



## PRELIMINARY STATEMENT

**Political freedoms and the commitment of voters prevailed over violence and, despite shortcomings, the Election Commission delivered the elections within a tight timeframe**

**Kathmandu, 9 December 2017**

### SUMMARY

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*This preliminary statement of the EU EOM to Nepal is delivered before the completion of the electoral process. The EU EOM will remain in Nepal to observe the completion of the counting process, the tabulation of results, and the resolution of any complaints and appeals. The EU EOM will publish a final report which will include recommendations for future elections.*

- The 26 November and 7 December elections to the House of Representatives and the seven provincial assemblies represent a key milestone in the implementation of the 2015 Constitution. The legal framework offers a good basis for the conduct of elections which comply with the international standards subscribed to by Nepal. The enabling legislation for these elections was enacted less than three months before the elections. The electoral system, in a constitutionally mandated effort to promote gender and social inclusion, is designed, in part, on the basis of proportional inclusion.
- Political freedoms, including association, assembly, expression, were well-respected in the law and in practice. There were no restrictions on the right to stand for election. Political freedom was, however, disrupted by a series of violent attacks on candidates and campaign events. Since 7 November, more than 150 violent incidents occurred throughout Nepal, principally with improvised explosive devices. A temporary police officer lost his life. Preventive detention was used to restrict the activities of some who were perceived to be a threat to public security.
- The Election Commission of Nepal (ECN) succeeded with the logistical preparations as well as the operational aspects of conducting the elections in two phases, despite the date for the election having been set by the Government just 97 days before the first election day. This tight timeframe was exacerbated by the late adoption of the necessary legislation and difficult geographical conditions. There is however a lack of transparency in the work of the ECN. There is no mechanism for regular consultations with political parties, civil society and observers at the central level. Decisions, internal rules of procedure, and voter registration data by administrative unit and constituency are not public. The ECN has failed to publish critical information on polling centre turnout. Also, procedural weaknesses exist, particularly with regard to the reconciliation of ballots, which is detrimental to transparency, making the process vulnerable to abuse.
- Oversight of the work of returning officers by the ECN is inadequate. While the law stipulates that the returning officers are subject to the direction of the ECN, decision-making is often left to the discretion of the returning officers. This reluctance of the ECN to exercise its powers led to the

inconsistent application of legislation, particularly regarding the access of observers. Despite serious efforts having been made voter education was seen to be insufficient. This was particularly worrying given the complexity of these elections. Equal suffrage has not been fully provided for, as great differences exist between the numbers of registered voters per constituency. The principal cause of these inequalities is the constitutional requirement that there be at least one federal constituency in each of the 77 districts, irrespective of population.

- A voter registration drive ending in August resulted in 1.37 million new registrants. The final voter list included 15,427,935 voters, an estimated 90 per cent of the total voting-age population. The right to vote was extensively circumscribed during these elections as at least half a million people, namely election officials and security personnel on election duties, were denied an opportunity to vote. Around 170,000 young people who turned 18 between the registration deadline and the election days were not permitted to register. Furthermore, the requirements to transfer voter registration are overly restrictive.
- A well conducted candidate nomination process was completed on 19 November. In total, there were 1,945 candidates running for 165 FPTP House of Representatives seats and 3,238 candidates running for 330 FPTP provincial assembly seats. Forty-nine political parties submitted closed lists, comprising 2,273 candidates for the 110 PR seats for the House of Representatives. Forty-one parties submitted 172 closed lists with 3,712 candidates for the 220 PR seats in the seven provincial assemblies.
- The ECN, in consultation with political parties, introduced an Election Code of Conduct, a key element of electoral law. The Code is applicable very broadly, not just to candidates and political parties. The rules are highly detailed and impose excessive restrictions on campaign freedom. Extensive power is conferred on the ECN to punish transgressions of the Code, including by fines and disqualification. Electoral law confers power on the ECN to regulate financial expenditure for campaign purposes. The shortage of information available to the public and the poor enforcement of disclosure rules together undermine the transparency of and accountability for campaign finance. Although vote-buying is explicitly prohibited in the Code, allegations that both cash and in-kind gifts were given to voters circulated widely.
- The media environment during the election campaign period was generally free, although a few cases of limitations on the freedom of expression and the freedom of the press were observed. Eight journalists were subject to preventive detention. Monitoring of 13 national media outlets by the EU EOM revealed a reasonably balanced coverage by public and private broadcasters and newspapers, with only the national radio station, Radio Nepal, allocating a disproportionate amount of airtime in favour of Nepali Congress.
- Many cases concerning both the work of the ECN and aspects of electoral law were filed with the Supreme Court, but not a single case proceeded to a full hearing. An interim hearing took place on the voting rights of electoral staff and security officials on election duty, yet no mandatory order ensued. The failure to proceed to full hearings of cases in a timely manner could possibly represent a denial of the right to an effective legal remedy. The ECN received around 100

complaints regarding violations of the Election Code of Conduct. A largely mediatory approach to adjudication was adopted, which undermined the enforcement of this instrument.

- The equality of women is a fundamental principle in the Constitution, with a requirement that at least one third of the total number of members elected from each political party to the Federal Parliament must be women. Political parties selected very few women to compete in the FPTP elections.
- Over 100 EU observers observed the opening, voting and closing process at 633 polling centres in 61 districts within all seven provinces. Despite the fact that the conduct of polling in 89% of polling centres visited was assessed positively, as good or very good, there was an assessment of bad or very bad conduct of polling recorded in 11% of the centres visited. Irregularities which impacted upon the credibility of the polling process in these centres where the assessment was negative included: lack of secrecy of the vote; excessive assisted voting, with assistance often being provided by unauthorised persons to voters who appeared to be able to mark the ballots unaided; people voting together behind the voting screen; voters voting on behalf of others; and interference with the work of the polling staff, mainly by political party and candidate agents conducting parallel voter identification inside the polling centres.
- EU observers were denied access to 22 polling centres and were seriously restricted in their observation in 29 polling centres. Observers were also denied access to counting centres in ten districts during the first day of counting.

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*The EU EOM has been present in Nepal since 25 October, at the invitation of the Government and the Election Commission of Nepal. The mission is led by Chief Observer, Željana Zovko, a Member of the European Parliament (MEP) from Croatia. The mission is comprised of ten core team analysts in Kathmandu, 38 long-term observers (LTOs) and 44 short-term observers (STOs) who have been deployed in all seven provinces. A delegation of seven MEPs led by Neena Gill CBE as well as diplomatic staff of EU member state embassies in Nepal, joined the EU EOM for both election days. In total, the mission was composed of over 100 observers from all 28 EU Member States, as well as Norway and Switzerland.*

*The EU EOM undertakes a comprehensive approach to election observation. It assesses the whole electoral process against international obligations and commitments for democratic elections as well as the laws of Nepal. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005. The EU EOM expresses its appreciation to the Government of Nepal, the ECN, political parties, civil society, media, as well as the people of Nepal for their cooperation and assistance in the course of our observation.*

## **BACKGROUND**

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The 26 November and 7 December elections to the House of Representatives and the seven provincial assemblies represent a key milestone in the implementation of the Constitution promulgated in September 2015. Local elections, concluded in September 2017, represented a first step in the realisation of the new federal structure. The Federal Parliament of Nepal will become bicameral upon the election of both the House of Representatives and the National Assembly.

The political milieu has been reshaped by extraordinary electoral alliances. For the first time since the establishment of the multiparty system, political parties agreed to compete together for the first-past-the-post (FPTP) elections. Previously, each party ran alone, and post-election coalitions were formed to govern. The current elections reveal a shift to strategies based on party coalitions. The catalyst for this change was the creation of the 'Left Alliance' between the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML) and the Communist Party of Nepal- Maoist Centre (CPN-MC) on 3 October. Other political parties reacted by also creating alliances, with the Nepali Congress subsequently leading the 'Democratic Alliance'. In Province 2 there was also an alliance between the Rastriya Janata Party Nepal (RJPN) and the Sanghiya Samajbadi Forum-Nepal (SSF-N) parties.

## LEGAL FRAMEWORK

The legal framework for the House of Representatives and Provincial Assembly elections offers a good basis for the conduct of elections which comply with the international standards subscribed to by Nepal. While the Constitution of Nepal, promulgated in September 2015, established the electoral system, the enabling legislation for these elections was enacted less than three months before the elections took place, with some directives published less than two weeks beforehand.

The House of Representatives, the first of the bicameral houses of the new Federal Parliament to be elected, will be comprised of 275 members, elected through a mixed electoral system. One hundred and sixty-five members are elected in a first-past-the-post (FPTP) system, from 165 constituencies, amounting to 60% of total membership. The remaining 40% of members, 110 individuals, are being elected by proportional representation (PR) where the entire country is a single constituency. According to the Constitution, the Federal Parliament should be established before 21 January 2018.

The electoral system, in a constitutionally mandated effort to promote gender and social inclusion, is designed, in part, on the basis of proportional inclusion. It is compulsory for political parties to include candidates from certain ethnic and social groups in their PR closed lists. Nominations must be made according to quotas which reflect the composition of Nepalese society<sup>1</sup>. Women must comprise a total of 50% of the candidates nominated by any political party to the House of Representatives. These quotas are a meritorious example of affirmative action through which Nepal is attempting to promote equality for historically marginalised groups.

The proportional inclusion system is based on that established under the Interim Constitution of 2007, but the impact has been diminished as the rules apply to only 40% of parliamentary seats under the present Constitution, as compared to 57% before. Furthermore, the expansion of the list of cluster groups to include the Khas Arya<sup>2</sup>, a group traditionally over-represented in political life, defeats the purpose of ending social discrimination and undermines the coherence of the quota system.

Political freedoms, including association, assembly, expression, were well-respected in the law and in practice. There were no restrictions on the right to stand for election. Political freedom was, however, disrupted by those who engaged in violent attacks during the election period. Preventive detention was used to restrict the activities of some who were perceived to be a threat to public security. While

<sup>1</sup> While the Constitution lists the groups to be included in the PR electoral system, the Elections Act for the House of Representatives sets out quotas as follows: Dalit 13.8%; indigenous people 28.7%; Khas Arya 31.2%; Madhesi 15.3%; Tharu 6.6%; Muslim 4.4%; "backward regions" 4.3%. These proportions are based on the National Census 2011. Persons with disabilities must be included also.

<sup>2</sup> Constitution of Nepal, Art. 84 (2) Khas Arya means the Kshetri, Brahmin, Thakuri, Sanyasi (Dashami) community.

preventive detention is provided for in the Constitution and the law, the use of such detention merely to suppress dissenting political views, such as advocacy of invalidation of the vote, would violate the International Covenant on Civil and Political Rights.

The right to vote is denied by law to “persons of unsound mind,” amounting to a violation of the Convention on the Rights of Persons with Disabilities. In addition, there are difficulties, both practical and legal, which have had the consequence that some members of marginalised groups lack citizenship certificates, the holding of which is a precondition to voter registration, thereby frustrating their right to vote. The secrecy of the ballot was denied to persons with disabilities who did not have facilities for independent voting. While all citizens have the right to vote, the weight of the vote differs widely between different constituencies, undermining the equality of the franchise.

The ECN, in consultation with political parties, introduced an Election Code of Conduct, a key element of electoral law. The Code is applicable very broadly, not just to candidates and political parties, but also to the Government of Nepal, public bodies, the media, electoral staff, NGOs, observers and the general public. The rules are highly detailed and impose excessive restrictions on campaign freedom, circumscribing the freedom of expression. Extensive power is conferred on the ECN to punish transgressions of the Code, including by fines and disqualification. Allegations of breaches of the Code circulated widely, but enforcement action was largely absent.

#### **ELECTION ADMINISTRATION**

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The ECN is a permanent constitutional body with extensive executive and regulatory powers, mandated to organise elections in Nepal. The mechanism for the appointment of election commissioners provides for cross-party consensus. The ECN to date, at the district and constituency level, has performed its duties impartially, generally enjoying the confidence of stakeholders.

There is however a lack of transparency in the work of the ECN. Decisions of the ECN and minutes of their meetings are not published systematically. Internal rules of procedure, a comprehensive electoral calendar, and voter registration data by administrative unit and constituency are not publicly available. The ECN has not published critical information on polling centre turnout. Importantly, there is no mechanism for regular consultations with political parties, civil society and observers at the central level, but engagement with stakeholders at the district level is better.

Oversight of the work of returning officers by the ECN is inadequate. While the law stipulates that the returning officers are subject to the direction of the ECN, decision-making is in reality often left to the discretion of the returning officers. This reluctance of the ECN to exercise its powers led to the inconsistent application of legislation, particularly regarding the access of observers to counting centres.

The ECN managed to conduct the elections in two phases, despite the date for the election having been set by the Government just 97 days before the first election day. This created a tight time-frame for the conduct of elections, exacerbated by the late adoption of the necessary legislation. The ECN decided to print ballot papers for both FPTP elections together on a single sheet of paper, and the equivalent for the two PR ballot papers. The intervention of the Supreme Court led to the separation of the two FPTP ballots on separate sheets of paper, while the PR papers were not affected. Ensuing logistical delays and difficult geographical and weather conditions further complicated preparations. Nevertheless, all technical preparations were completed on time for both election days. A notable exception, however, was the very late publication of essential polling and counting directives, less than two weeks before the first election

day. Thus, political party agents in particular, had limited time to familiarise themselves with the procedures for these critical parts of the process.

The polling and counting directives include a number of safeguards aimed at ensuring the credibility of the process. These include the mandatory presentation of a government-issued ID card, and access for agents and observers. However procedural weaknesses persist, particularly in regard to reconciliation of ballots, which is detrimental to transparency, making the process vulnerable to abuse. There is no meaningful reconciliation between the number of voters who received ballot papers, the number of used ballots and the number of ballots found in the ballot box. There is no provision on matching the polling and counting centre reconciliation data, neither is there any procedure on how to proceed in case of discrepancy. The directives also lack a mechanism for the auditing of polling centres with implausibly high or low turnout figures.

The ECN imposed unreasonable restrictions on observers, limiting their deployment to only one province. This went beyond the requirements stipulated in the accreditation procedures and hampered the work of both domestic and international observers. Despite serious efforts voter education was seen to be insufficient. The ECN stated that, due to challenges arising from printing the additional FPTP ballot, it would not have enough time for effective voter education. This was particularly worrying given the complexity of these elections where voters were casting four votes on three ballots. Around 20,000 voter educators, one per polling centre, were recruited, trained and dispatched to the field late, allowing only 15 days for their door-to-door visits ahead of the first phase election day.

The Constituency Delimitation Commission completed its work in a period of just 42 days in July and August this year. Equal suffrage has not been fully provided for, as great differences exist between the numbers of registered voters per constituency. The largest federal constituency has nearly 26 times more voters than the smallest one. Eighty-seven of the 165 federal constituencies (53%) deviate by more than 15% from the national average of 93,503 voters per federal constituency. Similar disparities exist for all seven provincial assemblies. The principal cause of these inequalities is the constitutional requirement for at least one federal constituency in each of the 77 districts, irrespective of population.

#### **VOTER REGISTRATION**

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The ECN has the overall responsibility to maintain the biometric voter register. Voter registration is active and continuous. The voter registration drive in July and August resulted in 1.37 million new registrants, representing an increase of 9.8% on the number registered for local elections. The final voter list was accessible online and it included 15,427,935 voters, an estimated 90% of the total voting-age population. However, the actual registration rate is lower, as there is no effective system in place for removal of deceased persons from the list.

The right to vote was extensively circumscribed during these elections as at least half a million people, namely election officials and security personnel on election duties, prisoners and residents of old age homes, were denied the opportunity to vote. This is particularly egregious as these groups are foreseen in the law as temporary voters who may be permitted to vote in the proportional representation elections. The ECN failed to vindicate their rights. Around 170,000 young people who turned 18 between the registration deadline and the election days were not able to register due to the legal requirement to be 18 on the day of registration. Furthermore, the requirements to transfer voter registration are overly restrictive. A voter who wants to transfer registration to another location must provide evidence of

permanent residence, such as through property ownership in the new place, and therefore voters staying in rented premises cannot transfer their registration.

#### **CANDIDATE NOMINATION**

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The candidate nomination process was completed on 19 November. The ECN published the list of all candidates on its website. In total, there were 1,945 candidates running for 165 FPTP House of Representatives seats and 3,238 candidates running for 330 FPTP provincial assembly seats. Forty-nine political parties submitted closed lists, comprising 2,273 candidates for the 110 PR seats for the House of Representatives. Forty-one parties submitted 172 closed lists with 3,712 candidates for the 220 PR seats in the seven provincial assemblies. In general, the candidate nomination process proceeded smoothly, with only one disputed disqualification being challenged in the Supreme Court.

#### **ELECTION CAMPAIGN**

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The electoral process was marred by a series of violent attacks on candidates and campaign events. Since 7 November, more than 150 violent incidents occurred throughout Nepal, particularly in Provinces 1 and 3. The number of incidents increased leading up to the two days of elections. Attacks with improvised explosive devices (IEDs), targeted 34 candidates from the 'left alliance' and 34 candidates from the NC, as well as eight candidates from other political parties. These included attacks on rallies of Prime Minister Deuba and the chairpersons of the CPN-UML and of the CPN-MC. On 4 December, former Minister of Health Gagan Thapa, an NC candidate, was injured by an IED while conducting 'door-to-door' canvassing in Kathmandu. There were 29 attacks on polling centres and election offices. Forty-eight IEDs targeted public venues, including two police stations in Saptari and Kailali districts. Fifty-one people were injured during these attacks. On 29 November, a temporary police officer died from injuries after an IED exploded near the venue of a NC event in Dang district which Prime Minister Deuba was scheduled to attend. Almost 1,000 people were held in preventive detention during the electoral period due to allegations of disrupting the elections. There was little public opposition to this practice, apart from some protest at the arrest of Madhesi activist C.K. Raut on election day.

Political parties started mobilising their supporters after the announcement of the date of the elections, and campaigning was invigorated by the filing of nominations on 22 October for the first phase of the elections, and on 2 November for the second phase. While there was broad freedom to campaign, the Election Code of Conduct prescribed an extensive catalogue of rules restraining candidates and political parties in their campaign activities, while also prescribing spending limits. The requirements stipulate that, among other things, election symbols may not be displayed on t-shirts and caps, and that posters and flags must be limited in size. Political parties largely respected the minor requirements and expressed their satisfaction with the restraints which reduced campaign spending expectations. However, the more serious aspects of the Code, such as limits on campaign expenditure, were not as well respected. Although vote-buying is explicitly prohibited in the Code, allegations that both cash and in-kind gifts were given to voters circulated widely. The Code of Conduct also imposed a period of campaign silence. While this silent period was largely respected both for the first and second phases of polling, EU observers noted exceptions, with some door-to-door campaign activities.

Relations between political parties were generally peaceful in all parts of the country. Incidents of sporadic clashes were, however, reported. During the early weeks of the campaign, posters and billboards were largely absent, with the campaign gradually becoming more visible. The EU EOM observed 120

campaign events across Nepal.<sup>3</sup> ‘Door-to-door’ campaigning and the holding of ‘corner meetings’ were the most common forms of campaign activity. Rallies on a larger scale with national party leaders promoting the parties became frequent from the second half of November.

#### **CAMPAIGN FINANCE**

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Electoral law confers power on the ECN to regulate financial expenditure for campaign purposes. For candidates, maximum limits on spending have been set out for the FPTP elections, the amounts differing depending upon whether the election is to the House of Representatives or a provincial assembly. The legal framework, however, contains almost no rules on the sources of funding for candidates, providing only that they shall not receive financial support from any governmental or public entity or NGO. Their political parties, may, however provide financial support. Candidates may also raise their own campaign funding, which favours candidates with greater financial means.

For political parties, by contrast, funding rules are clearly defined by law, including prohibitions on the receipt of donations from state corporations and foreign entities. Bank accounts have to be maintained for party monies, and income above a threshold must be disclosed. The legal framework also imposes limits on campaign expenditure by political parties, with the ceilings determined by the number of candidates they have fielded in the PR elections. Publication of the financial statements of income and expenditure by both political parties and candidates is required.

While monitoring structures, both at the central and district levels, have been set up by the ECN, enforcement of the rules on campaign finance has not been comprehensive. Sanctions have been imposed for the non-timely submission of reports, but the quantum of fines levied cannot be considered to be a sufficient deterrent against the repetition of such behaviour.<sup>4</sup> Additionally, although vested with an auditing mandate, the performance of the ECN regarding the efficient and timely verification of financial accounts submitted by parties and candidate could be improved. The shortage of information available to the public and the poor enforcement of transparency rules together undermine the transparency of and accountability for campaign finance. This fails to comply with Article 7(3) of the UN Convention against Corruption, ratified by Nepal in 2011.

#### **MEDIA**

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The media environment during the election campaign period was generally free, although a few cases of limitations on the freedom of expression and the freedom of the press were observed. Eight journalists were subject to preventive detention, allegedly due to a perceived threat to public security and the electoral process. Both the Federation of Nepali Journalists and the International Federation of Journalists condemned the arrests. On 29 November a journalist suffered injuries after the explosion of an IED in Udaypur district while he was covering campaign activities.

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<sup>3</sup> The EU EOM observed 15 campaign activities for phase 1 and 105 for phase 2. Of the 120 events, 47 were organised by the ‘left alliance’ and 37 by the NC – plus seven by the ‘democratic alliance’. EU EOM observers were present in seven events of the Bibeksheel Sajha Party, 4 events of Rastriya Prajatantra Party, 4 events of Nepal Majdur Kisan Party, 3 events of the RJPN and 3 of SSF-N as well as one common event among the two Madhesi parties. Similarly, two events of Rastriya Janamorcha was observed along with one event of the Communist Party of Nepal-Marxist Leninist, Mongol National Organisation and Deshbhakta Janaganatantrik Morcha. The mission also observed two independent candidates carrying out one campaign activity each.

<sup>4</sup> The Election Commission Act, 2017 provides for fines equal to total election expenditure if limits are exceeded. In practice, the ECN imposed fines of NPR 1,500 (€12) for failure to submit reports after elections in 2013.



Media in general provided a diverse platform for political parties to present their messages to voters across the country. Although electoral coverage focused mainly on campaign activities by NC, CPN-UML and CPN-MC, public and private media also provided coverage, to a lesser degree, to smaller parties. In a welcome initiative, some community radio stations at district level offered free-of-charge airtime to candidates to present their manifestos. Nevertheless, private radio stations at district level are widely perceived to be politically inclined. Political parties and candidates campaigned actively and in an appropriate manner through the social media, and any misuse of this platform was attributable to supporters rather than officials. Some local journalists used their personal Facebook or Twitter accounts to sensitise voters and to question parties and candidates.

Monitoring of 13 national media outlets<sup>5</sup> conducted by the EU EOM, from 6 November to 4 December 2017, revealed generally balanced coverage by public and private broadcasters and newspapers, with a reasonably proportionate distribution of airtime and space among the three main parties. News and election related information was mainly presented in a neutral tone. Only the national radio station, Radio Nepal, showed unbalanced coverage in favor of NC (39% of total airtime) to the detriment of CPN-MC (20% of total airtime) and CPN-UML (24% of total airtime). The remaining media monitored by the EU EOM showed, in general, a fair degree of impartiality in their electoral coverage.

The Election Code of Conduct includes restrictive provisions on the diffusion of parties' and candidates' propaganda in the media, limiting each party to only one advertisement (size 7'x7') to be published per day in only one newspaper, and up to just four spots a day, of a maximum duration of one minute, to be aired on tv and radio stations. In this regard, violations of the Election Code of Conduct by NC, CPN-UML, RPP-N, RPP-D, BSP, PLGP, APMP, ERPP-D and independent candidates were observed by the EU EOM in eight different media (Kantipur Radio, Ujyaalo FM, Kantipur TV, Image TV, Avenues TV, Naagarik, Naya Patrika and Kantipur newspaper). Likewise, in contravention of instructions published by the ECN on 28 November, online media MyRepublica published exit polls forecasting electoral winners at the district level. However, the ECN asked for clarifications, to both the concerned media and party, only in regard to two violations by CPN-UML and RPP-N. Similarly, no clarifications or actions were sought or taken by the ECN regarding the 52 cases of violation of campaign silence periods by 31 different media outlets, according to reports produced by the regulatory body, the Press Council of Nepal.

## ELECTORAL JUSTICE

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Many cases concerning both the work of the ECN and aspects of electoral law were filed with the Supreme Court, but not a single case proceeded to a full hearing prior to the elections. An interim order in one case resulted in the ECN being required to print separate ballot papers for the FPTP elections, but there was no equivalent ruling in a case on the PR poll. An interim hearing took place on the voting rights of electoral staff and security officials on election duty, yet no mandatory order ensued. Other cases, on overseas voting, on the inclusion of persons with disabilities and of women, did not proceed to a full hearing either. The failure to proceed to full hearings of cases in a timely manner could possibly represent a denial of the right to an effective legal remedy.<sup>6</sup>

The ECN has jurisdiction to monitor and enforce the Election Code of Conduct. Around 100 complaints were received regarding violations of the Code, ranging from a multitude of minor transgressions, such as posters and billboards in excess of the permitted size, to complaints of a more serious nature, including

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<sup>5</sup>The sample included the public media Radio Nepal, Nepal TV and Gorkhapatra newspaper, and the private media Kantipur Radio, CIN Radio, Ujyaalo FM, Kantipur TV, Avenues TV, Image TV, Kantipur newspaper, Naya Patrika, Nagarik and The Himalayan Times.

<sup>6</sup> International Covenant on Civil & Political Rights, Article 25

the abuse of public office to influence the election. In excess of 2,000 applications from public bodies for dispensations from the Code were made also. Enforcement of the Code was largely confined to requests to cease the behaviour complained of. A largely mediatory approach was adopted, which allowed an ad hoc application of the Code and provided little transparency or clarity on consistency in decision-making. The widespread absence of respect for, or implementation of, the Code partly undermines the integrity of the Code and the credibility of the ECN as the responsible body.

#### **PARTICIPATION OF WOMEN AND TRADITIONALLY MARGINALISED GROUPS**

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The Constitution makes it an imperative that traditionally marginalised groups are represented both in the Federal Parliament and in provincial assemblies. The Constitution includes “gender and sexual minorities” as being among the groups with the right to participate in state bodies on the grounds of proportional inclusion. A total of 167 people identified themselves as third gender when registering to vote, and there was one high-profile third gender candidate for the House of Representatives PR election.

The equality of women is a fundamental principle in the Constitution, with a requirement that at least one third of the total number of members elected from each political party to the Federal Parliament must be women. There are no legal obstacles restricting the political participation of women, although powerful social and cultural barriers to female leadership persist. Political parties did not select many women to compete in the FPTP elections, as women comprised just 7.5% of the total number of candidates for the House of Representatives, and 7.4% of the total for the provincial assemblies. Nonetheless, it is likely that Nepal will maintain its position as leader in the region for the proportion of women in parliament.

Political parties are constitutionally bound to provide for the representation of persons with disabilities in their PR lists. While achieved in an ad hoc manner for these elections, a reasonable number of candidates from this community received nominations. The recently enacted Rights Relating to Persons with Disabilities Act, 2017 provides strong protection for the right to political participation of persons with disabilities, obliging the Government of Nepal to ensure that the polling process and polling materials are accessible and understandable. The electoral law does not create any entitlements to accessible polling stations or to voter education materials which meet the varied needs of persons with disabilities. The Electoral Rolls Act 2017 states that persons “of unsound mind” shall not be entitled to vote, breaching the Convention on the Rights of Persons with Disabilities.

#### **DOMESTIC OBSERVER ORGANISATIONS**

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Several domestic observer organisations deployed a considerable number of observers, contributing to the transparency of the electoral process. Three groups – National Election Observation Committee, General Election Observation Committee and Sankalpa deployed on the two election days around 1,400 and 3,400 observers respectively, while the Democracy Resource Center observed separately. They coordinated their activities closely and issued a joint statement after both election days.

#### **POLLING AND COUNTING**

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On 26 November and 7 December, over 100 EU observers observed the opening, voting and closing process at 633 polling centres in 61 districts within all seven provinces. Despite presenting the ECN-issued observer accreditation cards, which grant unhindered access to polling and counting centres, EU observers were denied access to 22 polling centres and were seriously restricted in their observation in 29 polling centres. Observers were also denied access to counting centres in ten districts during the first day of observation of the counting process.

Despite the fact that the conduct of polling in 89% of polling centres visited was assessed positively, to be good or very good, there was an assessment of bad or very bad conduct of polling recorded in 11% of the centres visited. Irregularities which impacted upon the credibility of the polling process in these centres where the assessment was negative included: lack of secrecy of the vote; excessive assisted voting, with assistance often being provided by unauthorised persons to voters who appeared to be able to mark the ballots unaided; people voting together behind the voting screen; voters voting on behalf of others; and interference with the work of the polling staff mainly by political party and candidate agents conducting parallel voter identification inside the polling centres.

Voters were not always marking their ballots in secrecy in 13% of polling centres visited. Instances of more than one voter behind the voting screen, and voting on behalf of others, were observed in 14% and 11% respectively of the polling centres visited. Interference with the work of the polling staff was observed in 20% of the polling centres observed. Political party and candidate agents were present in all, and domestic observers in one third, of the polling centres visited. According to the ECN, the turnout in the first phase districts reached 65% and in the second phase districts 67%. The EU observers are currently observing the counting process in 41 of the 77 districts within all seven provinces.

*This preliminary statement is available on the mission website [www.eomnepal.eu](http://www.eomnepal.eu) as well as on social media: Facebook [EUEOMNepal2017](https://www.facebook.com/EUEOMNepal2017) and Twitter [@EUEOMNepal2017](https://twitter.com/EUEOMNepal2017). For further information, please contact: Sarah Fradgley, EU EOM Press Officer, Tel. +977 9801237603, [sarah.fradgley@eomnepal.eu](mailto:sarah.fradgley@eomnepal.eu)*