



**EUROPEAN UNION
ELECTION OBSERVATION MISSION – NEPAL 2013
CONSTITUENT ASSEMBLY ELECTIONS**

PRELIMINARY STATEMENT

Well-conducted elections with high participation allow for continuation of democratic state building

Kathmandu, 21 November 2013

EXECUTIVE SUMMARY

- The 19 November elections were the second elections for the Constituent Assembly mandated to draft a new constitution for Nepal. Voting was conducted in an orderly and generally calm atmosphere. Polling procedures were followed consistently in the polling stations observed by the EU EOM and the performance of polling staff was mostly assessed to be good. The integrity of the vote was sufficiently protected in 97 per cent of the polling stations observed as efficient processing of voters and appropriate use of controls and safeguards were implemented. The EU EOM continues to observe the counting and aggregation of results and will follow any consequent complaints and appeals before reaching a final conclusion.
- The Election Commission of Nepal (ECN) has enjoyed public confidence throughout the whole election process, acting, thus far, in an independent and impartial manner. Technical electoral preparations were completed in a timely manner despite considerable logistical challenges and time constraints. The ECN demonstrated competence in conducting key operations of the electoral process. The delivery of election material to the districts was concluded well in advance of election day, as were staff deployments.
- The Final Voters' List, as announced by the ECN, includes 12,147,865 voters capturing an estimated figure of around 75 per cent of the potential Nepalese electorate. One of the main challenges faced by the electoral administration was the provision of voter ID cards. However, EU observers reported that on election day, generally voters did not face difficulties regarding their identification as those without these cards were facilitated on production of other documents.
- Freedoms of speech and assembly were respected as candidates campaigned actively across the country. Several incidents of a violent nature took place throughout the campaign period, attributed variously to both participating parties as well as to those parties boycotting the elections. However, this did not have a significant impact on the unfolding of the campaign. Electoral campaign activities were largely manifest through small meetings at a local level with the exception of a week-long mass rally conducted by UCPN-M.
- The Code of Conduct for the Election conferred extensive monitoring and enforcement powers on the ECN. However, few sanctions were imposed on those who violated the code. While the code has legal weight, moral pressure has been used to enforce it rather than punitive measures. While the code includes campaign spending limits, supervision of expenditure extends only to requirement of a statement after the elections. A draft of the code had required disclosure of sources of party funding but this was not adopted missing the opportunity for greater transparency into campaign financing.
- Media, in general, provided a diverse platform for political parties to present their messages to voters in an environment of freedom of expression. Although electoral coverage focused mainly on campaign activities by UCPN-M, CPN-UML and NC, significant efforts were made to provide coverage to minor parties. Media monitoring conducted by the EU EOM revealed fair coverage

by both public and private broadcasters and newspapers, with proportionate distribution of airtime and space, and reports generally presented in a neutral tone.

- The legal framework for the Constituent Assembly elections provides a good basis for the conduct of genuine elections in line with the international commitments subscribed to by Nepal. However, the right of political representation is not fully protected in the provisions governing either PR or FPTP elections. The procedures for selection of successful candidates within the PR closed list weaken the link between voters and their elected representatives. Political parties are able to allocate the seats won, after the elections, to candidates of their choice without respecting any pre-determined order within their closed list.
- Electoral law has established targets for the inclusion of women and traditionally marginalised groups in the Constituent Assembly, measures which resulted in historic advances for all of these communities in 2008. There is widespread pessimism that these achievements will not be maintained in this time, due to a combination of legal loopholes and an absence of political will reflected in lower numbers of candidates from these groups. Women have been observed in extremely low numbers amongst officials within all levels of the ECN. This was apparent also on election day when just 11 per cent of polling officers (presiding officers) and 21 per cent of assistant polling officers encountered by EU observers were women.

The European Union Election Observation Mission (EU EOM) has been present in Nepal since 4 October following an invitation from the Government of Nepal and the Election Commission. The Mission is led by Chief Observer, Eva Joly, Member of the European Parliament (France). In total, the EU EOM deployed 112 observers from 28 EU Member States, Norway and Switzerland across the country to assess the whole electoral process in accordance with international commitments for genuine elections as well as the laws of Nepal. A delegation of members of the European Parliament, headed by Daniel van der Stoep, MEP, also joined the mission and fully endorses this Statement. 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 will remain in country to observe post election developments and the tabulation of results and will publish a final report, containing detailed recommendations, within two months of the conclusion of the electoral process. The EU EOM wishes to express its appreciation to the government of Nepal and the Election Commission and other Nepalese authorities, political parties and civil society as well as the people of Nepal for their cooperation and assistance in the course of the observation. The EU EOM is also grateful to the Delegation of the European Union to Nepal and the European Union member states' diplomatic missions resident in Nepal for their support throughout.

PRELIMINARY FINDINGS

BACKGROUND

The 19 November elections were the second elections for the Constituent Assembly, mandated to adopt a new constitution for Nepal, and to form a new government. The previous Constituent Assembly was dissolved in May 2012 after members failed to reach an agreement on the type of federalism to be adopted for the country. After a period of political instability, a care-taker government - Interim Election Council of Ministers (IECM) was established whose sole mandate is to hold the 2013 Constituent Assembly elections.

The Constituent Assembly is composed of 601 members, of which 575 are elected and 26 are appointed after the elections by the Council of Ministers. The Interim Constitution of Nepal creates a Mixed Electoral System for the 575 elected seats: 240 members are elected through the First-Past-The-Post (FPTP) system while the remaining 335 are elected through a Proportional Representation (PR) system. A total of 6,127 candidates competed for the FPTP seats, while 122 political parties submitted their lists for the PR seats.

LEGAL FRAMEWORK

The legal framework for the Constituent Assembly elections provides a good basis for the conduct of democratic elections in line with the international commitments subscribed to by Nepal. Legal provisions applicable to elections are to be found across a plethora of instruments, with the result that election law continues to be fragmentary in nature. It can be quite a complex matter to determine, authoritatively, what the law is which pertains to a particular issue.

The right of political representation is set out in the International Covenant on Civil and Political Rights Article 25 (a) which provides that every citizen has the right “to take part in the conduct of public affairs... through freely chosen representatives”. This right is not fully protected in the provisions governing either the PR or the FPTP elections. The procedures for selection of successful candidates within the PR closed list weaken the link between voters and their elected representatives. Political parties are able to allocate the seats won, after the elections, to candidates of their choice without respecting any pre-determined order within their closed list. This, thus, limits the choice of the voter to the selection of the political party only, not of the candidate. In FPTP, the absence of a requirement that a candidate is registered to vote in the constituency where he is contesting the election weakens the connection between the voter and his elected representative. Furthermore, a candidate is permitted to contest in two constituencies simultaneously. This creates the possibility of a resignation and subsequent by-election should he be successful in the two constituencies. This undermines the real choice of the voter, potentially reducing the mandate of his representative elected in a by-election election.

The Interim Constitution provides that voting is to be by secret ballot. However, secrecy was not afforded to voters with visual impairment as no tactile ballot guides were made available. This is particularly egregious in light of the fact that 10,000 voter education leaflets were made available in Braille. The right to vote was vindicated by the ECN as special arrangements were made for temporary voters, including prisoners amongst others, allowing them to participate in the election for PR seats.

ELECTION ADMINISTRATION

The Election Commission of Nepal (ECN) has enjoyed public confidence throughout the whole election process, acting, thus far, in an independent and impartial manner. The ECN held regular press conferences to update stakeholders on electoral preparations, improving the transparency of and confidence in the electoral process.

Technical electoral preparations were completed in a timely manner despite considerable logistical challenges and time constraints. The ECN demonstrated competence in conducting key operations of the electoral process such as the printing of ballot papers and the distribution of election material. The delivery of election material to the districts was concluded well in advance of election day, as were staff deployments.

Training-of-trainers (TOT) activities were conducted countrywide and assessed by EU observers to be satisfactory. However, the adoption of a gender policy by the ECN aspiring to the recruitment of 50 per cent female staff did not translate into reality as there were fewer than 10 per cent women among participants in the training.

Temporary election staff generally acted in an impartial and independent manner. Procedures provided sufficient safeguards to ensure the integrity and transparency of the voting process. Temporary voting was allowed for government and election officials and security personnel on election day for the single-constituency PR elections, reducing the level of disenfranchisement of these voters. The provision for temporary voting was also applicable to voters in care centres for elderly people with more than 50 registered voters and prisoners.

VOTER REGISTRATION

The Final Voters' List, as announced by the ECN, includes 12,147,865 voters. Voter registration was conducted in several phases, with the last one ending in August 2013. There is a significant difference, amounting to circa 5.4 million, between the number of voters registered for these elections as compared to those in the 2008 register. Also, based on the 2011 Census conducted in Nepal it could be estimated that the voting population reaches 16 million. Based on these figures, voter registration captured the notable proportion of around 75 per cent of the potential Nepalese electorate.

The difference in numbers registered between 2008 and 2013 may be attributed to factors such as the voluntary nature of voter registration, the more rigorous approach to qualification for registration, the requirement to register in person, significant emigration, less likelihood of multiple entries due to the facility for out of district registration, and less population displacement. Absence of motivation to register might have also been a factor due to disillusionment with the political stalemate. In addition, for the current register, eligible voters could not register themselves without a citizenship certificate - except for the brief opportunity to register on the basis of having been registered in 2008 - the holding of which is low among marginalised communities.

One of the main challenges faced by the electoral administration was the provision of voter ID cards. Despite the clear and publicly appreciated decision of the ECN to issue these cards, the timely delivery of the 12.2 million voter ID cards was uncertain until election day, with some still remaining uncollected at the close of polling. However, EU observers reported that on election day, generally voters did not face difficulties regarding their identification as those few voters without these cards were facilitated on production of other documents.

Constituency boundaries were not reviewed for the 2013 elections. According to the number of registered voters, the average size of the electorate per constituency is 50,616. However, significant differences between the size of the electorate exist with the largest electorate having 82,218 voters in one constituency in the Bhaktapur district, while the smallest has 4,795 voters in Manang district. These discrepancies suggest some significant deviation from the core principle of equal representation, a principle expressed as equal suffrage protected in Article 25 (b) of the International Covenant on Civil and Political Rights. This is undermined as FPTP foresees only one Member of the Constituent Assembly per constituency, regardless of the number of voters.

CANDIDATE NOMINATION

There were no unreasonable requirements to register as a candidate to contest either FPTP or PR seats. The requirements for qualification of candidates were strictly applied, and disqualifications were in accordance with the law. Despite requirements being in line with international commitments agreed to by Nepal, the right to object to candidature is limited to other candidates only, depriving the general public of the opportunity to object to their possible representatives.

Among the nominations submitted for the PR seats, nine objections were made to candidates. Three of them were disqualified by the ECN, one on the grounds of a murder conviction, and the other two for holding public office. The ECN, on its own initiative, disqualified an additional 294 candidates. No objections were made against candidates for the FPTP seats. The ECN, however, also disqualified 21 FPTP candidates on grounds which included lack of Nepalese citizenship, being under 25 years of age and lacking official party nomination. All decisions were taken according to the law.

ELECTION CAMPAIGN

Freedoms of speech and assembly were respected as candidates campaigned actively across the country. There was an open political space for debate, and no campaign gatherings were prohibited. Local authorities cooperated well with political parties, and no complaints were made regarding bias in the granting of permission for rallies and processions.

Campaign launches and the publication of manifestoes by the main political parties initially established a polite and cordial tone of political speech. However, several incidents of a violent nature

took place as campaigning intensified attributed variously to both participating parties as well as to those parties boycotting the elections. These range from assaults on individuals and acts of intimidation as well as attacks on public transportation to destruction of party vehicles. Though these activities continued throughout the campaign period, this did not have a significant impact on the unfolding of the campaign. Some obstructions of campaign activities were also due to the activities of rival candidates competing within the same constituency. Such actions were caused by individual rivalries rather than forming part of any political party strategy.

Electoral campaign activities were largely manifest through small meetings at a local level. Candidates and political parties focused on making close contact with voters through activities such as door-to-door campaigning, small corner meetings and small processions with flags and slogans. According to EU observers, in the campaign events observed, the principal topics discussed were the content of party manifestos, with significant emphasis given to decentralisation and issues of local governance, thus indicating the major concerns of voters.

UCPN-M clearly had greater financial resources at its disposal than did the other political parties. Indicators of this were helicopter use to participate in several campaign events and the mass campaign rally conducted from 6 to 13 November which moved across the country from east to west. It was the only party to engage in such a campaign activity. Both the CPN-UML and NC filed complaints with the ECN asserting that this event was in violation of the Code of Conduct, but the ECN dismissed the complaints.

In the absence of public campaign funding, candidates rely on their own financial resources. This is especially egregious for independent candidates and candidates from political parties with scarce financial resources as they lacked financial support from their party's central offices, compared to the main political parties which were able to offer more financial and material support to their candidates.

Campaign finance is loosely regulated. While spending limits were imposed, supervision extends only to the requirement that a statement of expenditure be submitted after the elections. A draft of the Code of Conduct 2013, however, had included provisions requiring political parties to disclose their sources of funding, and to ensure that campaign contributions in excess of 25,000 NPR were made through a bank. This opportunity to introduce greater transparency into campaign financing was not adopted.

The EU EOM has observed 366 campaign events across the country. The atmosphere in the campaign events observed was largely calm. Participation of women in these campaign activities was estimated to be extremely low at less than 10 per cent. Security forces presence during campaigning, while observed to be very low, created a deterrent effect against violence, indicating that the Integrated Election Security Plan was adequate to its purpose.

MEDIA

Media, in general, provided for a diverse platform for political parties to present their messages to voters. Although electoral coverage focused mainly on campaign activities by UCPN-M, CPN-UML and NC, the media made a significant effort to also provide coverage to minor parties. Radio and TV stations, both at national and local level, broadcast special programmes on elections involving candidates and parties representatives. Some national newspapers devoted space in their editions to analysis of political parties' manifestoes. A public debate organised by NDI-Nepal and the FNCCI, with representatives of nine political parties, was broadcast live by Nepal TV on 30 October 2013. No violations of freedom of expression were observed.

Media monitoring of 15 national media outlets¹ conducted by the EU EOM, from 19 October to 19 November, revealed a fairly balanced coverage by both public and private broadcasters and newspapers, with proportionate distribution of airtime and space among contestants. News and election related information was generally presented in a neutral tone. During the monitoring period,

¹ The sample included the state-owned media Radio Nepal, Nepal TV 1 and *Gorkhapatra* newspaper, as well as the private media Kantipur TV, Sagarmatha TV, Image TV, Kantipur FM, Ujyaalo FM, Nepal FM, Image FM, *Kantipur newspaper*, *Annapurna Post*, *Naya Patrika*, *The Himalayan Times* and *Nagarik*.

stated-owned Radio Nepal allocated 15 per cent of airtime in its news and election related programmes to UCPN-M, while NC received 13 per cent of coverage and CPN-UML 11 per cent. On Nepal TV 1, UCPN-M received 21 per cent of the total electoral coverage, while NC was allocated 19 per cent of airtime and CPN-UML 17 per cent. The public daily newspaper *Gorkhapatra* allocated 19 per cent of the space in its election related news to each of both UCPN-M and CPN-UML, while NC received 17 per cent of coverage. The 12 private media monitored by the EU also showed a significant degree of impartiality in their electoral coverage during the period referred, with the three main parties being widely and, in general, equitably represented in the news and election related programmes.

In accordance with provisions in the ECN Code of Conduct, free airtime was allocated to political parties in both national radio and TV in proportion to the number of candidates submitted to contest the PR seats. Only during the last week of campaign, this provision was implemented by the ECN resulting in 84 out of 122 political parties taking advantage of this facility on Radio Nepal and 62 on Nepal TV.

An official complaint was submitted by NC to the ECN against Filmy TV for violating the Code of Conduct through bias coverage. EU observers reported breaches of the Code of Conduct in Udayapur and Parbat districts carried out by private radio stations by broadcasting live coverage of campaign activities.

After several violations of the Code of Conduct and a breach of campaign silence, the ECN issued an order on 18 November to halt temporarily the transmission of ABC Channel TV station. ABC Channel, however, ignored the order and continued transmitting. ECN also issued warnings to Star FM and to fifteen different daily newspapers and weekly magazines for breaching campaign silence.

ELECTORAL JUSTICE

The Constituent Assembly Court, recently established on an *ad hoc* basis, has the jurisdiction to hear petitions to invalidate elections, void counts, and deal with electoral offences. The timeframes for submitting petitions challenging the validity of election results, as well as the period for the court to issue a decision, are reasonable, providing for a timely remedy for aggrieved parties. Regrettably, these petitions may be filed only by political parties and candidates, depriving the general public of the opportunity to challenge the qualifications of their possible representatives.

Election related matters have also been adjudicated on by the Supreme Court which has an extremely wide jurisdiction to deal with public interest litigation. Seven election-related cases were filed since the declaration of the date of the elections. Almost all of these cases sought to postpone the elections due, variously, to alleged violations of the rights of women, of persons with disabilities and of the diaspora, as well as the omission of negative voting rights, and the severity of accreditation requirements for domestic observers. None of these actions succeeded in achieving their aim of halting or changing the electoral process.

While the Code of Conduct for the Election conferred extensive monitoring and enforcement powers on the ECN and its officials, enforcement of the Code was almost entirely informal. Powers to sanction offenders are extensively detailed in the law, but few sanctions were imposed on those who violated the code, with an approach which has been mediatory in style adopted instead. The ECN recorded a total of 187 complaints in the period from 22 July to 17 November, with some action having been taken in 144 of these. The action taken in these cases generally attempted to restrain violations and sought undertakings of non-repetition. While the code has legal weight, moral pressure has been used to enforce it rather than punitive measures.

PARTICIPATION OF WOMEN AND MARGINALISED GROUPS

While the Interim Constitution 2007, and electoral law, repeatedly reiterate the goal of inclusion of women and traditionally marginalised groups, this is compulsory only for parties who nominate more than 100 candidates in the PR election. This rule, however, is inadequate to serve the purpose of

inclusion as one person may represent several minorities, and so the numbers eventually elected will not meet the inclusion goals.

There are 668 women amongst the 6,127 FPTP candidates as all of the main political parties have nominated fewer women than in 2008. While 50 per cent of reserved seats is apparently guaranteed in the Proportional Representation election, legal loopholes will reduce the figure below this level, as parties fielding less than 100 candidates are not bound to observe the mandatory quotas. In an attempt to ensure that 33 per cent of women in the Constituent Assembly is maintained, civil society has proposed that, where parties win an uneven number of seats, the “odd” seat should be allocated to a woman. Women have been observed in extremely low numbers amongst officials within all levels of the ECN. This was apparent also on election day when just 11 per cent of polling officers (presiding officers) and 21 per cent of assistant polling officers encountered by EU observers were women.

DOMESTIC OBSERVERS

In total, 54 national organisations accredited by the ECN deployed 23,443 domestic observers. The presence of a significant number of domestic observer groups during election day added to the transparency of the process. ECN has shown flexibility by reviewing the accreditation rules for domestic observers and by loosening requirements considered to reduce their capacity to deploy observers throughout the country.

POLLING AND CLOSING

The conduct of voting operations was positively assessed in 94 per cent of the polling stations observed by the EU EOM. Of the polling stations observed, most opened on time or with a delay of less than one hour. Voting was conducted in an orderly and generally calm atmosphere. Political party representatives were present in 96 per cent of the polling stations observed while at least one national observer was present in 64 per cent of these stations. A few instances of political party representatives acting in excess of their mandate were, however, observed. Polling procedures were followed consistently in the polling stations visited by EU observers and the performance of polling staff was mostly assessed to be good. The integrity of the vote was sufficiently protected in 97 per cent of the polling stations observed as efficient processing of voters and appropriate use of controls and safeguards were implemented. EU observers assessed, therefore the overall operation to have been well conducted. Closing was assessed positively in 43 out of 46 polling stations observed.

An electronic version of this Statement is available on the Mission website www.eueom.eu/nepal2013.

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