigns reflect the provisions of the Code of Conduct and allow voters freedom of choice in whom to vote for.
19. The authorities should immediately end the continuing culture of impunity for election offences by prosecuting and holding accountable those responsible for offences, including those of a criminal nature.
20. Law enforcement agencies should strengthen their capacity to guarantee law and order in an impartial manner. The Election Commission, the police and the public prosecutor's office should take a more proactive approach to resolving breaches to the law. They should also allocate adequate resources to ensure effective implementation of the legal framework. The creation of a special task force attached to the police, with sufficient resources to guarantee prompt and effective investigations of offences linked to the electoral process, should be considered.

Voter Education

21. Voter and civic education should receive increased investment and the considerable initiatives that have been implemented for these elections extended. This should include long term civic education promoting awareness of the role of the Constituent Assembly and representative democracy and increasing awareness of the rights of citizens of Nepal. Efforts should be specifically targeted at marginalised groups and women, populations in remote areas, people with disabilities, internally displaced persons and migrants. An increased degree of coordination between state institutions, the Election Commission and civil society organisations should also be seen as a key goal for the success of these initiatives.

The Media Sector

22. A comprehensive review of the legal framework should be undertaken to provide a legal system for the media sector that respects key elements of the principle of freedom of speech, whilst at the same time provides for greater legal certainty. The

new constitution should include provisions for protecting freedom of the media in line with the highest international standards in this field.

23. A new broadcasting act should be drafted to ensure clear legal provisions for the audiovisual sector. Furthermore, a new instrument should be introduced setting out the mandate and responsibilities of state owned broadcasters, and their independence from the authorities guaranteed. Mechanisms should also be established to ensure the independence and public accountability of state owned media and a clear monitoring mechanism introduced to guarantee its impartiality.
24. An independent regulatory authority should be established to regulate the audiovisual sector. This authority's mandate and powers should be established in law and it should be supported by an impartial and adequately funded secretariat to undertake the management of this institution. Key positions in this authority should be made transparently and without political interference.
25. The authorities should establish clear and concise guidelines for the media's coverage of candidates and parties during the campaign period. The scheme to provide free access to state owned media for party political broadcasts should also be developed and set out clearly in law.
26. The government should ensure greater access for the media to public records in order for journalists to report on policy making decisions and provide greater transparency and accountability in government by introducing the modalities for the Freedom of Information Act.
27. All statutory legislation pertaining to the media that is un-proportional such as the excessive protection granted public figures should be removed. Likewise, overly punitive provisions such as those including prison sentences for defamation should be withdrawn and replaced with suitable civil measures.
28. The Press Council should be transformed into a self regulatory body for the print media and all compulsory restrictions to register newspapers and journalists removed in line with international standards.

Promote the Participation of Women and Marginalised Communities

29. Increased representation of women and traditionally marginalised groups in public and political life should be supported to guarantee their participation in the decision-making process and higher levels of political party structures.
30. The election administration should include more women and members of indigenous communities. It should adopt a proactive gender and multi-cultural policy and appoint a senior position responsible for its implementation, with an aim to increase participation of women and marginalised groups in the electoral processes and at all levels within the election administration.
31. Programmes should be implemented to assist and train female candidates and elected representatives as well as those from the traditionally marginalised communities.

Increased awareness amongst men and women in political parties of gender issues should also be provided.

32. Civil society organisations in close collaboration with the Ministry of Women's Affairs and the National Commission of Human Rights should increase their efforts to enhance the participation of women in public life. Grass roots level campaigning and support for increased understanding of women as voters and candidates should also be implemented. This should also include increased awareness of the security services and a more transparent and inclusive security policy that is sensitive to the needs of marginalised groups and women.
33. Special provisions should be made to allow for the participation of special categories of voters in the election process such as displaced people, migrant workers, housebound and the physically disabled.

Civil Society and Domestic Observation

34. A greater degree of coordination of domestic observers should be planned in future elections. Moreover, capacity building to facilitate more systematic and effective data collection as well as publication of observation findings should also be encouraged.

Complaints and Appeals

35. The Election Commission should streamline its operations regarding complaints. It should also ensure political parties are fully aware of the procedures and grounds upon which complaints can be submitted to the Election Commission whilst at the same time clarifying the roles and responsibilities at each level of the election administration in the complaints process. The law should be amended to allow voters, domestic observers or other election stakeholders to file election petitions and complaints in all areas of the election.
36. Efforts should be made to ensure that the complaints and appeals system is transparent and publicly accountable. Consolidated records of complaints, responses, decisions and outcomes should be made available by the Election Commission for public scrutiny. A revised election act should also provide specific and adequate time limits for the resolution of complaints and appeals.
37. Particular attention should be paid to establishing and enforcing appropriate mechanisms for appeals against any decision of the election administration. This includes complaints related to inaccuracies in the voter register and the refusal of the Election Commission to register a political party or accept the nomination of a candidacy. Appeals against decisions of Returning Officers should be dealt with by the Election Commission. Appeals against the decisions of the Election Commission should be addressed by the courts. Disputes related to the above kinds of decisions should be concluded prior to the election.
38. A revision of the offences in the Election Offences and Punishment Act and associated provisions is necessary in order to further establish categories of offences including those currently contained in the Code of Conduct. The act should also

specify how types of offences should be treated. The suspension of political rights should be limited to the most severe offences and to those established by law.

39. All complaints should be promptly assessed and investigated where required. The Election Commission or lower level of election officials should refer complaints to the office of the public prosecutor if a criminal act has alleged to have been committed concerning the electoral process.
40. Greater certainty should be developed in the legal framework that clarifies jurisdiction of the respective courts dealing with petitions following election day.

Polling, Counting and Publication of the Results

41. The Election law and regulatory provisions should include requirements for:
 - a) consistent verification of voters' identification;
 - b) the names of candidates to be mentioned on the ballot for the single member constituency race;
 - c) allowing voters who have spoiled a ballot to be issued a new one;
 - d) enhanced reconciliation procedures at the end of polling, e.g. between the number of ballots used and the number of names marked in the voter list;
 - e) allowing party/candidate agents and accredited observers to enter comments in protocols at all stages of the voting and counting processes;
 - f) certified copies of polling station inventory forms and constituency results protocols to be distributed to all involved stakeholders, including party/candidate agents and accredited observers.
42. The election law should include a requirement that the Election Commission promptly publish detailed results in each constituency. These should include information on the total number of votes cast and invalid votes as well as a breakdown of the turnout per polling station.