

## OHCHR-Nepal

### Constituent Assembly Elections of 10 April 2008: Summary of Human Rights Monitoring

#### Introduction

OHCHR monitored the human rights aspects of the Constituent Assembly election in Nepal, including the environment prior to, during and after polling day, with a view to assessing whether the rights of everyone involved in the election process were respected. The high voter turnout, including the 53 per cent participation of women and the largely peaceful environment in which the election was conducted are important achievements. They mark crucial steps forward in the country's transition from conflict to peace.

OHCHR wishes to congratulate all concerned on the election of a Constituent Assembly whose members more accurately represent the diverse population of Nepal. Like many Nepalis, OHCHR is hopeful that the Constituent Assembly will have a positive long-term impact on the human rights of all people living in Nepal. As stated by the United Nations High Commissioner for Human Rights Louise Arbour shortly after the election, "Elections for a Constituent Assembly that will be responsible for drafting a new constitution are a major stride towards a new future in Nepal in which the rights of all people – including historically marginalized communities – are respected."<sup>1</sup>

In the majority of districts monitored by OHCHR, the election was conducted in a calm and orderly manner. In particular, OHCHR observed that the Election Commission and its staff made commendable efforts to ensure a peaceful and credible election process. The majority of candidates demonstrated political maturity despite the difficult circumstances in which they were forced to campaign. Nevertheless, some candidates and party supporters used threats and intimidation to influence the outcome of the election process. There was also some violence resulting in 10 deaths during the week preceding the election and another 4 on polling day. In a number of instances, polling staff failed to prevent or to report threats, intimidation and other electoral irregularities. Their inaction, however, can be attributed in large measure to genuine fears for their personal safety. Although the police generally played a positive, supportive role on election day in providing security for polling stations, they were not always able to respond effectively to the electoral irregularities and the few episodes of violence that occurred.

OHCHR remains concerned about the episodes of intimidation and violence it observed/it has been informed of that took place during the election process and recommends that the State swiftly and thoroughly investigates the more serious instances of human rights violations documented in this report.

#### Nature of OHCHR's monitoring

In the run-up to the election, OHCHR focused mainly on monitoring the exercise of political rights, particularly the rights to association, peaceful assembly, freedom of movement and expression. Serious allegations of human rights violations were investigated.

On polling day, OHCHR focused on monitoring freedom of access to the polling stations and the environment within the polling centres. This included monitoring violence or disturbances, the threatening presence of individuals or groups in the vicinity of polling stations or along the access routes to polling stations, intimidation of voters or electoral staff, the presence of unauthorised persons inside or close to the voting area of polling stations, inappropriate activities by police, and attempts to disrupt the polling process by political parties or other pressure groups. OHCHR also monitored the participation of

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<sup>1</sup> OHCHR-Nepal Press Release, "Arbour Welcomes Nepal's Constituent Assembly Elections" (11 April 2008).

women to see that they could participate freely without obstacles, including without pressure to vote for specific candidates.

While maintaining its primary focus on the duty of the State to respect and to protect the rights of the population, OHCHR also monitored the respect by non-State actors, including political parties, of the rights of others. OHCHR is continuing investigations into specific incidents of violence that took place over the electoral period.

### **Period covered by this report**

During the campaign period, three reports were issued by UNMIN in conjunction with OHCHR (the last on 6 April) that provided an assessment of the electoral environment and included reports of election-related violence, violations of the electoral code of conduct and of human rights. This report covers the last few days of the electoral campaign, the two-day cooling-off period that preceded polling day, polling day itself and the first few days after polling, which include the initial phases of the counting process.

### **OHCHR's deployment**

During the campaign period, OHCHR carried out its monitoring and investigation activities from its offices in the five regions located at Biratnagar, Kathmandu, Pokhara, Nepalgunj and Dhangadhi and from its sub-regional office located in Janakpur.

Four days before polling, some twenty-five teams of human rights officers were deployed to the districts where OHCHR had previously assessed that there were most likely to be problems, either because of their location (for example, in the Terai) or because there was a strong contest between rival political parties and thus the possibility of violence, or because one party was dominant in the area and thus likely to put pressure on voters. During polling day, human rights officers were present in 35 of Nepal's 75 districts. OHCHR teams covered about 200 of the almost 21,000 polling stations. This deployment was coordinated with UNMIN's Office of Civil Affairs which deployed nearly fifty teams to a similar number of districts, also giving priority to those believed to be most prone to incidents of violence and abuse.

Prior to deployment, OHCHR coordinated closely with UNMIN, the National Human Rights Commission (NHRC) and national and international observer organizations to ensure that as much of the country as possible would be covered. Information was also shared during polling day. However, given Nepal's terrain and the inaccessibility of much of the country, there were many polling stations where the elections took place without the presence of international or national observer organizations<sup>2</sup>.

### **Overall assessment**

The last days of the election campaign followed patterns similar to those of previous weeks<sup>3</sup>. As campaign activities of political parties and candidates intensified, the number of incidents of violence reported also increased. Still, many campaign activities were carried out peacefully. However, in some constituencies, rights to freedom of assembly, movement and expression were restricted on account of intimidation or violence. The serious incidents that took place during the two days preceding the election risked undermining the whole electoral process. This did not happen, due to the restraint shown by the affected parties.

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<sup>2</sup> Although it was expected that domestic monitors would have a continuous presence at all polling stations, international observer organizations recorded a presence of domestic observers only in 80% of the polling stations visited by them

<sup>3</sup> Described in the three pre-election reports released by UNMIN in conjunction with OHCHR

On polling day, patterns of intimidation and electoral fraud, sometimes leading to clashes between political parties, were observed in several districts of the central and western hills as well as in the eastern and central Terai. Four people were killed on polling day in separate incidents.

### **The end of electoral campaign and the cooling-off period preceding polling day**

In many districts, OHCHR was informed/or observed that campaigning proceeded in a relatively peaceful manner, and there were reports of instances in which political parties settled their differences through discussion and mediation. At the same time, however, there was an increase in reports of short-term abductions (particularly by the CPN-M), and violent clashes between rival political party supporters, as well as threats and intimidation by members of several political parties and armed groups against candidates and party workers.

While campaign activities officially ceased on 8 April as required by the election code of conduct, the so-called “cooling off” period was marred by perhaps the most serious human rights incidents of the whole pre-electoral period (see below).

#### *Killings*

During the week prior to the election, at least 10 individuals were reported killed in three separate incidents<sup>4</sup>. Following is a brief summary of the circumstances of these killings:

- In Dhankuta on 6 April, a Rastriya Janshakti Party (RJP) candidate who had been abducted from his home the previous evening by masked intruders was found dead. The RJP accused the CPN-M. The following day, police arrested two CPN-M cadres suspected of involvement. According to the police, the death resulted from excessive bleeding due to injuries caused by a sharp object.
- In Dang on 8 April, seven CPN-M cadres were killed and 12 were injured when APF and NP personnel escorting an NC candidate fired at CPN-M vehicles in Lamahi VDC. OHCHR found no evidence to support claims by the APF and NP that they opened fire in response to firing by CPN-M members. No firearms were reportedly found in the CPN-M vehicles and no-one in the NC candidate’s entourage was injured. OHCHR called for an independent investigation into this incident as the information gathered so far indicates that the killing of the seven may amount to extra-judicial execution by the police.
- Two people were killed in Surkhet on 8 and 9 April. On 8 April, a UML candidate was killed by an NC-affiliated youth group when a vehicle in which he was traveling was ambushed. On 9 April, during a protest against the killing, a YCL cadre was shot and killed by NP. An investigation by OHCHR concluded that the police had used excessive force to control the crowd. In this regard, OHCHR welcomes the recent announcement by the State that investigations will be conducted into the circumstances surrounding the killings in Surkhet as well as Dang.

#### *Abductions and assaults*

There was an increase in the number of alleged abductions in the days preceding the election. Between 6 and 9 April, OHCHR received 28 reports of election-related abductions; in 22 of these cases, CPN-M cadres allegedly abducted supporters of other political parties, particularly the NC and UML, whom they often accused of vote-buying or other electoral malpractices<sup>5</sup>. Most abductions were short-term; in some instances, the CPN-M handed the abductees over to the police, claiming that these were citizens’ arrests

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<sup>4</sup> In total, OHCHR has received reports of 21 deaths occurring between 7 March and 9 April, during incidents that have at least an apparent relation to the electoral process. Two of the deceased were election candidates (respectively for RJP and UML), and 12 were CPN-M cadres. Eleven of the 21 were shot and killed by police.

<sup>5</sup> Compared to 40 cases of election-related abductions by the CPN-M in the four preceding weeks and 4 by other party members.

as the abductees had been caught carrying out violations of the code of conduct. However, in a minority of cases, abductees were detained overnight for political reasons. OHCHR was concerned to find that no action was taken by the police against CPN-M cadres in any of the abductions reported to OHCHR, even in those cases in which First Investigation Reports were subsequently filed by the victims. Four of the 28 abductions were carried out by armed groups, who targeted party supporters, candidates, and election officers.

A number of incidents involving assaults on party workers and candidates were reported to OHCHR. In some instances there was evidence of the use of firearms:

- On 6 April, CPN-M cadres with *lathis* allegedly attacked NC cadres who were campaigning in Sindhuli, resulting in injuries to 17 NC cadres and one CPN-M cadre. In Baglung, UML cadres attacked a group of six NC supporters while they were sleeping, injuring five of them and, in Kailali, a UML cadre was abducted for three hours after a confrontation with 50 CPN-M cadres during a door to door campaign.
- On 7 April, CPN-M cadres reportedly assaulted 11 NC members in Dadeldhura who were campaigning at the VDC level. Five required hospital treatment, including for head injuries inflicted by *lathis* and metal rods.
- On 8 April, a clash took place between groups of CPN-M and NC supporters in Lamahi VDC of Dang district; supporters on both sides suffered *lathi* and *khukuri* injuries. In Dhading, the CPN-M abducted two NC cadres, including a female PR candidate. While the candidate was released the following day, the other person remained in CPN-M control.
- On 9 April, CPN-M and Janamorcha cadres attacked an NC cadre in Chitwan, hitting him three times on the head with a *khukuri* as a result of which he was hospitalized. In Syangja, a CPN-M cadre was allegedly shot and injured by an APF patrol. The circumstances surrounding the shooting have yet to be determined. In Kailali, YCL members physically assaulted two UML supporters who then went into hiding. Although the two have since returned home, they continue to receive threats from the YCL. Finally, in Surkhet, in the aftermath of the killing of a UML candidate, YCL cadres attacked three NC supporters, one of whom sustained serious head injuries.

#### *Improvised Explosive Devices (IEDs)*

IED explosions continued to take place in the eastern and central Terai. In Rautahat and Saptari between 9 and 10 April there were a number of explosions in the night and early morning. So far, it has been impossible for OHCHR to verify the exact number and whether they were targeted or not and, as no group claimed responsibility, the motive for the explosions remains unclear. In the case of Rautahat, villagers reported to OHCHR that three to five people were killed in an explosion, but the police and district authorities have denied that there were any casualties and no other evidence has been presented that would confirm the report.

During the week preceding the election, multiple IEDs also exploded in several other districts, such as Morang and Sunsari. Small IEDs exploded at a polling station in Saptari and near a candidate's house in Siraha. On 7 April a *sutali* bomb containing nails and glass splinters exploded in Birgunj, Parsa during an NC rally, injuring 13 individuals including one 12-year-old girl. Several armed groups claimed responsibility for the incident.

### *Threats and intimidation*

In addition to reports of physical assaults and other acts of violence, there were numerous examples of intimidation directed at candidates, party workers, and supporters. These included the destruction of party campaign material, vandalism of party offices, and visits to residences. There were continuing reports of intimidation of voters, and the CPN-M was accused of claiming that it had devices that could see who people voted for and would 'take action' against those who did not vote for the CPN-M. In some constituencies identified as CPN-M strongholds, which were often constituencies where the conflict had had a considerable impact on the local population, some villagers told OHCHR that they would vote for the CPN-M to avoid any possibility of a return to conflict.

Threats and intimidation were reported virtually every day in the eastern and central Terai, where armed groups issued several threatening statements that were normally followed by more targeted threats (for example through telephone calls) to candidates, journalists or election workers, but also to citizens as potential voters. For example, in Bara, OHCHR collected several reports that locals were intimidated by members of armed groups, who threatened to take 'physical action' against anyone who went to vote.

In most cases, reports of intimidation of the media were linked to threats by armed groups in the Terai. Of other cases reported, on 8 April OHCHR was informed that the CPN-M had seized all copies of a newspaper as well as printing equipment in Sindupalchowk the previous day.

### *Intimidation and violence against electoral staff and election observers*

Some cases of violence and intimidation targeting election officials, voter education volunteers or election monitors were reported. These included the alleged abduction of polling officers in Mahottari on 7 April and Dhanusa on 8 April, although the latter has yet to be verified. A voter education volunteer also went missing from Saptari on 7 April. It is suspected that armed groups are responsible for these incidents.

In the hill district of Ilam, on 9 April, a Kirat-Limbuwan group abducted four election workers, one of whom escaped while the remaining three were released the following day shortly after the closing of polls. In Kaski, a domestic observer organization claimed that two of their members were beaten and chased away by CPN-M cadres on 9 April when they arrived at the location where a local all-party meeting was being held.

### **Election-day and the period immediately following polling**

Despite pre-election violence and the tense atmosphere on the eve of the election, voting on polling day generally proceeded in a peaceful and orderly manner. The EC indicated that voter turnout was just over 63 per cent. Reports from all regions indicated that there was a high turnout of women. While the EC has not released figures indicating the percentage of female voters, international observer organizations that recorded female turnout at more than 500 polling stations indicated that women constituted approximately 53 per cent of the total voters.

However, whilst the general atmosphere was positive, OHCHR witnessed several cases of violence, intimidation and fraud, which were addressed on the spot with the relevant officials. These included intimidation of voters and polling staff in some hill areas dominated by the CPN-M, and in parts of the eastern and central Terai dominated by other parties, particularly the NC and MPRF. Some violent incidents occurred and were investigated by OHCHR, including the deaths of four persons in separate incidents.

## *Killings*

Four people are reported to have died on polling day in election-related incidents:

- In Sunsari, a man died at Dharan hospital after receiving a blow to the back of the head during a conflict between MPRF and NC cadres on the morning of election day.
- In Mahottari, shots were allegedly fired from the vehicles of an NC candidate as they approached a polling station, and while the candidate went in to complain of reported irregularities. Police subsequently rescued the candidate from an angry crowd after one of his vehicles ran over and killed a man as they tried to leave the area.
- The circumstances of the fatal shooting of an independent candidate in Sarlahi, remain unclear and OHCHR is continuing investigations
- A UML cadre was killed in Kaski by unknown assailants. The postmortem gave the cause of death as a head injury caused by repeated blows with a blunt instrument. UML accused the CPN-M of responsibility for the killing, which the CPN-M denies.

## *Assaults*

Although less numerous than was feared, several allegations of assault were reported to OHCHR during polling day, including the following:

- In Siraha an NC cadre, son of the NC candidate in the constituency, is reported by eye-witnesses to have seized a rifle from a Nepal Police officer following a dispute over alleged vote-rigging and opened fire indiscriminately, injuring a UML polling official and a voter. The NP maintains that the injuries occurred during a confrontation between the police and an armed group. The police have initiated an investigation into the shooting.
- In Baglung, at least three persons sustained serious injuries in clashes between Rastriya Janamorcha cadres and members of other political parties.
- A Dalit Janajati Party candidate in Sarlahi received 15 stitches to the mouth and had visible marks on his back after higher caste Terai-Madhesh Democratic Party supporters beat him with *lathis*, reportedly after he complained about irregularities at a polling station.

## *Intimidation and election fraud*

One of the most common concerns in the lead up to the election was the fear of “booth capturing” and other forms of election fraud. OHCHR monitoring of hill districts such as Ramechhap, Gorkha, Rolpa and Arghakanchi indicated that the CPN-M dominated several polling stations, and was often able to prevent voters from exercising their right to freely cast their votes. Not only did the CPN-M prevent voters from accessing polling stations but, in a few extreme cases witnessed by OHCHR, the CPN-M appeared to be in full control of remote polling stations. OHCHR teams observed CPN-M cadres accompanying voters to the voting screens and even physically stamping the ballots instead of the voters. In these cases, polling staff were unable to intervene to prevent such irregularities.

For example, on 10 April, an OHCHR team in Ramechhap received a report that a group of CPN-M cadres with *lathis* intended to enter a polling station and capture the booth. When OHCHR arrived on site, it observed approximately 25 CPN-M cadres sitting outside the polling station and eight inside, one of whom was armed with a *lathi*. OHCHR was informed that the CPN-M cadres discarded the *lathis* and abandoned their plans upon becoming aware of OHCHR’s presence. On 11 April, the team investigated the incident and found that the CPN-M seized control of a booth on voting day and issued instructions to election volunteers and Election Commission officials. According to testimonies obtained, the CPN-M threatened to shoot election workers and volunteers who did not obey their orders. This incident, as well as similar occurrences in other hill districts reported to OHCHR, was not reported to the Election Commission. In some cases, OHCHR was informed that this was due to fear of the possible

consequences. As no international observers were deployed out of the district capital and domestic observers also appeared to be intimidated, OHCHR was unable to determine how widespread such occurrences may have been.

In the eastern and central Terai, armed groups intimidated voters at some polling stations. In Saptari, none of the voters registered in one of the two polling stations at Trikol VDC, home of an armed group leader, showed up to vote. It was also noted that the polling station was full of menacing graffiti<sup>6</sup>.

More often, acts of intimidation and vote-rigging by representatives of the dominant political parties in the eastern and central Terai were observed, such as the NC and some of the Madheshi parties. In Chhinemasta VDC, Saptari, an OHCHR team observed cadres of one of the Madheshi parties (NSP) pre-marking ballots at a polling station and subsequently met the NSP candidate, who acknowledged the fraud, which he justified on the ground that everyone in the VDC supported him and the cadres were simply attempting to make the process easier. National observer organizations reported similar incidents in other polling stations in Saptari. Interviews, including with members of political parties and with local authorities, suggest that a deal was struck among various political parties, with at least tacit support from the local administration, allowing the parties to split the vote through the use of vote-rigging and ballot box stuffing.

In various Terai districts<sup>7</sup>, OHCHR teams witnessed cases of election fraud that included vote rigging, proxy voting, underage voting and multiple voting. OHCHR also witnessed voters stamping their ballots in a group, party agents standing next to the booth and indicating to voters where to mark the ballot paper, polling staff not marking the fingers with ink and several other irregularities. Polling staff in Parsa, Rautahat and Dhanusa admitted irregularities to OHCHR but confided their fear of repercussions from those involved if they tried to intervene or complain. One polling officer in Rautahat admitted to OHCHR that there had been extremely serious cases of fraud at his polling station, but stated that any action to suspend the poll would put him at personal risk. On some occasions in Mahottari and Bara, the police resorted to firing into the air to stop fights among political party members over irregularities.

One serious limitation to the integrity of the polling process related to the absence of standard procedures for voter identification. As voters are not required to present identification documents, it was difficult for polling staff to prevent or put a stop to proxy voting (particularly, but not only, family voting), underage voting, and multiple voting. In turn, these irregularities, in particular, accusations of multiple voting, led to sometimes violent conflict between the various parties at polling stations.

### *Children*

On several occasions, OHCHR observed children queuing in line to vote and actually casting votes. Of less significance, frequently children were part of small groups of volunteers located at the entrance of polling stations and were tasked with providing voters with a small piece of paper containing a voting registration number.

### *Counting process and post-election violence*

OHCHR teams observed that the counting process was carried out in a largely peaceful manner, with all parties demonstrating a great sense of decorum. The prompt and peaceful acceptance by most political leaders of the final results is highly commendable, and it is hoped that the restraint they have shown will contribute to creating the climate of cooperation and mutual respect that is essential for the first, crucial phases of the formation of a new government and the Constituent Assembly.

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<sup>6</sup> Graffiti included: “Anyone who participates in the election will be taken” and “All Pahadis are pigs and should leave the Terai”

<sup>7</sup> Irregularities cited were witnessed primarily in nine districts, from Parsa in the west to Sunsari in the east.

In spite of the generally positive post-election environment, tension remained high in specific areas for several days. Some of the incidents noted by OHCHR include:

- On 12 April, three NC supporters were allegedly attacked in Gorkha, by CPN-M members between 11 and 12 April. In Baglung, several villagers were reportedly displaced following clashes between supporters of RJP and other parties on 11 and 12 April.
- On 13 April, 12 people received minor injuries in Mahottari, when the police used *lathis* to stop a dispute between CPN-M and MPRF supporters over counting.
- On 14 April, Finance Minister Ramsharan Mahat, an elected NC candidate, was lightly injured in Nuwakot when a group of 25 CPN-M supporters attacked him and his supporters as they were returning to Kathmandu from a victory rally. In Bajura, several incidents indicating post-election tensions and violence were reported to OHCHR, including several physical assaults of UML members by NC members/supporters, one of which resulted in a head injury necessitating hospital treatment. Four UML members also reportedly received minor head injuries after having stones pelted at them by NC supporters during victory rallies on 14 April.
- On 15 April, five UML members were beaten by a large group of CPN-M cadres in Bajhang.

### *Re-polling*

At the end of election day, the Election Commission indicated that they had preliminary information that polling was cancelled in 33 polling stations. During the following days, this number increased to 106 polling stations in 23 constituencies, approximately the same as during the 1999 election but a smaller proportion of the total due to a reduction in polling stations. While the main cause for re-polling appeared to be violence or intimidation at the polling stations, a certain number of cancellations were due to evidence of electoral fraud. In some locations re-polling took place without incidents, while in one case (in Arghakanchi on 16 April) the polling exercise was disrupted for a second time.

### **Conclusion**

The Constituent Assembly election process is a significant step forward for human rights in Nepal and in the peace process. It constitutes an unprecedented development in the political participation of women. Thirty three percent of the 575 elected members are women, which puts Nepal in 14th place in terms of women's representation in national elected assemblies. Moreover, marginalized groups are better represented in the new Constituent Assembly than in any previous legislative body. The Constituent Assembly is therefore more reflective of the rich diversity of Nepal's population.

OHCHR-Nepal has no mandate to assess the free and fair character of the elections but welcomes the conclusions of the United Nations Electoral Expert Monitoring Team that these elections were credible.

However, OHCHR-Nepal considers that the numerous human rights violations and/or abuses, some of them serious, committed in the context of the elections, should be addressed by the Government irrespectively of the overall success of the elections. Accountability for those who commit crimes is essential to combat impunity in Nepal and to foster a democratic environment that fully respects human rights.