

NEPAL'S ELECTION: A PEACEFUL REVOLUTION?

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EXECUTIVE SUMMARY

Nepal's constituent assembly (CA) elections marked a major step forward in the peace process, paving the way for the declaration of a federal democratic republic and the start of the constitution-writing process. Although falling short of an outright majority, the Maoists won a decisive victory at the 10 April 2008 polls, securing a mandate for peace and change. However, the largely peaceful and well-managed vote opened a messy new round of political haggling and obstruction. The Maoists have been unable to secure agreement on a new coalition government. Other parties, still struggling to accept their defeat, have set new conditions for supporting a Maoist-led administration.

The elections delivered a clear and, to many, surprising result. The Communist Party of Nepal (Maoist, CPN(M)), emerged as the largest party by a wide margin, winning more than one-third of CA seats. The largest established parties, the Nepali Congress (NC) and Communist Party of Nepal (Unified Marxist-Leninist, UML), were not wiped out but have had difficulty coping with their relatively weak showing – their combined seats are less than those of the Maoists. The NC was particularly hard hit by the strong performance of new Madhesi parties, among which the Madhesi Janadhikar Forum (MJF) has secured a dominant position. Royalist parties failed to win a single first-past-the-post (FPTP) seat, only saving a toehold in the new assembly through the parallel proportional representation (PR) contest.

Party campaigning built the atmosphere for a lively and passionate contest. Long-suffering and politically sophisticated voters proved a testing audience, keen to hear what candidates had to say for themselves but well prepared to exercise their own judgement. It was not the cleanest of campaigns. The established parties resorted to old tricks to steal a march on their opponents. The Maoists, and to a lesser extent the MJF, distinguished themselves primarily by outdoing their more experienced rivals at their own game. The CPN(M) did use intimidation and coercion but also exercised great restraint in the face of the possibly calculated killing of fifteen of its activists. At the same time it demonstrated formidable organisation

and motivation – qualities which were deservedly reflected in its victory.

The vote itself and the complex parallel count went remarkably smoothly, with complete results (including repolling) ready within fifteen days. Still, final results, including the approved lists of parties' selections to fill PR seats, were published only on 8 May, almost a month after the election. Five by-elections, for seats resigned by individuals who won FPTP contests from two constituencies, will probably be held only in September. One declared FPTP result has been suspended by court order following an appeal by the (narrow) loser. The 26 individuals nominated by the cabinet, who will complete the complement of 601 CA members, have yet to be decided thanks to the elusiveness of the required inter-party "consensus".

Whatever the broad political breakdown, the CA is a remarkably inclusive body, far more representative of Nepal's caste, ethnic, religious and regional diversity than any past parliament. One third of its members are women, catapulting the country into regional leadership on gender representation. Thanks largely to the PR component, no fewer than 25 parties have secured CA seats, reflecting a kaleidoscope of ideological and regional or community-specific agendas. The MJF proved that it was more than just a brand name for a vague sense of Madhesi grievance but a viable political machine able to mobilise votes and put identity politics on the map – probably for the foreseeable future.

The Maoist victory was not unsullied. The CPN(M) engaged in orchestrated strong-arm tactics, generally facing down other parties, which embraced similar means. Some resounding constituency results would have embarrassed the more modest political bosses who engineer realistic-looking margins of victory. Nevertheless, its strong showing was not manufactured. Voters were willing to give credit for its struggle and sacrifice, recognising that the Maoists were the architects of the federal republican agenda. They struck a chord with popular aspirations that the old parties had not even woken up to. In this, as in their more dubious techniques, they made full use of the

fact that they had stayed in close touch with ordinary people and not lost their heads in Kathmandu politicking. Meanwhile, their convincing victories in many urban constituencies – the CPN(M) emerged the clear winner in the greater Kathmandu area –demonstrated that they did not profit solely by preying on vulnerable rural voters beyond the eyes of observers.

All in all, the elections were credible and a credit to those who organised, fought and voted in them. Although some disruption and intimidation took place, it was far less than predicted. Voters were offered a genuine political debate and real choices. In return, they took their responsibilities seriously and turned out in large numbers to have their say. For all the losers' public petulance, very few collected evidence to file formal complaints. What remains is for the politi-

cal elite to digest the message that Nepal's citizens have at last been allowed to send them.

This report describes the campaign and vote, assesses the credibility of the election and analyses the results. A companion policy report published simultaneously surveys the new political landscape and examines the remaining transitional challenges. The CA has to deliver a functioning government, act as a legislature and also write a new constitution. Each of these would be a tough task in its own right; managing all simultaneously while seeing the peace process through to a stable conclusion will require further commitment and patience.

Kathmandu/Brussels, 3 July 2008

NEPAL'S ELECTION: A PEACEFUL REVOLUTION?

I. INTRODUCTION

Nepal's constituent assembly (CA) elections went ahead as planned on 10 April 2008, despite two postponements, armed groups' threats of disruption and often questionable political will.¹ The Maoists emerged as the largest party by a clear margin, although commanding only just over one third of the CA seats. The campaign period, the vote itself and the counting proceeded far more smoothly than most observers had predicted; the Maoist victory also upset most predictions. But the post-election period was, as expected, less straightforward. While the CA convened for its first sitting on 28 May, nearly three months after the election, a new government is still not in place, and bitter haggling over power sharing continues.

This report offers an assessment of the election, from the latter days of the campaign to the completion of the count.² It analyses the results, their notable features

and the reasons behind them. A companion policy report surveys the new political landscape and examines the remaining transitional challenges.³

¹On the pre-election period and the constitutional and legal provisions governing the elections and the transition, see Crisis Group Asia Report N°149, *Nepal's Election and Beyond*, 2 April 2008. Other recent Crisis Group reporting includes Asia Briefings N°72, *Nepal: Peace Postponed*, 18 December 2007; and 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. Full Nepali translations of all these papers are available at www.crisisgroup.org/nepali.

²During the election campaign period and the first week of vote counting, Crisis Group visited 40 of Nepal's 75 districts, interviewing hundreds of party workers and leaders, election officials, administrative and security officials, journalists and analysts, civil society members and ordinary voters. Crisis Group was registered as an international election observer and expresses its appreciation to the Election Commission of Nepal, Chief Election Commissioner Bhoj Raj Pokharel, his colleagues and all related government officials for their cooperation and unhindered access to polling officers, stations and counting centres. Crisis Group's work was facilitated by the full cooperation of all parties. Notwithstanding the critical analysis in this report, Crisis Group was impressed by the commitment of all officials, political actors and citizens to making the elections a success.

³Crisis Group Asia Report N°156, *Nepal's New Political Landscape*, 3 July 2008.

II. THE CAMPAIGN

The election campaign was vigorous, enthusiastic and hotly competitive; it was also marred by irregularities and violence, most notably the killing of many Maoist activists. Public enthusiasm for the process was palpable, especially as the date drew closer and the prospect of the polls grew more real. Dozens of parties were on the campaign trail, with the atmosphere boosted by lively media interest. Interest focused on the first-past-the-post (FPTP) races, which came to be referred to in Nepali simply as the “direct” election. The traditional and best understood electoral format, it also lent itself far more to intense, locally driven clashes between named and known individuals. The shape of the campaign was similar to that of previous elections, with all parties using the same well-rehearsed techniques to take their message to the people and drum up support.

The resort to dubious tactics also reflected past precedents more than the particularities of the post-conflict environment. The campaign’s liveliness was somewhat tainted – although sometimes boosted – by misbehaviour. For all their repeated promises, few parties ever appeared likely to obey the letter of the Code of Conduct, nor was it likely that the Election Commission (EC) could enforce it fully.⁴ The campaign was also marred by some incidents of serious violence, including several killings, and a general atmosphere of background fear. These are discussed in detail in Section IV below.

A. THE MAOIST MACHINE

With hindsight, it is easy to comment that the campaigns foreshadowed the results. The CPN(M)’s electoral machine was formidable. No fresh observer would have suspected the Maoists’ lack of open electoral experience: in all aspects of traditional campaigning they adopted and refined the tools of the trade, outshining the other parties. They also made calculated, sometimes cynical, use of their military organisation: directly, in coordinated efforts to obstruct other parties’ campaigns in particular areas (not by the PLA but using the PLA-trained and led Young Communist League (YCL)), and indirectly. Repeated warnings

that they could return to war in case of an unfavourable result served as an effective threat.⁵

In all their activities, the Maoists’ main strengths were evident: discipline, motivation and strategic planning. In most of the 40 districts visited by Crisis Group, their cadres were more energetic and focused than those of other parties. This was partly the result of a clear policy line: they had a much more definite idea of their agenda than their major rivals.⁶ But it was also a triumph of organisational hard work: local activists were trained, well managed and educated in the party position. “We rely on the people. The UML is less keen than in November, NC aren’t going to the villages – so how can they win?”, explained party spokesperson Krishna Bahadur Mahara. “The CA is the completion of a peaceful revolution, not a normal election. Completing it and establishing a republic is still a war. It won’t happen without struggling hard”.⁷

The Maoists’ only serious policy problem during the campaign was their relations with other parties. Senior leaders had consistently stressed their desire for a broad “progressive front”. In the words of the second-ranking party leader, Baburam Bhattarai, “what if we’ve been through all this struggle just for the same old feudal system to triumph? We need a common minimum agreement among the parties for progress”.⁸ It appeared they would have been happy to campaign alongside the NC if it had enthusiastically embraced change. “Let the NC win, but not the old feudal candidates”, commented K.B. Mahara.⁹ As it became

⁵ Speaking in his home district, Gorkha, Baburam Bhattarai had warned that “if we lose, there will be a new type of revolution”. “A new revolution if Maoists lose the election, says Dr. Bhattarai”, nepalnews.com, 5 March 2008. Prachanda voiced similar warnings: “Due to the commitment of the people to build a new Nepal, I have seen that we are already victorious. Now, if there is any conspiracy to defeat us, we will not accept such defeat”. “Prachanda says Maoists won’t accept defeat if there is conspiracy”, nepalnews.com, 27 March 2008.

⁶ See Crisis Group Report, *Nepal’s Election and Beyond*, op. cit., p. 3.

⁷ Crisis Group interview, Krishna Bahadur Mahara, Kathmandu, 9 March 2008.

⁸ Baburam Bhattarai, address to election rally, Kirtipur, 12 March 2008. Two days later, Bhattarai expressed greater frustration: “We’re feeling sick about [the NC and UML’s] mindset. After all the sacrifice and the people’s movement, they’re back to low politicking”. However, he still insisted that “there has to be a coalition government through the [post-election] transitional phase. The major parties should agree on consensual democracy”. Crisis Group interview, Kathmandu, 14 March 2008.

⁹ Crisis Group interview, Krishna Bahadur Mahara, Kathmandu, 9 March 2008.

⁴ On the Code of Conduct, see Crisis Group Report, *Nepal’s Election and Beyond*, op. cit., pp. 6-7, 10, 13.

clear that the only realistic alliance could be with other leftists, primarily the UML, Maoist frustration with that party's refusal to play ball erupted in public.

Speaking at a meeting to launch Maoist leader Prachanda's campaign in his Kathmandu constituency, Bhattarai voiced this disappointment: "Let's compete by all means but why can't we have a basic consensus on the main issues?...It's sad that even republicans and leftists couldn't unite – of course we're sad about that".¹⁰ Prachanda himself warned that "without unity I see a very bad situation emerging – outside forces and others are conspiring to disrupt the elections and undermine our sovereignty".¹¹ Ironically, the failure to form an alliance strongly benefited the Maoists, who crushed the UML in the FPTP contests.

Although one constituent of the CPN(M), the United People's Front led by Bhattarai, had competed in the 1991 elections and emerged in third place with nine parliamentarians (out of 205), this was in effect the Maoists' first real electoral battle. Their view that it was a continuation of war by other means – publicly expressed and internally institutionalised – made sense. This did not mean that they saw it as a test of armed force (although they did resort to some militaristic means, described below), but that it required the same commitment to strategy and tactics as had their insurgency. They calibrated their "mass line" politics to the demands of a national election with the mix of strategic firmness and tactical flexibility with which they had pursued the armed conflict. Above all, they demonstrated their ability to learn and adapt.

B. THE STUTTERING CHALLENGE

For their opponents, the picture was more mixed. The NC and UML had not lost their vast national networks, nor were they actively stalling the progress towards elections. They went through the formalities of campaigning with the ease that their years of practice afforded them. But many of their activists seemed demoralised and poorly motivated, while some may have been actively working for their opponents.

The NC in particular was harmed by its unclear policy stance and unhealed divisions. Its decision to adopt a republican line was deeply unpopular with a large section of senior leaders and some local activists. Many of them, including the prime minister's daughter, waged an acrimonious public campaign against their own

party policy throughout the campaign. Others were happy to express their disappointment in the party leadership: "The government is useless. There is no government", lamented former NC Home Minister Govinda Raj Joshi.¹²

The distribution of candidate "tickets" within the party revealed the depths of continuing rifts between the members of the mother party and the former splinter, the NC(D), which had supposedly reunited in September 2007. The two factions of the party devoted much time and energy to haggling over seat allocations, eventually agreeing a 60:40 division.¹³ Ironically, many of the senior individuals humiliated by not being offered the chance to stand for FPTP seats later realised how lucky they were to have avoided the FPTP slaughter and to have slipped in on the proportional representation (PR) list, which they had earlier seen as ignominious.

The UML faced similar problems in accommodating its established leaders, suffering some resignations from office bearers unhappy at perceived slights.¹⁴ It did not face a debilitating factional split but had to cope with serious differences over relations with the Maoists. Some argued in favour of a broad leftist alliance, or at least a concrete seat-sharing deal; the winners of the argument were those who argued instead to stick closer to the NC, as a fellow mainstream party, and fight the Maoists head-on. This decision pleased foreign governments and some activists on the ground. Most leaders only realised after the elections how badly they had miscalculated. Two days before the poll, one UML minister still argued that the Maoists had shot themselves in the foot: "We offered to let four or five of their leaders through unopposed, but they called it a conspiracy and refused".¹⁵ The NC was also convinced the UML was their main rival and

¹² Crisis Group interview, Damauli, 8 April 2008.

¹³ At the end of January, when the Maoists' preparations were well underway, senior NC leaders were still busy running round the country trying to negotiate truces between the two halves of the party and appoint party officials below the district president level. Crisis Group interview, Prakash Sharan Mahat, Biratnagar, 24 January 2008.

¹⁴ Pre-poll arguments over the PR lists and post-poll disputes over the selection of winning candidates led to many resignations. See Section V.A(4).

¹⁵ Crisis Group interview, Prithvi Subba Gurung, Lamjung, 8 April 2008. Minister Gurung did manage to win his own seat, Lamjung-2, so his comments could have been coloured by his party's strength in his constituency, where the main battle was with the NC. The Maoists were more active in Lamjung-1, to the east of the Marsyangdi River, a seat they won. Crisis Group interviews, UML and NC activists, Besi-sahar, 8 April 2008.

¹⁰ Baburam Bhattarai, address to election rally, Kirtipur, 12 March 2008.

¹¹ Prachanda, address to election rally, Kirtipur, 12 March 2008.

in many districts encouraged voters to vote for the CPN(M) if they wanted a “real” leftist party – a tactic that backfired and may have further weakened the UML.

The Maoists benefited from their novelty value – for many voters the chance to see their leaders was a draw – and from their large pool of passionate and persuasive speakers. The NC and UML suffered from parallel weaknesses: most of their prominent campaigners were well-known faces that the public had grown tired of.¹⁶ While Prachanda and top Maoists travelled almost constantly, NC President G.P. Koirala did not visit a single constituency on campaign business or address a mass meeting.¹⁷ Acting President Sushil Koirala was largely confined to his own constituency, as he fought a losing battle to save his seat. The NC’s biggest crowd pullers were the charismatic student leader Gagan Thapa and popular speaker Pradip Giri; Shankar Pokharel emerged as one of the UML’s most effective performers. However, the fact that these individuals did not rank high in their party hierarchies undermined their individual efforts.

Where the Maoists were tireless in pamphleting and door-to-door canvassing, the NC and UML appeared less keen to meet the people. It was partly that they were just too late: the NC’s campaign did not kick off until the third week of March (and even then many party officials remained sceptical that the election would take place), while the UML held back because it was (falsely) confident of its mass base and did not want to lose face if the elections were postponed once it had launched its campaign, as had nearly been the case for the earlier scheduled November 2007 date. When the party finally got started, its cadres were poorly motivated. As some villagers observed, while the Maoists worked all day on a diet of fruit squash and beaten rice, the NC and UML cadres would not move until they were fed with meat and rice.¹⁸ When candidates and leaders did try to revive their connection with voters, they often found themselves faced with tricky questions about their past performance and future agenda.

C. THE MADHESIS PARTIES: MOTIVATION AMID MUTUAL SUSPICION

By the time the campaign kicked off, the wind of change in the Madhes was clear to all – although perhaps not clear enough to the established parties. Although the leaders of the Madhesi movement had agreed to a slightly nebulous compromise deal following their February 2008 agitation,¹⁹ they had solidified a widespread sentiment that only new leadership would force Kathmandu to address Madhesi issues. Still, it was unclear which parties would benefit the most from this heightened awareness.

The Madhes Janadhikar Forum (MJF) had spearheaded the first Madhesi movement in early 2007 and had built a powerful brand name. However, its organisational capacity was widely questioned, as were the changeable policies of its mercurial chief, Upendra Yadav, who thrived on his skill of being all things to all people. The newly established Tarai-Madhes Democratic Party (TMDP) was launched in December 2007 by senior NC leader Mahant Thakur as a more moderate, “establishment” front, but it had little time to put down roots despite apparent assistance from New Delhi. The NSP faction led by Rajendra Mahato, the outcome of a long series of splits and disagreements, offered a perhaps not decisive enough break from the mother party, which many Madhesis felt had achieved little in its long years of supposedly pushing regional interests. In the end, the MJF not only turned its brand into a viable campaign machine but also proved that its much criticised calculation not to ally with the TMDP and NSP was right, at least in terms of its own party fortunes.

The enthusiasm of many Madhesi voters was palpable, both during the campaign and as the counts continued.²⁰ There was no shortage of political experience across the Tarai, which had historically been the hotbed of Nepali politics, although threats by armed groups active in the eastern districts had inhibited voter awareness and party canvassing efforts.²¹ There were some communal tinges to the campaign but far less than at the peak of the Madhesi movement, when there were widespread threats against hill-origin *pa-hadis* in the Tarai. Most leaders were responsible;

¹⁶ In selecting candidates, the NC gave priority to winners from the 1999 general election, more or less guaranteeing a large proportion of old faces.

¹⁷ This was largely because of his ill health, although he also claimed that he felt the prime minister and acting head of state should not engage in party campaigning.

¹⁸ Crisis Group interview, villagers, Kabhrepalanchowk, 15 May 2008.

¹⁹ The protests started from 19 January 2008, escalated to an indefinite strike from 13 February and led to an eight-point agreement on 28 February. See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 2.

²⁰ Crisis Group interviews, Banke and Bardiya, 2-3 April 2008; Bara, Parsa, Siraha and Dhanusha, 12-13 April 2008.

²¹ On the history of political activity in the Tarai, see Crisis Group Report, *Nepal's Troubled Tarai Region*, op. cit., pp. 5-6.

some, such as Mahant Thakur, made dedicated efforts to rid the Madhesi agenda of anti-*pahadi* overtones. Nevertheless, the hangover of the past violence and unwillingness to allow the new Madhesi parties an easy victory probably drove more *pahadis* towards the Maoists, whom they saw as likely the strongest defenders of their interests.

The Madhesi parties were also greatly helped by the NC and UML's decision to put up many unpopular old *pahadi* faces in Tarai FPTP seats. Headline clashes, in particular Upendra Yadav taking on the prime minister's daughter, Sujata Koirala, enlivened the campaign and boosted interest – as well as leading to much bad blood and occasional confrontations. The major disappointment of the Madhesi parties' campaign was their disdain for women, Dalit and minority candidates (see below).

D. THE LEGACY OF CONFLICT

The elections took place under the shadow of the conflict, and in many areas its history shaped relations between the parties, as well as voters' attitudes. Dhading district, immediately west of Kathmandu, saw more violence than any other hill district.²² In eighteen pre-election clashes, 82 people were injured, sixteen of them in a March incident, when incumbent UML parliamentarian Rajendra Prasad Pandey was campaigning.²³ The district headquarters was put under a curfew on 8 April following NC-UML fighting, and there was also a bomb blast outside a polling station on election day.²⁴

This violence did not erupt randomly. Dhading had experienced some of the worst brutality of the conflict. More than five dozen of its residents, allegedly disappeared by the security forces, remain unaccounted for. Maoist organisers in Jivanpur, who were accused of a deliberate attack on Rajendra Pandey's campaign meeting, insisted that the UML itself should take the blame for the incident:

Five people were disappeared from this village alone – by the army but on the instruction of the UML. The local committee of the families of the disappeared has simply tried to present a petition to Rajendra Pandey demanding an investigation into the fate of their relatives. He refused to even speak to them, and instead the police attacked them without provocation.²⁵

Families of the disappeared confirmed this story (as did UML supporters who had also fallen victim to the indiscriminate police beatings), although it was clear that the CPN(M) was the guiding force behind the petition and had prepared itself for a clash.²⁶ In any case, these disappearances only took place after the Maoists had launched their own campaign for political dominance in Dhading by killing some twelve UML village officials and chasing others out of the district. Rajendra Pandey pointed out that he himself was under arrest during the period of royal rule, when the army abducted suspected Maoist cadres, so could hardly be accused of orchestrating disappearances. He observed: "Some form of peace may be restored, but the social fabric has been so badly torn during the conflict that we will never see a return to true peace and harmony".²⁷

Other patterns of campaign violence were also coloured by deep-seated antipathies dating back to the early years of the conflict. In Tanahun district, hard-line former NC Home Minister Govinda Raj Joshi complained of systematic assaults by Maoist cadres on his party workers.²⁸ His opponent, senior CPN(M) leader Suresh Ale Magar, did not deny responsibility for some incidents:

Our party line is retaliation, so we will not be Gandhis and just turn the other cheek. But at the same time we will not initiate any violence. In the neighbouring constituency, we've run a perfectly peaceful campaign against [NC Peace and Reconstruction minister] Ramchandra Poudel, because he himself has good political culture and has played by the rules. But here we've had to respond to the NC's deliberate use of hired thugs, who have been brought in from outside the district to try to steal the election by force.²⁹

²² According to the most comprehensive survey, the 23 violent incidents in Dhading were outnumbered only by the eastern Tarai districts of Saptari and Sunsari (with 26 and 24 incidents respectively). In terms of pre-election incidents, Dhading had the worst record in the whole country. "Election and Political Violence in Nepal: Final Report, November 26, 2007 to April 30, 2008", Democracy and Election Alliance Nepal (DEAN), Kathmandu, 19 June 2008.

²³ Ibid, p. 22. DEAN reported that five other incidents in Dhading involved the UML and Maoists.

²⁴ Ibid, p. 37.

²⁵ Crisis Group interview, local CPN(M) official, Jivanpur, 27 March 2008.

²⁶ Crisis Group interviews, Jivanpur, 27 March 2008.

²⁷ Crisis Group interview, Rajendra Prasad Pandey and campaign team, Malekhu, 9 April 2008.

²⁸ Crisis Group interview, Damauli, 8 April 2008.

²⁹ Crisis Group interview, Tanahun, 8 April 2008.

The many clashes in Dhading and Tanahun offer no black and white picture of guilty and innocent parties. They do, however, illustrate the corrosive effect of years of armed conflict, unresolved grievances and tit-for-tat retaliation. Under such circumstances, it is hardly surprising that competition was sometimes bitter. It is perhaps more remarkable that the painful legacy of conflict did not prompt a greater number of violent incidents.

III. THE VOTE

A. THE TECHNICAL MANAGEMENT

The Election Commission (EC) proved itself to be well organised and well motivated.³⁰ Polling stations were generally well managed and election staff (EC employees, civil servants on secondment, volunteer educators and security personnel) performed their duties enthusiastically.³¹ Election officials appeared well briefed and generally confident in their dealings with local party candidates and workers throughout the campaign period. They often admitted, however, that the election Code of Conduct was overambitious and that they received limited complaints about the more egregious violations. Some district election officers did insist on parties removing outlawed graffiti and held them to the ban on campaign tactics such as motorcycle rallies, but most were more lenient.³²

Despite the serious logistical challenges, all necessary materials reached the nearly 10,000 polling locations on time.³³ Sensitive materials, primarily the ballot papers themselves, were transported and stored under effective security guard. Election officials appeared well briefed. The training of temporary staff, mostly central and local government officials, was systematic and generally well managed.³⁴ The electoral roll caused some difficulties: in some polling stations it took voters a long time to identify themselves, while others complained that their names had been omitted even though they had participated in previous elections. Lax identification procedures also made it easier for illegal proxy votes to be cast in the names of

³⁰ Crisis Group interviewed election officials in twenty districts.

³¹ In several locations, Crisis Group visited election offices well outside normal office hours to find them fully staffed with officials of all levels working against the clock to complete preparations on time. Similarly, many counting stations operated round the clock on a shift-work basis.

³² Crisis Group witnessed minor infringements of the Code of Conduct in every district visited during the campaign period. Most common was graffiti (although some District Election Officers (DEOs), such as those in Baglung, Myagdi and Syangja, had persuaded the parties to keep district headquarters relatively free of wall-painting or to remove earlier graffiti). Most DEOs reported that they had urged parties many times to abide by the rules, but earnest vows to cooperate had rarely translated into action. Crisis Group interviews, various districts, March-April 2008.

³³ There were 20,866 polling booths in 9,788 centres. See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 8.

³⁴ Crisis Group observed training sessions for polling officers in various districts, from Dolakha to Palpa.

others. Nevertheless, such complaints appear to have been fewer than in past elections.

Security arrangements for the vote were in line with plans and generally low key. The relatively small number of police available for each location did, however, mean that they were often outnumbered by party agents and vulnerable to pressure tactics. Political parties had made great efforts to have their own workers recruited as temporary police – “the parties keep calling up trying to persuade us to accept their cadres”, complained a police superintendent³⁵ – but the partisanship of temporary recruits did not lead to significant complaints. Overall, party workers and ordinary voters shared a high opinion of the technical management of the election, many of them commenting that these were the best managed elections Nepal had ever had.³⁶

B. THE VOTE ITSELF

Across the country the vote largely started on time at 7am, with many voters queuing before the polls opened. In a handful of places, minor disputes delayed the opening of polls by a few hours. The majority of those who cast ballots did so well before the polls closed at 5pm. By noon, the EC announced that turnout had reached almost 50 per cent; by mid-afternoon, polling stations in Bhaktapur and Kathmandu were almost deserted. Three people were killed on the day itself, including an independent candidate for Sarlahi-6, Shambhu Prasad Singh, who was shot in the evening by unidentified gunmen.³⁷ However, violent incidents and deaths were far fewer than in previous elections.

Turnout was high given the circumstances but slightly lower than in past general elections.³⁸ There were slight differences in the FPTP (61.7 per cent) and PR (63.3 per cent) figures: although most voters participated in both races as part of the same procedure, government officials, security personnel and Maoist PLA members were enrolled as “temporary” voters and only allowed to vote in the PR race.³⁹ The early

and high participation suggested enthusiasm – as well as perhaps some organised rigging. There were significant regional and local variations. Many Tarai constituencies, where it had been feared that the threats of armed disruption would scare voters away, saw turnout crossing 65 per cent.

Many remote districts, especially in the west, had more than 70 per cent turnout – all such areas recording resounding Maoist victories.⁴⁰ In isolated Dolpa, 79.9 per cent of 21,932 registered voters took part, while nearby Manang, won by Maoist minister Dev Prasad Gurung, had only 40.1 per cent participation. In urban areas, Bhaktapur stood out with 74.3 per cent turnout – and voters awarding both seats to the locally based NWPP, one of the smallest members of the seven-party governing coalition.⁴¹

Many migrants to urban areas returned to their home villages to vote – often assisted by the Maoists providing free transport. But probably even more were unable to vote. A majority of the dozens of migrants in Kathmandu interviewed by Crisis Group reported they could not, mainly because of the time and money it would have cost to reach their permanent addresses; of those who did vote, many were from relatively accessible nearby districts.⁴² Hundreds of thousands (possibly as many as 2.5 million) of Nepalis working abroad did not get to vote, although the major parties did mobilise their long-standing organisations in India to persuade some supporters to return to take part.

These figures go some way to explaining the lower than usual turnout, although anecdotal evidence suggests many absent voters had their votes cast by party agents. Several hundred thousand young adults were excluded because the cut-off date for the electoral roll

³⁵ Crisis Group interview, Nepalgunj, 4 April 2008.

³⁶ Crisis Group interviews, various districts, 10-17 April 2008.

³⁷ “Independent candidate gunned down in Sarlahi”, nepalnews.com, 10 April 2008.

³⁸ Voter turnout was 65.15 per cent in 1991, 61.86 per cent in 1994 and 65.79 per cent in 1999. Election Commission of Nepal at www.election.gov.np/EN/prevelection.html. On turnout as a benchmark, see Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p 7.

³⁹ On temporary voters, see Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 11.

⁴⁰ Voter turnout: Kalikot 70.6 per cent, Dolpa 79.9 per cent, Mugu 75.4 per cent, Jumla 71 per cent and Humla 79.7 per cent. See “Winning Candidates of FPTP by Constituency” at <http://result.nepalelectionportal.org/report.html>.

⁴¹ 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), NC(D), 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).

⁴² Crisis Group interviews, Kathmandu, 10-12 April and May 2008.

was mid-November 2006.⁴³ There are no separate statistics on the turnout of women,⁴⁴ nor breakdowns by any other category, although party agents carefully noted who was voting, so the more organised ones could do their own analysis.

C. DID VOTERS KNOW WHAT THEY WERE DOING?

Statistics alone cannot demonstrate the level of voter understanding. However, the high turnout and the low number of spoiled ballots (5.2 per cent in the FPTP race and 3.7 per cent in the PR⁴⁵) suggest much greater awareness than sceptical observers had anticipated.⁴⁶ Any wasted ballots are disappointing, and in some constituencies the number of spoiled ballots was

greater than the winning margin. Nevertheless, the figures are respectable given the complexity of the parallel system and the uncertain circumstances of the vote.⁴⁷ The sheer number of parties which were only represented on ballot papers by sometimes similar-looking symbols (such as the various combinations of hammers, sickles and stars for numerous communist parties) made the voters' task more arduous.

Voters interviewed at polling stations generally indicated a strong understanding of both the purpose of the election and the technicalities of the procedure. They were guided by officials and party agents (legitimately present inside the entrance of the stations) and most had plenty of time to observe those ahead of them in the long queues going through the various steps: from identification, marking of a fingernail with indelible ink to prevent multiple voting, issuing of the FPTP paper and voting to the second step of receiving, marking and casting the PR ballot. An experiment with electronic voting, in Kathmandu-1, was a resounding success, with no lost votes and a prompt result.⁴⁸

The EC itself had run countrywide 45-day voter education campaigns, with district offices training and deploying volunteers, mainly schoolteachers, to all villages in their district. While some district election officers (DEOs) and volunteers reported sporadic difficulties, and some party workers suggested they had not been as assiduous in their campaign as the parties had in canvassing, the effort appears to have been successful. EC programs were complemented by civil society efforts, intense media coverage and the parties' own communication with voters. Some DEOs reported that the UN mission (UNMIN) District Elec-

⁴³ See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 11.

⁴⁴ The Office of the High Commissioner for Human Rights (OHCHR) reported that 53 per cent of voters were women, on the basis of counts by various international observers at over 500 polling stations. "Constituent Assembly Elections of 10 April 2008: Summary of Human Rights Monitoring", OHCHR-Nepal, 18 June 2008, p. 5. However, international observers caution that their counts were not systematic so specific figures are unlikely to be accurate. Crisis Group interviews, international observers, Kathmandu, May-June 2008.

⁴⁵ Tarai districts, especially those in the east, saw the highest levels of invalid votes. Saptari had the worst record, with three of its six constituencies having over 9 per cent rejected ballots (and 8.1 per cent across the district) in the FPTP race. In the PR race, Saptari-2 had 9.3 per cent rejected ballots, the highest nationwide. Whereas Saptari also witnessed high turnout, the district with the lowest number of invalid votes (Manang, at 2.1 per cent) had only 40.1 per cent turnout. See "Constituency-wise Total Voters, Casted Vote, Valid Vote, Invalid Vote and its Percentage in PR Election System" and "Constituency-wise Total Voters, Casted Vote, Valid Vote, Invalid Vote and its Percentage in FPTP Election System", Election Commission of Nepal, 6 May 2008, at www.election.gov.np. For useful maps indicating the regional variations in spoiled ballots, see <http://result.nepalelectionportal.org/maps.html>.

⁴⁶ The largest pre-election survey cautioned: "Only a small proportion of people have heard about the issues raised by the political parties such as federal state, proportional electoral system, etc. Likewise, only a small proportion understand what a constituent assembly election is". 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. 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.

⁴⁷ By comparison, the 2007 Scottish parliament elections, which also used a (different but equally complex) combination of constituency contests and regional PR races, saw 4.28 per cent rejected constituency ballots and 3 per cent rejected regional ballots. "Rejected ballots at the 3 May Scottish Parliamentary Elections", UK Electoral Commission, 13 June 2007, at www.electoralcommission.org.uk/templates/search/document.cfm/19604. One study suggested social deprivation and the number of parties on the regional lists were factors in the high number of spoiled ballots. Christopher Carman and James Mitchell, "An Examination of Ballot Rejection in the Scottish Parliamentary Election of 2007", Department of Government, Strathclyde University, at http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/25_06_07_rejectedballots.pdf. London's 2008 mayoral elections, which used a transferable vote system, saw 1.7 per cent spoiled first choice votes and 16.8 per cent spoiled second votes. <http://results.londonelects.org.uk/Results/MayoralResult.aspx>.

⁴⁸ See "Winning Candidates of FPTP by Constituency", at <http://result.nepalelectionportal.org/report.html>.

tion Advisers (UN volunteers, one of whom was deployed to each district) boosted their enthusiasm for the awareness campaign and generally added to their confidence in election preparations, as much by their moral support as any technical assistance.⁴⁹

D. REPOLLING

Polling was postponed or suspended in 106 stations, belonging to 21 constituencies across twelve districts.⁵⁰ Seventy-seven of these were in Surkhet-1, whose voting was suspended after the pre-election killing of the UML candidate. Other suspensions were caused by events on the day itself, primarily efforts to capture booths or clashes between rival party activists. The number is a tiny proportion of the total 20,866 booths – around 0.5 per cent. Repolling in all booths took place successfully within nine days of the original election date, being completed with the 19 April Surkhet-1 election. Well-informed observers had expected a far greater number of suspensions and potentially serious logistical and security challenges in managing reruns.⁵¹ The reality was far less problematic – a testament to surprisingly good party behaviour, weak disruptive efforts by armed groups and the EC's high organisational capacity.

IV. WAS IT FREE AND FAIR?

A. THE ATMOSPHERE

The verdict of national and international election observers was remarkably positive – especially given that many of the national observers were directly or indirectly linked to the UML and NC and primed to criticise any Maoist misbehaviour. Only a few hours after the polls opened, the most prominent observer, former U.S. President Jimmy Carter, declared the election “revolutionary”.⁵² This set the tone for other early comments and may have encouraged some of the national observers to hurry out their preliminary findings.⁵³ One large national network observed on 11 April that “the momentous elections to the much-awaited Constituent Assembly have been conducted in Nepal in accordance with the internationally accepted norms and standards”.⁵⁴

For the EU, the election was “a crucial step towards an inclusive democracy in Nepal and has so far met several international standards”, although its observers noted that “the campaign period was tense across the country and marred by incidents of intimidation and violence”.⁵⁵ The Asian Network for Free Elections (ANFREL), described the election as “largely successful and credible”, stating that “[t]he overall integrity of the election will be upheld provided that the counting of ballots is conducted well and grievances are appropriately resolved, including through re-polling”.⁵⁶

⁴⁹ Crisis Group interviews, various locations including Parbat and Dhading, April 2008.

⁵⁰ Election Commission of Nepal, at http://election.gov.np/EN/detail_news.php?id=128.

⁵¹ See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 16.

⁵² Manesh Shrestha, “Three dead in Nepal vote violence” at www.cnn.com/2008/WORLD/asiapcf/04/10/nepal.election/index.html. The Carter Center's official press statement, 12 April 2008, is at www.cartercenter.org/news/pr/nepal_prelim_041208.html.

⁵³ Some were already planning prompt initial statements; see Crisis Group Report, *Nepal's Election and Beyond*, op. cit., pp. 14-15. Nevertheless, Jimmy Carter's high profile, his across-the-board acceptability (while winning the Maoists' trust he is still fondly remembered by NC activists for having written to King Birendra urging the release of NC leader B.P. Koirala for health treatment while he was president) and the Carter Center's lengthy continued presence in Nepal meant that his comments were given much greater attention than those of other observers.

⁵⁴ “Statement of Preliminary Observation”, National Election Observation Committee (NEOC), Kathmandu, 11 April 2008.

⁵⁵ “Largely successful election day despite tense campaign marks step towards inclusive democracy”, EU Election Observation Mission statement, Kathmandu, 12 April 2008.

⁵⁶ “Credible Elections Advance Nepal's Peace Process”, ANFREL statement, Kathmandu, 12 April 2008.

The polls themselves were professionally managed and the atmosphere on the day was very good – many people commented that these were probably the best run elections Nepal has ever held.⁵⁷ Nevertheless, the environment was far from perfect. There was background fear and intimidation and all major parties engaged in irregularities. In particular, the Maoists used calibrated threats, from ominous warnings of a possible return to conflict to various low-profile, local tactics to encourage/coerce people to vote for them. Some of these efforts appeared deliberate and carefully orchestrated. For example, they deployed PLA soldiers outside the cantonments early in the campaign to remind people of their military capacity but ensured they were all inside well before the day itself.

B. DISRUPTION, INTIMIDATION AND CHEATING

The Maoists made systematic efforts to disrupt other parties' campaigns in particular areas, but there were many clashes with no Maoist involvement.⁵⁸ The Maoists appear to have adopted a strategic approach to disruptive activity: securing their heartlands, deploying additional activists to contested constituencies and using local displays of force as a tool in national-level negotiations, in particular while pressing the UML for an electoral alliance.⁵⁹ The CPN(M) consistently obstructed royalist parties and also responded strongly to what it claimed were UML and NC efforts to harass its own workers.

The NC and UML demonstrated that the Maoists were far from the only guilty party. To cite only two examples verified by Crisis Group in the final days of the campaign: NC/UML clashes in Lamjung district led to serious injuries and bitter recriminations on

both sides;⁶⁰ an NC/UML confrontation in Dhading's district headquarters forced the authorities to impose a curfew to contain the violence.⁶¹ There were frequent, credible, allegations that certain NC and UML candidates had brought in hired thugs to support their campaigns.⁶² There was a spike in abductions in the days before the polls, with the Office of the High Commissioner for Human Rights (OHCHR) receiving reports of 28 abductions in the 6-9 April period, 22 of them reportedly carried out by the CPN(M). Most abductees were only held for a few hours; some were handed over to police, accused of electoral malpractices, with their captors claiming they had carried out citizens' arrests rather than kidnapping.⁶³

Apart from open violence, all major parties engaged in underhand tactics to boost their vote. The Maoists were only exceptional in the dedication, scale and success of their efforts – one example of their "mainstreaming". Many of the most effective ways of influencing the vote are relatively invisible but require significant organisational investment. Possibly the most significant irregularity (although there is not nearly enough solid evidence to evaluate these trends with certainty) was unauthorised proxy voting, sometimes in the name of voters who were actually present but especially in the names of migrants whose names were on the roll but could not turn up to vote themselves.⁶⁴

Proxy voting is not new, and several parties appear to have engaged in it, but only the Maoists had the capacity to invest major resources in visiting households in advance of the election to check up on how many voters would be present and to cross-check this against the electoral roll. One Maoist cadre from Sindhu-palchowk-2 claimed he himself had cast 150 proxy votes in his constituency.⁶⁵ The fielding of "dummy candidates"⁶⁶ may not have made much difference during the campaign but proved its utility on the day, when these candidates' agents were able to be present

⁵⁷ Crisis Group interviews, Lalitpur, Bhaktapur and Kathmandu districts, 10 April 2008.

⁵⁸ The most comprehensive survey of political and election-related violence was carried out by the Democracy and Election Alliance Nepal (DEAN). It recorded 485 violent incidents, involving 50 deaths, between 26 November 2007 and 30 April 2008. "Election and Political Violence in Nepal", op. cit.

⁵⁹ It was certainly the impression of UML workers that Maoist attacks were linked to downturns in the talks for an alliance. "Every time our leaders say we don't need an alliance on their [the Maoists'] terms, they attack us. It seems they're just desperate", commented one of several dozen UML and ANNFSU (student wing) activists who had been prevented from holding a planned rally in Mainapokhari by some 200-300 YCL cadres, whom they claimed had been brought in from surrounding districts. Crisis Group interviews, Nayapul (Tamakoshi), Dolakha, 28 March 2008.

⁶⁰ Crisis Group interviews, NC and UML district officials and UML activists injured in clashes, Lamjung, 8 April 2008.

⁶¹ Crisis Group interviews, party workers, administrative and security officials, Dhading, 9 April 2008.

⁶² Crisis Group interviews, Tanahun, Dhading, Lamjung districts, March-April 2008.

⁶³ "Constituent Assembly Elections", OHCHR-Nepal, op. cit., p. 3.

⁶⁴ For example, a Kathmandu-based journalist reported how she discovered that someone had voted in her name in her home district, "and I can guess which party it would have been for". Crisis Group interview, Kathmandu, 29 April 2008.

⁶⁵ Crisis Group interview, Maoist cadre, Kathmandu, 2 May 2008.

⁶⁶ See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 14.

inside polling stations to assist their true parties.⁶⁷ There were probably many campaign financing irregularities as well, but it is unlikely these will ever be fully investigated.⁶⁸

It could be that widespread expectations of serious violence reduced observers' sensitivity to lower-level and less-visible cheating. To some extent, the physical security of election materials was also a diversion: except in a very few cases rigging attempts were more subtle than attacks on ballot boxes. Some efforts took place before polling day. Election officers in Lalitpur-3 and Ramechhap-2 told a television reporter that they were asked to sign some ballot papers before the polls opened (they are meant to be signed individually before being handed to a verified voter).⁶⁹ In one case, the EC took action against a polling officer in Saptari district for allowing the use of PR ballot papers without his signature.⁷⁰ Some party workers distributed incentives to voters, such as money, liquor and meat.⁷¹

C. KILLINGS

Maoists were the principal victims of political violence but also instigated the most orchestrated low-level harassment. Apart from eight of their activists who were killed in the opening weeks of the campaign,⁷² seven party workers were shot dead by an armed police detail guarding NC candidate Khum Bahadur Khadka in Dang district on 8 April. Although initial reports sug-

gested they had launched an assault, and the police were responding in self-defence, subsequent accounts suggested this was not the case.⁷³ An inquiry was launched but has yet to report. It was good fortune that Maoist leader Krishna Bahadur Mahara arrived quickly on the scene to urge restraint.

On the eve of the election, UML candidate Rishi Prasad Sharma was shot dead in Surkhet district, also by security personnel deployed with an NC leader, Purna Bahadur Khadka. The Surkhet-1 constituency election had to be postponed but these killings were not the much-feared harbingers of election-day bloodshed.⁷⁴ The day itself was remarkably peaceful, although there were four election-related deaths.⁷⁵ Of a rash of small bombings in the Tarai, the 29 March Biratnagar mosque attack was the most egregious atrocity.⁷⁶ Overall, the unexpectedly low level of violence in the Tarai suggests that armed groups' threats were

⁶⁷ Crisis Group met some such agents – including two who could not even remember the name of the candidate they were supposed to be representing. Crisis Group interviews, Lalitpur district, 10 April 2008.

⁶⁸ Only 26 of 54 parties contesting the elections submitted their expenditure details as directed. "26 parties furnish poll expenditure details at EC", *The Kathmandu Post*, 12 June 2008. Of those that have (including the three largest parties), the accounts are clean, probably suspiciously so. Accusations of dubious accounting have followed party lines. For a UML perspective on alleged NC and CPN(M) malpractice, see Bhadra Sharma, "Maovadi ra kangresdvara nakkali khar-cha pesh", *Budhabar*, 18 June 2006.

⁶⁹ Crisis Group interview, Ajaybabu Shiwakoti, Kathmandu, 18 April 2008.

⁷⁰ The EC directed Saptari district's chief returning officer to take departmental action (ie, an internal disciplinary measure) against Amarendra Kumar Yadav, a polling officer in Dadha village, for allowing the use of unsigned PR ballot papers and ordered a repoll. EC press briefing, 12 April, 2008, at http://election.gov.np/EN/detail_news.php?id=127.

⁷¹ For example, Crisis Group witnessed CPN(M) workers distributing *chiura* (beaten rice) and sugar just 100 metres outside a polling station in Nuwakot-3 during repolling, 17 April 2008.

⁷² See Crisis Group Report, *Nepal's Election and Beyond*, op. cit.

⁷³ "Seven CPN-M cadres were killed and 12 were injured when [Armed Police Force (APF)] and [Nepal Police (NP)] personnel escorting an NC candidate fired at CPN-M vehicles in Lamahi VDC. OHCHR found no evidence to support claims by the APF and NP that they opened fire in response to firing by CPN-M members. No firearms were reportedly found in the CPN-M vehicles and no-one in the NC candidate's entourage was injured. OHCHR called for an independent investigation into this incident as the information gathered so far indicates that the killing of the seven may amount to extra-judicial execution by the police". "Constituent Assembly Elections", OHCHR-Nepal, op. cit., p. 3.

⁷⁴ Sharma's widow, Kamala Sharma, was selected to contest the seat for the UML and easily won the election on 19 April, with 18,804 votes to the NC's Lal Bahadur Ghale's 12,335. She was the only woman FPTP winner for the UML. "Surkhet 1 ma Kamala Sharma Bijayi", www.nepalipost.com/nepali/nepalinews.php?&nid=5643.

⁷⁵ One man died in Dharan after being hit on the head during an MJF-NC clash in Sunsari; in Mahottari an NC candidate's vehicle hit and killed a protestor (after shots were allegedly fired from the candidate's vehicles); an independent candidate in Sarlahi was shot dead in circumstances that remain unclear; and a UML cadre was killed in Kaski, his party blaming the CPN(M), which has denied involvement. "Constituent Assembly Elections", OHCHR-Nepal, op. cit., p. 6. Nepal's previous general elections were all marred by violence. For example, in 1991 there were ten killings on polling day, and violence forced repolling in almost one third of the districts. See "Election and Political Violence in Nepal", DEAN, op. cit., p. 13. The May 2008 local elections in India's West Bengal, which borders Nepal, were far more violent, with at least 37 deaths. Subir Bhaumik, "Toll in violent India poll rises", BBC News, 20 May 2008. (West Bengal's 2003 local elections had been just as bad, with many deaths on the day and 30 during the campaign period. Subir Bhaumik, "Bengal's bloodied poll", BBC News, 12 May 2003.)

⁷⁶ See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 6.

largely empty, and rumours of the palace pouring resources into armed disruption were either false or vastly exaggerated.

D. MUCH MOANING, FEW FORMAL COMPLAINTS

The losers – and sometimes the winners – have made full use of the media to issue a litany of post-poll complaints. Some, in particular the royalist parties and NC leaders, had launched their public recriminations well before the polls. Many of their grievances appeared to be justified.⁷⁷ However, the broad aspersions cast on the validity of the elections in press interviews and speeches have not been backed up by many formal complaints.

The CA electoral laws and associated regulations offered a variety of means to resolve disputes or investigate alleged violations and, if necessary, punish offending individuals or parties.⁷⁸ The EC registered 304 complaints before the election, mostly relating to code of conduct violations and obstruction in campaigning. Almost all were quickly resolved, some having been submitted only for the record or having been settled before they were submitted to the EC.⁷⁹ Only 64 complaints were made about incidents on polling day or during the count, and all were resolved. Of the 106 booths where repolling was needed, the EC ruled for a repoll in 30, while the other cases were decided by DEOs.

In the entire election period, the EC only once imposed a punishment – and that on one of its own officers rather than a candidate or party.⁸⁰ Some further minor disputes took place during the vote and the count, but few were reported to the EC and the vast majority were resolved on the spot, often through negotiations between party agents, EC officials and security or administrative officials.⁸¹ The reluctance of

the EC and other authorities to take more determined action may well have deterred some potential complainants from bothering to use formal channels. For example, OHCHR discovered that the police had taken no action against any alleged kidnappers, even when written incident reports were lodged with them.⁸²

There were also few formal post-election complaints. Some parties may have registered complaints with district administrative officials or district courts but, if so, these cases have not reached the attention of Kathmandu authorities or party hierarchies; the Supreme Court has not received any election-related writs.⁸³ The dedicated constituent assembly election court has registered sixteen cases, twelve on disputes in FPTP competitions and four on disputed PR counts. The FPTP cases relate mainly to allegations of booth capture and rigging; the PR cases involve complaints by candidates against their own parties, alleging that their selection of winning candidates was not endorsed by the parties' central committees as the law stipulated. All these cases are pending, and court officials predict it may take weeks or months to conclude them. Overall, the picture is clear. However valid losers' complaints may be, their reluctance to use established procedures to pursue them suggests they either have little supporting evidence or are more interested in generating publicity than seeing justice done by the law.

E. WHAT CAN BE CONCLUDED?

International observers now avoid using the phrase "free and fair", concentrating instead on measuring compliance with "international standards" while withholding an overall verdict. In these terms, all major missions submitted positive reports.⁸⁴ The most negative judgement, that of the U.S. State Department, stopped well short of outright condemnation: "In April 2008 the Communist Party of Nepal-Maoist won a plurality of seats in Constituent Assembly elections

⁷⁷ See, for example, *ibid.*, pp. 6-7.

⁷⁸ See *ibid.*, p. 19.

⁷⁹ Crisis Group interview, EC spokesperson Laxman Bhattarai, 9 June 2008. The breakdown of complainants is: political parties, 91; government entities, 55; mass media, 28; others (individuals), 130.

⁸⁰ See fn. 70 above.

⁸¹ Crisis Group observed a number of minor disputes, all of which were eventually resolved without resort to court proceedings or formal EC sanction (although the more complex ones were referred to the EC for adjudication and directives). The incidents observed ranged from an on-the-spot argument over proxy voting (Chaugarhi polling station, Lalitpur district, 10 April 2008) to counts stalled by disputes over al-

leged cheating by rival parties (Bara and Dhanusha districts, 13 April 2008; Sunsari district, 14 April 2008).

⁸² "OHCHR was concerned to find that no action was taken by the police against CPN-M cadres in any of the abductions reported to OHCHR, even in those cases in which First Investigation Reports were subsequently filed by the victims". "Constituent Assembly Elections", OHCHR-Nepal, *op. cit.*, p. 4.

⁸³ Crisis Group interview, Shri Kanta Poudel, joint registrar, Supreme Court, Kathmandu, 10 June 2008. The Supreme Court received one complaint from Sarita Giri, relating to a post-poll dispute rather than an election-related case.

⁸⁴ The largest international observer missions have yet to issue final reports; the Carter Center's and EU's are likely to be published during July 2008. Both of these missions, and ANFREL, released preliminary statements on 12 April 2008.

that were generally accepted by the population but marred by violence, intimidation and voting irregularities.”⁸⁵

A reasonable conclusion is that the elections were remarkably free and fair given the circumstances and despite the widespread irregularities and violence, in particular the killings of Maoist activists. They delivered a clear sense of the popular will and a decisive winning mandate for the Maoists, as evidenced by their very strong performance in the capital, where they had little chance to use coercive tactics. There is little mileage now in arguing they were fraudulent, especially as the losing parties filed very few formal complaints about specific incidents. More importantly, there is no evidence that even better elections would have delivered a markedly different result.

V. THE RESULTS

A. THE BROAD PICTURE

1. The count

The first result arrived by the morning after the polls closed, thanks to a successful pilot test of electronic voting. The NC's Prakash Man Singh took Kathmandu-1 (formerly a UML stronghold), causing party leaders to comment that “the morning shows the day” and predict they would continue to be the beneficiaries of the UML and CPN(M) eating into each other's base.⁸⁶ However, the pattern of the early results suggested that this was only happening in Kathmandu, where the NC did perform surprisingly strongly. Elsewhere, the indications of a Maoist landslide were impossible to deny. The counting took place more promptly and efficiently than any experts had predicted, in some cases surprising even the officials who were overseeing the counts.⁸⁷

The most important factor to affect public and party perceptions was that, as expected, almost all centres counted the FPTP ballots first and left the PR till later. This meant that the Maoists' disproportionately convincing FPTP victory shaped the atmosphere before being balanced by a PR tally that reduced their overall share of CA seats. Within a few days of the election, the bulk of FPTP results were out, and more efficient centres had also completed the PR count.⁸⁸ All FPTP results, including repolling, were completed in twelve days, with the PR tally following two days later. After cross-checking and making the necessary calculations,⁸⁹ the EC announced the final results, including and allocation of PR seats by party, on 25 April.

⁸⁶ Gagan Thapa, interview on Nepal Television, 11 April 2008.

⁸⁷ Even officers in charge of counting centres where disputes had stalled some constituency counts reported that they were surprised at the smoothness of the process and impressed by the dedication of their staff. Crisis Group interviews, returning officers, Parsa and Dhanusha districts, 13 April 2008.

⁸⁸ By the time Crisis Group reached eastern hill districts on 13-15 April, there was little left to observe. Dhankuta district had completed both counts on 13 April, Tehrathum was into the final stage of PR counting on 14 April, and officials in Ilam were already busy doing a stocktake of ballot boxes and other materials before putting them into storage on 15 April. Tarai districts tended to take longer, not least because of their much larger populations.

⁸⁹ The PR seats to be allocated to each party were calculated according to the modified Sainte-Lague formula. See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 9, fn. 57.

⁸⁵ “Advancing Freedom and Democracy Reports – 2008”, U.S. State Department, Bureau of Democracy, Human Rights, and Labor, 23 May 2008, at www.state.gov/g/drl/rls/afdr/2008/104861.htm.

The Maoists won 220 of the 575 seats, exactly twice as many as their nearest rival, the NC.⁹⁰ (Twenty-six members to be nominated by the cabinet but not yet agreed upon will bring the CA to its total of 601.) The UML trailed in third place with 103 seats, while the MJF led the Madhesi parties with a tally of 52 seats making it a powerful fourth party. The Maoists routed their opponents in the FPTP contest, where their 120 seats (exactly 50 per cent of the total) contrasted with the NC's 37 and UML's 33; they also emerged as the largest party in the Tarai, with 42 FPTP seats to the MJF's 30, sweeping the western Tarai while remaining shaky in the east.

The PR results naturally tempered the distortions of the FPTP system. While the Maoists won 50 per cent of FPTP seats on a 30.5 per cent share of the vote; in the PR they received 29.3 per cent of the vote and a similar proportion of the seats on offer. The NC and UML, in contrast, were saved from shame by the PR safety net, bagging 73 and 70 seats respectively (with a 19.1 and 18.1 share of the vote). Five individuals won from two FPTP constituencies; they have now resigned one seat each, and five by-elections for the vacancies are pending.⁹¹

2. Notable features

The major features of the results have been thoroughly dissected in the Nepali media, and plentiful analysis is readily available.⁹² The nature of the Maoist victory is discussed in the next section. A notable aspect of the FPTP race was voters' strongly expressed distaste for many long-serving mainstream politicians and apparent dissatisfaction at being taken

for granted by the old parties. The UML was wiped out in its erstwhile stronghold, the Kathmandu valley. Of the fifteen constituencies in Kathmandu, Bhaktapur and Lalitpur districts, four went to the NC, two to the NWPP and the remainder to the CPN(M). The previously unknown Jhakku Subedi, a Maoist activist from Rolpa, defeated the UML general secretary, Madhav Kumar Nepal, in the Kathmandu constituency where he had been comfortably ensconced since 1991. The Maoist wave did not spare sympathetic individuals in rival parties: the CPN(M) defeated home minister and dedicated peace negotiator Krishna Prasad Sitaula in Jhapa, pro-alliance UML leader Bamdev Gautam in Bardiya and Janamorcha Nepal leader Lilamani Pokharel in Sindhuli.

The NC's humiliating defeat was particularly crushing with respect to its more conservative leaders and members of the Koirala clan. Almost all of those who had spoken out in favour of a ceremonial monarchy were beaten, as were eighteen of the twenty Koirala relatives who stood in FPTP seats (G.P. Koirala's reluctance to subject himself to the verdict of voters in his traditional constituency was a wise calculation.) Staunch monarchist Kamal Thapa, leader of the only avowedly anti-republican party, the RPP (Nepal), forfeited his deposit in Makwanpur by failing to reach 10 per cent. In this he was not alone: four out of five FPTP candidates lost their deposits.⁹³

The Maoists achieved many remarkably – some would say suspiciously – resounding victories, winning all ten constituencies where the margin of victory was more than 40 percentage points.⁹⁴ In Gorkha-2, Baburam Bhattarai secured 81.9 per cent of the votes, defeating the NC by a margin of 71 per cent. This stretched even sympathetic observers' credulity and angered NC leaders who accepted their loss but believe the figures il-

⁹⁰Final results can be found under <http://election.gov.np/reports/CAResults/>. The EC's official results do not include five seats won by candidates who were each victorious in two FPTP constituencies. They assume that only 570 members of the CA have been elected and have deducted the extra seats from the originally winning parties pending by-elections.

⁹¹Prachanda vacated his Rolpa-2 constituency and kept Kathmandu-10, Sher Bahadur Deuba vacated Kanchanpur-4 for his home ground, Dadeldhura-1. Dev Gurung decided to keep Manang and resigned from Kaski-1. The MJF's Upenra Yadav and Bijaya Kumar Gachhedra both left their Morang constituencies for Sunsari constituencies. Although some parties called for prompt by-elections, the EC would prefer to hold them after the monsoon, given weather-related logistical difficulties.

⁹²Useful online sources of election-related information include: Election Commission of Nepal (www.election.gov.np); the UN mission (UNMIN) elections page (www.unmin.org.np/?d=peaceprocess&p=election); and Nepal Election Portal (www.nepalelectionportal.org), which offers the best selection of maps and statistical charts.

⁹³"80 pc contestants failed to get 10 pc votes: EC", nepalnews.com, 22 April 2008.

⁹⁴These were: Ramechhap-2 (Dilliman Tamang defeating the UML's Kailash Prasad Dhungel by 46.5 per cent); Dhading-1 (Pushpa Bikram Malla by 41.2 per cent over the NC's Dilman Pakhrin); Gorkha-1 (Parbati Thapa by 55.7 per cent over senior NC leader Chiranjivi Wagle); Gorkha-2 (Baburam Bhattarai by 71 per cent); Gorkha-3 (Amar Bahadur Gurung by 49.3 per cent over former NC parliamentarian Chinkaji Gurung); Rukum-1 (Jun Kumari Roka by 67.9 per cent); Rukum-2 (PLA Deputy Commander Janardan Sharma by 44 per cent over the NC's Prem Prakash Oli); Rolpa-1 (Jaypuri Gharti Magar by 56 per cent); Rolpa-2 (Maoist Chairman Prachanda by 59.5); Baitadi-1 (Narendra Bahadur Kunwar by 40 per cent). See "FPTP Winning Margin by Constituency", at <http://result.nepalelectionportal.org/report.html>.

lustrate unobtrusive cheating.⁹⁵ In contrast, the highest NC vote was only 37.5 per cent (in the Dadeldhura PR contest), and its poorest showing was in Saptari with 9.7 per cent. The UML's best and worst PR results were in sparsely populated Mustang (39.7 per cent) and the Maoist stronghold of Gorkha (7.8 per cent).

3. A new look assembly

The CA is far more representative than past parliaments. In the words of Ian Martin, the special representative of the UN Secretary-General (SRSG), it is "the most inclusive body Nepal has yet known".⁹⁶ Although most parties did little to meet the Election Act's guidance that they should "take into account the principle of inclusiveness while nominating candidates"⁹⁷ in the FPTP race (the Maoists being the most notable exception), the fixed quotas for the PR race ensured representation of many minorities. The 575 elected members of the CA include 50 Dalits, 204 Madhesi and 192 *janajatis*.⁹⁸ Only 29 women were elected from the 240 FPTP constituencies (23 of them Maoists), but the 50 per cent quota from the PR race brought their total representation in the CA up to one third. Sunil Babu Pant, a well known campaigner for lesbian, gay, bisexual and transgender rights, became the first openly gay representative, when he was selected from the CPN (United)'s PR list.⁹⁹

The electoral system also ensured a great diversity of parties. Where the purely FPTP contests of the past had made it nearly impossible for small parties to break into the system, the PR element greatly assisted the election of representatives from 25 parties. For example, the CPN(ML) won not a single FPTP seat but its 2.3 per cent of the PR vote delivered it eight seats. The royalist RPP was in a similar position; other royalist parties also gained some PR seats, including four for the RPP(Nepal). The once controversial ethnic-

based Rashtriya Janamukti Party secured two seats. The Chure Bhawar Rashtriya Ekta Samaj, a *pahadi* grouping formed to resist the Madhesi movement in the eastern Tarai, won one seat for its president, Keshav Raj Mainali. The Nepa: Rashtriya Party, devoted to pushing the interests of Kathmandu's Newar community, also secured a seat. Despite only receiving 23,512 of the 10,739,078 valid PR votes, the Nepal Parivar Dal, backed by South Korea's Unification Church (founded by Sun Myung Moon), managed to establish itself as the CA's most unusual party.¹⁰⁰

The arrival of strong Madhesi parties has altered the look of the CA and will change the shape of politics. The three main Madhesi parties – MJF, TMDP and Sadbhavana Party – occupied fourth, fifth and sixth place in the national ranks, with 52, twenty and nine seats respectively. (The NSP(A), a member of the governing coalition, won only two seats, from the PR race.)¹⁰¹ Their strong performance was disproportionately at the expense of the NC.¹⁰² However, they also convincingly eclipsed the Maoists in several districts. The CPN(M)'s poorest showings in the PR vote were all in Tarai districts.¹⁰³ Tarai Dalits and Muslims were still very poorly represented. Where the Maoists did well in the Tarai – sweeping several western districts – they probably drew minority votes as well as those of *pahadis* who might have previously supported the UML.

The defeat of long-serving mainstream party leaders helped with the change of faces. Only ten of the 40 UML central committee members who stood in the FPTP race survived; for the NC, only sixteen of 63

⁹⁵ An NC leader complained that his party had at least 10,000 supporters in the constituency but received only 6,143 votes. Crisis Group interview, Kathmandu, 14 May 2008. The Maoists' PR tally in Gorkha was 65.8 per cent, which suggests that Baburam Bhattarai benefited from his personal profile – and possibly from extra party campaigning efforts. The Maoists' best PR result was in their heartland of Rolpa (66.4 per cent); their share of the vote in neighbouring Rukum (65.6 per cent) was similar to that in Gorkha.

⁹⁶ SRSG Ian Martin, Press statement, Kathmandu, 28 May 2008.

⁹⁷ Election Act, 5(3).

⁹⁸ Crisis Group interview, Pasang Sherpa, 13 June 2008.

⁹⁹ "Constituent Assembly Elections", OHCHR-Nepal, op. cit., p. 8. Thanks to the requirement that parties select 50 per cent women to fill PR seats, Nepal has jumped to fourteenth position in the global ranking of women's representation in elected assemblies.

¹⁰⁰ Party PR results are at www.election.gov.np/reports/CAResults/reportBody.php?selectedMenu1=Party%20Wise%20Count%20In%20Nation.

¹⁰¹ The EC's published statistics are confusing: in its list of party results, they show 29 MJF FPTP winners, but in their cumulative totals they work on the basis of 28. In fact the total of declared seats was 30. However, two MJF candidates (Upendra Yadav and Bijay Kumar Gachhedhar) won in two constituencies and resigned one each. In Mahottari-6, the MJF's Sharat Singh Bhandari defeated the NC's Sitaram Bhandari by 21 votes. Although the result was declared for the MJF, the NC lodged an appeal. The courts stayed the result and ruled that Sharat Singh Bhandari should not be sworn in as a member of the CA until the case is resolved. It is still pending.

¹⁰² Prashant Jha, "Forum in Maostan", *Nepali Times*, 18 April 2008.

¹⁰³ The Maoists' lowest PR vote was in Parsa (8.2 per cent), closely followed by the eastern Tarai districts of Sarlahi (9.4 per cent) and Saptari (9.6 per cent), the heartland of the Madhesi movement. (In contrast, the NC performed creditably in Parsa, winning 23 per cent.) Sarlahi went to the TMDP, whereas Saptari went to the MJF, whose own best share of the vote was only 25 per cent, in Siraha.

got through.¹⁰⁴ Some of the giant-killers offered a very new image. Younger Maoist women beat well-known leaders such as the UML's Bamdev Gautam (defeated by Sarala Regmi in Bardiya) and the NC's Chiranjivi Wagle (by Parvati Thapa in Gorkha) and Chakra Prasad Bastola (by Dharmasila Chapagain in Jhapa). Popular local leader Rajendra Bahadur Amatya was defeated in Parsa by the MJF's Karima Begum, a political unknown. The most remarkable winner was perhaps Baban Singh, who won as an independent candidate from Rautahat-1 while still underground with an NRs.100,000 (\$1,500) price-tag on his head as the most wanted suspect for the 1 September 2007 Kathmandu bombings.¹⁰⁵

One of the most significant gulfs between the parties was the age of their candidates.¹⁰⁶ The average of Maoist FPTP winners was 39, whereas for the NC it was 53. The youngest winner was the MJF's 25-year-old Abhishek Pratap Shah of Kapilvastu-5, while the oldest was 84-year-old Prime Minister Koirala.

4. The PR seat distribution

The PR contest was governed by complex and non-transparent procedures. Nepal is one of only a handful of countries to have opted for a closed list system that left the selection of winning candidates in this portion of the contest entirely in the hands of party leaders.¹⁰⁷ The only constraints were that their choice had to be endorsed by their parties' central committees and had to meet certain quotas for ethnic, caste and gender inclusiveness. Most voters, and many officials, were unclear about how their PR votes would translate into the selection of CA members.¹⁰⁸ This system left all the power of patronage in a few hands and also enabled parties to foist otherwise unpopular candidates on the electorate, with no way for them to indicate any preference.¹⁰⁹

The way in which the major old parties made their PR selections showed how clearly they had refused to digest the lessons from their electoral debacle, despite having three weeks to reflect. The NC was particularly hampered by its continued disunity, with the PR seats being internally allocated between the mother party and the former NC(D) breakaway in a 60:40 ratio. This in itself reduced the chances for some able candidates, but the lack of fresh thinking was in evidence in the selection. The NC's response to its defeat in the Tarai was to use the PR list to bring in candidates who would probably have lost in the FPTP. For example, it inducted no fewer than fourteen from Sunsari district in the eastern Tarai, not one of them a Madhesi. The UML made up for its Kathmandu wipe-out by bringing in ten members from Kathmandu. Although parties met the quotas, they made little effort to balance their selections geographically.¹¹⁰

The parties' internal selection processes unsurprisingly led to ego clashes and hurt feelings. There were many arguments, even affecting the otherwise more disciplined Maoists, whose disgruntled cadres vandalised their own party office in Jhapa.¹¹¹ There were allegations that leading figures in some parties were demanding bribes or other favours in return for offering PR berths. Court cases regarding breaches of procedure by party leaders are still pending.¹¹² The overall effect was unedifying, and underlined the severe reluctance with which established party leaders had been forced to come to terms with the demand for more representative candidates.

B. WHY DID THE MAOISTS WIN?

The Maoists' victory may have been unexpected, but it is far from inexplicable. Their energy and commit-

¹⁰⁴ Khagendra Pant, "Kendriya neta chunab hare", *Naya Patrika*, 16 April 2008.

¹⁰⁵ K.P. Dhungana, "'Most Wanted' le jite", *Naya Patrika*, 15 April 2008.

¹⁰⁶ See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 4.

¹⁰⁷ *Ibid.*, p. 9.

¹⁰⁸ Even the most experienced and politically interested officials found it hard to explain how PR votes would translate into CA members. Crisis Group interviews, various districts including Ilam, 15 April 2008.

¹⁰⁹ This is not a feature of all PR systems; in fact, Nepal's is the least transparent of any in use. Most PR systems either allow voters to indicate preferences for individual candidates or at least publish party lists, including the order in which

candidates appear on them, before the election. See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 9.

¹¹⁰ The CPN(M) selected eleven candidates from Banke and nine from Ilam, but none from many other districts. The UML brought ten from Mustang alone and eight from Tehrathum. The NC selected fourteen from Chitwan, twelve from Ilam, ten from Morang, nine from Kailali and eight from Parsa. Of its 22 PR seats, the MJF allotted only one to a non-Madhesi candidate; most of the remainder went to middle and high-caste candidates. The four seats won by Rajendra Mahato's Sadbhavana Party all went to candidates from Morang. In one case, twenty UML district members resigned to protest the leadership's failure to represent their community in the PR selections. "30 UML men resign en masse", *ekanti-pur.com*, 8 June 2008.

¹¹¹ "Discontent in parties over PR list", *nepalnews.com*, 4 May 2008.

¹¹² See Section V.D above.

ment have been commented on above, as has their flexible approach to achieving well-defined strategic goals. Many voters also looked to them as the party most likely to deliver peace and change – even if part of that attraction was the fear that not voting for them would encourage a return to war. In the absence of in-depth research, or supplementary indicators such as exit polls, analysis of the reasons for the Maoist victory is necessarily speculative. Nevertheless some factors stand out:

- ❑ **organisation and communication.** The CPN(M) had a well-structured campaign run by active and committed cadres. It had carefully planned training programs and public activities. It made the sheer size of its campaign force and mobilisation capacity was telling. For better or worse, the Maoists were in intimate contact with ordinary people throughout the country during their underground years. They did not always make themselves loved, but they listened, learned and maintained their links. The established parties neglected their popular bases and concentrated on power politics. They were forced out of many rural areas by the Maoists but did not push hard to reestablish themselves when given the chance. The Maoists' wider connections enabled them both to win people over and use coercive tactics.
- ❑ **cultivating constituencies ignored by other parties.** Many classes and communities were ill-served by the established parties. The Maoists took up their issues and had little competition in winning their support. Even the UML neglected the real lower classes, marginalised communities, the landless and the jobless. (Although many overseas migrants had landed jobs thanks to party string-pulling, those excluded were perhaps even more likely to turn to the Maoists.) Groups such as Tarai Dalits, Tharus and Rajbanshis could see hope in the Maoists. The CPN(M) returned 23 of the 49 Dalits in the CA; it also put up a Rajbanshi candidate, who defeated Home Minister Sitaula in Jhapa. Plenty of hotel and restaurant workers were well aware that it was thanks to the Maoists that they benefited from a compulsory service tax.
- ❑ **clear policies and an agenda for change.** The Maoists knew what they stood for and made sure voters did too. While the UML and NC's conversions seemed belated and unconvincing, the transformational agendas of the republic, CA and federalism belonged to the Maoists. They had set the agenda and knew their core messages. The old parties sounded tired and bereft of ideas in comparison.
- ❑ **calculated strong-arm tactics.** The Maoists did flex their muscles in various ways and also used more subtle threats.¹¹³
- ❑ **not taking anything for granted.** The NC and UML were overconfident, relying on a presumed "core vote" that turned out to be much smaller than they anticipated. The Maoists worked harder for every vote and correctly judged the political situation, including party loyalties, to be more fluid than other parties realised (with the exception of the Madhesi parties, who thrived for the same reason). First-time voters numbered in the millions – around 22 per cent of the electorate. With less rigid political affiliations and different generational perspectives, many saw little to attract them in the old parties. In contrast, the Maoists made determined efforts to win youth support, male and female, and to select many young candidates.

Last but perhaps most important was the role of struggle and sacrifice. Many non-Maoists, even including confirmed opponents, are willing to recognise that the Maoists fought hard to bring about political change – several voters said this alone had persuaded them to vote for the CPN(M).¹¹⁴ However much the other parties had joined the Maoists' CA and republican agenda, most people saw clearly that the CPN(M) deserved the credit for leading this political revolution. This was nothing new. The NC had won similar public approval in the 1950s (when it led the fight against the Ranas), and both the NC and UML had earned approval for their role in spearheading the 1990 people's movement. For politicians in these parties, their personal *itihās* ("history") is still a key qualification for rank and office – time spent in jail under the Panchayat or on the street in protests counts. Viewed in this light, public recognition for the Maoists' long years of struggle was not so surprising.

¹¹³The Maoists used subtlety as well as brute force. For example, a senior candidate who goes door-to-door campaigning and is received by a grandmother might say: "I'm not asking for your vote but for your blessing when we go back to the jungle. India, America, the king, the NC and UML have all sidelined us and are plotting to make us lose – even though we have the people's support. So please be ready to help us like before when we come to seek shelter after the war starts again". The voter would realise which way to vote for peace – and to avoid having to shelter guerrillas as the army came looking for them. Another party worker might show villagers footage of the PLA's battles, asking "if we were able to shoot videos while we were fighting and killing, will it be hard for us to see who you vote for?" Many more carried binoculars and invited voters to try them out, before explaining that it would be easy to check which way they voted. Crisis Group interviews, rural voters, various districts, April 2008.

¹¹⁴Crisis Group interviews, various districts, March-April 2008.

C. WHY DID WE (ALMOST) ALL GET IT WRONG?

A major feature of the elections was the shock result. However, those most surprised at the outcome were probably those who had done most, however unintentionally, to reinforce a misleading assessment of the Maoists' prospects.

The scale of this miscalculation, and its continued relevance to the political view from Kathmandu and abroad, demand examination. The Maoist press, of course, can claim that they predicted victory correctly. However, their stridently partisan reporting encouraged unbiased readers to take their predictions with a large grain of salt. The rest of the media, and domestic and international analysts, largely expected the Maoists to trail in third place. Crisis Group's own pre-election report, while avoiding predictions, strongly implied that this was the likely outcome and focused disproportionately on the CPN(M) and the palace as the most likely post-election spoilers.¹¹⁵

The major factors behind these miscalculations are not just of historical interest. They reflect well-established shortcomings in the analysis that is available to anyone who does not spend time outside the capital. Given that the brief spark of self-critical introspection within the media and mainstream parties appears to have had little lasting effect, it is important to recall the weaknesses that the election revealed:

□ **capital-centrism and circular analysis.** Major media outlets, analysts and diplomats retained their resolute Kathmandu focus. Outside the valley the fact the Maoists were not facing humiliation became clearer and clearer as the day grew closer. For many ordinary voters, it was obvious well before polling day.¹¹⁶ Local journalists insist that their stories reflected this fact, but their reporting was discounted by Kathmandu-based editors, who preferred to stick with their own view of national reality.¹¹⁷ Analysts in the capital fed off each other

and reinforced mutual misconceptions while ignoring primary sources.¹¹⁸

- **weak mainstream media.** All the weaknesses of the mainstream media came into play. There was a combination of overt bias and blindness to facts. Journalists and commentators were unwilling to abandon long-held positions, especially the belief that the Maoists could not possibly have genuine widespread support. This was reinforced by the liberal article of faith that "Nepalis won't tolerate authoritarianism of right or left" and the long-standing insistence on triangulating politics by putting the Maoists at the opposite end of the political spectrum to the king but seeing them as fundamentally alike in other "totalitarian" respects. Almost all mainstream journalists are at least UML or NC-leaning and often directly linked (many correspondents secure their positions through student party political connections). The more entertaining, if scurrilous, weekly papers are unabashedly partisan – they do investigative reporting but normally only when the results suit their political stance, which undermines their credibility even when they are accurate. By far the best single piece of pre-election reporting came from an Indian journalist familiar with Nepal but only an occasional visitor.¹¹⁹
- **almost no one understands the Maoists or feels they need to.** Non-Maoist journalists, academics and analysts who have made serious efforts to understand Maoist thinking are pitifully few and far between. Ten years of armed conflict and donor generosity produced a slew of "conflict experts" but not one academic specialist on Maoism and the

¹¹⁵ See Crisis Group Report, *Nepal's Election and Beyond*, op. cit.

¹¹⁶ Most voters in hill districts and the western Tarai expected the CPN(M) would be at least a very strong contender. Even among committed NC and UML supporters, very few echoed the confidence of party leaders about their prospects. Crisis Group interviews, *passim*.

¹¹⁷ Crisis Group interviews, local correspondents for national press, radio and TV outlets, various districts across all five development regions, January-June 2008.

¹¹⁸ Crisis Group also came in for criticism on this front: "[*Kathmandu Post*] Correspondent Bikash Sangraula says that the overwhelming victory by Maoist parties in Nepal's parliamentary elections fooled everyone, 'the experts, the Maoists, and the journalists, including me... In the run-up to the election, the media was relying on what the 'political experts' said. The media was quoting research groups, like the International Crisis Group, that said Nepal could face post-election problems owing to unwillingness by the Maoists to accept election results... There was basically a vicious cycle of wrong information and analysis'". David Clark Scott, "Reporters on the Job", *The Christian Science Monitor*, 15 April 2008.

¹¹⁹ Siddharth Varadarajan, "A vote for change, a vote for peace", *The Hindu*, 1 April 2008. This article still deserves reading as a testament to how much of the shape of things to come could have been predicted by reporters relying on the basic tools of their trade – going out and listening to people with an open mind. Varadarajan spent eight days covering fifteen constituencies. The combined reporting of Nepal's many journalists could surely have thrown up at least as much insight as this solo effort.

CPN(M) nor, despite vast investments in training, a single expert journalist beyond the handful who were already interested and well informed in their own right.

- **no helpful polling.** Psephology is not an infallible discipline even under the best of conditions. In Nepal, the history of wide-scale opinion surveys is very short,¹²⁰ and the circumstances of the CA election made it particularly hard for even the best polls to predict voter behaviour.¹²¹ Nepal is far from alone: Indian pollsters suffered a major embarrassment in the 2004 general elections, when they almost universally – and wrongly – forecast a victory for the incumbent BJP-led National Democratic Alliance. Some of India's most dedicated professional psephologists were also criticised for inaccuracies in their 2008 state election exit polls.¹²²

The unhelpfulness of Nepal's opinion surveys was neither surprising nor due to amateurishness on the part of practitioners. The discipline simply needs more time to develop and learn from local conditions. The nine-year gap since the last election, which meant that over one-fifth of the CA electorate were first-time voters, should not be repeated if parties stick to the interim constitution's timetable

for completing the constitution-writing process within two years.

- **mainstream parties' own miscalculations.** Despite having such large networks on the ground, NC and UML leaders did not have a good understanding of political realities. Nevertheless, observers felt there must have been some solid reasons for their confidence.¹²³ In contrast, Maoist leaders were less confident in private than in public, at least until the campaign gathered momentum.¹²⁴ Party spokesperson Krishna Bahadur Mahara explained, "all parties claim they'll win a majority, so we do too – that's natural – but we'll respect the results".¹²⁵
- **changing popular mood.** Voters' intentions were sometimes hard to gauge until the campaign picked up. There probably were large numbers of floating voters who either took time to make up their minds or only started talking more firmly about their intentions late in the day. Many people were unsure the elections were going to happen at all, and many Maoist voters may have been reluctant to express their support for the CPN(M) while it was still viewed as an "outside" and partly illegitimate force.

It may be that the story was just too simple for analysts primed to read between the lines and look for conspiracies and hidden meanings. In the end, the main players did more or less what they said they would – from their policy platforms to holding the

¹²⁰ On political opinion polling in Nepal, see Sudhindra Sharma and Pawan Kumar Sen, Political Opinion Poll in Nepal's Context, *Studies in Nepali History and Society*, vol. 10, no. 2 (2005), pp. 321-358. The major surveys prior to the election were carried out by Interdisciplinary Analysts (see fn. 46 above).

¹²¹ As one of the experts who has pioneered systematic polling commented, the very high number of "don't know/can't say" responses to voting intention questions in recent surveys was in itself an indication of the difficulty in making firm forecasts. Sudhindra Sharma, speaking on "Naya Nepal", BBC World Service, 12 April 2008. As Crisis Group had cautioned, "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". Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 17.

¹²² For example, an exit poll in the May 2008 Karnataka state elections organised by the respected Centre for the Study of Developing Studies wrongly predicted a hung assembly with Congress as the largest party. "Exit polls give different pictures", *The Hindu*, 23 May 2008. Such polls had also been criticised in 2006, despite their relative accuracy. See K. Narayanan, "How CSDS fine-tunes polling exercise", *The Hindu*, 22 May 2006.

¹²³ A number of factors appear to have affected communication between grass-roots party activists (who were aware that they faced an uphill struggle) and party leaders. Some activists may have chosen not to report on the true situation, either out of disillusionment with their superiors or out of fear of being blamed for the negative message; others had their concerns dismissed as pessimism.

¹²⁴ It would, however, be wrong to say that Maoist organisers displayed any significant lack of confidence after the end of 2007. By January 2008, district party officials were upbeat in their presentation and busy with practicalities, such as training activists in election campaigning techniques. Crisis Group interviews, Banke, Morang, Kailali districts, January 2008. Four weeks before the election, Baburam Bhattarai expressed no doubts: "The most likely scenario is that we'll be the largest political force after the elections. International powers will have to accept this and the popular desire for change". Crisis Group interview, Kathmandu, 14 March 2008.

¹²⁵ Crisis Group interview, Krishna Bahadur Mahara, Kathmandu, 9 March 2008. By the last week of the campaign, Mahara and other party leaders, who had spent time in many districts, were much more upbeat, sensing a swing of support towards them. Crisis Group interviews, Krishna Bahadur Mahara, Pyuthan, 5 April 2008; Baburam Bhattarai, telephone interview, 8 April 2008, Shaligram Jammakattel, ; telephone interview, 9 April 2008.

election and implementing the republic. The Maoists, and other parties, stuck to their vow to make sure the elections went ahead. As his acolytes had always promised, the king did not interfere overtly. The only people whose public promises were seriously out of step with their behaviour were the armed Madhesi groups, whose campaign of violence fell far short of their dire threats.

Despite the success of polling day, it was, however, right to warn about procedural difficulties in the aftermath, as well as the fact that the behaviour of powerful losers would shape the next steps (although these turned out to be the NC and UML rather than the Maoists). Fears that there could have been more violence and disorder were not fulfilled, but the potential was definitely there. The results did underline that no outcome (including the actual one) would be inherently stabilising or conflict-reducing.¹²⁶

VI. CONCLUSION

Nepal's elections were a major step forward in the peace process, and for this all political parties and institutions – from the Election Commission and security personnel to civil society groups who kept up pressure for a free and fair vote – deserve much credit. The fact that they were also a triumph of democracy owes more to the Maoists and new parties such as the MJF than the old “democratic” mainstream. For all the Maoists' use of intimidation and the MJF's policy flip-flopping, it was their campaigns that allowed voters to wield power, not only delivering a more representative assembly but voting out many unloved old faces that most citizens had thought they would be burdened with in perpetuity.

However, the results have left a confused political landscape with the potential for many future disputes, even the resumption of conflict. The Maoist victory was surprisingly clean in terms of their behaviour but much less clean in pure numbers: commanding just over one third of the new CA, they have the power to block anything but can achieve nothing without support from other parties. Their opponents have shown little willingness to recognise their defeat or to smooth the way towards completion of the peace process and the writing of a new constitution. The way in which political leaders cope with the political challenges of the election aftermath, set out in the companion Crisis Group report, will determine whether the revolutionary result delivers peace and change or further conflict.

Kathmandu/Brussels, 3 July 2008

¹²⁶See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 17. “No configuration of results is without conflict risk. Any of the possible outcomes could aggravate tensions, and each would generate powerful losers”.

APPENDIX A

MAP OF NEPAL



APPENDIX B

GLOSSARY OF ACRONYMS

ANFREL	Asian Network for Free Election
APF	Armed Police Force
BJP	Bharatiya Janata Party
CA	Constituent Assembly
CPN(M)	Communist Party of Nepal (Maoist)
CPN(ML)	Communist Party of Nepal (Marxist-Leninist)
DEO	District Election Officer
EC	Election Commission
EU	European Union
FPTP	First Past the Post
MJF	Madhesi Janadhikar Forum (sometimes referred to in other sources as the Madhesi People's Rights Forum, MPRF)
NEOC	National Election Observation Committee
NC	Nepali Congress
NC(D)	Nepali Congress (Democratic)
NP	Nepal Police
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
RPP	Rashtriya Prajatantra Party
RPP(N)	Rashtriya Prajatantra Party (Nepal)
TMDP	Tarai Madhes Democratic Party
UML	Communist Party of Nepal (Unified Marxist-Leninist)
UNMIN	United Nations Mission in Nepal
YCL	Young Communist League

APPENDIX C

AN OVERVIEW OF THE ELECTION RESULTS¹²⁷

Party	First Past The Post			Proportional Representation		Total	
	Vote (as %)	No. of seats	Women winners	Vote (as %)	No. of seats	No. of seats	Seats (as %)*
Communist Party of Nepal (Maoist)	30.5	120	23	29.3	100	220	38.3
Nepali Congress	22.8	37	2	21.1	73	110	19.1
Communist Party of Nepal (UML)	21.6	33	1	20.3	70	103	17.9
Madhesi Janadhikar Forum	6.2	30	2	6.3	22	52	8.7
Tarai Madhes Loktantrik Party	3.4	9	1	3.2	11	20	3.5
Sadbhavana Party	1.7	4	0	1.6	5	9	1.6
Rashtriya Prajatantra Party	3.0			2.5	8	8	1.4
Communist Party of Nepal (Marxist-Leninist)	1.6			2.3	8	8	1.4
Janamorcha Nepal	1.3	2	0	1.5	5	7	1.2
Communist Party of Nepal (United)	0.4			1.4	5	5	0.9
Rashtriya Prajatantra Party Nepal	0.7			1.0	4	4	0.7
Rashtriya Janamorcha	0.9	1	0	1.0	3	4	0.7
Nepal Workers and Peasants Party	0.6	2	0	0.7	2	4	0.7
Rashtriya Janashakti Party	0.8			1.0	3	3	0.5
Federal Democratic National Forum	0.3			0.7	2	2	0.4
Nepal Sadbhavana Party (Anandidevi)	0.4			0.5	2	2	0.4
Rashtriya Janamukti Party	0.4			0.5	2	2	0.4
Nepali Janata Dal	0.2			0.5	2	2	0.4
Communist Party of Nepal (Unified)	0.5			0.5	2	2	0.4
Independent	1.2	2	0			2	0.4
Dalit Janajati Party	0.3			0.4	1	1	0.2
Nepa: Rashtriya Party	0.1			0.4	1	1	0.2
Samajwadi Prajatantrik. Janata Party, Nepal	0.1			0.3	1	1	0.2
Chure Bhawar Rashtriya Ekata Party Nepal	0.2			0.3	1	1	0.2
Nepal Lokatantrik Samajbadi Dal	0.1			0.2	1	1	0.2
Nepal Parivar Dal				0.2	1	1	0.2
Other	0.6			2.5	0		0
Invalid ballots	5.2			3.7			

*These figures are percentages of 575 CA seats filled by election; 26 members remain to be nominated by the cabinet.

¹²⁷ Adapted from the results declared by the Election Commission of Nepal on 25 April 2008. These figures include ten FPTP seats won by five individuals contesting from two constituencies each. Five seats have now been resigned and will be contested in by-elections. This affects the CPN(M) (two seats), MJF (two seats) and NC (one seat). The MJF's 30 FPTP seats also include Mahottari-6, which was declared for them but is now subject to a court appeal (See fn. 101 above).

APPENDIX D

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

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