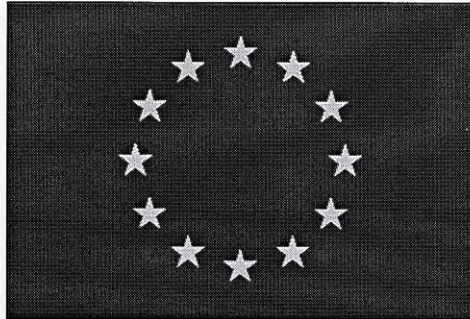


EDITED



Nepal

FINAL REPORT

**Constituent Assembly Election
10 April 2008**

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**EUROPEAN UNION
ELECTION OBSERVATION MISSION**

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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 on 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.