

UNMIN Election Report No 1, 22 March 2008

This report has been prepared by the United Nations Mission in Nepal (UNMIN), in conjunction with the Office of the High Commissioner for Human Rights (OHCHR) in Nepal. The United Nations was requested to assist in creating a free and fair atmosphere for the election of a Constituent Assembly, including through UNMIN's monitoring of the ceasefire and the management of arms and armies and OHCHR's human rights monitoring.

Conditions for Constituent Assembly election on 10 April 2008

Nepal is today better positioned than at any time since the signing of the Comprehensive Peace Agreement (CPA) in November 2006 to hold a credible Constituent Assembly election, a critical milestone in the peace process. Significant political hurdles that had seriously threatened to derail the process have been overcome, although not entirely removed.

The signing of the 28 February agreement between the Interim Government and the United Democratic Madhesi Front (UDMF) and the 1 March agreement with the Federal Republican National Front (FRNF) significantly transformed the electoral climate. Nomination of candidates has been completed and the code of conduct has come into effect. Political parties are campaigning, and the entire country is now in an election mode. This is no small achievement. Nevertheless, this positive movement toward an election has brought new challenges and difficulties, which need to be addressed promptly. These include violence by groups opposed to the election, serious violations of the electoral code of conduct and of human rights, and the need to maintain full respect of obligations regarding arms and armies.

1. Violence by groups opposed to the election

The overall security situation, particularly in the Terai, improved markedly immediately after the signing of the UDMF and FRNF agreements. However, in the past two weeks the activities of forces opposed to these agreements, particularly the armed groups, has intensified. There has been an upsurge of killings, violence, intimidation against candidates and voters and threats to disrupt the electoral process. On 29 February the Janatantrik Madhesi Mukti Morcha, Jwala Singh faction (JTMM-JS) issued a statement outlining a series of actions it said it plans to carry out to disrupt the election, and on 13 March four other armed groups issued a statement making similar threats: both statements threatened physical action against candidates and others engaged in the election. Other armed groups have expressed willingness to engage in dialogue with the Government.

Numerous reports have been received of candidates being pressured to withdraw their nominations. A candidate of the Janamorcha party was reportedly abducted by an armed group in Kapilvastu on 7 March, and when released after three days stated that they had pressed him to withdraw his candidacy. Several candidates have reported receiving death threats over the telephone and candidates' houses and party offices have been targeted with improvised explosive devices (IEDs). On 18 March, Kamal Adhikari, the Rastriya Janamorcha candidate for Banke-2 constituency was assassinated: the JTMM-JS was the first group to claim responsibility, but there have also been other claims or attributions of responsibility. On 19 March, Ashok Kumar Yadav, a candidate of the Communist Party of Nepal - Unified Marxist-Leninist (UML) was stabbed in Saptari-2 constituency, allegedly by the Akhil Tarai Mukti Morcha (formerly JTMM-Goit). A number of armed groups took responsibility for the detonation of IEDs at or near government, party and media offices, and the residences of candidates and government officials. Such explosions have been particularly prevalent in the eastern Terai. The situation risks becoming increasingly volatile.

2. Violations of the electoral code of conduct and of human rights

The electoral campaign is increasingly taking a violent turn, with daily reports of clashes between party supporters, use of other forms of violence, intimidation and threats. There is a marked gulf of distrust and hostility among political parties. There have been two campaign-related deaths. In addition to the killing of the Rastriya Janamorchha candidate, at least nine members of the Communist Party of Nepal-Maoist (CPN-M) were injured in Arghakhanchi District on 23 February when local villagers reportedly led by UML members beat them after a campaign event: one of the injured CPN-M members died the following day. It is unclear at the time of this report whether the killings of two CPN-M cadres in Rolpa on 19 March were related in any way to the election or not.

There is growing evidence of action by CPN-M cadres, including members of the Young Communist League (YCL), to restrict in various ways freedom of assembly of other parties in different areas of Darchula, Dhankuta, Sindhupalchowk, Chitwan, Bardiya, Baitadi, Lalitpur, Okhaldunga, Gorkha, Kaski, Kalikot, Dhading, Salyan, among others. This has often entailed the use of violence or threat of violence. A repeated warning from CPN-M cadres has been that other parties should not campaign in its “base areas”. Voters have been told that the CPN-M will know how they vote and will take action against those who cast their ballot for other parties.

In one of the most serious incidents, 19 UML members including a local UML candidate were reported injured in an attack by CPN-M cadres in Ramechhap district on 12 March, after they had carried out an electoral campaign programme. OHCHR visited the area of the incident and corroborated reports that the attack was pre-planned. The community was found to be in a state of fear and intimidated by the YCL, and OHCHR was told by multiple sources that students as young as twelve had been taken out of school and enlisted by the YCL. The pattern of these incidents has raised serious questions about whether the CPN-M, or significant parts of it, are willing to engage in a genuinely free and fair democratic process.

There have also been allegations of election-related incidents of violence and intimidation committed by other political parties. On 25 February a CPN-M member was shot in Bardiya district by six persons alleged to be members of the Madhesi People’s Rights Forum (MPRF) who reportedly wanted him to join the MPRF. Other more recent incidents which are under investigation by OHCHR include the abduction on 13 March of a Nepali Congress (NC) candidate by supporters of an independent (former NC) candidate in Surkhet, and an alleged attack on 17 March by MPRF supporters on NC members who were returning from electoral activity in Sunsari: eleven of those attacked received medical treatment.

Other reports continue to be received that children are involved in campaign activities that sometimes put their physical safety at risk. Representatives of youth wings of major political parties have indicated that they plan to deploy large numbers of young people “to provide security” at polling stations on election day. Although the stated reasons for the planned use of volunteers are non-violent and are claimed to be to facilitate the process, the presence near polling stations of organised youth belonging to competing parties would carry a considerable risk of violence. Widespread concern about booth-capturing and fear of violence on election day, and after if results are disputed, have been expressed by police, party activists and members of the local population alike, especially in the more remote areas. This “fear factor” could affect voter turnout.

There have been a number of credible complaints of the misuse of state resources by candidates of governing parties. Accusations range from partisan use of individual ministries, to interference in police recruitment and use of government vehicles for campaigning and similar activities.

The media continues to enjoy a high degree of freedom which is essential for providing the public with balanced and timely information about the political campaign. However there have been cases where UNMIN

and OHCHR have investigated incidents on the basis of media reports and found reports to be erroneous. It is important that the highest standards of accuracy and political neutrality should be upheld to contribute to the public's understanding of the political environment.

3. Monitoring of arms and armies

A fundamental principle of the 12-Point Understanding and the CPA is that the Maoist army and the Nepalese Army would remain restricted to cantonments and barracks respectively while the Constituent Assembly election would be held in an environment free of fear. The CPA stipulates (Art.6.4) that the armies of both sides will not be allowed to publicize for or against any party and to take sides, but shall not be deprived of their voting rights.

UNMIN has drawn to the attention of the leadership of the CPN-M that it is inconsistent with this principle that a number of commanders and members of the Maoist army have been nominated and are campaigning as candidates for election without having been discharged from the Maoist army.

The Agreement on Monitoring the Management of Arms and Armies (AMMAA) provides that no more than 12 per cent of the total retained force at a given cantonment or barracks will be on authorized leave at any given time unless mutually agreed by the parties. However UNMIN strongly recommended to the Government and the Maoist leadership that leave should not be granted to members of either army during the election period except in family, medical or other emergencies. The Joint Monitoring Coordination Committee (JMCC) has been informed that the Nepalese Army has suspended leave for all ranks except in emergencies from 20 March, and that Maoist Chairman Prachanda has also ordered that no leave be granted for Maoist army personnel except in emergencies and that personnel already on leave should return to cantonments. UNMIN welcomes these decisions. However, before the order to Maoist army commanders was given, significant numbers of Maoist army personnel were already on leave, and UNMIN believes that in some cases this has exceeded the 12 per cent maximum and combatants have engaged in political campaigning. UNMIN will monitor closely compliance with the order for Maoist army personnel to return to and remain within cantonments, including by observing head counts at all cantonments.

An understanding on security arrangements for the Maoist leadership agreed between the Government and the CPN-M permits the retention of a specified number and type of weapons for security at the residence of the Chairman and for 25 central members of the CPN-M, some of whom are election candidates. The understanding states that the weapons are to be used solely for self-defence and are not to be publicly displayed.

Activities by the Nepalese Army permitted under the CPA and the AMMAA include provision of border security as directed by the Government and provision of security of vital installations. Troop and air movements and exercises have to be notified to the JMCC at least 48 hours in advance. The Nepalese Army has informed the JMCC that it has deployed troops to 50 locations including airports and customs offices, but that it received orders from the Government too late to give 48 hours advance notice.

As requested, UNMIN will continue to monitor the compliance of both armies with the AMMAA during the election period and beyond.

4. Recommendations

- Armed groups should seek political accommodation through dialogue and refrain from violence and intimidation or other activities against the election. The Government should persist in efforts to initiate dialogue towards such political accommodation.

- All political parties should abide strictly by the election code of conduct and respect for human rights of competing parties and voters. It is in their interest to ensure the integrity and fairness of the election, as any “victory” in a seriously flawed election would not command legitimacy.
- The CPN-M must end the practice of preventing other parties from campaigning in areas where it is strong or which it considers its natural political territory.
- Intimidation and pressure on voters to vote for or against a party should cease. Political parties should cooperate in arrangements for polling day which avoid any perception of intimidation.
- All political parties should publicly and unequivocally recommit themselves to abide by the outcome of the election. This is a fundamental tenet of a democratic process.
- Candidates should scrupulously avoid any misuse of state resources. All state actors should remain neutral and fulfil their duties with professionalism, particularly the Nepal Police and local officials.
- All media should strive to maintain the highest standards of accuracy and political neutrality.