

# NEPAL'S ELECTION AND BEYOND

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## NEPAL'S ELECTION AND BEYOND

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

Nepal's peace process faces a crucial test this month. Elections for a Constituent Assembly (CA) are likely to go ahead on 10 April 2008 as scheduled but political unrest and violence could mar – or even derail – preparations, and the aftermath could bring turbulence. Elections in a delicate post-conflict situation are never straightforward and Nepal has many possible flashpoints, not least that the two armies that fought the war remain intact, politically uncompromising and combat-ready. Once results are in, all political players must be prepared for a difficult period in which they will need to compromise to make the CA an effective body, extend the number of parties with a role in government and urgently tackle crucial issues left aside during the campaign, including security sector reform. The international community has an important election observation function and should listen to Nepal's political and civil society groups in assessing the credibility of the process.

Successful elections for a CA charged with writing a new constitution and serving as an interim legislature would be a major step forward. It would be a psychological and concrete achievement for the political leadership after two failed attempts that would vindicate the sometimes controversial concessions made to recalcitrant groups, which made the peace process possible. It would also be welcomed by the international community. India wants a successful conclusion to the roadmap it was closely involved in designing, while credible elections would open the way to a significant scaling back of the UN role. Although underlying issues remain, holding the polls would signal the short-term success of the recent deals with protesting groups.

There are many positive signs. All parties moved quickly into campaign mode, nominating candidates and launching programs to attract voters. A vibrant media reporting news and offering critical scrutiny is narrowing the deficit in public awareness of the electoral system and party positions. Given the momentum, it would be hard for any major party to back out of the elections, although some, including the Maoists, are still wary of the process.

Nevertheless, major challenges remain. The campaign has been dogged by violence and intimidation. While the Maoists appear to have been responsible for most assaults on rival candidates, they have had eight of their party workers killed – a fact which the mainstream media has chosen to downplay. Public security has been dismal throughout the ceasefire, and armed groups in the lowlands have carried out killings, bombings and abductions and threatened further violence. The considerable technical challenges of holding an election have been exacerbated by a complex, nearly opaque parallel electoral system that involves three separate means of selecting members of the CA. The widely respected Election Commission, charged with managing all aspects of the exercise, has no experience of logistics. In previous elections, those, along with back-up security, were managed by the army, which the peace agreement has now largely confined to barracks.

The post-poll period will likely be difficult and dangerous. Under the best of circumstances, it will probably take three weeks to determine final results. Significant repolling is expected to be required in areas where there was violence or disruption on election day – adding weeks more to the schedule. There will certainly be appeals from losing parties, and public frustration at the delay in learning results may add to a tense atmosphere. Parties will trade allegations of fraud and violence. The behaviour of powerful losers will shape the immediate aftermath. Some, in particular the Maoists, may even be tempted to reject the entire election: the best possible results for them will not reflect their actual power on the ground (exercised through continuing parallel structures). Royalists cannot hope to gain enough seats to block the move towards a republic.

If the major political forces accept the results and move forward without severe confrontation and acrimony, the transition will be manageable. However, each step will present obstacles that demand maturity and cooperation from party leaders. The formation of a new unity government – which will need to include members beyond the current seven-party coalition – will prompt much haggling. The convening of the CA, whose first sitting must take place within three weeks of final poll

results and which is set to discard the monarchy, will be even more problematic. Transitional arrangements are only vaguely covered by the Interim Constitution; how they work out in practice will depend on political compromise. Yet, the CA will have to deal with tough issues, including the drafting of the constitution and addressing security sector reform, federalism, the role of the monarchy, secularism and inclusiveness.

While attention has focused on the elections, there has been no progress on the fundamentals of the peace process. Many critical agreements have not been implemented, inter-party consensus and mutual trust are fragile, and the military ceasefire, which has held since April 2006, has yet to be transformed into structures for a sustainable peace. Public aspirations for peace and socio-economic reform remain high but are matched by scepticism towards political leaders. This is the best chance for politicians to redeem themselves.

## RECOMMENDATIONS

### To the Government of Nepal:

1. Improve security so as to ensure an environment conducive to free and fair elections on 10 April 2008 by:
  - (a) providing solid guidance and political support to the Nepal Police and Armed Police Force, and training and deploying temporary police, ensuring they are non-partisan and carry out their duties with neutrality;
  - (b) improving security arrangements for candidates and party campaign workers; and
  - (c) basing all security plans on local community support and respect for human rights.
2. Build on the agreements with protesting groups by:
  - (a) implementing fully the agreements with the United Democratic Madhesi Front (UDMF) and the Federal Republican National Front;
  - (b) pushing for negotiations with armed militant groups on an election ceasefire, while strengthening security in sensitive areas; and
  - (c) encouraging moderate Madhesi leaders to use their influence to urge armed groups to drop plans to disrupt the polls.
3. Guard against giving openings for Maoist People's Liberation Army (PLA) and Nepal Army (NA)

militants to assert more influence over proceedings; clarify the code of conduct for both armies in the election period; and move urgently to begin discussions on security sector reform so the PLA has an incentive to remain in cantonments.

4. Move beyond solely seven-party cooperation to involve all parties contesting the elections in discussions on security and the creation of a free and fair electoral environment.
5. Keep working on other critical elements of the peace process and in particular:
  - (a) implement the 23-point agreement and other accords; and
  - (b) abide by the Comprehensive Peace Agreement (CPA) and ceasefire code of conduct.

### To the Election Commission of Nepal:

6. Enforce the election code of conduct strictly and impartially, maintaining pressure on all parties to cease intimidation and other malpractice, such as the widespread misuse of state resources for campaigning.
7. Continue with voter education and other publicity efforts and in particular prepare the public for potentially slow announcements of results by increased publicity explaining the count procedure and realistic timeframes.
8. Make plans for dealing rapidly with politically sensitive post-election appeals and repolling.

### To National Election Observers:

9. Carry out observation and reporting impartially and professionally, dismissing any observers who are linked to political parties and avoiding inflammatory assessments before and after the elections.

### To the Media:

10. Adhere to the standards set out in the election Code of Conduct and exercise responsibility in the accurate and impartial reporting of election-related violence.

### To the Political Parties:

11. Commit unambiguously to free and fair elections by:
  - (a) promising to accept the results of a credible poll, whatever they may be;

- (b) abiding by the election code of conduct, including ceasing all violence and intimidation;
  - (c) exercising restraint and responsibility in mobilising student and youth cadres for legitimate election campaigning, not as private security forces; and
  - (d) educating voters about the electoral system.
12. Prepare for the difficult post-election period by building cross-party consensus on managing the transition, including:
- (a) forging a minimum agreement on dealing with post-election recriminations and maintaining consensus on moving forward;
  - (b) using formal procedures to resolve any complaints regarding the election process or results;
  - (c) agreeing on the broad framework for negotiations to form a new government; and
  - (d) clarifying and publicising the procedure by which pre-election agreements, including the implementation of a federal democratic republic at the CA's first sitting, will be implemented.
13. Build common ground on procedural issues such as the formation of CA committees and the division of business between the CA as a constitution-drafting body and as a legislature.
14. Make clear commitments for public participation in the constitutional process.

**To the International Community, in particular  
India, China, U.S., EU and UN:**

15. Election observers should:
- (a) publicise international electoral standards and the principal benchmarks by which they will assess the polls, as well as explain the consequences of failure to meet those standards and benchmarks;
  - (b) coordinate their deployment to maximise coverage across the country and make the most of relatively small numbers; and
  - (c) coordinate on main statements to avoid public confusion and achieve as much unity as possible on the overall assessment.
16. Condemn all election-related violence, pressure all parties to abide by the code of conduct and encourage the Election Commission and security forces to use their powers in a non-partisan manner.
17. Prepare for the post-election period by:
- (a) reminding all parties they must accept the outcome;
  - (b) supporting the Election Commission, politically and practically, on any necessary repolling;
  - (c) urging and supporting the formation of a power-sharing unity government; and
  - (d) listening to judgments by Nepali political and civil society groups in assessing the credibility of the electoral process.
18. Offer technical and financial assistance for establishing mechanisms to ensure meaningful public participation in the constitutional process and work to coordinate proposed training and orientation programs for CA members.

**Kathmandu/Brussels, 2 April 2008**

## NEPAL'S ELECTION AND BEYOND

### I. INTRODUCTION

The December 2007 deal that brought the Maoists back into government and the February 2008 agreement to end a second Madhesi movement in the Tarai plains put Nepal's Constituent Assembly (CA) elections back on track.<sup>1</sup> The seven-party governing coalition remains at loggerheads on many issues, but all its components insist they want the elections to go ahead as scheduled on 10 April 2008.<sup>2</sup>

The country has considerable experience of elections. Following the first general elections in 1959, the Panchayat period of palace rule offered little chance for meaningful polls, and a 1980 referendum on the Panchayat system was widely seen as rigged. But 1991 multiparty elections managed a smooth transition to democratic rule. The general elections of that year as well as 1994 and 1999 were regarded as broadly free and fair (despite local malpractices by most parties), were well managed considering the logistical challenges,

and had high turnouts.<sup>3</sup> This is, however, the first time Nepalis will elect a constitution-drafting body, though calls for such an assembly go back to the early 1950s.<sup>4</sup>

Most parties are treating the campaign in the same manner as past general elections. This is encouraging insofar as it suggests a return to normality but indicates they are underplaying the significantly different role a CA will play – even though it will also function as a legislature. The sense of comfort is likewise fragile. The momentum to hold the polls appears unstoppable, but last-minute hurdles could still delay or derail the process, especially if major players become more worried about the likely results.

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<sup>1</sup> On the impasse before the 23 December 2007 agreement, see Crisis Group Asia Briefing N°72, *Nepal: Peace Postponed*, 18 December 2007. Other recent Crisis Group reporting on Nepal includes Asia Briefing N°68, *Nepal's Fragile Peace Process*, 28 September 2007; and Asia Reports N°136, *Nepal's Troubled Tarai Region*, 9 July 2007; N°132, *Nepal's Maoists: Purists or Pragmatists?*, 18 May 2007; and N°128, *Nepal's Constitutional Process*, 26 February 2007. Nepali translations are available at [www.crisisgroup.org](http://www.crisisgroup.org). Useful online sources of election-related information include: Election Commission of Nepal ([www.election.gov.np](http://www.election.gov.np)); the UN mission (UNMIN) elections page ([www.unmin.org.np/?d=peaceprocess&p= election](http://www.unmin.org.np/?d=peaceprocess&p= election)); and Nepal Election Portal ([www.nepalelection portal.org](http://www.nepalelection portal.org)).

<sup>2</sup> In this report, the term "seven parties" refers to the governing coalition of six parliamentary parties and the Communist Party of Nepal (Maoist, CPN(M)). The "six parties" are the continuation of the Seven-Party Alliance, whose membership was reduced when the Nepali Congress and Nepali Congress (Democratic) reunited. Past Crisis Group reporting referred to this alliance as the SPA, a term that is now widely used to refer to the six plus the CPN(M) – although there is no "alliance" binding them. The six parties are the Nepali Congress (NC); Communist Party of Nepal (Unified Marxist-Leninist, UML); Nepal Sadbhavana Party (Anandidevi, NSP (A)); Janamorcha Nepal; Nepal Workers and Peasants Party (NWPP); and United Left Front (ULF).

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<sup>3</sup> Voter turnout was 65.15 per cent in 1991, 61.86 per cent in 1994 and 65.79 per cent in 1999, Election Commission at [www.election.gov.np/EN/prevelection.html](http://www.election.gov.np/EN/prevelection.html).

<sup>4</sup> On the history of the constituent assembly proposal, see Crisis Group Asia Report N°99, *Towards a Lasting Peace in Nepal: The Constitutional Issues*, 15 June 2005, pp. 36-38; on its November 2005 adoption by the mainstream-Maoist alliance, see Crisis Group Asia Report N°106, *Nepal's New Alliance: The Mainstream Parties and the Maoists*, 28 November 2005.

## II. THE RUN-UP

### A. HOW THE ELECTIONS WERE PUT BACK ON TRACK

By December 2007 the peace process was at an impasse. The Maoists walked out of the interim government on 18 September when new demands were not met by the other parties.<sup>5</sup> Negotiations on a deal to bring them back into government and set another date for the twice-delayed elections were stalled until a flurry of talks achieved success on 23 December.

The 23-point agreement between the six governing parties and the Maoists addressed the main issues, committing to making Nepal a federal democratic republic as soon as the CA convenes and to implementing still incomplete aspects of the peace process.<sup>6</sup> A third amendment to the Interim Constitution (IC) on 28 December reflected the new commitments, most notably the implementation of the republic at the CA's first sitting, an increase in the number of CA seats to be elected by proportional representation (PR) and clarification that the king no longer has any powers, and the prime minister will officiate as head of state until the republic is implemented.<sup>7</sup> The Maoists rejoined the government on 30 December, with their previous five ministerial positions and two additional state ministers.<sup>8</sup> The 10 April election date was announced on 11 January 2008.

The road forward was not smooth. The Madhesi Janadhikar Forum (MJF), which had spearheaded the Madhesi movement of January-February 2007, was joined in December 2007 by Rajendra Mahato's

Sadbhavana Party (which had split from the Nepal Sadbhavana Party (Anandidevi), NSP(A), which remained in the government) and a new party, the Tarai Madhesi Democratic Party (TMDP), established by former Nepali Congress (NC) minister Mahant Thakur. These three parties formed a loose alliance, the United Democratic Madhesi Front (UDMF), which launched a new wave of protests from 19 January 2008 and an indefinite Tarai *bandh* (shutdown) from 13 February, demanding greater representation in the CA polls and a single Madhesi federal state. Some of the protests were provocative, even violent (one armed police officer was killed); a harsh state response led to the deaths of six protestors.<sup>9</sup> Although the shutdown hit the country hard, producing shortages and price-hikes in Kathmandu, it was not sufficient to disrupt the nomination of candidates for the elections. With both sides under pressure to negotiate, India stepped in to take a surprisingly public mediation role, hosting some critical talks in its embassy.

After frantic last-minute haggling during which MJF leader Upendra Yadav threatened to pull out, the government and the UDMF signed an eight-point agreement on 28 February.<sup>10</sup> The deal was enough to call off the protests, and there were both victory rallies and widespread relief in Tarai towns. However, its content was vague, and it was not clear that either side had made serious concessions other than to allow election preparations to go ahead. Thanks to a deadline extension by the Election Commission, the Madhesi parties filed nominations, as did former royalist Prime Minister Surya Bahadur Thapa's Rashtriya Janashakti Party (RJP), which had threatened a boycott if the Tarai issue was not resolved.

Madhesis were not the only determined protestors. A coalition of hill and Tarai ethnic groups had formed a Federal Republican National Front (FRNF), which also called strikes and threatened to disrupt the elections.<sup>11</sup> Three days after the Madhes deal, the government

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<sup>5</sup> On these demands and the walkout, see Crisis Group Briefing, *Nepal's Fragile Peace Process*, op. cit.

<sup>6</sup> The 23-point agreement is at [www.unmin.org.np/downloads/keydocs/2007-12-24-23.Point.Agreement.SPA.NEP.pdf](http://www.unmin.org.np/downloads/keydocs/2007-12-24-23.Point.Agreement.SPA.NEP.pdf); an unofficial English translation is at <http://www.unmin.org.np/downloads/keydocs/2007-12-24-23.Point.Agreement.SPA.ENG.pdf>.

<sup>7</sup> Interim Constitution, Art. 159. A bilingual edition of the Interim Constitution has been published by the UN Development Programme (the Nepali original is authoritative) and is at [www.undp.org.np/constitutionbuilding/constitutionnepal/constitutionfile/Interim\\_Constitution\\_bilingual.pdf](http://www.undp.org.np/constitutionbuilding/constitutionnepal/constitutionfile/Interim_Constitution_bilingual.pdf).

<sup>8</sup> The CPN(M) ministers are Krishna Bahadur Mahara (information and communications); Dev Gurung (local development); Matrika Yadav (forest and soil conservation); Hisila Yami (physical planning and infrastructure); and Pampha Bhusal (women, children and social welfare). State ministers are Nabin Kumar Biswokarma (women, children and social welfare) and Padam Rai (local development).

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<sup>9</sup> See "Summary of human rights concerns arising from the Terai protests of 13-29 February 2008", Office of the High Commissioner for Human Rights in Nepal, Kathmandu, 27 March 2008.

<sup>10</sup> The eight-point agreement is at [www.unmin.org.np/downloads/keydocs/2008-02-28-Agreement.SPA.Govt.UDMF.NEP.pdf](http://www.unmin.org.np/downloads/keydocs/2008-02-28-Agreement.SPA.Govt.UDMF.NEP.pdf); an unofficial English translation is at <http://www.unmin.org.np/downloads/keydocs/2008-02-28-Agreement.SPA.Govt.UDMF.ENG.pdf>.

<sup>11</sup> The FRNF brings together the Federal Limbuwan State Council (Lingden) and the Tamangsaling Autonomous State Council (which had already united as the Federal Democratic National Forum), the United Tharu National Front, Madhesi People's Rights Forum (Biswas/Gupta), Dalit Janajati Party, Loktantrik Madhesi Morcha and Madhesi Loktantrik Morcha.

concluded a five-point agreement with the FRNF, which brought an end to its protests, by promising a federal republic that would emphasise the rights of ethnic groups and guarantee their proportional representation in all branches of the state.<sup>12</sup>

Elections once more appeared possible, but the agreements that cleared the way were reached under great external pressure, and their durability has been in question from the start. Some of the seven parties themselves were quick to repudiate the eight-point agreement, while the Nepal Army (NA) insisted it would not accept group Madhesi recruitment. Other elements may or may not materialise. A sceptical observer commented: "You have a government that can't provide electricity or collect rubbish promising the details of a federal system that's yet to be agreed upon".<sup>13</sup> There has been almost no progress on the fundamentals of the peace process, including implementation of the 23-point agreement. Seven-party consensus is fragile and relations often antagonistic.

## B. PARTIES AND ALLIANCES

### 1. Manifestos and party positioning

The parties moved rapidly into election mode. The Maoists were the first to start mass training to prepare their activists for the campaign, but others quickly followed, building on their interrupted preparations for the postponed November 2007 polls. The Maoists were also the first of the major parties to publish their manifesto, on 7 March, quickly followed by the Communist Party (Unified Marxist-Leninist, UML) on 9 March and the NC on 13 March.

The major parties' manifestos follow similar patterns. Each starts with a lengthy analysis of recent history, and each claims the party is best placed to fulfil the mandate of the April 2006 people's movement. Each stresses the significance of the constitution-writing process – the NC, for example, stating that it is the chance to create a new sense of "we, the people of Nepal"<sup>14</sup> – but large parts of the NC and UML manifestos read more like a standard plan for government. No party devotes much attention to explaining the electoral system, setting out plans for the functioning of the CA or ensuring public

participation in the process. However, the Maoists offer more detail than the others in most areas relevant to the CA, notably a proposed map of ethnic-based autonomous states. Key features of the manifestos include:

**Nepali Congress.** The NC stresses the party's longstanding commitment to liberal multiparty democracy and reminds voters that in 1950 it was the first to call for an elected assembly to frame a constitution. It urges a broadly Westminster/Indian government structure, with an upper and lower house, a prime minister-led government and a ceremonial president.

**CPN(UML).** The UML sees the CA's main objectives as democracy, lasting peace and progressive policies and stresses its own history of struggle and determination to bring change. Although it talks of the need for consensus in the CA, it appeals for votes to ensure it leads the next government, which it says will be formed according to the proportion of seats won by each party and will "play an important role in the constitution-making process".<sup>15</sup> It calls for a directly-elected prime minister to head the executive and a ceremonial president.

**CPN(Maoist).** The Maoists are most emphatic in reminding voters that "the election of a constituent assembly is not the same as the usual five-yearly parliamentary elections".<sup>16</sup> They devote eleven pages to an analysis of Nepal's historic problems (feudalism and imperialism), the democratic movement as a fusion of their people's war and the people's movement, the regressive conspiracies of the feudal monarchy and the weaknesses of the parliamentary parties in comparison to the clarity and conviction of the Maoist revolutionaries. The CPN(M) personalises its appeal by highlighting the claim of its leader, Prachanda, to the executive presidency of a new, republican Nepal. It argues that as the only party to put forward the new agenda of a republic and state restructuring, it is the only one that can be trusted to implement that agenda.<sup>17</sup> In many policy areas, the Maoists offer compromise, such as embracing public-private partnership,<sup>18</sup> and they make the kind of promises associated with a parliamentary election, such as eradicating illiteracy and ensuring clean drinking water for all within five years.<sup>19</sup>

**Smaller leftist parties.** Janamorcha Nepal has proposed a balance of power between an executive president and

<sup>12</sup> The five-point government-FRNF agreement is at [www.unmin.org.np/downloads/keydocs/2008-03-02-Agreement](http://www.unmin.org.np/downloads/keydocs/2008-03-02-Agreement). SPA. Govt.FRNF.NEP.pdf; an unofficial English translation is at [www.unmin.org.np/downloads/keydocs/2008-03-02-Agreement](http://www.unmin.org.np/downloads/keydocs/2008-03-02-Agreement). SPA.Govt.FRNF.ENG.pdf.

<sup>13</sup> Crisis Group interview, international expert, 9 March 2008.

<sup>14</sup> NC manifesto, p. 4.

<sup>15</sup> UML manifesto, p. 38.

<sup>16</sup> CPN(M) commitmentPaper, p. 7.

<sup>17</sup> Ibid, p. 37.

<sup>18</sup> Ibid, p. 25. Maoist leaders stress that this is part of their "New Transitional Economic Policy" and does not reflect any weakening of long-term commitment to socialism, Crisis Group interview, Baburam Bhattarai, 14 March 2008.

<sup>19</sup> CPN(M) commitment paper, p. 29.



a prime minister, the former to be directly elected and the latter to be chosen by the upper and lower houses of parliament. It also calls for halting commercialisation of the education sector. The Nepal Workers and Peasants' Party (NWPP) has called for a powerful president, with no prime minister and proposes to convert the existing geographically delimited zones into provinces with legislatures, rather than divisive forms of federalism.<sup>20</sup> CPN(ML), another small communist party, has proposed a directly elected prime minister, a ceremonial president appointed by the parliament and seven federal states. The CPN (United) has one unique proposition: equally powerful parliaments at the central and provincial level.

**Madhesi parties.** The TMDP still calls for a single, autonomous Madhesi province across the entire Tarai. A prime minister would hold executive power and a ban is proposed on no-confidence motions for one year to ensure "political stability". The MJF wants a president as chief executive, continues to demand Madhesi group recruitment into the army and proposes a trilingual official language policy (local mother tongues, Nepali and Hindi), with English as the national language. The Sadbhavana Party led by Rajendra Mahato calls for a prime minister-led government with a ceremonial president, elected provincial and central legislatures and autonomous provinces ruled by chief ministers. Madhesi leader Ramraja Prasad Singh's Navajanabadi Morcha has proposed a rotating presidency shared between incumbents from the hill, mountain and Tarai regions.<sup>21</sup>

**Royalist parties.** Only the Rashtriya Prajatantra Party (Nepal), the RPP(N), headed by the king's former home minister, Kamal Thapa, is campaigning on an explicitly monarchist platform, demanding that the future of the monarchy be decided by a referendum and calling for its continuation as a constitutional entity. The Rashtriya Prajatantra Party (RPP) and the Rashtriya Janashakti Party (RJP) are more ambivalent towards the palace; both have publicly stated, though not in their manifestos, that they will accept the CA vote as legitimate authority for determining the monarchy's future. The RJP explicitly calls for the constitution drafted by the CA to be "directly ratified by the people"; the RPP says "people" should decide the future of the monarchy with "their direct participation".<sup>22</sup> It does, however, embrace the concept of federalism and calls for an ethnically based upper house. The RPP's manifesto is silent on the monarchy and calls for state restructuring to guarantee

"inclusive multiparty democracy", with federal states run by chief ministers.

## 2. Candidates

Candidate selection was a major challenge for the parties. The distribution of party tickets is always a contested affair; because of the parallel electoral system and the new quotas for various communities, it became even harder, especially for the larger parliamentary parties, whose leaders had to juggle the expectations of their many established workers and incumbent parliamentarians with the need to offer the electorate new faces.

The NC has a high proportion of older candidates, many the same ones active in every election since 1991. Of its first-past-the-post (FPTP) candidates, the youngest is 31, most (175) are between 41 and 59 and 44 are 60 or above; the UML is only slightly different.<sup>23</sup> In contrast, the CPN(M) has a young profile, with an average age for its FPTP candidates of 39.<sup>24</sup> The Maoists also present by far the most diverse selection of FPTP candidates, with eleven Dalits, 73 *janajatis* and 63 Madhesis. The UML and the NC field the bare minimum of women candidates, only 26 each for 240 FPTP seats.<sup>25</sup> Many of these have been selected for seats which they have little chance of winning. In sixteen districts and 67 constituencies, there is not a single woman candidate.<sup>26</sup> The Maoists have nominated 42 women, as well as several serving members of their People's Liberation Army (PLA), in contravention of the peace agreement.<sup>27</sup>

The Madhesi parties have opted largely for middle- and higher-caste candidates. The MJF, for example, has 25 Yadavs and almost no women. The TMDP has four women out of 94 FPTP candidates, the Sadbhavana Party four out of 87 and the MJF three out of 103.

## 3. Alliances

Despite the multitude of parties, there is still a broadly discernible left-right split. The leftist parties are the Maoists, UML, the Janamorcha, NWPP and CPN(ML),

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<sup>20</sup> It also called for separate national and provincial citizenship, compulsory army training and a ban on foreign bank accounts.

<sup>21</sup> "Nawa Janabadi Morcha unveils manifesto", *The Rising Nepal*, 17 March 2008.

<sup>22</sup> RJP and RPP manifestos.

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<sup>23</sup> Only ten UML candidates are over 60; 52 are between 29 and 40 and 121 between 41 and 50. For an assessment of youth issues and representation see Dipendra Tamang, "Youth Representation In CA", *The Rising Nepal*, 10 March 2008.

<sup>24</sup> 45 candidates are less than 30; 101 candidates are between 31 and 40 and 60 between 41 and 50.

<sup>25</sup> On the various quotas, see Section III below.

<sup>26</sup> "16 jilla ra 67 kshetrama mahila ummedavar shunya", *Naya Patrika*, 24 March 2008.

<sup>27</sup> See "Election Report No. 1", UNMIN, Kathmandu, 22 March 2008, at [www.unmin.org.np/downloads/publications/2008-03-22-UNMIN.Election.Report.1.ENG.pdf](http://www.unmin.org.np/downloads/publications/2008-03-22-UNMIN.Election.Report.1.ENG.pdf).

as well as a handful of smaller groups. Those towards the right are the NC (although it describes itself as socialist), the royalists and the various Madhesi parties, which are all more or less anti-leftist. However, there are other ways of categorising the parties: in many ways UML and NC similarities as centrist parliamentary parties outweigh their differences.

The major parties have been expected to agree on a seat-sharing deal under which their top leaders would be elected without serious opposition, but they are reluctant to discuss this publicly and have sent mixed signals about it. An arrangement would concern the FPTP portion of the elections, in which candidates can in effect withdraw to allow their opponents a clear run (it is too late for them to cancel their candidacies formally, so any deal must be well publicised to voters).<sup>28</sup> Even if party leaders overcome their mutual antagonism to reach such an accommodation, however, it may be difficult to ensure that local activists and candidates respect it.

On the left, Janamorcha has withdrawn some candidates in the interest of unity (for example, pulling out of Madhav Nepal's Kathmandu constituency), but the larger parties are still at loggerheads. The Maoists have pushed hard for a left alliance and called for a grand alliance of progressive and nationalist forces.<sup>29</sup> Sceptics suggest this stems from concern they would not do well on their own. The Maoists themselves argue that there have been longstanding agreements to unite around a common minimum program, and a broad alliance is particularly appropriate for CA elections, which should be different from the usual scramble for parliamentary power.<sup>30</sup> They have reacted to the UML's reluctance to forge such an alliance by accusing it of betrayal under outside pressure. Domestic and international forces

have indeed leaned on the UML to dissuade it from joining with the Maoists, but the party's reluctance also stems from confidence it can do well on its own. It has generally left it to local party leaders to decide on cooperation but has not closed the door altogether on a nationwide deal.<sup>31</sup> Holding out the prospect of an alliance may be the UML's attempt to keep Maoist attacks on its activists in check: the rash of violence after it had initially refused a deal suggested a deliberate Maoist response.

Madhesi parties united to form the UDMF but have been divided over their election plans. Although they are not intensively contesting each other in some constituencies, they could not agree on a functional alliance. The Sadbhavana Party and TMDP did eventually manage a deal, but the more prominent MJF has not joined them. Their divisions may cost them dearly. Analysts suspect they will not win more than 50 seats among them, which would mean that most Madhesi delegates will belong to the major parties.<sup>32</sup> On the royalist front, the RJP and RPP have avoided fielding candidates against each other but face competition with Kamal Thapa's RPP(N).

### C. BEYOND THE PARTIES

**The public.** The general public want elections but doubt politicians' sincerity or ability to make them happen, though the recent momentum has assuaged some doubts. If intimidation – already a problem in some areas – at least does not increase, turnout could be high. The incumbent parties should all be worried that the interim government's dismal record on basic services will count against them: little has been done to ensure security, deliver basic services and utilities or cushion significant price rises for food and petroleum products. However, dissatisfaction on these matters is unlikely to generate major street protests or stimulate an election boycott.

**The media.** The increasingly sophisticated media has already played a major role by both disseminating basic election information and scrutinising parties and candidates critically. The press has analysed party lists, exposed malpractices such as dummy candidates and offered a vehicle for policies to be communicated and debated. The significance of private FM radio and television stations has grown hugely (they hardly existed in 1999, at the time of the last elections). In addition

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<sup>28</sup> In most constituencies in which senior leaders are standing, opposing parties have fielded weaker candidates. For example: Maoists chair Prachanda will be facing a second-rung UML leader, Sanu Maharjan, and the unknown Rajan K.C. from NC. Local alliances have formed in many parts of the country, mostly between the leftist parties.

<sup>29</sup> For example, Prachanda repeated the call for such an alliance the day after the CPN(M) launched its manifesto. "Prachanda says 'nationalists' and republicans should join forces in polls", nepalnews.com, 8 March 2008.

<sup>30</sup> The CPA specifies a common minimum program for the interim government, but this does not apply to electoral arrangements or constitutional deliberations: "The conduct of business of the Government of Nepal shall be carried out consistently with the aspirations of the united people's movement, political consensus and culture of mutual cooperation. The common minimum programme prepared through mutual agreement shall be the basis of the policies of the Government of Nepal", CPA, Art. 43(1).

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<sup>31</sup> Crisis Group interviews, UML and CPN(M) central leaders and district activists, March 2008. See also "UML chief rules out possibility of alliance with Maoists at the centre", nepalnews.com, 9 March 2008.

<sup>32</sup> See, for example, Prashant Jha, "Murkier and murkier", *Nepali Times*, 21 March 2008.

to carrying donor-funded, election-related programs, they have developed their own high-quality discussion and interview shows. State radio and television have also shown greater professionalism. However, there are questions about their impartiality, since the Maoists run the information and communications ministry. Equally, there are questions about the political inclinations of the private media, most of which have been quick to castigate Maoist misbehaviour but softer on other parties, especially the NC.

Overall, the media has had trouble adjusting its outlook and coverage to the delicate transitional situation. Much election reporting has been along traditional party lines and has downplayed or ignored the additional sensitivities of the conflict context. The media is subject to a code of conduct in the electoral period (in force since 9 March 2008),<sup>33</sup> the observance of which is being monitored by the Nepal Press Council. This government-appointed watchdog has yet to show signs of being a stern referee, despite much inflammatory and inaccurate reporting.

**Civil society.** Its leaders resent accusations that civil society has become divided and partisan, no longer commanding its earlier respect or influence. "Remember we dragged the parties to where they are today", one said. "If we hadn't, there would never have been a people's movement or peace process".<sup>34</sup> Civil society's active role has helped move the peace process forward, but criticisms of partisanship and personal rivalry are not unfounded. Many human rights organisations and election observers (see below) have party leanings. Some prominent activists are campaigning for parties or even standing for election, for example, Daman Nath Dhungana, who has returned to the NC. Nevertheless, influential civil society voices are maintaining some pressure on the parties to abide by electoral norms and deliver the results the peace process promised. Many who lack party leanings are disillusioned at the speed with which the parties have returned to business as usual, with only the Maoists willing to nominate some outside individuals.

## D. A CONDUCTIVE ENVIRONMENT?

Despite the positive mood generated by the momentum towards elections, there are clear signs that not only the campaign but also its aftermath will be fraught with tension. For all the rhetoric of uniting to build a new Nepal, most parties are preparing for aggressive competition. On 1 April, leaders of the three main parties signed a ten-point pact promising to cease misconduct and establishing monitoring and coordination mechanisms to build a free and fair environment.<sup>35</sup> However, past evidence suggests that signatures on paper do not readily translate into improved behaviour.

There have been at least nine election-related murders: one victim a National People's Front candidate in Banke, all the others Maoist activists.<sup>36</sup> On 29 March, two people died when a Biratnagar mosque was bombed, an act for which the shadowy Nepal Defence Army claimed responsibility. There have also been dozens of assaults on party workers engaged in campaign activities. RPP Chair Pashupati Shamsher Rana commented: "This will not be an election, it's a battle".<sup>37</sup> Maoist leaders have described the elections as the next stage in their "war" for revolutionary transformation.<sup>38</sup> Domestic and international human rights bodies and observers have warned of misconduct and condemned the killings and other acts of violence and intimidation.<sup>39</sup>

The Maoists have been accused of the most systematic misconduct, in particular a series of attacks on royalist party workers and apparently concerted efforts to disrupt their campaigns. In pre-poll observation, the respected but UML-linked human rights organisation INSEC reported Maoists were responsible for 97 per cent of

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<sup>33</sup> What is often referred to as "the media code of conduct" is actually Part 4 of the general election Code of Conduct issued by the Election Commission, at [www.election.gov.np/NP/electioncode/index.php](http://www.election.gov.np/NP/electioncode/index.php). An unofficial English translation is at [www.nepalmonitor.com/2008/02/ecs\\_nepal\\_media\\_code\\_of\\_conduct\\_during\\_ca\\_elections-print.html](http://www.nepalmonitor.com/2008/02/ecs_nepal_media_code_of_conduct_during_ca_elections-print.html).

<sup>34</sup> Crisis Group interview, civil society leader, Kathmandu, 13 March 2008.

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<sup>35</sup> An unofficial English translation of the ten-point agreement is at [www.unmin.org.np/downloads/keydocs/2008-04-01-10.Point.Agreement.NC.UML.CPNM.ENG.pdf](http://www.unmin.org.np/downloads/keydocs/2008-04-01-10.Point.Agreement.NC.UML.CPNM.ENG.pdf)

<sup>36</sup> The mainstream media has paid little attention to the killing of Maoist workers. On the seven deaths, see "Ek mahinama sat maobadiko hatya", *Naya Patrika*, 23 March 2008.

<sup>37</sup> Crisis Group interview, RPP Chair Pashupati Shamsher Rana, Kathmandu, 14 March 2008.

<sup>38</sup> Prachanda, election campaign address, Kirtipur, 12 March 2008. The CPN(M)'s internal handbook for party workers includes instructions on election preparations from the chief of its schooling department. The main elements are: political and ideological preparation; organisational preparation; technical preparation; and preparation for retaliation. Dharmendra Bastola, "Samvidhansabhako chunav ra char tayariko prashna", CPN(M) schooling department, 2008.

<sup>39</sup> For example, see "OHCHR-Nepal calls on political actors to ensure respect for human rights in CA elections", Office of the High Commissioner for Human Rights in Nepal, press release, Kathmandu, 14 March 2008.

violations of the code of conduct.<sup>40</sup> As well as beatings and harassment, there have been a few abductions. The aggressive language of party leaders may well encourage cadres to this course. All major parties plan to mobilise their youth wings to support door-to-door canvassing and be present at polling booths; they will likely also serve, as in the past, as muscle to protect candidates or threaten voters. In the words of the RPP chair, “the state isn’t able to provide adequate security, so each party will try to make their own private arrangements”.<sup>41</sup>

Candidates, their party colleagues and election officials may face the most direct threats, but intimidation of the general public could be as damaging. Many Tarai districts have no-go areas for some candidates, and the threat of armed action remains explicit. The continued absence of local government officials suggests a far from normal atmosphere, which may be off-putting to election and security officials.<sup>42</sup> International experts warn that policing plans do little to restore public confidence.<sup>43</sup>

Voter participation in past general elections has consistently been over 60 per cent (66 per cent in the most recent). If turnout for the CA polls is significantly lower – whether through fear or disinterest – it could undermine the legitimacy of the exercise. Low turnout in particular areas, or partial boycotts, could spark renewed regional tensions. The main threat to wide participation is intimidation. In the face of direct threats from Madhesi militant groups and indirect warnings from the Maoists (and sometimes other parties), many voters may decide to stay at home. Poor turnout could have specific electoral ramifications: for example, harming the traditional NC vote, since older voters with family and property to worry about may be more influenced by threats. On the other hand, low youth participation – possible since many young men work abroad or away from their home constituencies,<sup>44</sup> and several thousand

young adults are missing from the electoral roll<sup>45</sup> – could harm the Maoists.

## E. POSSIBLE SPOILERS

**Armed militant groups.** Several Tarai-based groups threaten to disrupt the elections and have already carried out violence, but they are more politically isolated than before: people are tired of bloodshed and keen for elections. They also face a more serious security crackdown, with both deployment of additional armed police (APF) in sensitive districts and tougher cross-border controls.<sup>46</sup> Despite encouraging signals from some ministers, Prime Minister Koirala seemed to close the door on negotiations;<sup>47</sup> however, Peace and Reconstruction Minister Ramchandra Poudel wrote to armed groups on 21 March inviting talks.<sup>48</sup> There were hopes they could agree to at least a ceasefire, but on 29 March the groups that had indicated a willingness to negotiate announced they would not talk, as the government had failed to meet their preconditions. They could disrupt the polls – attacks on election officials could prompt widespread fear and lead to some deserting their posts, a pattern seen with local government officials – but are unlikely to derail them entirely. Apart from the armed groups with political agendas, the numerous criminal gangs could take advantage of the election situation or be used by other forces for disruption.

**Maoists.** The Maoists’ public enthusiasm for the elections seems at odds with near universal expectations that they will fare poorly in them. Some suspect they may try to postpone the vote at the last minute if they are convinced they will do badly; there are signs they plan to re-evaluate their policy a few days before the polls. They could easily make elections impossible but only if they were willing to sacrifice their credibility, domestically and internationally. Few would forgive them if they were

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<sup>40</sup> Crisis Group interview, Subodh Pyakurel, INSEC, 21 March 2008. The Code of Conduct is available (in Nepali only) at [www.election.gov.np/NP/electioncode/index.php](http://www.election.gov.np/NP/electioncode/index.php).

<sup>41</sup> Crisis Group interview, Kathmandu, 14 March 2008.

<sup>42</sup> For example, the Democracy and Election Alliance Nepal (DEAN) reported that 23 Tarai constituencies are acutely fearful of elections; two (Dang-5 and Mahottari-5) are off limits to election observers, social workers and even parties. Crisis Group interview, Subhadayak Shah, DEAN, 21 March 2008.

<sup>43</sup> See “Public safety and policing in Nepal: an analysis of public attitudes towards community safety and policing across Nepal”, Saferworld, January 2008, at [www.saferworld.org.uk/images/pubdocs/Policing\\_in\\_Nepal\\_English.pdf](http://www.saferworld.org.uk/images/pubdocs/Policing_in_Nepal_English.pdf).

<sup>44</sup> For example, an estimated 25,000 registered voters in the western district of Myagdi alone are away from home (mainly working overseas) and unable to vote. “25,000 to miss polls in Myagdi”, *The Himalayan Times*, 26 March 2008.

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<sup>45</sup> Only those who reached eighteen by 15 December 2006 are on the roll. See Section III C(1) below.

<sup>46</sup> India has promised to do more to crack down on cross-border crime and the activities of armed groups. There has been more progress on the Uttar Pradesh-Nepal border than on the (more sensitive) Bihar-Nepal border. Neither Indian state government is led by parties represented in the central government, and it is likely border security efforts will be inconsistent. See also “India won't tolerate activities that can affect polls: Indian envoy”, [nepalnews.com](http://nepalnews.com), 18 March 2008.

<sup>47</sup> Binod Bhandari and Lila Ballav Ghimire, “No talks with armed groups before polls: PM”, *The Kathmandu Post*, 10 March 2008.

<sup>48</sup> “Sashastra samuhalai vartanimiti patrachar”, *Gorkhapatra*, 22 March 2008. The groups invited were the Madhesi Mukti Tigers, United Tarai Janatantrik Morcha (formerly the JTMM(G)), JTMM(J) and Tarai Cobras.

seen to be undermining the process. Although some within the party would shrug off public condemnation, the leadership would be unlikely to risk it.

**Royalists.** Politicians close to the palace insist that only the Maoists are likely to cause trouble. “No one else will try to disrupt the polls”, said former prime minister and RJP leader Surya Bahadur Thapa.<sup>49</sup> However, most observers – including some sympathetic to the king – suspect ardent monarchists are unlikely to accept the elections with equanimity and may try to stall the process. If the polls go ahead, parties formally committed to a republic are certain to win a majority, an unsettling prospect for royalists. Maoist leaders speak of palace conspiracies and say they have reliable information some are planning violence, including assassinations.<sup>50</sup> Still, chances of halting the process are slim. “What can the king do?” asked one political analyst. “He could sponsor a major destabilising incident such as a bombing or instigate or take advantage of other tensions, unrest or public disorder – but none of these is likely to halt the polls altogether”.<sup>51</sup>

**Other factors.** Lack of will in the major parties was a major cause of past delays and could still be a problem if the NC or UML feared crushing defeat. This does not appear likely, although any rise in Maoist intimidation or serious evidence of attempts at widespread rigging could change the picture. UDMF members may worry that their prospects are poor but would find it hard to back out or cause disruption now that they have signed a deal. Technical and logistical challenges are probably likelier than that individual parties will back out, although these could be seized on as an excuse for postponement by the nervous.

### III. THE ELECTIONS

#### A. THE ELECTORAL SYSTEM

The electoral system is a parallel one, with first-past-the-post (FPTP) and, for the first time, proportional representation (PR) contests.<sup>52</sup> Voters will elect 240 members of the constituent assembly in direct, constituency-based FPTP contests and 335 through party list-based PR ones. The interim cabinet will nominate a further 26 members by consensus.<sup>53</sup> The total of 601 seats is greater than was originally envisaged (and far more than the 205 seats of past elected parliaments). This resulted from demands for greater representation in the Tarai and more weighting to the PR contest. There are 9,788 polling centres, with one to three booths each, a total of 20,866 polling booths.

The FPTP contest is simple: in each constituency, the candidate with the most votes wins. There are 3,954 registered candidates from 55 parties for the 240 FPTP seats.<sup>54</sup> The whole country is a single constituency for the PR contest, in which voters will vote for parties, each of which must have registered a list of at least 34

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<sup>52</sup> The main electoral legislation includes the Election Commission Act 2063 (2006); Election (Offences and Punishment) Act, 2063 (2007); Election to the Members of the Constituent Assembly Act, 2064 (2007); Act relating to Electoral Rolls, 2063 (2006); Rules relating to Electoral Rolls, 2063 (2006); Rules Relating to Electoral Rolls, 2063(2007); Constituent Assembly Court Act 2064 (2007); Political Party Registration (for the purpose of Election) Regulation 2063 (2006); Regulation relating to the Election to the Members of the Constituent Assembly, 2064 (2007); as well as various policies and directives. The acts and regulations are available (mostly in Nepali and English translation) at the Election Commission website, [www.election.gov.np](http://www.election.gov.np). A useful summary of the legal framework governing elections is available at [www.nepal-electionportal.org/EN/election-laws/](http://www.nepal-electionportal.org/EN/election-laws/). The Constitutional Advisory Support Unit (CASU) of UNDP has made available a selection of Interim Constitution provisions relevant to the CA (although it does not take account of the third amendment), at [www.undp.org.np/constitutionbuilding/elibrary/constitutionnepal/IC%20CA%20Provisions.pdf](http://www.undp.org.np/constitutionbuilding/elibrary/constitutionnepal/IC%20CA%20Provisions.pdf).

<sup>53</sup> These should be drawn from “distinguished persons and persons from among ethnic and indigenous groups who fail to be represented as a result of elections ... who have made significant contributions to national life”, Interim Constitution, Art. 63(3)(c).

<sup>54</sup> The first amendment to the Interim Constitution set up a Constituency Delimitation Commission to redraw boundaries and increase constituencies from the earlier 205. Interim Constitution, Arts. 63(3, 3A) and 154A). The list of revised constituencies is available (in Nepali only) at [www.election.gov.np/NP/pdf/chhetra2063.pdf](http://www.election.gov.np/NP/pdf/chhetra2063.pdf).

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<sup>49</sup> Crisis Group interview, Kathmandu, 16 March 2008.

<sup>50</sup> Prachanda, public address in Kirtipur, 12 March 2008.

<sup>51</sup> Crisis Group interview, Baburam Bhattarai, 14 March 2008.

<sup>52</sup> Crisis Group interview, Kathmandu, March 2008.

names.<sup>55</sup> There are some 6,000 candidates on the lists of 54 parties. Each party will select its winning candidates from any position on its list once the Election Commission announces how many seats it has won. (The fact that the numbered lists have been presented as if they are ranked may confuse or disappoint voters if the parties select names that were low on the lists.<sup>56</sup>) That number will be calculated by a system that slightly favours larger parties.<sup>57</sup>

Parties must abide by certain quotas.<sup>58</sup> Women must be at least half their PR list and at least half of those they select to fill PR seats they win; across both election contests, parties must field at least 33 per cent women candidates.<sup>59</sup> This means that if women FPTP candidates are allotted losing seats, female delegates could make up less than 30 per cent of the CA. Other PR quotas include: Dalits, 13 per cent,<sup>60</sup> “oppressed and indigenous”, 37.8 per cent, “backward region”, 4 per cent,<sup>61</sup> Madhesi, 31.2 per cent and “others” (groups not mentioned elsewhere in the list) 30.2 per cent.<sup>62</sup> These apply only

to the PR list (for both nominated and winning candidates), and the Election Commission may accept a 10 per cent variance in any category.<sup>63</sup> The requirement to nominate half women applies to each quota (eg, there must be at least 6.5 per cent female Dalits). There are no quotas for the FPTP contest, but parties are to “take into account the principle of inclusiveness while nominating candidates”.<sup>64</sup> At the polling booth voters will first be given a light blue FPTP ballot paper. Once they have marked their choice with a stamp, they will be issued a light pink PR ballot paper to be cast in a separate ballot box.<sup>65</sup>

The result is a system that is hard to understand and may well not produce the proportional outcome activists want. An expert said, “this is a very complex electoral system – very few people, even supposed experts, understand it. The parties are now starting to realise how complicated it is. It’s not easy for them”.<sup>66</sup> Many candidates reportedly do not understand it. Only one fringe party filed a correct initial PR list; all others were returned for revision, although some parties had only made minor technical errors.<sup>67</sup> This type of PR list system has only been used by Serbia and Guyana, and has been widely criticised for its lack of transparency and voter accountability as it allows party leaders to select winning candidates.

Critics also point out it is unlikely to deliver a proportional outcome. Parties winning a handful of PR seats will only be able to select a rough approximation of representative candidates; those winning an odd number of seats may well choose more men than women. The better smaller parties do, the less likely the overall balance will meet quotas.<sup>68</sup> Furthermore, parties that field short lists for less than 30 per cent of PR seats (100 candidates or less) do not have to meet

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<sup>55</sup> The major parties have submitted lists with 335 candidates. All lists are at [www.election.gov.np/reports/report/reportBody.php?selectedMenu=PR%20Party%20wise%20\(Close%20List\)](http://www.election.gov.np/reports/report/reportBody.php?selectedMenu=PR%20Party%20wise%20(Close%20List)).

<sup>56</sup> Some parties, notably the CPN(M) and RJP, have carefully positioned all of their candidates from marginalised communities at the head of their lists but this is no guarantee that they will be selected to fill any seats won in the PR contest.

<sup>57</sup> On PR systems and the modified Sainte-Lague method to be used in Nepal’s election, see Hans Riedwyl and Jürg Steiner, “What is Proportionality Anyhow?”, *Comparative Politics*, vol. 27, no. 3 (April 1995), pp. 357-369; and Arend Lijphart, *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies, 1945-1990* (Oxford, 1994). The Election Commission’s presentation on the system is at [www.election.gov.np/EN/legal/PRcalculationEN.pps](http://www.election.gov.np/EN/legal/PRcalculationEN.pps).

<sup>58</sup> These quotas, provided for by the Interim Constitution, are defined in the Election Act 2007, Schedule 1. The Procedures for Nomination and Selection of Candidates in Proportional Election, 2064 (2008) are available at [www.nepalelectionportal.org/EN/election-laws/nomination.php](http://www.nepalelectionportal.org/EN/election-laws/nomination.php).

<sup>59</sup> Interim Constitution, Art. 63(5).

<sup>60</sup> “Dalit” is the term “untouchables”, who are at the bottom of the traditional caste hierarchy, prefer to describe themselves.

<sup>61</sup> “Backward region” refers to eight western and far-western districts: Accham, Kalikot, Jumla, Dolpa, Bajhang, Bajura, Mugu and Humla.

<sup>62</sup> Election Commission officials are unable to clarify the “others” category, Crisis Group interview, Laxman Bhattarai, commission spokesperson, Kathmandu, March 2008. According to the spirit of the Interim Constitution, “other groups” was supposed to mean other marginalised groups (for example, Muslims) not mentioned in individual quotas. However, the parties used this category for any group not covered by previous categories – including high caste and otherwise privileged communities. This has both reduced the originally intended scope of affirmative action and further complicated the post-election arithmetic. Further explanation can be found at

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[www.nepalelectionportal.org/EN/elections-in-nepal/electoral-system.php](http://www.nepalelectionportal.org/EN/elections-in-nepal/electoral-system.php).

<sup>63</sup> The Election Commission will judge whether the PR nominees for winning seats meet the criteria and will demand revisions if they do not; the EC can allow +/- 10 per cent variance on each quota, Election Act, 7(8).

<sup>64</sup> *Ibid*, 5(3).

<sup>65</sup> One constituency (Kathmandu-1) will use an electronic voting system without ballot papers. See [http://www.election.gov.np/NP/evoting/EVM\\_FAQ.pdf](http://www.election.gov.np/NP/evoting/EVM_FAQ.pdf).

<sup>66</sup> Crisis Group interview, international election observers, March 2008.

<sup>67</sup> Crisis Group interviews, Election Commission officials, Kathmandu, March 2008.

<sup>68</sup> Parties that win only one seat can disregard the quotas altogether and nominate whomever they choose from their list, Election Act, 7(14).

any quota other than that for women's representation.<sup>69</sup> Of the 54 parties standing in the PR contest, only eleven will have to abide by the other quotas.

The FPTP contest may also have deficiencies. Ballots will not have candidates' names, just party symbols. Critics argue this undermines the nature of a contest in which there is a direct relationship between voters and individual candidates and representatives. Candidates from major parties should have little trouble getting voters to associate them with established party symbols, but smaller parties and independent candidates may struggle. An observer commented: "The system *is* crappy but that doesn't necessarily mean the result will be".<sup>70</sup> Others are not so optimistic. "This system is going to produce something that doesn't even vaguely resemble PR", an international expert said.<sup>71</sup> Nevertheless, the combined quotas have produced a far more diverse field of candidates than ever before, and the CA will be significantly more inclusive than past parliaments. The guaranteed number of women members may fall below the one third some had hoped for but even around 25-30 per cent will still put Nepal well ahead of other countries in the region – and probably around 35th globally for women's representation.

## B. THE ROLE OF THE ELECTION COMMISSION

The Election Commission, a powerful independent constitutional body, is solely responsible for the conduct of the polls.<sup>72</sup> Headed by Chief Election Commissioner Bhoj Raj Pokharel, assisted by four commissioners,<sup>73</sup> it runs the entire process, from compiling the voters list and preparing ballot papers to carrying out the elections, ensuring their security and managing the count and any initial complaints. It has issued regulations for the CA election and party registration and electoral roll rules, as well as an election code of conduct. The

commission has to coordinate closely with the home ministry and security forces and has deployed district election officers (DEOs) in all 75 districts. Total staff is around 240,000, and there will be between five and thirteen election officials and support staff at each of the nearly 21,000 booths.<sup>74</sup> The commission has powers to second civil servants on election duties: on 14 March it sent 49 government secretaries to monitor preparations around the country.<sup>75</sup>

How the commission referees the run-up to the polls, manages logistics and copes with the count and any appeals will be critical. Pokharel has won widespread respect for his professionalism and has asserted his authority in public warnings to the parties and government that he will not tolerate misbehaviour.<sup>76</sup> He has also repeatedly urged the home ministry to work harder on security arrangements. However, he has so far refrained from exercising his power to fine parties or bar candidates (although one party was disqualified for failing to observe the women's quota). The Election Commission is in an invidious position: lax enforcement may be taken as weakness, while strict enforcement could destabilise the peace process (hence its reluctant agreement to extend deadlines to accommodate fresh understandings with protestors). So far, Pokharel's perceived closeness to the NC (he was an NC-appointed home secretary)<sup>77</sup> has not damaged his credibility; in fact, it may have helped him to convey tough messages to the NC and its ministers. But it could become an issue if he has to take a stance in party battles over procedures or results.

## C. THE PREPARATIONS

### 1. Technical preparations

**The electoral roll.** There are 17.6 million registered voters (out of a population of approximately 27 million and compared to 13.5 million in the 1999 general election).<sup>78</sup> When the Election Commission completed compilation of the new voters list in May 2007, some

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<sup>69</sup> This was negotiated by the UDMF so that Madhesi parties do not have to field nationally representative candidates. See eight-point agreement, fn. 10.

<sup>70</sup> Crisis Group interview, international election observer, 8 March 2008.

<sup>71</sup> Crisis Group interview, Kathmandu, 9 March 2008.

<sup>72</sup> Interim Constitution, Art. 129(1). The Electoral Commission's role and responsibilities are defined by *ibid*, Part 14 (Arts. 128-130) and the Election Commission Act, 2063 (2007). In addition to national elections, the commission is also responsible for referendums and local government elections. The Interim Constitution Act is only available in Nepali, at [www.election.gov.np/NP/pdf/ecact.pdf](http://www.election.gov.np/NP/pdf/ecact.pdf); the commission summarises its salient features in English at [www.election.gov.np/EN/legal/ecact.php](http://www.election.gov.np/EN/legal/ecact.php).

<sup>73</sup> The other commissioners are Usha Nepal, Neel Kantha Uprety, Dolakh Bahadur Gurung and Ayodhi Prasad Yadav.

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<sup>74</sup> Crisis Group interview, Laxman Bhattarai, Election Commission spokesperson, 14 March 2008.

<sup>75</sup> "Govt secretaries monitoring polls process from today", [ekantipur.com](http://ekantipur.com), 14 March 2008.

<sup>76</sup> For example, on 11 March 2008, the Pokharel summoned the cabinet and warned that if there was misbehaviour, he would disqualify candidates.

<sup>77</sup> Pokharel has served as secretary in several ministries but his longest tenure was in the home ministry (October 1992-March 1995), to which he was appointed by the first post-1990 NC government. His first electoral experience was his association with the National Referendum Commission (1979-1980).

<sup>78</sup> For more information, see Election Commission statistics at [www.election.gov.np/EN/prevelection.html](http://www.election.gov.np/EN/prevelection.html).

individuals complained they had been omitted. Their complaints were resolved, and there have been none from parties about the overall accuracy of the list.

However, many people have been left out. Only citizens who reached the age of eighteen by 15 November 2006 were eligible to register, meaning the youngest voters on 10 April will be nineteen years and four months old. Permanent residents within an electoral constituency were registered as permanent voters;<sup>79</sup> others (including PLA combatants in cantonments and government employees – including soldiers, police and election officials) were registered as temporary voters, meaning they can vote only in the PR race.<sup>80</sup> Internal migrants will only be able to vote if they return to their home constituencies (the Maoists had seized and burned some voters lists in February 2007 protesting the refusal to register migrants at their current addresses). Many recent citizenship certificate recipients, predominantly Madhesis, have also been left off the roll, although Madhesi parties have not raised this issue vocally.

**Ballot papers.** Over 40 million ballots have been printed and have to be securely delivered to almost 10,000 polling centres. The printing was achieved on schedule, despite the tight deadlines, although distribution to more remote polling stations will be a challenge. Election officials have started distributing less sensitive basic materials separately; ballot papers will require transport and police guards.<sup>81</sup>

**Logistics.** Collating the ballots, distributing them to the correct locations in time and keeping them secure will not be easy. Distribution and security in past elections were army responsibilities. Sceptical observers doubt that the Election Commission is up to the task. Preparations for recovery of ballot boxes and their secure delivery to count centres in the district headquarters may also be affected by this lack of experience. However, the commission insists the timetable is manageable, and district election offices appear to be well organised.<sup>82</sup>

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<sup>79</sup> Electoral Roll Act, 5.

<sup>80</sup> The Election Commission will allow temporary voters to vote in the FPTP portion as well, if they can be present in their home constituency on polling day. "Nanimaiyalai kase dela ta mat?", *Jana Aastha*, 19 March 2007.

<sup>81</sup> Crisis Group interviews, election officials, Kabhre, Dolakha and Sindhupalchowk districts, March 2008.

<sup>82</sup> In the three district election offices visited by Crisis Group since the distribution of poll materials began (Kabhre, Dolakha and Sindhupalchowk), preparations were well in hand – although as these districts are close to Kathmandu and fairly accessible they are not necessarily representative. Election officials and returning officers had experienced no significant difficulties, political or technical, and were confident the polling could

**Staffing.** There are two critical positions at the local level: the DEO, the commission appointee in charge of overall preparations, and the returning officer, who oversees polling and counting in each constituency. In districts with multiple constituencies, there will be a chief returning officer, who acts as returning officer in one constituency but also coordinates the other returning officers. Returning officers are drawn from the judiciary (although in past local elections, chief district officers have filled the role). Each polling centre will have a polling officer and as many assistants as necessary, drawn from the civil service or state corporations.<sup>83</sup>

**International assistance.** Many donors have offered significant bilateral aid to prepare for the polls, and the UN Mission (UNMIN) is mandated to help create a suitable environment. The Electoral Commission is not allowed to accept cash but says it has received the equivalent of Rs.533 million (\$8.4 million) as foreign aid in kind.<sup>84</sup> UNMIN's mandate includes supporting the process with technical assistance. Its advisers have been working with the Election Commission in Kathmandu and five regional centres since the start of its mandate; it has now deployed advisers in all 75 districts. The UN has also set up an independent Electoral Expert Monitoring Team (EEMT), which reports directly to the Secretary-General.<sup>85</sup>

## 2. Security arrangements

Security arrangements are based on those for past elections but with some modifications. The most critical difference is that the army, which had previously been deployed for security back-up, will be confined to barracks under the terms of the CPA. The home ministry will deploy over 100,000 security personnel: 40,000 regular police (NP), 22,000 armed police (APF) and some 48,000 temporary

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be managed effectively. Crisis Group interviews, Kabhre, Dolakha and Sindhupalchowk districts, 25-30 March 2008.

<sup>83</sup> The functions, duties and powers of the returning and polling officers are set out in the Election Act (10-14). The Election Commission summarises their roles at [www.election.gov.np/EN/legal/returning.php](http://www.election.gov.np/EN/legal/returning.php) and [www.election.gov.np/EN/legal/polling.php](http://www.election.gov.np/EN/legal/polling.php).

<sup>84</sup> Election Commission statement, [www.election.gov.np](http://www.election.gov.np).

<sup>85</sup> UN Security Council Resolution 1740 (S/RES/1740, 23 January 2007) specifies that UNMIN should "provide technical support for the planning, preparation and conduct of the election of a Constituent Assembly in a free and fair atmosphere, in consultation with the parties" and that the EEMT should "review all technical aspects of the electoral process, and report on the conduct of the election". On Resolution 1740, see Crisis Group Report, *Nepal's Constitutional Process*, op. cit., pp. 34-35. UNMIN's support is explained in a factsheet, at [www.unmin.org.np/downloads/publications/Factsheet\\_3\\_ENG.pdf](http://www.unmin.org.np/downloads/publications/Factsheet_3_ENG.pdf).



police and 6,000 temporary armed police.<sup>86</sup> Effective policing is necessary not only to ensure a free and fair environment for campaigning but also to protect the physical integrity of ballots – from the moment they leave the press and are distributed to districts until completion of the final count. Given the likelihood of some repolling, the security exercise will extend over several weeks, perhaps even a few months. The recruitment of temporary police has been problematic: political parties have put forward their cadres, and many appear to have been enlisted. Even if partisan recruits can be weeded out, minimal training and preparation for coping with possible violence may well make the temporary forces counterproductive.

Overall responsibility for security arrangements lies with the Central Security Committee, a permanent body headed by the home minister and including the NP and APF chiefs, home and defence secretaries (and, optionally, the chief election commissioner). The Election Commission is to work closely with the home ministry, which retains operational control over security personnel, although the commission can issue directives.<sup>87</sup> At the district level, security forces will answer to the chief district officer, who chairs a district security committee bringing together the local security chiefs.<sup>88</sup> This committee can also include the district election officer. Each polling centre will normally be guarded by between five and sixteen police. They will be greatly outnumbered by party representatives and supporters, but election officials hope that civil society, media and other observers will also act as a deterrent against election-related crime. Five helicopters will be on standby (one per region) for emergency evacuation or security force deployment.<sup>89</sup>

Extra security has been provided for sensitive districts which are more likely to see disruption by armed groups. Each of the twelve constituencies in Siraha and Saptari districts will have three APF and two NP bases, with patrols across the area. Other Tarai districts will have two police bases; hill districts will have only one APF base each. Some candidates have been given personal

security on the basis of individual threat analyses.<sup>90</sup> Other security measures will include sealing the border (for two to three days), banning the sale of alcohol, closing schools (for two weeks), and increasing army protection of borders and critical infrastructure (as permitted by the CPA).

There are concerns over police neutrality. The NP has been historically biased towards the NC, which also holds the home ministry and so has operational control of all security forces. There is also concern over the ability of the APF, raised and trained as a counter-insurgency force, to adapt to the sensitivities of an election. Politicians from various parties have called for the army to be deployed, despite the CPA prohibition. The army itself has kept track of the security situation and has made plans in case it is called in to cope with severe instability.<sup>91</sup> It has deployed troops to 50 locations, such as airports and customs posts, to provide additional security – a move permitted by the CPA, although it did not give the requisite notification, reportedly due to lack of time.<sup>92</sup>

### 3. Voter awareness

Many observers have long expressed fears that voters are insufficiently aware of the CA election, or of its purpose and modalities. The most recent extensive survey concluded that “only a small proportion of people have heard about the issues raised by the political parties such as a federal state, proportional electoral system, etc. Likewise, only a small proportion understand what a constituent assembly is”.<sup>93</sup> The lack of understanding this implies may be overstated: the definition of “correct” understanding is narrow, and the campaign and media attention will boost awareness.<sup>94</sup> This has been a priority for government and non-government agencies.

The Election Commission has taken the lead in organising basic voter education programs across the country. Its efforts have been supplemented by numerous

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<sup>86</sup> The temporary police have been recruited and their two-week training started in mid-March 2008. They will be retained for a month. Crisis Group interview, home ministry assistant spokesperson Ekmani Nepal, Kathmandu, 19 March 2008.

<sup>87</sup> Ibid. The Election Commission has broad powers to issue directives to all government personnel, Election Act (39, 45).

<sup>88</sup> This includes the senior commanders of the NP, AFP, army and NA and the National Department of Investigation, the domestic intelligence agency.

<sup>89</sup> Four private chartered helicopter and one army helicopter. A second army helicopter will be on standby for the Kathmandu valley.

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<sup>90</sup> Candidates are entitled to state security if they specifically request it or if police threat analysis suggests they require it. The local administration is the primary point of contact for candidates.

<sup>91</sup> Crisis Group interviews, senior army officers, January-February 2008.

<sup>92</sup> See “Election Report No. 1”, UNMIN, Kathmandu, 22 March 2008, at [www.unmin.org.np/downloads/publications/2008-03-22-UNMIN.Election.Report.1.ENG.pdf](http://www.unmin.org.np/downloads/publications/2008-03-22-UNMIN.Election.Report.1.ENG.pdf).

<sup>93</sup> Sudhindra Sharma and Pawan Kumar Sen, “Nepal Contemporary Political Situation V: Nationwide Opinion Survey”, Interdisciplinary Analysts, Kathmandu, March 2008, p. 67. Fieldwork carried out in December 2007 and early January 2008 found that 67 per cent of respondents had heard of the CA but only 21 per cent correctly understood it.

<sup>94</sup> On an earlier survey in this series and the narrow definition of “correct” understanding, see Crisis Group Report, *Towards a Lasting Peace*, op. cit., p. 37, fn. 360.

NGO projects, mostly funded by donors. The commission's work has included training thousands of local volunteer educators, publishing information booklets and posters and producing radio and television information slots.<sup>95</sup> The scale has been impressive but the impact is hard to quantify. There has been criticism that volunteer educators were reluctant to reach beyond district headquarters; volunteers themselves reportedly found the electoral system hard to understand and even harder to explain.<sup>96</sup>

NGOs have engaged in the effort in a number of ways, from running local workshops to publishing materials. Some have focused on particular issues, such as training for women journalists. However, there are concerns that generous donor funding directed to large Kathmandu-based NGOs may not have met its targets, and there is little or no way of evaluating utility, impact and impartiality.<sup>97</sup> Nepal's media has matured and expanded rapidly since the 1999 elections. The greatly increased reach of FM radio and private television (as well as a flourishing print sector) has enabled the media to play a greater role in building awareness, and donor-funded NGO projects have boosted its capacity to disseminate CA information. Still, voters look primarily to the parties to educate them about the elections,<sup>98</sup> and with campaigning underway, gaps in understanding may narrow rapidly.

#### D. POSSIBLE ELECTORAL MALPRACTICE

The Electoral Commission's Code of Conduct is strict and Chief Commissioner Pokharel has said he will

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<sup>95</sup> The Election Commission appointed some 8,500 volunteers, mostly school teachers, as voter educators. They were meant to travel to villages for 45 days disseminating information about the CA, encouraging participation and explaining how to vote.

<sup>96</sup> Crisis Group interviews, international and national election experts, Kathmandu, March 2008.

<sup>97</sup> Some Rs.180 million (\$2.8 million) was channelled to NGOs registered with the Social Welfare Council, and they may have received more directly from INGOs. Only one recipient NGO was based outside Kathmandu. Bhadra Sharma, "Rs. 180M received from donors for voters' education", *The Rising Nepal*, 8 March 2008.

<sup>98</sup> A nationwide survey (with 1,606 respondents) found that 28 per cent of respondents looked to the parties when asked: "Who should conduct political awareness campaigns (such as providing information on constituent assembly election) in your locality?"; 19 per cent looked to the media; only 9 per cent to NGO workers or civil society. Sudhindra Sharma and Pawan Kumar Sen, "Drivers of Legitimacy: A Nationwide Survey Report", submitted to The Asia Foundation and the UK Department for International Development (DFID), Interdisciplinary Analysts, Kathmandu, August 2007, chart 3.24.

enforce it rigorously. Some of the commission's steps seem excessive, such as banning motorcycle rallies to prevent "pomposity and ostentation".<sup>99</sup> Its inability to force parties to clean up their election graffiti suggests that aiming for perfection may be overly ambitious, especially if it means overturning long-established habits. Some forms of more serious electoral malpractice are also long-established habits – perfected and practised by the mainstream parties, which will likely use them against each other and the less experienced Maoists.

**Intimidation.** The Maoists are justifiably seen as the primary problem, but other parties have often resorted to threats in past elections. All the major ones will use their youth and other wings for campaigning and a visible presence at polling booths which can keep an eye on other parties but may also intimidate voters or officials. The Maoists have announced they will deploy large numbers of Young Communist League (YCL) cadres at each polling station. The NC's Tarun Dal (youth wing) and UML's Democratic National Youth Organisation will also be out in force.<sup>100</sup>

**Voter impersonation, fraud.** Although election identity cards were used in 1999, they are not needed for the CA polls. Voters can identify themselves with various documents, including citizenship card, passport, driving license or a government identification card with name and photo of the holder. This increases the risk of fraud. Parties will be tempted to make up for the absence overseas of many younger males by having others vote in their names. It will be hard for anyone to vote twice without official connivance, as fingers will be marked with indelible ink; however eighteen-year-olds excluded from the voters roll may well try to cast a ballot in another's name.

**Booth-capturing.** This refers to various forms of unauthorised seizure of a polling station to enable a party to stuff ballot boxes. Apart from direct, violent takeover – which has been tried in the past but would certainly lead to annulment and repolling – parties can seek to infiltrate their own permitted agents, "dummy" candidates' agents and others inside the polling station to pressure officials to allow extra votes. Other tactics are even harder for observers to monitor: for example, a party might get its voters out early, then hold up the

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<sup>99</sup> Press communiqué No. 2, Election Commission, 14 March 2008, at [www.election.gov.np/EN/detail\\_news.php?id=92](http://www.election.gov.np/EN/detail_news.php?id=92).

<sup>100</sup> Tarun Dal President Mahendra Yadav said the party plans to mobilise 101 youths at each polling station "to secure each booth"; Democratic National Youth Organisation President Ajambar Kangdang said his cadres would "not remain mute spectators if anyone attempts to seize a polling booth". Both parties' student wings made similar statements. "Anyone can go to people: youth leaders", *The Kathmandu Post*, 13 March 2008.

lines to cause delay and frustration among other voters. Given the short time available to process each voter through the two complex ballot-marking exercises, deliberate delay may be an effective, near-invisible tactic.

**Dummy candidates.** Fielding dummy candidates (as independents) in individual constituencies can assist parties in various ways: the resources they are allowed to use for campaigning (cash and vehicles) can be diverted to the real candidate; they may divert some votes from rival parties; and, most importantly, their agents can be present at polling and at the count, pressuring voters and officials. Many suspected dummy candidates registered for certain seats, most egregiously Kathmandu-10, where the Maoist leader, Prachanda, is standing. A suspected seventeen Maoist dummies filed, but fifteen later withdrew.<sup>101</sup> Other parties have been accused of the same practice.<sup>102</sup>

**Misuse of state resources.** This will likely be a recurrent problem and cause for complaint from parties outside government.<sup>103</sup> All 30 ministers are standing – twenty in FPTP seats, ten on PR lists.<sup>104</sup> They will be tempted to divert resources to their parties and their own campaigns. The Election Commission has given warnings, but ministers do not seem to be listening. There have been repeated criticisms that the Maoists are abusing control of the information and communications ministry to use state media for propaganda.<sup>105</sup> The NC, as leader of the government coalition and holder of key ministries, is in the strongest position to manipulate state resources.

**Lack of state neutrality.** With the NC in charge of the home ministry, there is a widespread perception,

including within the party's own ranks, that it has disproportionate influence over local administration and policing.<sup>106</sup> Apart from most senior bureaucrats, election returning officers are serving judges – drawn from a judiciary in which the public has little faith and whose senior members (mostly male and predominantly Bahun, a high caste) may have leanings to the major parties that have been in government when they were promoted.<sup>107</sup>

## E. ELECTION OBSERVATION

Monitoring will be essential for endorsing the validity of the elections and as a deterrent to malpractice. Some 148 Nepali and 29 international organisations have registered as election observers. Apart from registered monitors, party agents and officials, independent civil society members and journalists will be at many polling stations.

**National observers.** An estimated 90,000 national observers from 148 organisations will monitor the polls. The Election Commission has accredited over 10,000 observers at the central level; district offices will accredit the vast majority.<sup>108</sup> National observers have to be adult Nepali citizens with at least tenth-grade education, non-partisan and have received observation training from their organisation.<sup>109</sup> There are five major observer networks: the Nepal Election Monitoring Alliance (NEMA), Nepal Election Observation Committee Nepal (NEOC-N), General Election Observation Committee (GEOC), Democracy and Election Alliance Nepal (DEAN) and Constituent Assembly Election Observation United Forum (CAEOUF).

NEMA, funded by the Asia Foundation and led by Subodh Pyakurel, is probably the largest network, bringing together fourteen organisations and a significant membership.<sup>110</sup> It has trained 17,000 volunteers and aims

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<sup>101</sup> "25 candidates withdraw names, 15 from constituency no. 10", *ekantipur.com*, 9 March 2008.

<sup>102</sup> For example, the NC and RJP appear to have fielded dummy candidates in Nuwakot district. "Yasta chhan 'dami' ummedavar", *Naya Patrika*, 11 March 2008.

<sup>103</sup> The NC used government vehicles to go to the Election Commission to file candidate nominations. Observers report frequent and continuing misuse of government vehicles and other resources in many districts, Crisis Group interviews, international observers, Kathmandu, March 2008.

<sup>104</sup> "Tisajana mantri chunavma", *Naya Patrika*, 21 March 2008.

<sup>105</sup> Despite strong evidence, Minister Mahara says, "people say that but we haven't even put our people into Radio Nepal – in fact, comrades keep complaining that they haven't seen any benefits in my being in this ministry; there are still royalists and others in all the state outlets", Crisis Group interview, 9 March 2008. The Election Commission has kept up pressure: "Drawing the attention of the Government media, the Election Commission has again issued directives to the Chiefs of the Government media to comply with the CA Election Code of Conduct. The EC, time and again, has drawn the attention of the government media", press release, 21 March 2008, at [www.election.gov.np/EN/detail\\_news.php?id=99](http://www.election.gov.np/EN/detail_news.php?id=99).

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<sup>106</sup> One report alleged Home Minister Sitaula has recruited over 600 Congress workers into the National Investigation Department, the domestic intelligence agency, since his April 2006 appointment. He would be following the established practice of incumbents. "Anusandhan vibhag rajnitik bhartikendra", *Naya Patrika*, 11 March 2008.

<sup>107</sup> The most comprehensive survey on social inclusion in Nepal notes that Bahuns, Chhetris and Newars hold "virtually all positions" in the judiciary, while women are even more poorly represented than in the civil service (where they are less than 1 per cent of first class officers and above). "Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal – Summary", DFID/World Bank, 2006, pp. 31-32.

<sup>108</sup> Crisis Group interview, Dhruva Dhakal, EC, 20 March 2008.

<sup>109</sup> *Ibid.*

<sup>110</sup> These include the Federation of Community Forest Users Nepal, Teachers Union of Nepal (a confederation of the UML- and NC-affiliated teachers organisations), Nepal Jaycees,

for 19,000, to cover all polling centres and issue an initial report by mid-morning on election day. DEAN, funded by the U.S. Agency for International Development (USAID) and the National Democratic Institute (NDI), will have 13,000 observers from different organisations (to be trained by 556 veteran observers qualified as master trainers).<sup>111</sup> CAEOUF, led by former Supreme Court Justice and IC drafter Laxman Aryal, plans to deploy 5,000 observers. The Nepal Bar Association and NGO Federation will mobilise 1,000 and 2,000 observers respectively.

The sheer numbers are impressive – almost 30 times more than in 1999 – although even the observers admit this may bring its own problems.<sup>112</sup> Efforts to form a coordination committee have failed.<sup>113</sup> Election observation has in the past been plagued by partisanship and there are no signs the CA polls will be different. Some major organisations and prominent individuals leading them are openly supportive of particular political parties.<sup>114</sup> The Election Commission has indicated it will rescind the accreditation of observers who are found to be partisan; total numbers may end up significantly lower than the initial estimate.

**International observers.** 29 international organisations have been granted accreditation, some of them Kathmandu-based embassies. They will field 810 observers in total. The largest missions are those of the European Union (EU), the Asian Network For Free Elections (ANFREL) and the Carter Center. Some smaller missions are being organised by international organisations with an established Nepal presence, such as NDI and the Asia Foundation.<sup>115</sup> Major international observers will compare notes, aiming not to directly contradict or undermine each other's reports, but retain

their independence.<sup>116</sup> The large EU mission need not reflect member state views; its leader stresses it will reach its own judgment independent of EU missions in Kathmandu or Brussels.<sup>117</sup> Nevertheless, there is likely to be much common ground in the missions' reports; if the polls are broadly free and fair, a united message would make it harder for parties to reject the results. Perfect compliance with international standards is probably impossible: as long as there is no outrageous violence benefiting the Maoists, India is likely to issue a prompt endorsement to forestall appeals and lock in the results.

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Private and Boarding Schools Organisation Nepal and National Federation of Irrigation Water Users Association Nepal.

<sup>111</sup> Nepal International Election Forum (NIEFO), Nepal Law Society (NLS) and Federation of Forestry Users Nepal (FECOFUN). NIEFO members have been involved in election missions abroad (usually UN-sponsored). NLS was involved with all three previous general elections. FECOFUN, a national federation of forest users with thousands of members nationally, is a NEMA member. DEAN's publications, including monthly bulletins and background materials for national observers, are available at [www.deannepal.org/publication.html](http://www.deannepal.org/publication.html).

<sup>112</sup> Crisis Group interview, NEMA chief Subodh Pyakurel, Kathmandu, 20 March 2008.

<sup>113</sup> Crisis Group interview, DEAN chief Subhadayak Shah, Kathmandu, 20 March 2008.

<sup>114</sup> For example, GEOC's H.S.J.B. Rana is seen as linked to the NC and NEOC's Surya Prasad Shrestha and NEOC-Nepal's Sudip Pathak to the UML.

<sup>115</sup> Crisis Group has also registered as an election observer.

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<sup>116</sup> Crisis Group interviews, EU, ANFREL and Carter Center observers, Kathmandu, March 2008.

<sup>117</sup> Crisis Group interview, Kathmandu, 18 March 2008.

## IV. THE AFTERMATH

### A. REPOLLING

Repolling will probably be necessary in some places, but it is hard to predict how many, and even election officials are unsure how it will be carried out. The returning officer of each constituency, or the polling officer at an individual station, has the authority to call off voting in a variety of circumstances. These include “any commotion as well as other extraordinary situation at the polling station or owing to non-operation of electronic devices or any riot or natural calamity or any act beyond control”.<sup>118</sup> Any party that feels it is doing badly can easily cause enough disturbance to force a halt to voting. It is up to the returning officer to specify and publish a date for repolling. Polls can also be cancelled if ballot papers are lost, damaged or interfered with before the count, or if the counting station is seized.<sup>119</sup> Repolling in any polling station means the count for the whole constituency must be suspended until it is complete.<sup>120</sup>

Electoral law does not specify deadlines for repolling, and Election Commission officers admit they have no fixed plans.<sup>121</sup> Some say it can be done almost immediately, but this is unrealistic. The ease or difficulty will depend on a number of factors. For example, if there was widespread violence it may take time to reestablish security and guarantee a free and fair environment. If most ballot papers were used before the poll was suspended, it may be necessary to print replacements, as polling stations will have only a small reserve on hand. Even supportive observers fear significant repolling may well be required. A senior Indian diplomat warned: “There may well be a few dozen places where repolling is necessary – it could be in effect an election in two phases”.<sup>122</sup>

Election observers have urged that repolling regulations should be drawn up in advance to ensure that procedures are not politically influenced.<sup>123</sup> As the decision to cancel

polling at individual stations on the day rests with polling or returning officers, there may be charges that they have not been impartial or acted under duress.

### B. THE COUNT

Before counting starts, the ballot boxes from each booth are to be delivered under security escort to the relevant district headquarters. The returning officer must publish a notice specifying the place, date and time for the count so candidates and their agents can attend.<sup>124</sup> FPTP and PR ballots are both to be counted in the district headquarters. If it cannot be done simultaneously, as preferred, the FPTP ballots take priority, and the PR count will start once that count is completed.<sup>125</sup> Election officials are all likely to concentrate on completing the FPTP count first: managing two parallel counts will be practically unmanageable and there will be greater demand from voters and candidates to learn the FPTP outcome as soon as possible.<sup>126</sup> FPTP results will be published by each constituency returning officer as soon as they are ready. The PR tallies are meant to be passed to the Election Commission in Kathmandu, to be totalled centrally, but election officials have also decided to release the PR tally for each constituency when complete.<sup>127</sup>

The Election Commission long maintained an overly optimistic estimate that the count would take seven to ten days, and a maximum of two weeks (assuming no repolling). Many international experts had suggested some three weeks (longer if repolling is required) will be needed.<sup>128</sup> The Election Commission subsequently revised its projection to the end of April.<sup>129</sup> Given the serious logistical constraints, this is a more realistic timeframe, although it will still almost certainly be extended by repolling.

Individual FPTP results may start being announced shortly after election day.<sup>130</sup> However, as the whole country is considered a single unit for the PR contest, those results can only be finalised when voting in every

<sup>118</sup> Election to the Members of the Constituent Assembly Act, 2064 (2007), 40(1).

<sup>119</sup> Ibid, 52 (1,2) and 53 (4,5).

<sup>120</sup> Ibid, 49(3).

<sup>121</sup> Crisis Group interviews, Election Commission officials, Kathmandu, March 2008.

<sup>122</sup> Crisis Group interview, senior Indian diplomat, Kathmandu, 14 March 2008. One quirk of the electoral legislation is that the government may choose different dates for polling in different constituencies, “taking into consideration the geographical situation, weather and other circumstances as well” but such staggered voting will still be deemed to have been held simultaneously. Election Act, 16(2).

<sup>123</sup> International observers and diplomats have made similar suggestions, Crisis Group interviews, Kathmandu, March 2008.

<sup>124</sup> Election to the Members of the Constituent Assembly Act, 2064 (2007), 48.

<sup>125</sup> Ibid, 49(1).

<sup>126</sup> Crisis Group interviews, central and district election officials, various districts, March 2008.

<sup>127</sup> Ibid, 57, 58.

<sup>128</sup> Crisis Group interviews, international election experts from several organisations, Kathmandu, February-March 2008.

<sup>129</sup> See “Results three weeks after polls, says EC”, *Himalayan Times*, 22 March 2008.

<sup>130</sup> In a case where an FPTP candidate stands and wins in two constituencies (a practice permitted in Nepal), he or she will choose which seat to resign and a by-election will fill the vacancy.

constituency is completed, and the final national tally has been confirmed. The parties will name the winners from their lists only after it has been announced how many seats they have. If their selections do not satisfy the inclusiveness quotas, they will be given three days to revise them.<sup>131</sup> Although the rules allow for a 10 per cent variance, the provisions are so complex that parties may well fail – whether accidentally or deliberately – to meet the requirements.

On past experience, some experts suggest 10 per cent of ballot boxes could be lost, damaged or interfered with before reaching counting stations. A similar percentage of ballot papers could be accidentally spoiled, although this is harder to predict. Voter awareness programs and the guidance of both officials and party agents at polling stations may reduce this. Still, the parallel system with double papers could confuse many voters, as could the 55 party symbols. The lost or damaged ballots will probably not undermine the overall integrity of the vote, but since the margins separating parties could be narrow, 10 per cent disqualified ballots could prompt heated complaints and calls for repolling.

The most important question is at what stage the Electoral Commission will feel able to declare final results. This is the trigger for convening the CA, but it is not clearly defined. Some may argue that as long as by-elections or repolling are pending, the results cannot be final. Others, happy with the broad picture, may push for a faster declaration. Failure to complete polling and counting in even a single station theoretically makes the PR announcement impossible, but it is unlikely the country will wait on a handful of trouble-spots. The decision on final results, like most other aspects of the election, is likely to be political. If it is made with the consensus of the major parties, there will be little quibbling; if not, there will be another dispute.

### **C. THE RESULTS**

The complexity of the parallel system, the vagaries of voter behaviour, the weak tradition of opinion polling and the fluidity of the post-conflict political landscape all contribute to a situation that defies confident prediction. There has been little research on voter behaviour, and it is in any event uncertain whether old loyalties will outweigh more immediate concerns. The arrival of the Maoists as an untested electoral force may lead to shifts in support among leftist voters and beyond. Similarly, the new Madhesi parties' prospects are hard to evaluate. The behaviour of first-time voters – some 22 per cent of the electorate – may reflect concerns specific to young

people who have grown up in the democratic period and come of age during the conflict.

Although it is unlikely any single party will win a majority, this does not mean the CA will be the same as a hung parliament. Assuming the broad division between the (more or less) republican left and the (more or less) conservative/royalist right continues, one of those blocs, however frail its cohesion, will have a majority. (This broad characterisation may be slightly complicated by the arrival of new parties.) The major established parties are banking on their voters turning out and hoping that loyalty and habit will trump the temptation to switch allegiance, particularly in the Tarai. The NC is hoping that the leftist vote will be split between the UML and the Maoists, potentially giving it an advantage in tight FPTP constituencies (just as the UML split before the 1999 election brought it a landslide victory). However, the UML appears confident the Maoists will not eat into its votes – one reason why it has resisted an alliance.

Royalist parties have been marginalised during the seven-party-dominated transitional period but cannot be written off, especially if they can forge an alliance. Many prominent royalists have been confident enough to stand for election from their traditional FPTP constituencies, among them RPP, RJP and RPP (N) leaders.<sup>132</sup> Together they could win PR votes not only from royalists but also from others dissatisfied with the current government; they will be able to draw on resources from well-off monarchists. The fact that the Maoists have risked condemnation by frequently obstructing royalist campaigning (even by parties that have supported the peace process) suggests they view them as a serious threat, as do their repeated calls for “nationalists” to leave the palace and join their cause.

No configuration of results is without conflict risk. Any of the possible outcomes could aggravate tensions, and each would generate powerful losers. If two parties combined command more than two thirds of the CA seats, they could form an alliance powerful enough to drive through constitutional provisions. If, as is more likely, only three or more parties combined reach the two-thirds mark, there will be a greater need for consensus and therefore a greater opening for smaller parties to stall progress.

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<sup>131</sup> Election Act, 7(10).

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<sup>132</sup> Eg, Pashupati Rana (Sindhupalchowk); Surya Bahadur Thapa (Dhankuta); Kamal Thapa (Makwanpur and Kathmandu-5).

## D. REACTIONS: ACCEPTANCE, APPEAL OR REJECTION

Several broad scenarios could emerge as results are announced. Ideally, a more or less free and fair process will leave some individuals complaining but the main parties accepting the outcome. More likely, there will be significant complaints from larger parties which cause some disruption and perhaps lead to repolling, but do not halt the entire exercise. In the worst case, one or more major parties could reject the election altogether and press for a re-run or simply take grievances to the streets.

The critical test will be whether the election is credible enough for the results to withstand the complaints of powerful losers. There are several which could cause trouble if seriously dissatisfied with the conduct of the election or its results; any one of the main parties could obstruct progress. Meeting electoral standards is not just a matter of abstract principle: a credible process offers a much more solid basis for coping with post-poll complaints.

The slow emergence of results and the order in which they are published (with individual FPTP results announced as soon as they are counted and the PR total probably weeks later) could have political significance. For example, the Maoists are widely expected to do badly in the FPTP contest. The announcement of initial poor results could lead to frustration among their cadres (possibly increasing pressure to reject the results) or embolden their opponents to goad them with premature political obituaries. The gradual publication of local PR tallies as the count continues and the circulation of rumours may well exacerbate a tense atmosphere.

High popular aspirations raised by the polls – the prime minister has even promised they “will solve all the nation’s problems”<sup>133</sup> – will not be met. Those whose hopes focus on greater inclusiveness may well be disappointed by initial FPTP results, which will be far less representative of gender, regional and ethnic diversity, and suspicious at delays in the PR results. International experts have urged that the Election Commission make greater efforts to inform voters about the time it may take to know results.<sup>134</sup> While there will be many new faces in the CA, the probable victory of most senior politicians may give the impression of a return to business as usual.

Challenges and appeals are inevitable. Parties that see themselves as victims of intimidation or other unfair practices will register complaints. Individual parties and groupings could be unhappy for particular reasons:

- **CPN(M).** The Maoists have frequently stated that as the people are on their side any result other than victory could only result from rigging. However, on other occasions their leaders have explicitly said they will recognise even unfavourable results.<sup>135</sup> The movement has remained on the fringes of the state and so will feel – however much their participation in government may point to the contrary – that they can justifiably denounce the elections as managed entirely by the “old regime”, from the election officials and security forces to the NC politicians who control critical ministries. The Maoists would find it hardest to accept an NC-royalist majority in the CA.
- **NC and UML.** The two major parties of the democratic era make the most credible-sounding commitments to abide by the results. Nevertheless, surprisingly poor showings could prompt either to complain about an unfair environment or technical irregularities. Such complaints would be unlikely to go as far as all-out rejection and might be used as leverage in the bargaining over ministerial positions.
- **Madhesi parties.** Madhesi will certainly be better represented in the CA than in any previous parliament, but it is possible many more will be elected on NC and UML tickets than from specifically Madhesi parties, whose disunity may cost them dear. This could prompt turmoil in the moderate Madhesi parties and strengthen the hand of more radical organisations, including armed groups. Even if divisions between Madhesi parties appear to be the main cause of a weak showing, the temptation to return to street protests to avoid being outflanked by radicals might be hard to resist. The only consolation that might suit individual leaders would be cabinet berths.
- **Royalists.** The RPP and other royalist parties have been assiduously documenting Maoist obstruction and reporting incidents to the Election Commission, the press and the international community. None expects outstanding results, but none is likely to let any perceived unfairness pass without comment.
- **International reaction.** The most influential (and probably most prompt) reaction to the polls and

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<sup>133</sup> Prime Minister Koirala told the Nepal Donors Consultative Meeting: “The election will take place on April 10 and it will solve all problems facing the country”, “PM assures donors about timely polls”, nepalnews.com, 21 Feb 2008.

<sup>134</sup> The U.S. embassy has expressed willingness to fund such efforts, Crisis Group interviews, electoral experts and U.S. diplomats, Kathmandu, March 2008.

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<sup>135</sup> See, for example, “We will accept any outcomes of the CA polls: Prachanda”, ekantipur.com, 23 March 2008.

their results will be India's. Although plenty of government agencies and opinion-formers in Delhi are still wary even of moderate parliamentary leftists such as the UML, India is likely to accept any result except one which would trigger a Maoist-led government.<sup>136</sup> The U.S. would also balk at such a government, although both countries' diplomats insist their concern is with the credibility of the process, not the results.<sup>137</sup> Other countries worried by a strong Maoist showing would be shielded by India's leading role in making objections (which could easily be based on the many violations likely before and on polling day). Conversely, if India accepts the outcome, others are highly unlikely to reject it.

The Election Commission is the primary authority to handle complaints: it can annul the polls in any station or constituency.<sup>138</sup> There is also a CA Court, which has the power to "hear and settle petitions relating to the election of members of the Constituent Assembly".<sup>139</sup> The court has a three-member bench, drawn from Supreme Court judges. Though in most respects it would follow summary trial procedures,<sup>140</sup> any case might take a long time to process. Even once all evidence has been heard and the defence has submitted its statement (or the deadline to do so expires), it could take up to three months for the court to issue its verdict, which is final.<sup>141</sup> The thoroughness of technical preparations and management will be critical for rebutting allegations of major fraud or other irregularities. Whether the Election Commission can resolve complaints or has to refer some to the court, political pressures will probably outweigh legal niceties.

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<sup>136</sup> New Delhi's concerns about a governing Maoist-UML alliance stem from fears the Maoists might become the dominant partner. India insists it would accept an outright Maoist victory achieved by free and fair means, Crisis Group interview, senior Indian diplomat, March 2008. But so relaxed a reaction in the event of that outcome would be unlikely.

<sup>137</sup> Crisis Group interview, U.S. diplomats, Kathmandu, March 2008.

<sup>138</sup> The Electoral Commission will investigate any complaint about a threat, intimidation or other inappropriate influence on the polls. Election Commission Act, 17(1). It can annul the election in any constituency (or at any or all of its polling centres), if it decides that any election activities have not been free and fair, *ibid*, 17(2). Manual on Settlement of Petitions and Proceedings Relating to Election, 2064 (2007), at [www.nepalelectionportal.org/EN/election-laws/settlement.php](http://www.nepalelectionportal.org/EN/election-laws/settlement.php).

<sup>139</sup> Constituent Assembly Court Act, 2063 (2006), preamble and 3(1). The constitutional provision establishing the court offers a marginally broader definition of its scope: "to examine election-related complaints", Interim Constitution, Art. 118.

<sup>140</sup> Constituent Assembly Court Act, 2063 (2006), 10(1).

<sup>141</sup> *Ibid*, 14(1).

## V. A CHALLENGING TRANSITION

### A. A ROADMAP FOR THE INTERREGNUM?

The transitional period will last at least several weeks. Even if voting goes smoothly, it will take at least three weeks for the final results to be published and up to another three weeks before the CA convenes. As noted, repolling will probably seriously extend that schedule. The Interim Constitution is vague on several transitional issues and avoids some altogether. Much depends on the major political players. While all the main ones talk of maintaining seven-party unity and consensus-based governance, there is no detailed agreement on how this would work. Even if there were a general commitment to seek a broad unity government, questions of its leadership and distribution of ministries would almost certainly be reopened in the light of election results. The seven parties will probably find it hard to admit others into their club (however fraught their relations, there is a certain comfort in the arrangement) but a stable unity government would need wider representation – of Madhesi parties, more representative individuals and perhaps moderate royalists. That will require a major psychological shift.

The interim legislature will remain in place until it is automatically dissolved by convening of the CA.<sup>142</sup> The Interim Constitution does not specify transitional arrangements for the executive but as long as the legislature is in place, the provisions for the continuity of the prime minister and council of ministers remain in force. This means there could only be a change in prime minister if the incumbent resigns, loses a no-confidence vote, ceases to be a member of the legislature or dies.<sup>143</sup> The Interim Constitution envisions formation of a new government after the CA convenes but only specifies that it should be broadly in line with its own provisions.<sup>144</sup> The critical ones that will likely still apply are that the prime minister should be selected by consensus or, failing that, elected by a two-thirds majority, and the council of ministers should be appointed by consensus.<sup>145</sup> "Consensus" is defined as that of the seven parties,

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<sup>142</sup> Interim Constitution, Art. 45(4): "The term of the Legislature-Parliament shall come to an end following the first meeting of the Constituent Assembly".

<sup>143</sup> *Ibid*, Art. 38(7). A vote of no confidence is detailed in Art. 55A.

<sup>144</sup> "After the formation of the Constituent Assembly, the exercise of the executive power, constitution of the Council of Ministers and other matters related thereto shall, *mutatis mutandis*, be in accordance with the provisions in this Part", *ibid*, Art. 44.

<sup>145</sup> *Ibid*, Art. 38(1-3).



which appear set to retain this privileged constitutional position regardless of the election outcome.<sup>146</sup>

Prime Minister Koirala has said he will retire from politics after the election, but it is not clear if this is firm and, if so, when he will step down. His name remains on the NC's PR list. If he resigns before the CA's first sitting, his successor would be chosen by consensus or a two-thirds vote in the legislature. The Maoists, while supporting a coalition administration, said in their manifesto they would seek CA backing for an executive presidency and a new transitional government appointed by consensus.<sup>147</sup> The UML said the government "will be formed under the leadership of the largest party on the basis of proportional representation", implying that any party with sufficient seats could expect cabinet posts.<sup>148</sup> Other parties may see the start of the CA as an opportune moment to push for more structural changes.

Managing the transition will be difficult. Even with basic cross-party consensus, the government has been weak in the pre-election period and may well be dysfunctional in its aftermath – especially if results suggest the power-sharing arrangements require major changes. Tough decisions will be required during the interregnum, from managing election disputes to convening the CA and forming a new government. Perhaps more critically, the current government will have to manage security arrangements – and any post-poll instability could bring new calls for army deployment or other sensitive steps.

## B. THE CONSTITUENT ASSEMBLY'S FIRST SITTING

The first sitting of the CA is to be summoned by the prime minister within 21 days after the Election Commission announces final results.<sup>149</sup> Although the general understanding of "first meeting" is a single session on the first day, debate and procedural delays could extend it for several days.<sup>150</sup> Its administrative tasks

include electing a chair and vice-chair, forming a new government and deciding basic rules of procedure (including how to divide its constitution-drafting and legislative functions). The Interim Constitution does not specify the order in which these decisions must be taken or a time-limit. Once formed, the cabinet is to nominate the 26 remaining CA delegates by consensus, a process that could prove controversial if the assembly is closely divided.

The Interim Constitution says, "implementation of the republic shall be made by the first meeting of the constituent assembly" but does not define "implementation" or specify a mechanism.<sup>151</sup> The sitting of the CA is unlikely in itself to be considered an automatic trigger for implementation, which would presumably still be subject to a vote that the seven currently governing parties would feel bound in spirit, if not in letter, to support. The Interim Constitution had initially specified that the monarchy's fate would be decided by simple majority vote at the first sitting, but this was altered to the language cited above, which leaves the need for, or nature of, any voting unspecified.<sup>152</sup> The Maoists are the only party to offer a detailed description of what it understands by implementation of the federal democratic republic, although its elements range from the immediately practical (replacing the king with an interim president) to broader policy initiatives, such as immediate implementation of the CPN(M) transitional economic policy.<sup>153</sup> The NC offers no clues in its manifesto and its leaders' comments have been ambiguous.<sup>154</sup>

If the NC and royalist parties do well, it would strengthen those pushing to reopen the question of the monarchy's

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suggests that the "first meeting" may exclude an initial sitting to resolve procedural issues, Crisis Group interview, March 2008. There will be scope for debate over the word's interpretation in the context of Art. 159(2).

<sup>151</sup> Ibid, Art. 159(2). This article was revised in the third amendment (28 December 2007) to reflect the 23-point agreement.

<sup>152</sup> Ibid, Art. 159(3) originally read: "Notwithstanding anything contained elsewhere in this Constitution, the Constituent Assembly shall decide by a simple majority at its first meeting about whether or not to continue the monarchy in existence".

<sup>153</sup> CPN(M) commitment paper, p. 19.

<sup>154</sup> Prime Minister Koirala's probable successor, Sher Bahadur Deuba, was deliberately vague when asked to describe the process in an interview: "Q. Take for instance, the issue of republic. Some say it will be implemented through the first sitting of the Constituent Assembly, while others disagree. What will happen? Deuba: Maybe it means the first session of the first meeting. It won't be exactly like that; the issue of how to choose a president could take time. Q. How will the republic work? Will the king be ousted from the Narayanhiti [royal palace] or what? Deuba: What the king will do, stay in Nepal or leave the country, that is also unknown", interview, ekantipur.com, 15 March 2008.

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<sup>146</sup> "For the purpose of this Constitution 'political consensus' means the political consensus reached between the seven political parties", Interim Constitution, Art. 37(1), explanatory note. Formation of any new government shall be in accordance with this and other provisions, *ibid*, Art. 44.

<sup>147</sup> CPN(M) commitment paper, p. 19.

<sup>148</sup> UML manifesto, p. 38.

<sup>149</sup> Interim Constitution, Art. 69(1).

<sup>150</sup> The authoritative Nepali original uses the term *baithak*, in common usage "meeting" and in contrast with the standard term for "session" (*adhiveshan*). However, the terms are used more or less interchangeably at many points in the Interim Constitution, and occasionally *baithak* alone stands for "session" (eg, *ibid*, Art. 88(2)). One constitutional law expert

future, either by voting against a republic or mounting a campaign for a referendum. The Maoists have already indicated in their manifesto that they see the CA as an opportunity to start from scratch – for example, by appointing an acting executive president. Assuming these hurdles can be crossed, the question of implementation will have to be addressed. If a republic is endorsed, the immediate future of the king and the appointment of a new head of state will need to be managed. Neither the Interim Constitution nor other written agreements address the modalities of implementing the republic, and these will certainly be contentious.

### C. POSSIBLE DESTABILISING FACTORS

**Two armies.** Both the state and the Maoist armies are intact, as strong as ever and ready to fight if necessary. Indeed, the former has grown stronger with public rehabilitation of its reputation (helped by ineffective government and worsening public security) and recruitment to fill vacancies. It has also become bolder in its political interventions – most notably on Maoist integration and its public rejection of part of the eight-point deal on Madhesi group entry into its ranks. Chief of Army Staff Rookmangad Katwal made pointed comments in his Army Day address about respecting the orders of any government “established by constitutional law”.<sup>155</sup> Unlike efforts to claim earlier remarks on Maoist integration had been misunderstood,<sup>156</sup> he reinforced the message by having his official spokesperson reiterate the main points on the record the next day.<sup>157</sup> On 20 March 2008, the army bluntly warned it would not tolerate any attempt to seize power by force or any elements that sought to compromise national sovereignty or territorial integrity.<sup>158</sup>

Lack of progress on integrating PLA fighters, while seen by conservative opponents of the Maoists as a victory, is precisely what more militant Maoist commanders sought.

Prachanda's shift from December 2007 (when he was calling for integration before the elections) to January 2008 (when he announced it could be deferred until after them) may look like a triumph for moderation but is in fact a concession to those who want the PLA to be intact on 11 April. PLA soldiers have been involved in election campaigning (some even standing as candidates); UNMIN believes some cantonments have permitted more than the maximum 12 per cent of combatants to leave at any one time.<sup>159</sup> The progressive reassertion of the military on both sides is the most dangerous shortcoming of the peace process. The essence of the November 2006 CPA was a commitment that both forces would be restrained, controlled by civilian politicians and stay out of politics to allow elections to go ahead. This has not happened: each has re-entrenched to protect its basic interests and remains combat-ready.

**Royalist rearguard action.** Although most royalist parties have indicated they will accept the CA's verdict on the monarchy, the king and his staunchest supporters may not be so accommodating. Their options are narrowing and pre- or post-poll disruption is one of the few avenues left to them to stall the process.<sup>160</sup> The king has become slightly more vocal (giving two interviews after a long silence) but has made no public statement directly indicating an intent to oppose the CA. Some groups within the NC are more or less openly discussing options, including a call for return to the 1990 constitution. Former NC Prime Minister Krishna Prasad Bhattarai has hosted meetings of the like-minded to discuss plans. The RPP(N) is still fighting for a referendum but is unlikely to attract significant support. Some people close to the king are still talking up the “democratic coup” plan, but the army is unlikely to step in without international backing and civilian, rather than royal, political cover.

Royalists have frequently hinted at secret Indian guarantees of the monarchy's survival, but the resolution of the Madhes movement suggested Delhi has decided not

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<sup>155</sup> “Sena divas 2064ko upalakshyama nepali senaka sakal darjalai pradhansenapatiko sandesh”, NA Headquarters, 6 March 2008, paragraph 5, at [www.nepalarmy.mil.np/news.php?newsid=2173&&lan=np](http://www.nepalarmy.mil.np/news.php?newsid=2173&&lan=np).

<sup>156</sup> See “No need to create wave out of my remarks: Army chief”, *ekantipur.com*, 13 January 2008.

<sup>157</sup> Army spokesperson Brigadier-General Ramindra Chhetri was quoted as saying: “Nowhere it is mentioned that Maoist combatants will be integrated into [the] NA. Politically active persons cannot be recruited into [the] army. Likewise, there cannot be collective recruitment based on some ethnic group or community”, “NA no to recruitment of politically indoctrinated”, *nepalnews.com*, 8 March 2008.

<sup>158</sup> “NA won't bow down at elements aiming to seize power forcefully”, *nepalnews.com*, 20 March 2008.

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<sup>159</sup> See “Election Report No. 1”, UNMIN, Kathmandu, 22 March 2008, at [www.unmin.org.np/downloads/publications/2008-03-22-UNMIN.Election.Report.1.ENG.pdf](http://www.unmin.org.np/downloads/publications/2008-03-22-UNMIN.Election.Report.1.ENG.pdf). Unarmed PLA and NA soldiers in plain clothes can go out of their cantonments or barracks on leave, for medical referral or to visit families – but no more than 12 per cent of the total personnel at any location may be absent at one time. “Agreement on Monitoring of the Management of Arms and Armies”, 8 December 2006, paragraph 5.2(5).

<sup>160</sup> See Kiran Nepal, “Antim ladain”, *Himal Khabarpatrika*, 28 February 2008. This article quotes former royal minister Tanka Dhakal warning that elections will only be possible with the king on board and that there will be “great bloodshed” if Gyanendra is sidelined.

to offer the king an unconditional lifeline.<sup>161</sup> Questioning the CA elections' legitimacy, trying to use sympathetic legislators and stalling for time are the best but still weak options for the royalists. Opinion polls suggest a significant minority still supports some form of monarchy, but there are few ways to convert that abstract belief in the institution into a practical rescue plan.<sup>162</sup> Still, the monarchy is unlikely to disappear without some final, possibly violent, confrontation. If the move to a republic is achieved with a less than overwhelming public mandate, royalists may still nurture hope of a return at some future date.

**Weak peace process.** Seven-party unity has sometimes been little more than cosmetic, and the peace process has been characterised by multiple agreements never implemented. Critical CPA elements remain unaddressed, despite explicit commitments in the 23-point agreement to move them forward. Whatever the election outcome, the Maoists will be keen to retain as much extra-parliamentary leverage as possible and are unlikely to dismantle all their parallel power structures. On 6 February they announced reestablishment of their United Revolutionary People's Council, raising new doubts over their commitment to dissolve those structures.<sup>163</sup>

Militant Maoists or royalists are far from the only threat to peace. The experience of the Madhesi and ethnic movements demonstrates that radicalism can spring from different sources and rapidly assume a violent form. In the absence of a solid peace process that transforms the basic structure of the conflict, the idea that the CA will be a panacea is an illusion. Weak governance and poor law and order have dogged the run-up to the elections and will probably be an even more severe problem in the aftermath.

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<sup>161</sup> In the wake of the 23-point agreement, endorsed by New Delhi, that called for a republic, royalists were still confident that India would rescue the king. Rabindranath Sharma, then leader of the aggressively pro-palace RPP (Nepal) party, said, "India has still left a place for monarchy. I think India is negotiating with the king", interview, *Spotlight*, 28 December 2007. The prime minister's signature on the eight-point agreement with the UDMF in February 2008, which confirmed the commitment to a federal democratic republic, and the changed language of royalist leaders such as Surya Bahadur Thapa suggests hopes of an Indian bailout have receded.

<sup>162</sup> Royalists took heart from a survey that reported 49 per cent support for the monarchy, Sudhindra Sharma and Pawan Kumar Sen, "Nepal Contemporary Political Situation V: Nationwide Opinion Survey", Interdisciplinary Analysts, Kathmandu, March 2008. Other research, such as a large April 2007 survey which found 59 per cent in favour of a republic, suggest support for the monarchy is dwindling. "State of Democracy in Nepal", International IDEA, June 2007, at [www.idea.int/asia\\_pacific/nepal/upload/nepal\\_survey\\_keyfindings07.pdf](http://www.idea.int/asia_pacific/nepal/upload/nepal_survey_keyfindings07.pdf).

<sup>163</sup> Press statement, United Revolutionary People's Council, Kathmandu, 6 February 2008.

## VI. CONSTITUENT ASSEMBLY AND BEYOND

### A. THE NATURE OF THE CONSTITUENT ASSEMBLY

The CA is a sovereign body and will be at liberty to define many of its own rules of conduct.<sup>164</sup> In theory, it will be free to endorse or overturn any agreements entered into by the current government or its constituent parties. It will also be able to amend the Interim Constitution by a two-thirds vote.<sup>165</sup> The CA's goal is not specifically defined, although the preamble to the CPA and the Interim Constitution contain statements of intent that serve as non-binding guidelines.<sup>166</sup> Broad public agreement on core governance principles has been reflected in the stated aims of the major parties, although their manifestos differ in approach.

**Procedures.** The Interim Constitution establishes an unusual decision-making system. Apart from the question of the monarchy, all provisions are expected to be adopted unanimously, with time-consuming procedures for fresh consultations and voting if there is even one opposing vote. Each provision will be voted on in sequence and adopted if a quorum of two thirds is in attendance and no opposing vote is cast.<sup>167</sup> Failing this, it will be referred to consultation between parliamentary party leaders before a fresh vote within 21 days and, failing unanimity, a further, final two-thirds majority

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<sup>164</sup> For the constitutional provisions on the CA, see Crisis Group Report, *Nepal's Constitutional Process*, op. cit. The UNDP's CASU has made resources and reports available at [www.undp.org.np/constitutionbuilding/](http://www.undp.org.np/constitutionbuilding/). The report of a 3-4 March 2007 conference is particularly useful: "Constitution Making in Nepal", UNDP, Kathmandu, 2007, at [www.undp.org.np/constitutionbuilding/elibrary/constitutionnepal/First%20Report%20Full%20English.pdf](http://www.undp.org.np/constitutionbuilding/elibrary/constitutionnepal/First%20Report%20Full%20English.pdf).

<sup>165</sup> The Interim Constitution permits the legislature-parliament to amend the constitution in this way (Art. 148) and states that the CA shall exercise the same powers once it replaces the interim legislature (Art. 59).

<sup>166</sup> The CPA's preamble lists the tasks of the new constitution: "progressive restructuring of the state"; resolution of "problems related with class, ethnicity, regional and gender differences"; and principles of "competitive multiparty democratic system, civil liberties, fundamental rights, human rights, complete press freedom, rule of law and all other norms and values of democratic system". The Interim Constitution echoes this list but does not require that the eventual constitution must be in accord with it. See Crisis Group Report, *Nepal's Constitutional Process*, op. cit., p. 10.

<sup>167</sup> Interim Constitution, Art. 70(1)-(2). It is unclear from the text what happens if members abstain.

vote.<sup>168</sup> Separately, an absolute two-thirds majority can refer to a referendum “a decision on any matters of national importance, except when this conflicts with provisions elsewhere in the constitution”.<sup>169</sup> This has been taken to exclude a referendum on the monarchy; although the Interim Constitution no longer specifies requirements for a vote on the monarchy, its unambiguous provision for immediate implementation of a republic presumably counts as a provision that rules out a referendum.<sup>170</sup>

The structural bias towards unanimous decisions may encourage consensus building but will also allow individuals to stall progress. The role assigned to party leaders may well encourage backroom horse-trading instead of open debate. The lack of a provision for agenda setting, drafting and ordering of votes could further empower political leaders over legislators. The CA is entitled to set up such committees as it deems necessary and could either request additional secretariat support or delegate drafting to cross-party committees.<sup>171</sup> Negotiations over structures could be complex if parties see partisan advantage in specific mechanisms. However, faith in the process will be strengthened if committees or other structures function transparently and make drafts available to the public as they are submitted for debate.

**The CA as legislature.** The CA’s dual function saves costs and electoral complications but raises the risk of trade-offs between its constitution-making and legislative functions. It is for the CA itself to decide how it wishes to divide its roles. The Interim Constitution states that the CA acts as the legislature as long as it is in existence but that it may delegate legislative duties to a separate committee.<sup>172</sup> In any case, bargaining over day-to-day legislation could lead to party deals to gain support for constitutional provisions. Restricting the CA’s legislative mandate (either by constitutional provision or party commitments to avoid enacting all but essential legislation) could prevent some of these problems. However, as even the unelected interim legislature demonstrated an appetite for legislating across the board, it is unlikely that any proposal to limit legislative scope would win party backing in the CA. Transparency of procedures and debates, coupled with public participation in constitutional discussions, are the best remaining

bulwarks against the CA falling victim to disputes over relatively minor legislation.

**Duration.** The Interim Constitution gives the CA two years to complete its work, with a possible six-month extension in case of a “declaration of an emergency situation”.<sup>173</sup> This is a reasonable timeframe, but the consistent track record of missed deadlines in the peace process suggests delays are entirely possible. The Interim Constitution specifies the need to use emergency powers to enable an extension but, as in other areas, the CA could decide that as a sovereign body, it is entitled to extend its timeframe by other means. Perhaps more worrying is the provision for early dissolution of the CA (by its own resolution),<sup>174</sup> which could lead to suspension of the constitutional process mid-way without any framework for continuing executive, legislative or constitution-drafting functions.

**Implementation.** It may seem premature to worry about how to implement a constitution the drafting of which has not yet begun. However, constitutional experts stress that implementation is increasingly recognised as the most important part of the constitutional process. Without viable plans to put it into practice, even the best document may fail to achieve its aims.<sup>175</sup>

## B. THE BIG ISSUES

Although much attention has been focused on the monarch’s future, several other major issues are likely to generate serious debate:

**Security sector reform.** Despite its centrality to ending the conflict and building a sustainable peace, the shape of Nepal’s security sector is yet to be discussed. There are only cursory, poorly defined commitments in the CPA (to make the army more representative and subject to democratic control and to “integrate” Maoist combatants). The committee that was supposed to take discussion forward has met only once and made no progress.

**Federalism.** This will cause much debate. All major parties – even the RPP(N) – have formally accepted some form of federalism but there has been little discussion within them on principles or practicalities. There remains wide opposition across the political spectrum, including from prominent opinion-formers in academia, media and civil society. Little attention has been paid to the

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<sup>168</sup> Ibid, Art. 70 (3-6).

<sup>169</sup> Ibid, Art. 157.

<sup>170</sup> Of course, the scope for referendums could be redefined by constitutional amendment.

<sup>171</sup> Parties have proposed certain mechanisms. For example, the NC envisages a main constitution drafting committee assisted by subject-specific expert committees or sub-committees. NC manifesto, p. 30.

<sup>172</sup> Interim Constitution, Art. 83(1).

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<sup>173</sup> Ibid, Art. 64.

<sup>174</sup> Ibid, Art. 64.

<sup>175</sup> See “Constitution Making in Nepal”, UNDP, Kathmandu, 2007, p. 23.

bureaucracy needed to support federal governance or a complex system of quotas and reservations. Related to federalism but not synonymous with it is the longstanding demand for more decentralisation. The 1999 Local Self-Governance Act, which devolved some budgetary authority to Village Development Committees (VDCs), the lowest level of local government, was widely seen as a success but the dissolution of local elected bodies in 2002 and the displacement of most VDC secretaries during the conflict (and latterly the Madhes unrest) halted progress.

**Secularism and inclusiveness.** Parliament proclaimed Nepal a secular state in May 2006. All major parties are committed to endorsing this in the constitution, but it is an emotional issue that has already generated some passionate opposition, as well as criticism from Indian Hindu groups and parties. The CA may restart debate. The question of reservations, quotas or other forms of affirmative action will be hard fought. While the quotas in the CA electoral system may be seen as a precedent, there is unlikely to be easy agreement on whether the constitution should guarantee specific measures or contain only a general provision for later legislation to implement.<sup>176</sup>

**Government structure and state institutions.** The Maoists call for an executive presidency with a prime minister elected by parliament to oversee day-to-day administration. The UML wants a weak, ceremonial presidency with a directly elected executive prime minister. Some parties talk of making the state more representative, accessible and accountable. The Maoists, for example, seek to overhaul the judicial system and bureaucracy.

**International relations.** The Maoists have called for revoking the 1950 Treaty of Peace and Friendship with India, as well as tighter controls on foreign capital. International treaties or other agreements involving major natural resource issues are already subject to certain restrictions,<sup>177</sup> and some may push for even stricter constitutional provisions, especially in the light of pre-election awards of large hydropower

contracts.<sup>178</sup> Apart from this, the major parties' stances on foreign relations are similarly bland. The NC and UML manifestos are indistinguishable in their commitment to base foreign policy on the UN Charter and panchsheel, the doctrine of non-interference.<sup>179</sup> All parties promise to maintain good relations with India and China; the Maoist proposal that Nepal should be a "bridge" between them to take advantage of their fast-growing economies echoes King Gyanendra's priority following his 2005 coup.<sup>180</sup>

### C. PUBLIC PARTICIPATION

A meaningful process will require much better mechanisms for public consultation and participation than in the past. There has been no shortage of advice on how to accomplish this, ranging from a full-fledged constitutional commission (an idea unpopular with political leaders) to support structures to manage public discussions, invite and analyse individual or group suggestions and maintain transparent debate.<sup>181</sup>

The major parties, however, show little interest in public consultation, despite the strong evidence that a more participatory drafting process on the Interim Constitution and firmer commitments to a similar CA exercise might have headed off some of the street agitations that forced pre-CA deals on key issues. The UML does not mention public participation in its manifesto; the Maoists make a single-sentence promise to adopt "appropriate mechanisms" to guarantee the active participation of "the general population, different interest groups and experts".<sup>182</sup> The NC gives it more space and has more concrete proposals for public hearings and consultations with a variety of groups, as well as for CA committees to consult interest groups and experts on particular issues.<sup>183</sup>

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<sup>176</sup> The 1990 Constitution specifically authorised "special provisions ... for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward", Art. 11(3). However, no legislation was introduced to establish such provisions.

<sup>177</sup> Ratifying, acceding to, accepting or approving such treaties or agreements requires a two-thirds parliamentary majority, Interim Constitution, Art. 156(2).

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<sup>178</sup> For example, the 2 March 2008 award of the 402MW Arun III hydropower project to India's Sutej Jal Vidyut Nigam raised controversy. Nevertheless, the CPN(M) is sticking with the two-thirds ratification rule, insisting only that it be rigorously enforced, commitment paper, p. 18.

<sup>179</sup> NC manifesto, pp. 19-20. UML manifesto, pp. 37-38.

<sup>180</sup> See July 2005 budget speech, at [www.mof.gov.np/publication/speech/2005/pdf/BudgetSpeech\\_english.pdf](http://www.mof.gov.np/publication/speech/2005/pdf/BudgetSpeech_english.pdf).

<sup>181</sup> The UNDP's CASU has offered significant support and guidance on possible mechanisms for public participation. See, for example, Yash Ghai, "A participatory process for making a new constitution", CASU paper, at [www.undp.org.np/constitutionbuilding/elibrary/constitutionnepal/Participatory%20process%20English.pdf](http://www.undp.org.np/constitutionbuilding/elibrary/constitutionnepal/Participatory%20process%20English.pdf).

<sup>182</sup> CPN(M) Commitment Paper, p. 16.

<sup>183</sup> NC manifesto, p. 30.

## **VII. CONCLUSION**

Even a successful election will only mark the opening of the next stage in the peace process. Many of the most critical tasks have been left on the back burner as attention has focused on the election. Surviving the rocky road to the polls and their probably turbulent aftermath will require maturity, cooperation and forward planning from the main parties. A managed transition to the CA is possible but the range of potentially disruptive factors is daunting. The parties' first commitment must be to respect the election's outcome, as long as it is broadly free and fair. Whatever the results, seven-party cohesion would smooth the way forward, but leaders will need to prepare for a broader unity government that includes other parties that do well at the polls. Tackling the sensitive remaining parts of the peace deal will then be a priority – starting with grasping the nettle of security sector reform and converting the extended military ceasefire into structural support for sustainable peace. Progress on security, justice, reconstruction and economic development would help to maintain popular support for the constitutional process.

**Kathmandu/Brussels, 2 April 2008**

## APPENDIX A

### MAP OF NEPAL



## APPENDIX B

### GLOSSARY OF ACRONYMS

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APF	Armed Police Force
CA	Constituent Assembly
CDO	Chief District Officer
CEC	Chief Election Commissioner
CPA	Comprehensive Peace Agreement
CPN(M)	Communist Party of Nepal (Maoist)
DEA	District Election Adviser
DEO	District Election Officer
EC	Election Commission
EEMT	Electoral Expert Monitoring Team
EOM	Election Observation Mission
FPTP	First Past The Post
FRNF	Federal Republican National Front
IC	Interim Constitution
JTMM	Janatantrik Tarai Mukti Morcha (in two factions: Jwala Singh (JS) and Goit (G))
MJF	Madhesi Janadhikar Forum
NA	Nepal Army
NC	Nepali Congress
NC(D)	Nepali Congress (Democratic)
NSP(A)	Nepal Sadbhavana Party (Anandidevi)
NWPP	Nepal Workers and Peasants Party
OHCHR	Office of the United Nations High Commissioner for Human Rights
PLA	People's Liberation Army (Maoist)
PR	Proportional Representation
RJP	Rashtriya Janashakti Party
RPP	Rashtriya Prajatantra Party
RPP(N)	Rashtriya Prajatantra Party (Nepal)
SPA	Seven-Party Alliance (includes NC, UML, NSP(A), NC(D), Janamorcha Nepal, NWPP and ULF)
TMDP	Tarai Madhes Democratic Party
UDMF	United Democratic Madhesi Front



UML	Communist Party of Nepal (Unified Marxist-Leninist)
UNMIN	United Nations Mission in Nepal
YCL	Young Communist League

## APPENDIX C

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**Mohamed Sahnoun**

**Salim A. Salim**

**William Taylor**

**Leo Tindemans**

**Ed van Thijn**

**Shirley Williams**

**Grigory Yavlinski**

**Uta Zapf**