

# ***Electoral Violence and Mitigation Assessment***

**Nepal**

## **Final Report**

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## Abbreviations

<b>Abbreviation</b>	<b>Name</b>
AG	Attorney General
ANFREL	Asian Network for Free Elections
APF	Armed Police Force
APM	All-Party Meeting
Bandhs	General strikes, shutdowns ('closed')
CA	Constituent Assembly
CDO	Chief District Officer
CEC	Chief Election Commissioner
CIB	Criminal Investigation Bureau of Nepal Police
CoC	Code of Conduct
CPA	Comprehensive Peace Agreement
CPN-M	Communist Party of Nepal – Maoist
CPN-UML	Communist Party of Nepal – Unified Marxist-Leninist
CPX	Command Post Exercise
CSO	Civil Society Organization
DEAN	Democracy and Election Alliance Nepal

DEO	District Election Officer
ECI	Election Commission of India
ECN	Election Commission, Nepal
EDR	Electoral Dispute Resolution
EU-EOM	European Union - Electoral Observation Mission
EVMA	Electoral Violence and Mitigation Assessment
FES	Friedrich-Ebert-Stiftung
FGD	Focus Group Discussion
FPTP	First Past the Post
GoN	Government of Nepal
IFES	International Foundation for Electoral Systems
IGP	Inspector General of Police
IIDEA	International Institute for Democracy and Electoral Assistance
Jana Andolan	People's Movement
LPC	Local Peace Committee
LTO	Long Term Observer
MoF	Ministry of Finance
MoHA	Ministry of Home Affairs
MoIC	Ministry of Information and Communication
MoLJ	Ministry of Law and Justice
MoPR	Ministry of Peace and Reconstruction
MPRF/MJF	Madhesi People's Rights Forum/Madhesi Janaadhikar Forum
NA	Nepalese Army (Formerly Royal Nepal Army or RNA)
NC	Nepali Congress
NDI	National Democratic Institute
NEFIN	Nepal Federation of Indigenous Nationalities
NEMA	National Election Monitoring Alliance
NEOC	National Election Observation Committee
NP	Nepal Police
P/EVER	Political/Election Violence Education and Resolution Project
PC	Polling Center
PLA	People's Liberation Army (Maoist Combatants)
PO	Presiding Officer
PP	Political Party
PR	Proportional Representation
RJP	Rastriya Janashakti Party
RO	Returning Officer
RPP	Rastriya Prajatantra Party
SP	Sadbhawana Party
SWC	Social Welfare Council
TAF	The Asia Foundation
TMDP	Terai Madhes Democratic Party
UCPN-M	United Communist Party of Nepal-Maoist
UN RCHCO	UN Resident Coordinator / Humanitarian Coordinator Office
UNMIN	United Nations Mission in Nepal
USAID	United States Agency for International Development
VDC	Village Development Committee
VMLR	Verified Minors and Late Recruits
YCL	Young Communist League

## 1. Introduction

### 1.1. Summary of findings and recommendations

Nepal is currently experiencing a period of Constitutional and political uncertainty, with an election having been called but not officially endorsed, and with no political agreement on the type of election, the body to be elected, or the electoral system to allocate seats. The leadership of the government and the Election Commission are in flux, or transition. It is in this context that the Election Commission, Nepal (ECN) and the United Nations Development Programme (UNDP) initiated this electoral violence and mitigation assessment over three weeks from mid September 2012. The assessment was originally planned to review potential violence triggers and suggest mitigation measures for the first legislative elections following the approval of the Constitution by the Constituent Assembly (CA). However Nepal has taken a different and uncertain path in the last six months after the stalling of the Constitution-writing process.

The three-person team conducted 45 interviews and focus group discussions with 274 national and international election security experts and actors. A workshop with 62 of the interviewees allowed preliminary findings and recommendations to be validated and improved. The team also visited three districts which experienced significant electoral violence in the 2008 CA election: Dhanusa with equal fourth highest levels of pre-election political violence; Mahottari with the second highest number wounded overall; and, Dhading with the highest number of pre-election incidents and third highest wounded.<sup>1</sup>

In the course of the assessment the team was told by interviewees of the urgency to begin national dialogue on the threats to a future election. In the event there was timely and comprehensive political agreement, and the electoral process was conducted in 120 days,<sup>2</sup> there would still be very little time to put in place preventive measures. There would be even less time to make necessary changes to the legal framework, to mobilize a stronger criminal justice response to violent election acts, or to improve on the national information and security coordination architecture set-up for the 2008 CA election.

The first section of this assessment outlines the team methodology, provides four overall electoral violence findings that have a bearing on how potential triggers and mitigation strategies have been framed, and reviews recent international research and practice on the topic. One of those dominant findings is that in discussing the future, all interviewees recalled the recent past. The historic negotiation and signing of the 12-Point Understanding in November 2005, followed by the Comprehensive Peace Agreement (CPA) in November 2006, were turning points in the restoration of peace and security in Nepali society after a decade of violent conflict. Despite differences, with their actions political parties, movements, their leaders and state and non-state

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<sup>1</sup> DEAN, P/EVER, *Final Report* (2008), Figure 7

<sup>2</sup> The ECN spokesperson stated that 120 days was the minimum timeframe from the conclusion of necessary legislation to organize a 22 November 2012 election. See Reuters, 'Likely Nepal election delay may test fragile peace process', 17 July 2012

armed groups demonstrated an emerging consensus. The overall success of the 2008 CA election was evidence of a national agenda taking precedent over party and ideological interests.

While there are different narratives on how successful a turning point those three years were, in the international domain the conflict-to-peace transition is generally regarded as a success, and national and international peace-building efforts are deemed – in many respects – best practices for other countries.<sup>3</sup> Still, electoral violence monitoring by the civil society group *Democracy and Election Alliance Nepal* (DEAN) Political/Election Violence Education and Resolution (P/EVER) project documented 485 verifiable incidents, including 50 deaths, 1,286 injuries and 116 kidnappings in just five months during the CA electoral process.<sup>4</sup>

Six potential electoral violence triggers: In the intervening four years the peace process and transition has faced serious hurdles and crises. The eventual success on army integration has been overshadowed by the significant setback in the failure to conclude the Constitution and the dissolution of the CA that followed. In the context of what is expected to be a highly contested election, the second section outlines six overall trigger areas of visible and invisible violence that were identified by interviewees:

- The *Constitutional vacuum* poses a significant risk to the election, and how it is resolved will impact the electoral security environment that follows;
- The failure of political leaders to *resolve key constitutional issues, including state restructuring, federalism and related identity and marginalization questions* has turned them into potential triggers. This is the central question that the election is expected to resolve, and the extent to which identity, ethnicity, religion, caste, geography and regionalism are managed and sufficient consensus is found by political leaders and cadres will shape all other risk factors and mitigation strategies. The absence of deep dialogue (*sambad*) on these issues is leaving space for fear-mongering and for politicians to manipulate issues for political gain, with the coming election expected to reinforce cleavages instead of reinforcing national identity;
- There remain persistent historical threats inside and between *political parties, their cadres and non-state actors, as well as youth wings and armed groups*. Low levels of intra-party democratization and transparent decision-making have exacerbated a crisis in confidence between the public, political leaders and their supposed supporters. These combine with a greater number of political actors and their polarization and fragmentation to create an environment ripe for violence. Greater representation for women in the CA has not translated to greater empowerment for women in politics – it is business as usual, and the team was not presented with evidence that women will be less exposed as victims of violence, or empowered to prevent it;

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<sup>3</sup> See, for example, the final reports of domestic and international observer groups listed in the bibliography, analysis in various chapters in von Einsiedel et al., *Nepal in Transition* (2012), and Whitfield, *Focused Mission: Not so limited duration* (2010). The concluding sentence of the Secretary-General's final report on Nepal surmised '*Nepal has managed its own peace process with greater goodwill and steadiness than have many other countries in similar post-war settings*', S/2010/658, (2010), p9

<sup>4</sup> DEAN P/EVER, *Final Report* (2008), p1

- The pervasive and unchecked influence of ***money in politics*** is probably worse than before, buttressed by a stronger nexus of politics with crime and business. There is already competition to win support from and mobilize these groups, based on a perception that failing to do so leaves candidates on an unequal playing field. The unchecked breaches of criminal law and the Code of Conduct (CoC)<sup>5</sup> by political parties was raised as the single-most important factor undermining previous attempts to check electoral violence;
- There is a question whether the ***psychology of voters*** (impacted by each of these three previous triggers) leaves them ripe to be mobilized for or against violent electoral competition, with a high likelihood many currently unaligned voters will be mobilized by identity-based groups. An open question is how the voting public can contribute to a culture of *sambad*, and to shape a healthier issue-based citizen-centered discourse; and
- Different risks are expected in ***different phases of the electoral process***, with the highest risk expected in the pre-polling steps of candidate pre-selection, candidate nominations and the campaign.

Five electoral security, justice and integrity challenges: The third section addresses challenges to five other key areas that relate to securing the environment for peaceful elections, providing justice in criminal and electoral cases, and protecting the integrity of the vote through actions by the ECN, observers and others. In this section, depending how actors act and how issues are managed, they could be violence inducing or solving:

- While there is extensive experience in election-related security in the Nepal government, its ***security institutions*** are in transition, and the overall criminal justice system is not well prepared to manage highly political criminal-violence cases, and take on the influences of money, muscle and mafia. Control of the government machinery was also being contested as the report was being written. While the response to election-related violence is in large part governed by broader rule of law capacity and the independence of the judicial sector, a key test will be the ability to reconstitute integrated security mechanisms with the ECN in time for political party candidate pre-selection;
- Although ambitious legal changes to resolve the weaknesses of the current ***electoral dispute resolution*** regime are unlikely to be realized for the next election, it is imperative to implement the rules of the current system. The conditions for a future election (in particular money, muscle and mafia) indicate a high probability that perpetrators will (or already are) acting as they have become accustomed to – preparing to use criminal and violent means to reach elected office or to stay as incumbents. In most assessments the key weakness is the lack of enforcement and sanction, so unless strong measures are taken to prepare for a more aggressive and public investigation and adjudication of these cases, electoral violence is very likely to continue in an environment where perpetrators face few or no consequences;
- With regard to the ***independence and capacity of the ECN***, the current election commission leadership gap needs to be filled urgently with capable and independent individuals, and to take the same approach when selecting electoral staff,

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<sup>5</sup> Herein CoC refers to ECN, *Code of Conduct on Election to Member of the Constituent Assembly*, 2064 (2007)

down to Returning Officers and Presiding Officers. To build trust with political actors who would otherwise seek violent means, the new commissioners need to confidently project that its actions are credible and its decisions are independent. The government needs to allocate sufficient resources – under ECN control – to allow the ECN to perform those constitutional responsibilities. The ECN needs also to carefully manage the roll out of new technology, to maximize its capacity to reduce – not create new – risk (new biometric digital voters list, and electronic voting machines);

- Four other electoral actors – ***observers, media, civil society and the international community*** – will need to improve their coordination and coverage, and to partner with each other and with political parties, the security sector and ECN to push for an open and fair non-violent electoral process; and
- All of these actors will need to come together to begin a positive and creative ***anti-violence campaign***. Equivalent campaign efforts between 2006-2008 were more reactive to the peace process.

Recommendations – Seven elements of a mitigation strategy: In the fourth section the team proposes seven elements of mitigation, targeted at different election actors. If elections are processes to manage political competition and conflict, the team was asked to identify some game-changing measures to prevent the next election inducing more violent conflict, and to manage escalation when it does. A key concern was the risk of persistent levels of violence becoming chronic, at least in the 10 top districts that interviewees could each name with a voting public who have only ever known elections to be violent. Consistent with observer reports at the end of the 2008 CA election, the feeling was that more can be done to address election security, and underlying causes of violence. In these circumstances, the questions were: what can help change the actions of political actors seeking to win at all cost, and what measures might provide a positive tipping point? In short, the recommendations are:

1. As soon as the constitutional vacuum is resolved, for the ECN to ***pro-actively engage political parties in All-Party Meetings*** to re-establish the rules of the game, and engage in *sambad*. In partnership with political parties, the security and justice sectors, the ECN should also increase monitoring of party finances, improve campaign management, and keep a vision and pursue a goal of peaceful and accountable parties, starting with national and local party leaders;
2. To ***seek a higher standard of integration between the ECN and security agencies*** (assessment and budgets, monitoring and information sharing, prevention and response) on electoral violence, and benchmark and improve on the 2008 coordination mechanisms. To improve collective training and capacity building between the ECN and security agencies, and anticipate and address specific risks in different phases of the electoral process;
3. To ***strictly enforce criminal and electoral law from day one***, in a pro-active and public manner, in particular criminal law broken whenever an individual or group is violent. The same approach should be taken on the CoC and electoral dispute resolution and campaign finance laws, to have a chance of changing motives of political actors' committed to violence. Data collection and public reporting on individual cases nation-wide should move from those who collected it in 2008 (observer groups, the DEAN P/EVER project, and the UN) to the Ministry of Home Affairs (MoHA), judiciary and ECN;
4. To ***protect the independence and capacity of the ECN***, first by ensuring the non-partisan and merit-based appointment of election commissioners, Returning



Officers and Presiding Officers, and to ensure the timely and adequate delivery of election resources to the ECN. The ECN should ensure the roll-out of the new voters list and electronic voting machines (EVM) are well managed and communicated to the public;

5. To ***meaningfully increase the role of women in politics***, starting with political parties selecting more women in party leadership roles, and giving preference for women candidates in a maximum number of competitive seats. The ECN should declare a goal for the percentage of women Returning Officers and Presiding Officers to be recruited. ECN/MoHA to create several integrated headquarter teams to develop region-specific strategies to tackle gender-based electoral violence. Specific voter education campaigns should be designed for women focusing on psychological violence, and observer groups should form a working group to lead monitoring and reporting compliance to these goals, in particular in historically violent districts;

6. To ***improve impartiality, coverage and coordination of observers (especially long term observers), the media, CSOs and the international community*** so that they buttress efforts of the authorities on electoral violence, and by their own actions improve the quality of the political and electoral environment and undermine underlying causes of violence; and

7. To ***urgently facilitate a national anti-violence campaign strategy***, first in message development, and to soft launch the campaign now with existing capacities. The campaign will need to engage party cadre and youth leaders, media leaders and other experts to tailor creative messages, and should focus on creating a culture of meaningful dialogue (*sambad*) at various levels and stages.

## 1.2. Team methodology

With electoral violence a persistent feature of Nepali electoral politics, the ECN and UNDP Electoral Support Project (ESP) included in their partnership a plan to conduct an assessment of potential triggers and mitigation strategies.<sup>6</sup> As part of a strategy to support ‘participatory, peaceful and credible elections’ the initial plan was to prepare for elections that would follow the ratification of a new Constitution by the CA on 27 May 2012. The current legal and political crisis and vacuum, as well as calls for a new CA election, a referendum, or legislative or local government elections (or a combination thereof), gave the ECN and UNDP greater urgency to conduct the assessment.

The methodology for the assessment was set out by the ECN and UNDP in the Terms of Reference (see Annex 1).<sup>7</sup> The ECN and UNDP engaged a three-person team with complementary experience and of mixed Nepali and international composition. The team interviewed as broad a range of key electoral actors and institutions as possible

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<sup>6</sup> The new approach to the ECN/UNDP partnership began after the 2008 CA election, an August 2011 Needs Assessment Mission led by the Electoral Assistance Division, Department of Political Affairs, and mid-term review of the ECN’s 2009-2013 5-year plan. This approach called for a stronger emphasis on building a sustainable and enduring institutional and professional capacity in the ECN, to be re-employed in future elections. For more details on the ESP, including the project document, see <http://www.undp.org.np/democratic-governance/program/esp-88.html>

<sup>7</sup> Notably, this may be the first electoral violence assessment in this format conducted for an electoral management body with UN support. No previous examples of equivalent assessments were therefore available to learn from, although voting and violence have had long associations globally and in Nepal.

in the three-week period, concluding with this report to the ECN. Between 24 September and 10 October the team conducted 45 meetings with 274 interviewees<sup>8</sup>, many in focus group discussions, and one final workshop. All interviewees were asked generic questions on potential triggers and mitigation, and then more specific questions tailored to their functions and experience. Three limitations to the assessment included: the time constraints that prevented more thorough survey-based techniques and data collection; the extra analysis a criminologist could have contributed to understanding group and individual electoral violence motives, and distinguishing between *normal* criminal violence trends and election-related violence; and the very limited conflict and EDR data available from the 2008 CA and earlier elections, an issue which is addressed in the report.

The intention of the assessment was to map higher-level electoral issues and actors and identify how a range of experts view the potential for the issues and actors to be triggers of violence or to mitigate direct or proximate causes of that violence in the current political climate. Interviewees and the team reflected on past electoral violence trends and best practices for mitigation, in particular during the 2008 CA and by-election process. Although 2008 was a unique political and technical process, it was the benchmark for almost all interviewees, and has been the only past election with meaningful comparative data. It was also not the intention for the team to conduct a nation-wide detailed security assessment. The mandated authorities – the ECN and the security sector – are best placed to facilitate a national and district-level assessment, and some of the institutions have already begun pre-election analysis and planning. The assessment importantly did provide an opportunity to generate dialogue on these issues among key stakeholders. With this in mind, a broad range of interviews were conducted with political parties, voters, ECN staff, MoHA and security sector staff, the judicial sector, civil society, international partners, academics and others. The full list of interviewees and the team's schedule are found at Annex 2, and the assessment reflects events up to mid November.

The team conducted two field trips, the first to Dhanusa and Mahottari districts, and the second to Dhading district. These locations were chosen because they had a history of highly contested elections and of electoral violence,<sup>9</sup> and they provided a mix of experiences between the Terai and border region, and a hills district close to Kathmandu. Over 55 percent of the interviewees were from these three districts, most of them interviewed in focus group discussions. The team also conducted a desk review, references of which are in the body of the report and are listed in the Bibliography at Annex 9. After the field trips and interviews the ECN hosted an Electoral Violence and Mitigation Assessment workshop on 8 October with 62 participants (see list of workshop participants at Annex 2). An outline document was provided, highlighting some general findings, potential triggers and mitigation

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<sup>8</sup> That included FGDs with 40 voters in Dhanusa, 20 bar association members in Dhanusa, and 25 voters in Mohotari. The names and affiliations of all other interviewees are found in Annex 2.

<sup>9</sup> While no electoral violence data was provided on elections in the 1990s, for the closeness of 2008 CA results see <http://www.election.gov.np/reports/CAResults/reportBody.php>, and Dhanusa Constituency 5 by-election at <http://www.election.gov.np/EN/byelection.php>; also, for 2008 CA electoral violence see the DEAN P/EVER Report (2008) which recorded in Figure 7 (i) Dhanusa having the equal fourth highest levels of pre-election political violence (including killed and kidnapped), (ii) Mahottari as having the second highest number wounded, and (iii) in Figure 17 showing Dhading with the highest number of pre-election incidents and the third highest number wounded.

measures among electoral issues and actors that emerged from the interviews.<sup>10</sup> The general findings in this final report were therefore tested, validated and refined, and new ideas that emerged in the workshop's four focus group discussions are included in the report (see the matrix in Section 4).<sup>11</sup> Many opinions and ideas have not been included due to time and space limitations, or where triggers and mitigation actions raised were not backed-up by multiple sources. This report was then prepared, shared for comment with the ECN and UNDP, and submitted independently by the team.

### 1.3. General findings

In the course of the assessment, four general findings framed the current situation and perceptions among interviewees.

1. A common language for describing electoral violence: From senior officials to local village members the same language was used to describe two forms or types of electoral violence in Nepal, namely: *visible or physical violence*, and *invisible or psychological violence*. This was accompanied by a clear understanding that different mitigation is needed to address one or the other, that visible violence can be counted, but invisible violence is harder to address and very difficult to measure. In terms of measurable visible violence, an effort was made to describe political versus electoral violence in 2008.<sup>12</sup> A related observation was the remarkable consistency in the issues and actors identified by interviewees. One gap was that only when men were prompted did they identify the special dimensions and systemic nature of electoral violence against women (as victims, by suppression or proxy voting, susceptible to psychological violence).

2. Agreement on geography, disagreement on causes: In terms of the location of past and expected violence, interviewees had *a common outlook on which districts and regions were at higher risk of violence*. Electoral violence in Nepal has been highly contextual and variable between each Terai and hill district and constituency. While some generalizations about Nepali electoral violence at the national level are made in this assessment, generally the team was told about the significant differences between actors and issues in different locations. This has important implications for how security agencies and the ECN prevent and respond to threats. However, *there were significant disparities over whether each electoral issue and actor was seen as part of the solution or part of the problem*. Reflecting diverse interviewee experiences, without exception, all national and international electoral actors were described as either the problem or the solution. Several electoral issues were also described negatively as triggers or positively as mitigation strategies (the new Voters List, EVMs). While there are numerous explanations for opposing outlooks on the same

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<sup>10</sup> ECN/UNDP, Workshop Outline, *Electoral Violence Mitigation Assessment*, (2012)

<sup>11</sup> Participants noted that the workshop was the first time they had discussed electoral violence in a broad forum since the aftermath of the 2008 CA election.

<sup>12</sup> Political violence largely involved forceful attacks on the public and on state actors, with nearly 50% of them involving bomb/explosives and guns/firearms. Election violence then mostly occurred between political parties, 57% of which involved fists and other physical means, and stones/throwing objects. DEAN P/EVER, Final Report (2008), p6

actors,<sup>13</sup> it became clear to the team that these perspectives are an impediment to working collectively to prevent and mitigate electoral violence.

3. The 2008 CA election is the benchmark but there's a data problem: There were *fresh memories of electoral violence in the 2008 CA elections, and some institutional memory and visible violence data captured in the DEAN P/EVER Report (2008)*. Even if the 2008 CA election in particular was the key event used to compare the nature of electoral violence to the current context, there is no agreement on how to categorize that electoral process, for example: whether it was a moderately or severely violent process, and whether it can or cannot be compared to now, as it was a peace process election. Some conclude that electoral violence conditions are now better, and some suggest conditions are worse. Comparisons with 2008 facilitated discussion on what did and didn't work in 2008, and what can be done to improve mitigation next time. Related issues relate to data and the *urgent need to preserve institutional memory and to fill electoral violence and EDR data gaps*: there is no available data on visible violence and election-related criminal cases from elections in the 1990s; although there is a baseline in the 2008 DEAN P/EVER visible violence data, there is no survey data in any election for psychological violence and currently no plan to match the standard of violence monitoring and data collection by the DEAN P/EVER project (480 constituency-based monitors and five public reports).

4. Three key actors need to address violence together: Interviewees were almost unanimous that *while the actions of three actors could produce triggers of violence, they must be the key mitigation actors – political parties, the ECN and the government*. Time, resources and effort should be expended on mobilizing these three actors in concert to have the most impact nationally. Further, *the only effective path to address electoral violence is through an integrated strategy*, one that engages all electoral actors to take positive and coordinated actions. Although mediation, confidence building and coordination on security in the 2008 CA election were deemed to have been exceptional for that peace process election,<sup>14</sup> much of it was described as best practice for the next election. The next election could take integration further and ensure a common ECN/Police and judicial sector platform of information, analysis, response and monitoring for follow-up. Interviewees generally favored *strengthening existing electoral security coordination and information-sharing mechanisms and systems*, rather than creating new ones. However, this approach depends on a common understanding of past and future threats.

#### **1.4. International perspectives on electoral violence**

*'In certain circumstances, elections have the potential to divide and destabilize.'*<sup>15</sup>

In the last five years, increasing international research has been directed to understanding and preventing electoral violence. High violence following the Kenyan 2007 Presidential elections generated international attention and mediation by Kofi

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<sup>13</sup> For example, within government, between security sector agencies, and between government and the ECN, interviewees described competition between institutions for mandates, authority, and scarce financial and material resources. Between media, CSOs and international partners, the team heard examples of distrust on motives, partisan behavior and low capacity.

<sup>14</sup> Many of the integrated security measures used in 2008 have their origins in the 1990s.

<sup>15</sup> The quote continues: *'This risk is particularly high in countries with systemic, long-standing and unresolved grievances, combined with a "winner takes all" approach to competitive politics'*, UN, *Preventive Diplomacy* (2011), S/2011/552, p 12

Annan; and violence has been an increasing feature of Brazilian urban elections where political and criminal actors compete or join forces.<sup>16</sup> One motivation to address this violence has been the risk of returning to conflict: in the recent past 40 percent of post-conflict countries have reverted to violence in the decade following conflict.<sup>17</sup> Another motivation is the experience that systemic violence poses risks in transition to a consolidating democracy, and to economic development.<sup>18</sup> In addition to loss of life and injury, violence prevents citizens running for office, and from registering and voting. One long-term survey on patterns of electoral violence in Sub-Saharan Africa found most violence occurred before the vote and was perpetrated by incumbents, and if violence broke out after an election it tended to be more severe and involve challengers.<sup>19</sup>

There is no universal definition of electoral violence, but a recent UN report on election-related violence and killings quotes working definitions from five authors. Each author emphasizes different intent or the motive and impact of the violence on an electoral process, electoral actors, and the election result.<sup>20</sup> The 2011 World Development Report on Conflict, Security and Development posits electoral violence as one of several forms of organized violence, and notes that the remaining forms of 21<sup>st</sup> Century conflict and violence ‘do not fit neatly into “war” and “peace” or into “criminal violence” or “political violence”’.<sup>21</sup>

New tools have emerged to monitor and map, prevent and mitigate electoral violence. Four current methods or tools include: IFES Election Violence Education and Resolution project, used by the DEAN P/EVER civil society coalition in the 2008 CA election; International IDEA’s Electoral Risk Management (ERM) Tool; USAID’s electoral security guidance handbook (2010); and UNDP’s elections and conflict prevention guide to analysis, planning and programming.<sup>22</sup> Much has been recently written on the benefits and limitations of social media, SMS and other technology to report and respond to electoral violence.<sup>23</sup> To mitigate escalating violence before their 2009 general elections, the Mexican Electoral Commission put in place a political-electoral information system one year before to minimize risks to electoral actors. The system analyzed murder, robbery, kidnapping, drug trafficking, poverty and electoral

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<sup>16</sup> For recent analysis on Kenya see Atwood, *How the EU can support peaceful post-election transitions of power: Lessons from Africa* (2012); on Brazil see The Rio Times, '2012 elections are turning violent', 4 September 2012

<sup>17</sup> Collier, *Wars, Guns, and Votes* (2009), p 75; see bibliography for more references.

<sup>18</sup> See: World Bank, *World Development Report 2011, Overview* (2011), Feature 1 and 2 ‘How violence is changing’, pp3-4; Gillies ed, *Elections in Dangerous Places* (2011)

<sup>19</sup> Straus, Taylor, *Democratization and Electoral Violence in Sub-Saharan Africa, 1990-2007* (2009)

<sup>20</sup> UN, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Election-related violence and killings* (2012), A/HRC/14/24/Add.7, pp4-6

<sup>21</sup> World Bank, *World Development Report 2011: Conflict, Security and Development, Overview* (2011), p2 and p39, Footnote 1

<sup>22</sup> The IFES EVER project methodology is here - <http://www.ifes.org/Research/Cross-Cutting/Election-Violence-Education-and-Resolution/Nav/Electoral-Violence-and-Mitigation/Methodology.aspx>, and see DEAN P/EVER (2008); for International IDEA’s tool see - <http://www.idea.int/elections/elections-in-nepal-remain-vulnerable-to-violence.cfm>; USAID (2010); and, UNDP (2009). See the bibliography for more details of each.

<sup>23</sup> See, for example: Letouzé, International Peace Institute, ‘Can Big Data From Cellphones Help Prevent Conflict?’ (2012)



complexity, and brought together a taskforce of the security sector, communication and infrastructure agencies, intelligence systems and local government.<sup>24</sup>

In terms of prevention and mitigation, the benefits of integrated strategies or a ‘holistic and comprehensive approach’ have been recognized. Such an approach – used to some degree in Kyrgyzstan and Guinea in 2010 – brings dialogue and conflict prevention capacities to bear in combination with electoral management and police capacities. Kenya is well known for having used mobile technology to report violence. India recently had success in enforcing codes of conduct and criminal laws.<sup>25</sup> There is also greater understanding of the constructive role to be played by the international community.<sup>26</sup> Nepal’s elections from the 1960s to the 2008 CA election, and experiences with violence and mitigation have also been captured recently in dedicated and comparative studies.<sup>27</sup>

## **2. The Context and Potential Triggers of a Highly Contested Election**

Within the context set in the summary above, this section identifies potential triggers that are legacies of the conflict and peace process, and new emerging political issues that could become triggers for violence in a future election. While this section does not develop political scenarios, it does assume that regardless of the date, type and form it takes, an election would be highly contested.

### **2.1. The legal front: Which path to end the Constitutional vacuum?**

The demise of the CA, which was also the legislative parliament, has created many constitutional vacuums. A caretaker government runs the country and there is no provision to form another government in the absence of the parliament. There is also a budgetary crisis in the country. Although two options - revival of the CA or a fresh election (CA and/or Parliament) - are under consideration, the Interim Constitution is silent on both issues; hence neither is possible without constitutional amendment. During the final stages of the report writing several developments were occurring, including that it looked like political parties agreed to proceed to another CA election, targeting April / May 2013. In any case amending the Interim Constitution is imperative to fill vacant constitutional positions as well as to initiate any political process, but there is no parliament to act as the constitutional authority to approve the amendment. So, a key question to resolving the current political impasse is how to

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<sup>24</sup> For the Mexican case study, see Carillo, ‘Instituto Federal Electoral, Mexico,’ in International IDEA, *Workshop Report* (2009)

<sup>25</sup> On integrated mitigation see Fomunyoh, *Mediating election-related conflicts* (2009), p 6; on Kenya, Guinea and Kyrgyzstan see Call ‘Political Missions and Departures from Constitutional Order’ (2011); and on India see The Hindu, ‘Editorial: The model code ain’t broke’, 23 February 2012

<sup>26</sup> For example, the UN General Assembly recently noted ‘the international community can contribute to creating the conditions which could foster stability and security throughout the pre-election, election and post-election periods in transitional and post-conflict situations’, A/RES/66/163 (2012), p 3. See also ‘Election-related violence prevention’ in UN, *Preventive diplomacy*, S/2011/552 (2011), p 12

<sup>27</sup> See the bibliography, and in particular: Kumar, *Electoral Violence and Volatility in Nepal* (2010); von Einsiedel et al., *Nepal in Transition* (2012); UN, A/HRC/14/24/Add.7, paragraphs 49-51; and comparative research 1945-2010 in Norris, *Why electoral malpractices heighten risks of electoral violence* (2012), Figure 5

amend the Interim Constitution. This would demand a higher level of understanding among the key political parties to end this stalemate; something currently absent.

Just a few minutes prior to the expiry of the CA, the PM called for a fresh election for November 2012, but the opposition parties decried and claimed there was no provision for another CA election under the Interim Constitution.<sup>28</sup> On the other hand, the Election Commission notified the government that an election in November was not possible without amending the election-related provision of the Interim Constitution and revising the existing election laws.<sup>29</sup> In this setting a level of political understanding is necessary among the key political forces to find a mutually acceptable path forward; however political parties are so far sharply divided on the process and the agenda. The present coalition caretaker government is seeking to settle the agenda first and discuss the future government afterwards, while the opposition is insisting on forming a new all-party government before discussing the agenda.<sup>30</sup> In addition, the political parties themselves are not consistent on their agendas.

Further, elections cannot be imagined without election commissioners. The tenure of all the commissioners, including the Acting Chief Election Commissioner (CEC), will expire by January 2013 and appointment of new commissioners is not possible without amending the Interim Constitution. People, particularly the political stakeholders, stressed the importance of the neutrality and independence of the new commissioners who they feel will largely determine the perception of a fair election.<sup>31</sup> However in this complex political environment, appointing commissioners with a high level of competency and political neutrality is expected to be a challenge.

There is agreement among legal experts that even if the constitutional impasse for conducting an election is resolved, the process demands a series of legal changes and technical preparations<sup>32</sup>, which alone would be highly challenging to negotiate. These preparations are crucial for conducting credible and legitimate elections, against the concerns of the people over whether the ECN will be strong enough to enforce electoral laws and codes of conduct. It must be noted that the ECN has initiated many reforms and some are already underway. Interviewees were additionally concerned as to whether or not the new team of commissioners will own and continue the reform process.<sup>33</sup> Further analysis on the capacity and independence of the ECN, and managing the introduction of new technology, are covered in the next section.

## **2.2. Emerging political issues: The challenge of consensus building**

Many issues have emerged and the political context has changed since the 2008 CA election. Some key unresolved constitutional questions and other more persistent issues with a direct bearing on electoral violence are discussed below. People felt they

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<sup>28</sup> The Kathmandu Post, 'NC, UML cry foul; say poll decision illegal', 28 May 2012

<sup>29</sup> ECN, *Election Bulletin Volume 5*, October 2012, (2007) p13

<sup>30</sup> For a record of events, see a compiled 2012 Nepal timeline at:  
[www.satp.org/satporgtp/countries/nepal/timeline/index.html](http://www.satp.org/satporgtp/countries/nepal/timeline/index.html)

<sup>31</sup> EVMA workshop, 9 October 2012

<sup>32</sup> ECN, *Election Bulletin Volume 5*, October 2012, (2007) p13

<sup>33</sup> EVMA workshop, 9 October 2012

had been deprived of the expectations that a new constitution would introduce a new democratic republic.

State Restructuring: Political parties have been sharply divided on the question of “how” to engage in state restructuring, although there was general agreement on the need for restructuring. While the state failed to take a timely initiative to shape the discussion, interest groups took the lead on the issue both inside the CA and outside of it. As a result, a political debate on state restructuring on the basis of identity or capacity, including name and number, became a national debate. The issue was not only highly debated between the political parties, but also within the parties. More importantly, the different level of understanding of state restructuring among the stakeholders contributed to their different positions on the issue. The lack of progress, resulting in a stall of the constitution process, is perhaps indicative of not only a deep political divide, but also a fractured civil society and general populace.<sup>34</sup> Many reports discuss the emergence of formal and informal alliances on forms of federalism.<sup>35</sup> Although an unusual calm over the country, including among the contesting groups, was noted in the aftermath of the stall of the constitution writing process, people feel the issue (forms of federalism) will dominate the political debate again with the announcement of an election.

Almost universally, the most significant threat to a future election is believed to be the central question that the election is expected to resolve: division on federalism. In contemplating possible election scenarios, six features were raised that led some to predict greater violence than in 2008: (i) Identity; (ii) Ethnicity; (iii) Religion; (iv) Caste; (v) Geography; and (vi) Regionalism. Nepal is a diverse society and people are concerned that the current political process could steer it towards a divided society if issues of traditionally excluded communities are not addressed urgently and appropriately. That is, the quality of diversity is deteriorating and if the triggers are not managed, Nepal could slide down a slippery slope of racial violence.

Many reports mention groups of different identities aligning for or against an identity-based federal structure, despite their political differences over the last six months.<sup>36</sup> Almost without exception, interviewees thought that the debate on ‘federalism’ and identity politics would be the single-most important issue responsible for increasing the momentum of coalescing ethnic and regional political forces. They fear the political parties contesting the next election would be divided on the issue of forms of federalism, which in itself is a challenge and can be a trigger.

While interviewees predicted that the prospect of future ethnic conflict is slim (though the risk of local inter-ethnic conflict is higher), they described a growing skepticism among the people over the ability and will of political leaders. In case of a fresh election, they argue, mistrust between different political and ethnic groups could escalate, and that it could ‘lay the seeds for future conflict.’<sup>37</sup> Moreover, the public is not confident that with the same attitude, thinking and style the parties will deliver a

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<sup>34</sup> von Einsiedel et al., *Nepal in Transition, Conclusions* (2012) p366

<sup>35</sup> For a survey of this issue see: ICG, *Nepal’s Constitution (II): The Expanding Political Matrix*, # 234 (2012)

<sup>36</sup> See, for example, ICG, *Nepal’s Constitution (II): the expanding political matrix*, #234 (2012)

<sup>37</sup> This sentiment in interviews has also been stated by Kunda Dixit, in Al Jazeera, ‘Nepal Premier calls for fresh elections’, 28 May 2012



new constitution, even if fresh elections are held. Most interviewees stated that the composition of the future CA would not be dramatically changed, and it would be a hung parliament. People referred to the present political condition of Nepal as “tinder” vulnerable to the strike of a matchstick.

In this context, many respondents questioned the logic of going to an election without resolving the issue of state restructuring. They were of the opinion that the next election, if called without resolving this contentious issue, would not be based on political parties’ programs or manifestos, or individual candidates’ qualities, but more on issues such as federalism (origin and ethnicities). It could be like a referendum rather than an election. In this context, they felt the next election would be different than the last one and would be highly contested.

Political inclusion, marginalization and representation: The Interim Constitution initiated the provision of a positive discrimination (quota) as a means to address political/social exclusion. The 2008 election translated this provision into reality by electing 601 CA members, the first inclusive and representative CA or parliament in Nepal’s history, including 33 percent women members. However, the changed context has brought calls for a reduction of the 601 members for the next election.<sup>38</sup> If that is the case, the number of representatives per group may decrease drastically, which might not be a welcome scenario to many, particularly traditionally discriminated and marginalized groups (who might take it as a threat to their representation). Moreover, it may invite unhealthy competition, tension and conflict within each group, be it regional, geographic, ethnic, class or caste. This in itself can be a trigger for pre-election violence.

Marginalized communities in Nepal are diverse and encompass many ethnic groups, caste, gender and class, including indigenous communities and Dalits. However, complaints are that the ‘creamy layer’ has politically represented groups almost invariably. In this context, real marginalized communities are slowly raising their voices, realizing the ‘marginalization within the marginalized’.<sup>39</sup> It must also be noted that the interim Constitution’s provision for inclusion was based on the census of 2001. The 2011 census attempted to compile comprehensive disaggregated data by gender, ethnicity and caste groups, among other things. This can change representation of all or some groups. In addition, constituencies’ delimitation based on the new census data would be a challenge and if not managed properly, would be expected to trigger violence before the next election.<sup>40</sup>

Crisis of confidence and credibility: Although there was political consensus on the national agenda until the April 2008 CA election, the journey beyond was not very

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<sup>38</sup> See the CA’s *Concept Paper: Constitutional Assembly Committee on Determination of the Form of the Legislative Body, Preliminary Draft of the Constitution*, recommending a future House of Representatives be reduced to 151 seats, p3

<sup>39</sup> EVMA Meeting, October 2012

<sup>40</sup> During the 2008 CA election the first report of the Delimitation Commission was opposed by some political parties and the business of the Legislative Parliament was obstructed for several weeks. Finally, the same Commission was asked to review the report by amending the Interim Constitution: see Interim Constitution of Nepal (2007), Article 154A, sub-article 10B, second amendment 13 June 2007.

different from the political decade of 1990s.<sup>41</sup> In fact, the crisis of confidence between the parties in the aftermath of the 2008 election was marked with political polarization, instability and frustration. The respondents said the hope of a constitution that addressed all issues of exclusion was a thread holding the people together.

Notwithstanding public expectations, the failure of the CA to deliver a constitution was a setback for the country's fledgling democratic process. Interviewees varied in their assessment of the level of crisis this has created, but were generally in agreement that it has had a particularly negative impact and further weakened public trust and confidence in political leaders. The failure to agree the Constitution 'dashed their hopes and trust'<sup>42</sup> as they elected the assembly in 2008 to write Nepal's first democratic and inclusive constitution. Interviewees assess that political parties never rose above the power game, and personal and party interest. They thought the high-handedness and occasional provocative remarks of some political leaders could lead communities towards division. In this context the CA members are seen as people who plundered state funds and wasted the precious four years. Some respondents said, 'we had only one king in the past, after the CA election we had 601.'<sup>43</sup> People expressed frustration that instead of institutionalizing the achievements of different 'andolans' (movements), parties created an impasse soon after the CA ceased to exist.

Interviewees felt the impasse is driven by the lack of trust and demonstrated compromise in Kathmandu. Instead of proposing realistic options, different leaders have sought to set the agenda on their own terms, to draft a road map, and control a new 'election' government and state resources that they see would follow. The bickering and parleys on whether to revive the CA or go for a fresh election dominated the political scene before and during the assessment. How the public perceives the resolution of these political questions will largely shape public confidence in the future electoral process and in the political actors competing in it.

### **2.3. The political actors: Political will and the rules of the game**

*'Political parties, affiliated groups, leaders and candidates bear most of the responsibility for the election-related violence [for the 2008 CA election]'*<sup>44</sup>

It is believed that the current political environment, characterized by inter- and intra-party rifts and power struggles, is seen as highly conducive to electoral violence. A majority of interviewees expressed frustration at the political instability and constitutional vacuum, and blamed political parties for the current state of affairs.

Continuing political party re-alignment and fragmentation: There could be significant possibilities and motives for inter-party visible and invisible electoral violence in the current political environment. Of the 75 registered political parties, 54 contested the 2008 CA election and 25 were elected, which later split to 33 at the end of the CA.

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<sup>41</sup> Although the popular protests reintroduced democracy in Nepal in 1991, the politics that followed, marred with undemocratic intra-party struggles, led to a crisis of confidence of the multi-party parliamentary system. Although the decade laid many foundations for positive socio-economic changes it witnessed insufficient protection of the rights of the marginalized, weak state governance and unstable politics.

<sup>42</sup> Interviewee, EVMA meeting, October 2012

<sup>43</sup> Interviewee, EVMA meeting, Janakpur, Dhanusa, 4 October 2012

<sup>44</sup> DEAN P-EVER Final Report (2008), p 1

Today, registered political parties have grown to more than 99, and still more are expected to apply for registration with the ECN.<sup>45</sup> This is likely to change, as the country's mainstream politics is continuously re-aligning on the basis of political ideology and convenience. When asked about significant change in the aftermath of the stalled constitution writing, respondents pointed to the changing political equation, with the breaking and merging of political parties.

Breaking and merging traditionally established parties are not a new phenomenon in Nepal. Most political parties are grappling with factional and ideological divisions. While some parties are dealing with the intense pressure of identity-based politics, others are facing problems of factionalism and vertical splits within their ranks. The recent split of dissident Nepali Congress (NC) and Communist Party of Nepal – Unified Marxist-Leninist (CPN-UML) leaders from ethnic/indigenous and Madheshi communities made headlines. The dissociated group announced its intention to form a new political force committed to 'class liberation' and social justice.<sup>46</sup>

Most noteworthy in current politics is the vertical split of the Maoist party into the United Communist Party of Nepal-Maoist (UCPN-M) and the new Communist Party of Nepal-Maoist (CPN-M). The long intra-party bickering and frequent threats of a split were no secret, but the official split was announced in June 2012. Although ideological differences are cited as the main issues, people feel that it was about personal rivalries and ambitions. Political party splits can have deeper ramifications than expected, particularly from an electoral violence perspective, under a fragile situation. The ramifications of a Maoist split are perceived as a threat to peace and security. The breakaway party has not ruled out the use of force, if needed. They also stated they will not accept any political negotiations that do not involve them. Many participants of the workshop meeting mentioned reaching out to a large number of former combatants, including disqualified groups. They feared the split 'will lead to further political deterioration' and warned it could lead to greater electoral violence, whether the splinter faction participates in or defies the next election.<sup>47</sup>

Decentralizing politics: During the 1990s there were only two key political actors: the NC and CPN-UML. Four big political forces emerged after the breakthrough of the peace process: the UCPN-M, the NC, the CPN-UML and the Madheshi group. They continue to dominate the present political scene, notwithstanding the greater number of registered political parties in the last seven years. However, interviewees and other analysis conclude the next election is likely to be very different in terms of new political polarization, not along traditional political ideologies and within the grip of the national political forces, but along new regional, local and ethnic interests and issues, based on new political forces. How these issues will affect the political equation will largely determine the complexity and challenges of the next election.

Local representatives of political parties expressed frustration at the increasing trend of resourceful party members getting on the election ticket at the cost of local political

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<sup>45</sup> ECN, *Name List of Political Parties*, [http://www.election.gov.np/EN/downloads/political\\_parties.php](http://www.election.gov.np/EN/downloads/political_parties.php) (accessed 20 November 2012)

<sup>46</sup> The Himalayan Times, 'UML Dissident leaders sever ties with party, over 500 cadres follow suit', 4 October 2012

<sup>47</sup> Interviewee, EVMA meeting, October 2012

thinkers.<sup>48</sup> Under such circumstances, local resentment is likely to play against the party candidates at the time of the election, and trigger violence. People were also concerned about the misuse of resources at the local level under the all-party mechanism, which was created to oversee the management of development work in the absence of local elected officials. The complaints are that this has given rise to malpractice in the division of resources among political actors. This in turn has induced unseen tussles between those with resources and those without (local political thinkers). The “win-at-all-cost” attitude, and the practice that has followed, can induce local party leaders to misuse these resources, to mobilize both muscle and material, to manipulate the next election.

Many people pointed out that the integration of the People’s Liberation Army (PLA) is not the only aspect of the peace process. The issue of internally displaced people (IDP), including the victims of conflict, is yet to be resolved. Interviewees felt the issue deserved due attention and justice, which, if not resolved properly, could trigger violence.

*‘The constitution and rules of the political party must be democratic.. the constitution of the party must have an effective provision to maintain discipline of its members.’<sup>49</sup>*

Intra-party democratization and transparency: There could also be significant possibilities and motives for intra-party visible and invisible electoral violence in the current political environment. Interviewees and other analysis conclude that Nepali political parties have been weakened in part by a lack of internal party democracy and transparency.<sup>50</sup> Interviewees expressed concern that the internal governance of almost all parties is characterized by lack of communication, consultation and transparency. The traditional group of leaders continues to control the structure of the major political parties, with questions on how democratic and transparent 5-yearly elections for party office-bearers are. Women, Dalits and indigenous people in mainstream political parties in the CA, find it hard to push their agendas and get their message across.<sup>51</sup> One report speculates that the deficiency of channels for peaceful political expression in Nepali political party culture often induces the rise of inner-party factionalism, clientelism and even splits (Dahal, 2008).

The influence of entrenched party leaders in pre-selection competitions is seen to prevent the induction of young and qualified candidates being nominated by their parties, including those from disadvantaged groups and women.<sup>52</sup> Merit-based selection to get on the party ticket and inclusiveness within parties is therefore undermined, even after the Interim Constitution made inclusiveness a requirement for political party registration.<sup>53</sup> Several interviewees noted that political decision-making

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<sup>48</sup> EVMA Meeting, Discussion with political parties, October 2012

<sup>49</sup> The Interim Constitution of Nepal (2007), Article 142, Sections 3 (a) and 3 (b)

<sup>50</sup> See analysis in Dev Raj Dahal, *Inner party democracy in Nepal* (2008), and Carter Center, *Final Report* (2008), ‘recommendation 7: Increase substantive political party outreach and improve internal party democracy, decentralization and inclusivity,’ p59

<sup>51</sup> Mahendra Lawati, ‘Ethnic Politics and the Building of an Inclusive State’, in von Einsiedel et al., *Nepal in Transition* (2012) p140

<sup>52</sup> Mallu-Dhakal, *Womenomics for Growth and Development* (2012)

<sup>53</sup> Interim Constitution (2007), Article 142: (b) the constitution or the rules of the political party must provide for election of office bearers of the party at all levels at least once in every five years; (c) there should be a provision for the inclusion of members from neglected and oppressed groups including women and Dalits in the executive committees at various levels

in Nepal is highly centralized, with insufficient consultation with lower levels. This culture was evident throughout the CA process and more so in the week leading to the demise of the CA. All important decisions and agreements were hashed out by a very small group of top leaders of the majority political parties, almost invariably male of advanced age.<sup>54</sup> If these trends persist, it is unlikely the parties will present a more inclusive and law-abiding group of candidates to compete in the next election.

Almost all interviewees noted that unchecked breaches of criminal law and the Code of Conduct by political parties was raised as the single-most important factor undermining previous attempts to check electoral violence. Interviewees (including members of political parties) unanimously referred to the culture of “win-at-all-cost syndrome” as the reason political parties seldom abide by the CoC. There was no evidence that internal party regulations checking the behavior of their officials, candidates and members are working. In the absence of the political party self-regulation required in the Interim Constitution, all responsibility is transferred to the ECN, security agencies and judiciary. Interviewees expressed concern that this trend is creating a new legacy of systemic and systematic electoral violence in certain parts of the country. Moreover, given the changed political context with ‘the fear of the unknown’, many expect the next election to be a fierce battle for a clear parliamentary majority, with more electoral violence, both invisible and physical. While that competition will be concentrated around the formal electoral campaign, intra-party violence is likely to be triggered in the course of candidate pre-selection processes.

Women in Politics – Business as usual and powerlessness: Further to the problems of getting elected as party officials or as party leaders, female politicians revealed that women were allocated seats in 2008 that the party was least likely to win. The Carter Center noted ‘women hardly ever were seen by observers in party meetings.’<sup>55</sup> Several interviewees noted that some women candidates did revolt against the party leadership and culture, and this signaled an important change in perception that women remain silent when disenfranchised. But in general, their lack of access to power continued. Some political candidates told of withdrawing their candidacy under pressure from family and opponents. Despite a ‘culture of silence’ 26 percent of women candidates came forward to share their stories of violence faced during various stages of nomination, campaigning or the polling process during the 2008 CA election.<sup>56</sup>

Women in politics were more vulnerable to electoral violence than their male counterparts, particularly in the patriarchal conditions prevalent in Nepal. Women are generally resource poor and have scant support networks for political activities. They have less contact with people in influential positions and are often in a position where they confront social stigma when they are victims or witnesses of electoral violence. Women continue to suffer physical, sexual or psychological harm, including threats of such acts, coercion or arbitrary deprivation of liberty, within family, and at the inter- or intra-political party level. Compared to men, women are more likely to be attacked

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<sup>54</sup> Rikkila Tamang, *No constitution yet for Nepal* (2012)

<sup>55</sup> The Carter Center, *Final Report* (2008), p59

<sup>56</sup> SAP International, International IDEA, *Analysis of the Elections from the Perspective of Representation and Violence Against Women* (2008) p28

or intimidated on the street, and to be victims in private spaces, and this has been shown to directly translate into greater exposure to electoral violence.<sup>57</sup>

Women faced specific threats on polling day. Men and women in interviews reflected that women were prone to be threatened by their male family members into voting the way men would like them to vote, or harassed for participating in politics at all (as candidates, as party supporters). Women voters interviewed – of hills and Terai alike – shared their personal and community experiences of voting for candidates of their spouse's choice under coercion. Voter suppression was another form of psychological violence. When five women initially made positive headlines for being able to vote for the first time for the 2008 CA election in Gaindhabhetpur village in Mahottari district,<sup>58</sup> the press subsequently took the issue as an illustration of the extent of that intimidation. Members of that community told the assessment team that they did not expect women would be allowed to vote in the next election either. Whether forced to vote a certain way, or forced not to vote, very few women (candidates and voters) admitted breaking the silence for fear of social stigma.

In 2008 all electoral observer groups reported on the increased seats reserved for women and higher women voter turnout, but then said very little about electoral violence from a gender perspective, and when they did, the team found insufficient emphasis and analysis.<sup>59</sup> The SAP/International IDEA (2008) project conducted national research, and in their fieldwork they were able to conduct perception-based surveys on psychological violence. However, there are no numbers that illustrate its scope and extent. At Annex 6 are graphs reflecting perpetrators and the frequency of visible violence against women CA candidates. Likewise, not a single male respondent mentioned “gender” during the team's electoral violence interviews unless prompted.<sup>60</sup>

Women representation in security, judicial and electoral institutions are also inadequate: for the CA election the EU Electoral Observation Mission (EOM) noted that ‘in spite of [estimated 52% women turnout] the absence of women from every official level of the electoral process is striking. There were only two female Returning Officers from a total of 240 and participation of women in polling station committees was also very low.’<sup>61</sup>

These factors contributed to the assessment of the team that a business-as-usual attitude and mind-set prevails among most men and within institutions, despite the use of the mixed electoral system in the 2008 election to promote inclusiveness. As noted above, historically high numbers of women representatives in the CA didn't translate to a greater role for those elected women in constitutional deliberations and deal making between parties. Further, direct causes of the violence against women have not fundamentally changed since 2008. Unless the ECN, Nepal Police and political

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<sup>57</sup> See, for example: SAP International, International IDEA, *Analysis of the Elections from the Perspective of Representation and Violence Against Women* (2008), Chapter 5: Violence Against Women Participating in Nepal Politics

<sup>58</sup> EVMA meeting, Sahodawa VDC, Mahottari, October 2012

<sup>59</sup> The only gender disaggregated data found by the team was provided by former DEAN P/EVER project staff, information that was not reflected in the final report (2008)

<sup>60</sup> The EVMA team itself was only able to interview 11% women in the course of the assessment.

<sup>61</sup> EU-EOM, *Final Report* (2008), p31

parties in particular can find ‘game-changing’ strategies to prevent and respond to physical and invisible electoral violence against women, violence targeting them in politics will continue unabated in the next election.

## **2.4. Money in politics: The cost of getting elected**

Election cost: There is widespread agreement on several critical issues: that there is too much money in politics; that the problem is getting worse; that illegal money is both a trigger of visible and invisible violence; and that the illegal money enables most other triggers and tactics listed in this report.<sup>62</sup> There was almost universal agreement among the participants of the assessment that the lack of transparency of election expenses is a major issue. They felt the lack of compliance with the Code of Conduct relating to election expenses has far-reaching implications in terms of electoral violence.

Elections are costly and candidates often exceed the financial ceiling (NRs 459K) set by the Election Commission’s CoC.<sup>63</sup> Many political actors confessed that compliance to the CoC is difficult in part because the actual cost of elections is much higher than the official cap (they said the present cap is not realistic). According to the respondents, resources define the fine line between winning and losing in a highly contested election and the trend of costly elections is set by the “win-at-all-cost” attitude of the candidates. This makes it difficult – perhaps unrealistic – for a candidate to contest the election ‘legally’. Some participants openly confessed spending ten times more than the stipulated official cap.<sup>64</sup>

The fundamental questions are why are candidates making such huge investments and where does the money come from? If contributed by individuals/parties, it begs the question how can such elected candidate(s) function independently in the national interest? In 2008 the DEAN P/EVER project concluded that ‘the financial cost of running a campaign was so high that political actors were desperate to recoup their investment, utilizing violence to guarantee success.’<sup>65</sup> Almost all interviewees continue to fear that the extra financing will be used to purchase illegal means: muscle, arms and other corrupt practices of vote buying. Although the CoC and legal instruments have clear provision for punishing noncompliance, there are no resources dedicated to finance monitoring. A culture of impunity (no submission of election costs on time, no action against violators) has encouraged the violators.

### ***Muscle in politics***

Youth wings: Every major political party in Nepal has a political youth wing to support the mother party, and they were active agents in each party’s campaign strategy for the 2008 CA election. In the 2008 election, the Young Communist

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<sup>62</sup> While the tactics and motives of money and muscle are all country-specific, the team found that types of electoral violence employed in Nepal were common to other countries. See S. Birch, J. Carlson, *Electoral Integrity Framework Project: Electoral Malpractice Primer*, Creative Associates International, (2012) p9, ‘There is a striking consistency across the world in the underlying range of tactics employed to undermine democratic electoral processes.’

<sup>63</sup> ECN, *Code of Conduct on Election to Member of the Constituent Assembly*, 2064 (2007), Schedule 1 (a), Ceiling of Election Expenses

<sup>64</sup> EVMA meeting, October 2012

<sup>65</sup> DEAN P/EVER, *Final Report* (2008), p43



League (YCL) was criticized for its intimidating actions during the pre-election period, and for violating the CoC.<sup>66</sup> In the last four years there has been no abatement of the role of youth wings acting as frontline workers of political parties, with interviewees describing them as the ‘tool’ of mother parties to serve ‘party interests’. They implied that all political youth wings are similar, with differences between the degree of legitimate and legal political mobilization compared to aggressive and illegal use.

A Carter Center survey in 2011 focused on youth wing membership, and their activities and compliance with the peace process agreements signed by the mother parties. They found differences in how organized and disciplined some of the groups are, and interviewees in this assessment expressed particular concern about the actual or potential militarization of some youth wings. With the increase in registered parties, more parties are establishing youth wings to counter political rivals, and some are more militarized than others. There is also a difference in how connected or directed youth wings are from political party leaders, and the impression of interviewees was that violent clashes between youth wings reflected disagreements between mother parties. One interviewee reflected that many youth leaders are not supportive of electoral violence but to resist party leadership instructions to commit violence would be “career ending.”

There is a high level of awareness of some youth wings’ involvement in activities which undermine political space, development and public security. Likewise, interviewees discussed, and recent analysis shows, youth wing connectivity with illegal extortion and interference with tendering processes.<sup>67</sup> Some respondents thought they had links with the ‘Dons’. It is problematic for electoral politics that the youth wings (future political leaders of this country) are losing their credibility in the initial stages of their political lives - a loss to future politics. During the elections, these youth groups are the ‘means’ of parties and candidates to achieve the ‘end’. The majority of people are afraid that these groups could invite more violence in future elections.

People’s Liberation Army (PLA) and Verified Minors and Late Recruits (VMLR): Of the originally claimed 31,000 (approximate) Maoist combatants (including minors) only about five percent are being integrated into the Nepal army. The rest of them are back in society, with some voluntary retirement financial package.<sup>68</sup> Interviewees felt that two issues were clear: first that the majority of them are frustrated and unhappy with the way they were treated; and second that they will be used in the electoral process – legitimately and illegally – by groups and parties for personal/group gain. This presents particular challenges for security agencies given that these ex-combatants are no longer organized and visible in combatant units, yet they keep their military training including skill in the use of firearms.

Most of the interviewees thought that due to the division in the UCPN-M with the recently formed CPN-M splinter group, these militarized groups were also divided

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<sup>66</sup> von Einsiedel et al., *Nepal in Transition* (2012) p372; Carter Center, *Final Report* (2008), pp27-30

<sup>67</sup> This is consistent with the Carter Center survey, The Carter Center, *Political Party Youth Wings in Nepal*, 28 February 2011, pp3-4, 10-11

<sup>68</sup> For a record of events, see a compiled 2012 Nepal timeline at:  
[www.satp.org/satporgtp/countries/nepal/timeline/index.html](http://www.satp.org/satporgtp/countries/nepal/timeline/index.html)



into the two camps. They wondered what the role of these trained and frustrated young people would be in the next election. How would they treat each other during the election campaign, and will they remain neutral and unaffiliated or choose to align with their mother parties? It is likely that most ex-PLAs are already engaged or will re-engage in politics, and some may file candidacy for election. It is speculated that large numbers of combatants, including disqualified ones, have crossed over to the CPN-M. Interviewees were concerned that the frustrated among these groups are likely to be a serious potential trigger of violence.

### *The criminalization of politics*

Use of Don in Politics: Against the backdrop of weak state control, it is natural for people to perceive that non-state actors are exercising authority, and the level of impunity is high. As stated by the Inspector General of Police (IGP) of the Nepal Police, ‘the use of criminals for votes has led to a mingling of politics and crime ... the political parties have to think seriously about how to segregate criminality from politics, the tools of state could perhaps do this, but the political leadership must want it first.’<sup>69</sup> Respondents generally agreed with this sentiment, but wondered how those political leaders would do that when powerful state actors are seen protecting non-state actors to secure their muscle power and resources.

Recently, a newspaper editorial discussed the tendency of political parties in Nepal to provide refuge and protection to criminals working in their political or economic favor.<sup>70</sup> People at large believe that these Dons, under the patronage of influential leaders (political, social or security), are involved in economic crimes such as extortion, and the misuse of tendering processes. Many felt the politician-criminal nexus is thriving because of the weak government and a culture of impunity. Almost all interviewees were unanimous that they (the Dons) were the primary source of funding for their patrons. Some interviewees spoke of an incident when a local Don was arrested and a member from every political party pressured the authorities to release him. All interviewees knowledgeable in these issues see such trends as persisting throughout the next electoral process, with their influence most important in the pre-electoral process when parties and candidates are positioning for influence and collecting resources to fund their campaigns.

Armed groups: As a by-product of the decade-long conflict, small armed groups mushroomed in many parts of Nepal. Of 109 groups recorded by the authorities, 56 have signed peace agreements at different times with various governments. In and around the 2008 elections, these groups, mostly in the Terai and some in the hills, were involved in bombings, shootings, abductions, extortion, armed crime and domestic violence.<sup>71</sup> Government efforts to reach out to the groups and bring them into dialogue continued after the peace process through the Ministry of Peace and Reconstruction (MoPR).<sup>72</sup>

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<sup>69</sup> eKantipur, *Interview with IGP Rana*, 15 October 2012

<sup>70</sup> Editorial, *The Kathmandu Post*, 17 January 2012

<sup>71</sup> See, for example, DEAN P/EVER, *Final Report* (2008), ‘armed / unarmed groups were the most common perpetrators of political violence (44%)’, p4

<sup>72</sup> See MoPR site <http://www.peace.gov.np/peace-talk-14-np.html> (accessed 21 November 2012)

There is much debate about whether the armed groups are primarily criminal or political in nature. While some refer to them as purely criminal groups, others argue that they need to be taken seriously as political entities. The groups with a criminal nature that engage in activities such as extortion, intimidation, shootings and illegal trades, often use a political guise. By taking on ethnic labels, criminal groups can acquire an air of legitimacy and a means to create both fear and support.<sup>73</sup> In the 2008 elections, some offices of the election commission were bombed, and electoral officials were physically and psychologically threatened and attacked. These and other emerging groups could be part of the new politician-criminal nexus emerging in Nepal. A sudden withdrawal of criminal cases in the judiciary and clemency of criminals in the guise of political cases is on the rise, which suggests the increasing political protection of criminals. People believe that a significant number of criminals are already outside the criminal justice system and fear they will be used against opponents during the election.

Interviewees expressed concern that politics and crime are increasingly interlinked, and several had witnessed the political protection of criminals and armed groups for political benefit.<sup>74</sup> If the country goes into a polarizing election (based on ethnicity, regionalism, etc.) or without minimizing the key differences on the national agenda, people expressed fear that these armed groups could be used or operate as a trigger for violence. Further, ten years of conflict has increased the average person's access to small arms. Some groups of people, on learning what a gun can do, have attempted to take advantage of the open border and gun power. Stakeholders believe these elements surface and act in the interests of political parties, and interviewees expressed serious concern about their role during the next election.

## **2.5. Voters: Mobilization for or against violent electoral politics**

With a majority of interviewees expressing concern that the current political environment is ripe for unrest and electoral violence, a key question is: what is the changing perception and psychology of voters? Although none of the perception-based views of interviewees are verifiable, voter psychology is widely believed to be a key factor in whether violence gets better or worse. Discussion focused on two questions that have a bearing on the susceptibility of voters to be mobilized for violent or peaceful politics. First, what is the chance the public is placing too much weight on the electoral process, and second, will their expectations be met?

Interviewees reflected that the public is frustrated about the current vacuum and instability and that a prolonged transitional (caretaker) period would invite more uncertainty and further weaken people's confidence in the state. While this could lead some members of the public to expect the same level of breakthrough as the CA election (where the election 'solves all remaining issues'), it could lead others to express frustration, after the relief and euphoria that followed the CA election. Many undecided or unaffiliated voters will likely chose to join or support new or established political parties in the coming months, in an environment where voters may be exposed to a lack of knowledge and / or misinformation. This political climate with an absence of quality dialogue between old and new parties on outstanding dominant

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<sup>73</sup> Nepal Madhes Foundation (NEMAF) et al., *Armed Violence in the Terai* (2011)

<sup>74</sup> Interviewees, EVMA Meetings, October 2012

issues, may increase the likelihood voters support calls for *bandhs* (general strikes / shutdowns) instead of *sambad* (dialogue).

A broader question is whether there is a crisis of confidence in peaceful electoral politics. Many of the triggers of violence raised in interviews and reflected in this report have long histories in Nepali electoral politics, and some interviewees described them as *inevitable* or *persistent triggers*.<sup>75</sup> A question raised was whether the legacy of systemic and systematic electoral violence in parts of the country over several decades, combined with the failure of elected leaders in the CA to enact a new Constitution in the last four years, has led parts of the voting public to lose faith in electoral politics. Lost faith could translate into apathy – not voting – or to join violent political movements. It also raises the question of whether violence in the most consistently violent constituencies and regions is seen as chronic.<sup>76</sup> Interviewees and other commentators have asked whether the impact of long-term poverty combined with the current economic crises (such as youth unemployment<sup>77</sup>, inflation and the cost of basic commodities like rice and fuel) increase the risk of mobilization.

## **2.6. Risks in different phases: Before, during and after polling**

Annex 8 shows a generic electoral cycle that can be helpful to security experts facilitating discussion on potential threats, and to tailor mitigation to two phases: pre-electoral, before the election announcement; and electoral which goes up to and includes acceptance of results. The DEAN P/EVER data at Annex 3 clearly shows that most CA election visible violence occurred around the campaign before polling day in 2008,<sup>78</sup> a pattern that will be shaped in the next election by the presence or absence of political consensus on key federal and identity questions. Interviewees generally expect the violence pattern between phases to be similar to 2008, so an important resource for the ECN and security agencies are the different sections of chapter 4 of the DEAN P/EVER final report, outlining pre-election political and electoral violence, election and post-election violence.

Further assessment will be needed to take account of the type of election, the type of elected body, and the number of seats. A more detailed assessment would then be possible when pre-selection in each political party turns into formal candidate nominations for seats. With that information electoral and security experts can assess the political landscape (who is competing against who) and to project the probability of violence in each region, district, constituency and even polling center (noting the great diversity in violence between districts mapped in 2008 in Annexes 3 and 4). While this is not intended to be comprehensive, potential triggers commonly brought up by interviewees covered the following phases and issues:

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<sup>75</sup> For a survey of past electoral violence in Nepal see Kumar (2010), Chapter 4 – *Electoral Malpractices and Violence, Who Violates?*

<sup>76</sup> The limited number of voters from those high-risk districts interviewed in this assessment generally expressed faith in electoral politics, and in violence-free elections.

<sup>77</sup> Surveys done for the World Development Report (2011) indicate that unemployment is overwhelmingly the most important factor for recruitment into gangs and rebel movements. Figure 2.2 ‘What drives people to join rebel movements and gangs’, p9

<sup>78</sup> District-level data in the DEAN P/EVER report also shows how visible violence in each district varied in different phases of the electoral process. No available data tracked invisible violence.

### *Phase 1 – Pre-electoral violence*

- *The urgent need to fill the pre-election vacuum:* Key threats in the current period are the constitutional vacuum and lack of decisions on the electoral system, accompanied by leadership instability and uncertainty in government formation. This is coupled with an expected leadership transition (and gaps) in the ECN, slowing down formal election preparations and hampering pro-active violence prevention, and an education campaign. Yet while the ECN and government are unable to be pro-active to prepare for elections, political actors are reorganizing, gathering their resources, trying to mobilize new supporters, and potentially partnering with criminal actors as mentioned above. Calls for *bandhs* are also possible as different groups seek specific political outcomes from negotiations on the type of election, the number and proportion of PR and FPTP seats and FPTP seat constituency boundaries. Political parties have been in election mode at least since the middle of the year (with indications of psychological violence already) reducing the chance that authorities will be able to set the tone and begin mitigation now, when it is needed.
- *Getting on the party ticket:* There are indications that positioning for pre-selection is already underway. While the formal process of parties deciding who will win the chance to contest seats must wait for decisions on the type of election and the number of seats, parties are already raising funds, re-aligning and beginning to negotiate on internal candidate selection. Two over-riding considerations are whether larger parties can move from plurality to simple majority (with or without a coalition), and whether smaller parties can win sufficient seats to secure their specific ideological or regional-based goals.

Given that the largest number of perpetrators and victims of electoral violence were political party leaders, their cadres and affiliated youth and armed groups, this phase is expected to produce physical and psychological violence. There is currently no sign of a public campaign to encourage moderate candidates with no association with crime and violence that could positively impact pre-selection. It is possible there is greater psychological violence in this period compared to the formal ECN Candidate nomination process that follows party pre-selection. One particular threat in nominations is between candidates who won the party ticket, and those who lost, becoming independent candidates and competing in First Past the Post (FPTP) constituency elections.

### *Phase 2 – Violence during the formal electoral process*

- *The Political Campaign and silence period:* The campaign period was the phase with the greatest visible violence recorded in the DEAN P/EVER monitoring (2008). With no reason to expect the threat of physical harm to reduce (or to expect a new era of dialogue), it could be when psychological violence is also highest, and when most resources (financial, material, legal, illegal) are given to supporters and voters. Therefore threats are likely to include assaults on candidates and supportive communities, gender-based violence, mob violence, abusive words to opponents, disruption to others' programs, clash in programs/venues, destruction of opponents' campaign materials, assassinations and kidnappings. Conflicts due to campaign scheduling (mostly processions and mass meetings) could also be expected to

continue, even if there is an improvement in political parties and candidates accurately planning and reporting their schedule to the Nepal Police.<sup>79</sup>

- *Polling Day threats:* Noting that polling day threats are particularly driven by district and local security issues, the following are five broad threats (in addition to potential EVM threats outlined below):

- (i) Exposed polling centers (PC) if the ECN and Nepal Police fail to take into account past or future patterns of violence when deciding PC number and location;

- (ii) Booth capture, which has a long history in Nepal as an electoral security and criminal problem, has not been successfully prevented in past elections, and has led to the cancellation of polling in some cases;

- (iii) Armed groups or political party cadres have also historically prevented voters accessing polling centers, by threats and intimidation, either on roads and paths approaching the PC, or in the immediate vicinity of the PC;

- (iv) With Nepal Police providing perimeter security outside the PC, there has also been a history of insecurity inside the PC, intimidation coming from party agents, and active or passive collusion of observers and ECN polling staff; and

- (v) Violence is likely in cases where candidates lose confidence in their ability to win, leading to ballot boxes being captured, destroyed or injured, and plastic seals broken, in particular during the 1-5 day walk back to a road.

- *1-day or Phased Election Days:* The team was presented arguments for and against 1-day polling, the method used in 2008. Phased elections were conducted in the past, for example there were two phases in the 1999 legislative elections. It is also common practice in India.<sup>80</sup> For the next election, the majority of interviewees suggested conducting the election in two or more phases. Some observer groups, for example, see it as a mitigation measure to reduce violence, and security agencies see it as the best way to concentrate their effort, deploy permanent professional police, and avoid the investment in time and effort to recruit, train and deploy temporary police. The issue begs the question – who can move faster between election phases, security agencies or criminal forces? The 1-day or phased election has implications for all aspects of the election – legal, technical, logistical and operational, financial, voter education, and it has implications for voters, and for candidates. Some political parties fear that a phased election might help criminals concentrate focus in specific areas.

- *Count, acceptance of results, and post-election threats:* Probable violence in the final steps of the next electoral process will be the most difficult to project until the nature of the political competition is better known, and in any case it depends greatly if incumbents win or lose, and if ECN-certified results are close. Historically the period from the count to the formation of the new elected body and new government has posed serious threats to party cadres, winning and losing candidates, and voters. In this period in 2008 the DEAN P/EVER project counted 25 incidents in

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<sup>79</sup> In 2008 observers reported clashes between NC and Maoists campaigns that led to 7 killed in Dang and 1 in Solukhumbu. National Election Monitoring Alliance (NEMA), *Constituent Assembly Election 2008: Observation Report* (2008), pp38-39

<sup>80</sup> There were five phases for the Indian 2009 general elections, and Uttar Pradesh state elections were held in six phases February to March 2012. BBC, 'India state elections: Uttar Pradesh holds sixth phase' 28 February 2012

16 districts, resulting in 4 deaths, 38 wounded and five kidnappings.<sup>81</sup> Due to the perceived threat that more intimidation, fraud and violence are possible in a polling-station count, Nepal has been practicing counting at district headquarters. This requires transportation of EVM and the ballot boxes from the polling centers, at times requiring multi-day treks over difficult geography. The challenges encountered in past elections include looting, and damaging or throwing ballot boxes in rivers. Likewise, security has been an issue in district headquarters counting centers. Ballot box damage, on the way to, or at counting centers, generally requires re-election.

### **3. Challenges to Improving Electoral Security, Justice, and Integrity**

This section reviews past and current challenges faced by key formal security, justice and election management actors in Nepal, and threats and opportunities they face to address electoral violence in a future election.

#### **3.1. The security sector, government and ECN partnership**

*‘Stakeholder cooperation must be developed to promote the necessary multi-faceted strategies to address election violence.’<sup>82</sup>*

This section will outline the functions of key electoral security actors, and their roles and methods of preventing and responding to electoral violence. It includes conditions when actors and security management within the ECN are seen as potential triggers of electoral violence, or where they are seen as effective mitigation measures. The role of the police and the judiciary in electoral dispute resolution is addressed in a separate section below. Even in an extremely difficult and worst-case security situation of a post-conflict environment, the Nepal Police and Armed Police Force (APF), within various constraints, were able to provide security for a successful CA election in 2008.<sup>83</sup> In the 2008 election, the Nepal Army was not used, however more than 116,000 security personnel were deployed by the MoHA.<sup>84</sup>

#### ***Nepal’s electoral security actors***

**Nepal Police:** While Article 129 of the Interim Constitution (2007) mandates the ECN to ‘conduct, supervise, direct and control the election,’ it has no law-enforcement authority. The Nepal Police is therefore the front line institution primarily responsible for preventing, responding to (arrest, detain), and carrying out investigations on electoral violence. One report called Nepal Police a key actor ‘as the most visible arm of the state and the primary civil agency for law enforcement and the maintenance of public order.’<sup>85</sup>

Nepal Police are specifically the first responders, first investigators and the inner ring of electoral security. They are responsible for the security of political campaigns, the

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<sup>81</sup> DEAN P/EVER, *Final Report* (2008), p38

<sup>82</sup> Post election recommendation of DEAN P/EVER, *Final Report* (2008), p44

<sup>83</sup> Pokharel, ‘Elections: A Nepali Perspective’ in von Einsiedel et al., *Nepal in Transition* (2012), p 256

<sup>84</sup> That included an estimated: 40,000 regular Nepal Police; 48,000 temporary Nepal Police; 22,000 regular APF; and, 6,000 temporary APF. ICG, ‘Nepal’s election and beyond’ No. 149 (2008), pp 11-12; ANFREL calculations put the figure at 120,860. ANFREL (2008), p44

<sup>85</sup> Saferworld, *Policing in Nepal: A collection of essays* (2007), p 1



security of election stakeholders (candidates, voters, ECN, observers), security of sensitive electoral materials (ballot papers, ballot boxes, EVM, result sheets), and guaranteeing access to polling centers. Regardless of how the ECN might fare in promoting peaceful political competition between candidates, every act of violence or intimidation is a criminal act, as is every instance of money laundering for partisan gain. In this context, the research team found the most important strategic partnership to be that between the ECN and the Nepal Police, at national, regional, and in particular at district and constituency levels, with the District Police Chief.<sup>86</sup>

Two legacies of the ten-year conflict were the fact that the police suffered the bulk of government casualties, and that only 600 of 2,000 police posts were functioning at the cessation of the conflict just six years ago. During the 2008 CA election significant effort went to returning police officers to posts and to re-establishing police primacy in public order and in criminal investigations. Noting the special circumstances of that election, the CPA (Section 5 *Termination of Military Action and Armed Mobilization*) stated the Nepal Police and APF would ‘continue the task of maintaining law and order and conduct criminal investigations as per the spirit and sentiment of the people’s movement (*Jana Andolan*), and Peace Accord, as well as the laws in force.’ In addition to enforcing the law with that spirit, election security was driven by broader challenges confronted by the many dedicated professional police: ‘public distrust, poor training and resources, low morale and psychological trauma, varying degrees of corruption and impunity, politicization and the lack of an overall vision for the organization’s development.’<sup>87</sup>

Observers gave mixed results to the impact of police efforts, and interviewees discussed similar instances of: a lack of quality training on the electoral process and its regulations, in particular for junior level police personnel; a lack of knowledge of the modified election period command and control required to provide security while ECN led the process overall; limited impact on the criminality and violence that escalated through the campaign period; police unwilling or unable to take action against crowds, or party cadre and youth members exerting control over polling centers; in other cases police inside polling centers deciding who could vote, and directly assisting voters to fold and post ballots. In terms of election day reports were mixed, noting weaker overall security on polling day in one case, and crediting police presence as preventing violence and creating a ‘fear-free’ polling environment in another.<sup>88</sup>

Similar to past experiences, *potential triggers* listed by interviewees dealt mainly with police morale and capacity, public confidence and government influence. Low morale and low public confidence affect their will to conduct immediate and thorough investigations of election-related intimidation or violence. In this respect the role of the National Investigation Department (NID) – and the Criminal Investigation Bureau (CIB) wing currently being institutionalized within Nepal Police – will be important to support the Nepal Police investigation and information management. During the 2008 CA election, members of the public reported many incidents to the United

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<sup>86</sup> The rank of the District Police Chief varies, for example a Senior Superintendent of Police in Kathmandu, a Superintendent of Police in Dhanusa, and a Deputy Superintendent of Police in Dhading.

<sup>87</sup> Saferworld, *Policing in Nepal: A collection of essays* (2007), pp 2-3

<sup>88</sup> See NEOC, *Comprehensive Report* (2008), p76; and The Carter Center, *Final Report* (2008), pp 30-31, 45-46

Nations Mission in Nepal (UNMIN) and to the Office of the High Commissioner for Human Rights (OHCHR), neither of which will be present in the next election. A more open political environment and more political parties increase the likelihood that parties will seek to campaign in areas that were closed in 2008, challenging the police's capacity to protect freedom of movement, freedom of assembly, and the freedom to campaign nationally on the Proportional Representation (PR) list, and in new constituencies for FPTP seats. There are long-standing questions about overall Nepal Police numbers, with the current police/population ratio of 1:440.<sup>89</sup> There is also limited police track record (relying also on ECN monitoring) of successfully completing political party financing investigations.

Additional *potential triggers and vulnerabilities* for the Nepal Police apply also to the Armed Police Force, temporary police, and Nepal Army below: over-reaction in a security response, using violence to contain violence, in particular when not providing warnings and signaling clear intent beforehand; there being no repercussions when state security agencies break the law themselves; the threat of under-reaction, where there is no disincentive to halt violent acts; and lack of specific election-related training, including command post exercises that test the modified security command and control necessary for election-security.

The Armed Police Force: The APF is a significant yet still relatively new national institution, established in October 2001 during the conflict. It is a paramilitary force with combat brigades in each region and Kathmandu valley, one-brigade comprising two-to-three infantry battalions with rifles, support and administrative companies, and independent infantry companies. For electoral security, their primary role is 'in support of' the Nepal Police and the ECN, and more generally as a 'catalyst in maintaining law and order, containing insurgency and cracking down [on] terrorist activities.' It provides security to 'VIPs, vital installations and facilities [and for] riots and public unrest.' The exact division of labor with the Nepal Police on some of these tasks is not yet well understood at all levels. With greater resources coming on-line before the 2008 CA elections (its first deployment in support of electoral security), the APF by now have strong capabilities and mobility,<sup>90</sup> and high quality training, weapons, and transport and communications infrastructure.

When discussing the APF and *potential triggers*, most interviewees had as many questions as concerns, particularly because the APF is the newest security institution in Nepal. Issues raised included: there is a very high premium on coordination and collaboration at all levels with the APF acting in support of others (ECN, Nepal Police), a potentially difficult task for such a strong paramilitary force; although there is now a clearer division of labor to work 'in harmony and coherence' with the Nepal Police and the Nepal Army, what tasks each will do for both electoral security and for operational and logistical support to the ECN are less clear; normally responsible for 'riot control,' will the APF be the primary security actor during mass demonstrations in the campaign period, and how will that role work with the ECN's campaign management and CoC enforcement?; will the APF be responsible for protecting key political leaders from all parties, and how can resources be allocated on a non-partisan

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<sup>89</sup> Ratio provided to the team by the Research and Development Division, Police HQ, November 2012

<sup>90</sup> For an overview, see the APF website <http://www.apf.gov.np/index.php?c=3&lan=en>, and Shrestha, 'Armed Police and policing in Nepal', in Saferworld (2007)



basis?; significant threats in the next election are expected to come from the border, so border security in general, and tackling cross-border criminal networks (armed groups and ‘Dons’) and small arms trafficking will be critical; the APF have strong intelligence-gathering capacity, in particular for non-state groups, but they are governed by high standards of confidentiality, potentially limiting access to that information by ECN and other partners; the APF have a limited criminal investigative capacity and mandate, so can only be a secondary asset to react to criminal violations by political parties and armed groups during the electoral process; and what role can they play in an anti-violence public education campaign?

Temporary Police: The estimated 54,000 temporary police needed by the Nepal Police and the APF in 2008<sup>91</sup> was high in part because of the security assessment for that Election Day, but also because of the re-building of the police that was ongoing at that time, and the absence of the Nepal Army as back up. The common view among interviewees was that although there has long been a practice of employing temporary police in Nepali elections, no-one is satisfied with the arrangement, including voters, political parties, the Nepal Police, APF and ECN. Given the current strength of the police, there does not seem to be another option in the event the election has to be held in a single day.

In terms of *potential triggers*, quality control of hiring was the most common concern, with political influence in evidence in 2008. In one observer report it was assessed that no single party dominated control of that partisan recruitment, so the police were unable to resist political pressure to recruit party cadres in general.<sup>92</sup> The other question asked was whether the cost of temporary police could be better spent on the permanent forces, noting the police/population ratio above. The second most common concern to interviewees (also raised in all observer reports) was the low quality of training witnessed in 2008. Even though temporary police are not a substitute for the permanent forces, interviewees still pointed to the low levels of public trust as an indirect risk factor, making it less likely the public would report incidents to them, to trust incidents would be followed up, and perpetrators held to account.

The Nepal Army: The future roles for the Nepal Army in electoral security and in election administration are open questions. Before the 2008 CA election the Nepal Army was a background force for electoral security, generally for confidence building in support of the Nepal Police, and for logistical lift and communication. The army was confined to barracks in 2008 under the terms of the 2006 CPA.<sup>93</sup> Little or no defense force involvement in elections is more common internationally.<sup>94</sup> Although they made preparations for ‘severe instability’, just one army helicopter joined a fleet of four private chartered helicopters (one per region) as emergency evacuation or security force deployment.<sup>95</sup> Some interviewees called for a Nepal Army role again in

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<sup>91</sup> See footnote reference above and ICG ‘Nepal’s election and beyond’ No. 149 (2008), pp 11-12

<sup>92</sup> ANFREL, *Final Report* (2008), p99

<sup>93</sup> *Comprehensive Peace Agreement concluded between the Government of Nepal and the Communist Party of Nepal (Maoist)* (2006), Article 4.6

<sup>94</sup> See ICG, *Nepal’s Election and Beyond* (2008), p(i) and p11. Internationally, defense forces are not generally involved in supporting elections (UNDP, *Understanding Electoral Violence in Asia* (2011), p9), but in Nepal throughout 1990s elections and until the CA 2008 election, their deployment was well established and accepted.

<sup>95</sup> ICG, *Nepal’s Election and Beyond* (2008), p12

the next election given the range of risks outlined in section 2 above. However, in general the impression is that it needs greater discussion, and should be based on (and not pre-judge) the national security assessment. Interviewees experienced in security matters pointed out the Nepal Army are not a substitute for the Nepal Police and APF, and – similar to the APF – are not empowered to investigate electoral violence cases. In that sense, the key issue for mitigation is that the Nepal Army work under and lends expertise to integrated security management mechanisms discussed below.

MoHA: Most interviewees are of the view that the role of the MoHA, as the national authority on internal security, is a key determinant of the overall election environment. For instance, postings of the police and civil sector bureaucracy, especially that of the Chief District Officers (CDO) and District Police Chief, at district level in and around the election period have always been a key concern before Nepal elections. In delegating special authority to the ECN during an electoral process, the Constitution and Election Commission Act effectively modify normal security and justice roles and responsibilities, impacting how MoHA functions during elections. People questioned the influence exercised by the political leadership of the Ministry on these officials, when those leaders will be competing in the election. They cited examples of how political leadership in the Ministry can strategically mobilize officials around the election period to influence the election outcomes in their interest.<sup>96</sup> Any type of involvement of security officials in support of or against any candidate or party could ultimately invite violence. In this context, mindful of the highly contested political situation, the majority of participants advocated for a neutral election government and/or suggested that the government recognize and facilitate the full extent of the ECN's existing authority for security during the electoral period.

### ***Partnering with a neutral government***

Although the ECN is an independent body, to conduct elections it depends on the government to provide security, funding, electoral staff, physical assets and services. All of these needs are provided for explicitly in the law: Article 130 of the Interim Constitution (2007) states the government 'shall provide' the ECN with 'such employees and other things as may be required to perform its functions.' Section 6 of the Election Commission Act (2007) goes further to give the ECN 'powers to seek assistance' by making 'direct contact with any [government entity] or Constitutional Body. to seek any kind of assistance.'

In the current context, interviewees stated two of the key *potential triggers* could be first the inability of the ECN to secure necessary resources in time (to be taken up below), and second that government-deputed staff and assets do not support the ECN in an appropriate manner. Many interviewees discussed in detail how the partisan use of government staff and assets is highly likely in the current environment, with civil servants and the bureaucracy seen to be politicized, demoralized and divided. One past practice has been to make tactical changes to staff at different levels, to position 'friendly' civil servants or police officers in key locations. Interviewees described the current impasse on control of the state machinery and caretaker government as

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<sup>96</sup> FGD participants in Dhanusa cited examples how officials' direct involvement affected election results, particularly the 2008 by-election. This information was authenticated by observer group reports.

evidence that political leaders place significant weight on the benefits of ‘owning’ that state machinery.

The MoHA is generally the focus of this attention, given its central role in overseeing the state’s security and administrative apparatus.<sup>97</sup> However, many parts of the state machinery provide electoral staff temporarily, transport and communication assets, and election facilities and services (such as procurement). If issues of government bias or interference are not anticipated, prevented and addressed nation-wide, interviewees described circumstances where government support could be *potential triggers*, for example: lack of enforcement of existing CoC provisions that govern impartial government support to the ECN and the electoral process; government media is misused; government staff come under the influence of elected or political appointments who use them for campaigning; government staff ignore or are slow to prevent or respond to illegal intimidation or physical violence; and, government staff make state resources available to political party cadres; government staff engage in local-level politics.

### *Challenges to improving and integrating electoral security*

Rule of law and public order: In discussing electoral violence, the first point raised by security experts is that it be seen as a subset of broader rule of law and public order throughout Nepal. From this perspective the security of elections as periodic and time-bound events is in large part governed by longer-terms shifts in confidence between the general public and the Nepal Police, APF, the government and the judiciary. While the parameters of this assessment are to map electoral violence, interviewees connected the exercise directly to the larger criminal justice system, to the legacies of the armed conflict and the peace process, and to the current state of security sector governance and human rights. Security sector assessments described security agencies in transition, for example on: public perceptions; civilian and parliamentary oversight; investigative capacity; corruption; and human rights.<sup>98</sup> A recent media interview with the IGP highlights the challenges the Nepal Police face in many of these areas.<sup>99</sup>

One of the most critical security mechanisms in Nepal to manage rule of law and public order is the District Security Committee. This committee is chaired by the civilian CDO (who is also the Chief Security Officer), with participation from all district level security agencies, including the District Police Chief. The district structures then report back through five regional offices to MoHA, and then to the National Security Committee, headed by the Home Minister. This national security system is detailed in security-related laws. To compare the effectiveness of electoral security in past elections, a key question is whether the security provided in the 2008 elections was cost efficient, and whether investments in MoHA, the Nepal Police and APF (via their election budgets) were well spent in preventing and mitigating electoral violence. Although the election security expenditure is believed to have been the largest cost to the government, and was ‘roughly equal to those of election

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<sup>97</sup> For comment see eKantipur, *Interview with IGP Rana*, 15 October 2012; and for historical analysis on MoHA see Kumar (2010), Chapter 4 ‘Electoral Malpractices and Violence’

<sup>98</sup> See the bibliography for references, including, for example: Sangraula, ‘Police Investigation: Interrogation methods and their impacts’, in Saferworld (2007)

<sup>99</sup> eKantipur, *Interview with IGP Rana*, 15 October 2012

management costs' which had significant international expenditure,<sup>100</sup> there was a lack of data to make this assessment. It is recognized that reporting on election security expenditure is difficult (commonly known as 'integrity costs'), in particular for first post-conflict elections, and it is challenging to separate core recurrent costs of security agencies from their election-specific costs.<sup>101</sup>

Improving the integration of electoral security: Nepali institutions face a particularly difficult organizational challenge to ensure that electoral security integrates all relevant state actors and the ECN. Not only have the Nepal Police, APF and Nepal Army been in transition through and after the armed conflict, but also elections require them to participate in temporary structures and systems in a limited timeframe, modifying normal security roles and responsibilities. Article 10 of the Election Commission Act, for example, gives the ECN the 'power to remove from work' deputed security personnel if they perform an impartial or prejudicial act. However, in Nepal the police force and army are some of the most experienced peacekeeping forces globally, where integration doctrines are well developed. This experience and the positive inclination to integration between uniformed institutions and between civilian and uniformed structures are particularly important strengths in the Nepal context: in other countries the absence of collaboration between civilian and uniformed institutions undermines strategies to address electoral violence.

In the 2008 election a high level of integration was eventually achieved for election day between the ECN and security agencies, greatly improving planning and response, and the impact of violence prevention and mitigation. The key elements of that integrated security architecture are outlined in the diagram at Annex 5 – 2008 *Electoral Security Coordination Mechanism*.<sup>102</sup> The mechanisms took some time to come together, and in early 2007 electoral planning proceeded informally, with collaboration between the leadership and working levels of the ECN and MoHA. Complementing the existing MoHA national security architecture that was being re-established in many districts, the additional election-specific mechanisms were established by the ECN after the election was announced. Observers who concluded that security effectiveness was undermined by a lack of coherence highlighted the slow start.

Ultimately the CA election mechanisms became more effective, more integrated and met more regularly as the process rolled out. At each level (national, regional, district, polling center) the ECN and all security entities were present at the table, red tape was minimized to facilitate a collaborative environment where information sharing was the norm not the exception, and much relied on personal relationships and trust. A key function of these mechanisms was to adapt strategy as new threats emerged and as different phases of the process demanded different mitigation tactics. The 2008 and 1990s experiences reveal two key outcomes of integration:

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<sup>100</sup> ACE Project Consolidated Replies, *Cost of Election Security for EMBs*, 24 July 2012, <http://aceproject.org/electoral-advice/archive/questions/replies>

<sup>101</sup> Lopez-Pintor, Fischer (2005), p 15, 46, and additional analysis in the India Case study pp 67-80

<sup>102</sup> Translated from ECN, *Constituent Assembly Member Election Report: 2063-2066* (2009), p238

- To maintain unity of command, while integrating analysis and assessment, culminating in one national strategy, from which individual plans are developed (for each institution and for each district);
- To create joint civilian and uniformed structures (joint operation centers), to support monitoring and analysis (for situational awareness) and to integrate mitigation and response.<sup>103</sup>

The experience in Nepal – both normal security management, and election-specific coordination mechanisms – leaves operational activities to be managed within units (within ECN district structures, by the CDO and District Police Chief, by APF battalions). The shared structures ensure collective decision-making, quick reaction and confidence building between entities. Key challenges to integration include: the necessity for strong leadership so that subordinates learn that collaboration and coordination is the expected standard of conduct; understanding different cultures, organizational structures and priorities between institutions; and being seen to act in an integrated fashion to the public, and communicating to the media with commonly agreed messages. Each of these principles and challenges were confronted in 2008 and previous elections, and can be expected in the next election.

*Potential challenges* to integrating electoral security in the next election include: much of the pressure to successfully deliver the 2008 peace process election is no longer present; there is a high risk of a leadership gap in the ECN, limiting their constructive influence with MoHA; a high risk of a protracted caretaker government of limited legitimacy and decision-making authority, and uncertainty about MoHA and executive leadership. However, in general the assessment found the Nepal Police and the APF already planning the next election, and ready for a discussion on integration. Another challenge relates to planning and budgeting, which are handicapped by a lack of data on electoral security costs and efficiency from 2008, as mentioned below.

An integrated approach to budgets and planning: Planning and budgeting for the next election has already commenced, but not yet – in the view of informed interviewees – in an integrated fashion. In some previous elections the budgets of different security agencies passed “through” the ECN, and in others they were simply forwarded to the ECN after having been fully developed and approved. A national election security strategy and budget that was not conceived in an integrated fashion between the ECN and MoHA could introduce *potential triggers* later in the process. For example, if the ECN doesn’t consider new security threats and the disposition and capacity of security agencies when deciding polling center locations and number, it could mean insufficient security in and around polling centers. A similar effect could occur if the Nepal Police and APF don’t understand the new security dimensions of securing and transporting EVMs. Another example is that the ECN owns the data on registered political parties, on the current location of eligible voters on the new biometric voters list, and where potentially disenfranchised eligible voters are, the latter being more easily mobilized by party cadres. If there is not an integrated approach to strategy,

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<sup>103</sup> Nepal’s security sector has decades of experience in integrated approaches with civilian counterparts. For recent discussion on UN operational integration, see for example: Report of the Special Committee on Peacekeeping Operations (2011) and its discussion on integration in paragraphs 29, 70, 105 and 134.

planning and budgeting, then for example, the ECN would not be in a position to defend a drastically cut Nepal Police or APF budget that provided insufficient fuel for police and electoral staff, material transport and patrolling.

Integrating information management: A further challenge relates to integrating monitoring and reporting systems to establish and maintain a common situational awareness of threats throughout the electoral process. There are numerous technologies (hardware and software) that can provide a platform to support security assessment and response. One challenge in Nepal is deciding which system to invest in, for future sustainable information management and longer-term institutional memory. Other questions that remain include: technology compatibility; the lead-time required to get a common platform operational before candidate nominations; and how to separate confidential data from the ECN (voter names and addresses), and from the MoHA (witnesses and other criminal case information).

It appears the extensive data collected in the DEAN P/EVER 2008 project is no longer available, and only the final report remains as a resource for researchers, the ECN and security agencies.<sup>104</sup> In 2007-2008, UN humanitarian, human rights, political and electoral reporting that was collected nation-wide was then integrated into geographic information system mapping software. That data was then made available to the ECN and security actors (see maps in Annex 4), but is still currently held in a UN 'ARCGIS' database (a commercial application requiring a license), and no ECN staff capacity currently exists to responsibly hand that data over. Two other important information systems are being improved. On the one hand, MoHA is improving support to district security architecture by piloting geographic mapping in several districts.<sup>105</sup> On the other hand, the ECN now has both the biometric digital voter list and it has GIS mapping software with up-to-date plots of all polling centers and voter populations. There is not, as yet, an electronic information system that records and manages criminal cases and EDR, from investigation through to the courts.

### **3.2. Criminal and electoral cases: Incident response instead of justice**

*'Criminal incidents should be brought within purview of law rather than resolving them through mediation and consensus'*<sup>106</sup>

The limits of two paths to criminal and electoral justice: Technically, two paths currently exist to resolve election-related disputes in Nepal: first, criminal and civil cases are adjudicated by the judiciary in the first and last instance; and non-criminal electoral and administrative cases are adjudicated by the ECN in the first and (in all cases except petitions) the last instance.<sup>107</sup> Electoral violence and EDR are part of the

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<sup>104</sup> The DEAN P/EVER (2008) data not only provided the baseline for much of the assessment in this and other reports, it was also used and analyzed extensively in the book on Nepal electoral violence, Kumar, *Electoral Violence and Volatility in Nepal* (2012)

<sup>105</sup> Precise details were not available, but one MoHA staff member described the first phase of a Google maps platform being rolled out in several pilot districts. At present the system is passive at the district level, i.e. the data can only be entered from Kathmandu, not by the district office.

<sup>106</sup> A recommendation to political parties in NEOC, *Comprehensive Report* (2008), p106

<sup>107</sup> Current EDR laws include: the Constituent Assembly Member Election Act, 2007, Articles 40-44, 50, 52-53, 66, and 69); the Election Commission Act, 2007, Articles 17-18, 29, 31, and 41); and, the Election (Crime and Punishment) Act 2007, Articles 18-19, 23, 25, and 27-28)

same challenge because, by law, all visible and physical violence is a criminal act, most of the perpetrators and victims are political party members (candidates and supporters), and real or perceived electoral injustice is a common violence trigger. A key electoral reform since 2008 has been to improve EDR, with many reports that electoral justice and criminal cases against visible and invisible violence were neither expeditious nor transparent.

EDR has since been the subject of several studies and an extensive re-drafting of the law; the re-drafting was also driven by complaints in 2008 that laws were inaccessible, scattered among different legislation and regulations, and the ECN and court processes lacked predictability, simplicity and fairness. However, the failure to finalize the Constitution leaves open the possibility that the former 2008 EDR system and law will largely remain in place for the next election.<sup>108</sup> If this does occur then interviewees confirmed that the problems encountered in 2008 are likely to persist and need to be brought back into focus. In explaining its weaknesses interviewees recall that the criminal component of the current EDR system is particularly ineffective, complex and seldom used, and the electoral CoC and ECN complaints system were '*underutilized and ad-hoc*'.

The general impression of the responses by authorities to violent incidents in 2008 was they took measures to keep the peace, contain each situation and prevent escalation by separating groups, even arraigning alleged perpetrators for questioning. However, in few cases it appears the next step was taken – to continue to pursue the paths of criminal and / or electoral justice. On the criminal side the impact as assessed by DEAN P/EVER project was 'political parties have acted with impunity, regularly violating the law and the electoral Code of Conduct, without ramifications,' and on the CoC the Carter Center predicted the lack of a hard line approach by the ECN 'likely will be considered unacceptable by the Nepali people in a future election.'<sup>109</sup>

Enforcing criminal law on violent acts during the electoral process: As outlined above, the lack of investigation and enforcement of criminal acts during electoral processes were understood by interviewees to be part of broader rule of law and human rights challenges, issues intricately connected to the conflict and the peace process. The perception is that during elections criminal offences involving visible or psychological violence are even less likely to be investigated, prosecuted and lead to offenders being appropriately punished. Authorities to calm tensions perform incident response, but justice is not pursued in many cases. This includes cases involving the most serious offences committed in the last and other past elections (murder, kidnapping, battery) where there appears little record of successful prosecution. With limited disaggregated data on criminality between 2008 and 2012 (see security sector section above), it is difficult to establish the status of electoral violence cases, as well as to see annual criminal justice data, and how trends might have changed since the 1990s.

In the absence of these facts the dominant impression is that law-breakers are more sophisticated and adaptable than law enforcers, and that impunity before the law by

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<sup>108</sup> The current law re-drafting may be dependent on a new Constitution being promulgated, an improbable scenario before the election at this time.

<sup>109</sup> DEAN P/EVER, *Final Report* (2008), p43, and The Carter Center, *Final Report* (2008), p58. See also, EU-EOM, *Final Report* (2008), pp 33-40, and ANFREL (2008), pp101-102



alleged electoral violence offenders was persistent in electoral politics up to and including the 2008 election. The view is that the high number of electoral criminal cases left un-investigated (or frozen in a *Keep-in-View* investigation status) and un-judged by the courts, has provided the conditions for criminal actions in electoral politics to flourish and for the near universal view that they will persist in the next election. In 2008 the CPA placed an additional burden on the Nepal Police, to consider ‘the people’s movement and Peace Accord’ while also enforcing the law. A question for the next election is whether political parties now expect the police to act the same way (which might mean being lenient on offenders, or selectively ignoring some crimes altogether), or to apply the letter of the law?

The time to put a dent in this impression and place public confidence in criminal justice in particular before the next electoral process is very short. Changing public confidence in electoral justice will likely be shaped by the way investigative capacity is utilized at the very start of the political process by the Attorney General and police departments. It will then be shaped by the timeliness and quality of early judgments of the courts in those early cases involving physical violence and intimidation. The new Nepal Police IGP believes the police have turned a corner, and, while challenges remain, investigative professionalism and neutrality is improving, where 75 percent of cases were ‘investigated and reached closure.’<sup>110</sup> The question is whether this general statistic can now be replicated for electoral criminal cases, given the power of local and national political leaders, and the ‘nexus of criminals, politicians and businessmen’.

The team found that strong measures, possibly ‘special temporary measures’ (tailored to reversing the current trend) are needed to prepare a more aggressive and public investigation and adjudication of these cases. The widespread impression is that the ‘demonstration effect’ is mostly in the wrong direction, that repeatedly electoral violence and criminality continue in an environment where there are few consequences for perpetrators. The conditions for a future election, described in the federalism and political sections above (in particular the money, muscle and mafia section), indicate a high probability that perpetrators will (or already are) acting as they have become accustomed to: preparing to use criminal and violent means to reach elected office or to stay as incumbents.

The Code of Conduct, complaints and appeals: A recent report makes the case for the direct relationship between incidence of malpractice and electoral violence.<sup>111</sup> While violence prevented can never be measured, there was a misperception from some interviewees that political parties and their candidates escaped all sanction from the ECN during the 2008 electoral process. In fact, 854 complaints were lodged with the ECN against political party candidates, ECN and Government of Nepal, media, as well as other miscellaneous complaints. Many of the complaints were duplicates and 304 did not require action. The nature of the valid complaints largely dealt with non-criminal security issues, such as being barred by opponents from campaigning, barred from going to vote and proxy voting. They also dealt with the misuse of public resources and inaction and partial behavior by security actors, polling staff and media. The ECN deployed CoC monitoring teams that were helpful in the post-conflict

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<sup>110</sup> eKantipur, *Interview with IGP Rana*, 15 October 2012

<sup>111</sup> Norris, *Why electoral malpractices heighten risks of electoral violence* (2012)



scenario, but some confusion arose with their authority to implement the CoC and penalize on the spot.<sup>112</sup> The ECN's complaints adjudication led to re-election in 106 polling booths,<sup>113</sup> and a summary of some of those cases is in Figure 7.1 – Post-election dispute management, Annex 7, including showing details on cases where action was taken and where 'no action required.'

Overall, in 2008 there were systemic weaknesses in the complaints and appeals systems, in the law itself, in education and in investigation and interpretation of the law. A key component of that confusion was a lack of understanding when a case was criminal, electoral, or both. Unless these issues can be addressed in the current legal vacuum, they will be *potential triggers*, along with the following raised by interviewees: distrust in the complaints and appeals process overall, leading losing candidates to resort to violence instead of using legal means; anger from losing candidates or their supporters when they learn there is no appeal against a decision of the ECN during the electoral process, including if the ECN rejects the registration of a political party, or application of a candidate; anger from a voter on learning they cannot file a petition; confusion, and therefore frustration, about EDR rules, including between types of offences split between the Election Offences and Punishment Act and the CoC; lack of knowledge and capacity by ECN district staff if they fail to lodge a complaint correctly and it is not promptly and accurately investigated and adjudicated.

Petitions to election results after the electoral process: There remains uncertainty about the likely system to appeal ECN results of the next election. A new system would need to be at least as strong as the 2008 petition process, or there could be very high potential to trigger violence in each contested seat, with so many parties and their candidates competing in more constituencies nationally. Governed by the special framework set up for CA election petitions,<sup>114</sup> appeals to the ECN's 2008 declared results were under the exclusive jurisdiction of the three-member Constituent Assembly Court, a special court that was time-bound (with three months to settle each case after the final defense statement), and that was dissolved when the last case was concluded. Sixteen petitions were received by the court (see Annex 7, 12 of them relating to FPTP elections, and four to PR elections. In the course of filing two of the cases, two candidates from FPTP who 'won' elections received orders from the court not to attend the CA until the final court decision. These defendants finally won their cases.<sup>115</sup> All the cases were resolved without disqualifying any results.

Increasing data collection and reporting by the authorities: The lack of data is an issue by itself, because it allows perception-based opinions to dominate, almost all of those perceptions expressed in interviews being negative. Although data collection on electoral violence is difficult, its absence prevents an informed discussion on trends,

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<sup>112</sup> ECN, *Order Relating to Monitoring of Election to Members of Constituent Assembly*, 2064 (2007)

<sup>113</sup> ECN, *Constituent Assembly Member Election Report: 2063-2066* (2009), pp260-261

<sup>114</sup> The court had jurisdiction to hear and settle petition cases to members of the CA, on member disqualification, invalidation, and offences relating to members. It had the power to issue summons, to take testimony, to arrest, to issue interim and stay orders, and to punish contempt of court with imprisonment. It otherwise followed the existing powers of summary trial, and had the same powers and procedures as district courts. Interim Constitution 2063 (2007) Section 118, and Constituent Assembly Court Act 2063 (2007).

<sup>115</sup> Constituent Assembly Court, *Collection of the Verdict of the Constituent Assembly Court* (2009)

and whether one mitigation works better than another.<sup>116</sup> In the 2008 election there was perhaps more data on electoral violence collected and made publicly available than at any other time in Nepal's election history, in particular by three sources: the DEAN P/EVER report aggregate data (see Annex 3); UN aggregate data (see Annex 4); and 2008 observer reports which contain many descriptions of specific incidents, and detail when perpetrators were arrested in connection to beatings, bombings and other violence.<sup>117</sup> The Nepal Police and APF performed a great deal of immediate response and containment, the gap is to know what happened next: how was each case investigated and adjudicated by police and the judiciary?

### **3.3. The ECN, electoral reform and modernization**

As discussed in several previous sections, the ECN itself is one of the three key institutions to deliver an electoral process free of visible and psychological violence. The ECN will be performing its tasks in a significant transition – the transition of new Election Commissioners, and the introduction of new technology to improve and modernize the administration of elections. In the last twenty years a sequence of reforms has followed each political transition: two key periods were the pre-2000 and the 2008-2012 between-election periods. Based on past experiences of electoral violence and malpractice and the ECN's own post-CA election review, from 2009 Nepal began to systematically implement a far-reaching long-term electoral reform strategy.<sup>118</sup> The reforms are explicitly and implicitly directed to prevent visible and invisible electoral violence. Outstanding questions are whether the reforms have gone far enough, whether there are new triggers for violence, and whether new tactics by political actors will subvert these efforts. Three aspects are covered here: ECN capacity and impartiality, the new Voters List, and Electronic Voting Machines.

**ECN capacity and independence:** Interviewees insisted that an essential pre-condition to addressing electoral violence (and to give confidence to voters and candidates), was a capable and independent ECN that enjoyed broad public trust and enforced Nepal's electoral laws and its own regulations. The impression from interviewees is that the ECN is not sufficiently strong (or any stronger than in 2008) to enforce laws or to demonstrate independence and win public confidence. There remains a serious question whether ECN capacity can realistically be addressed in the current climate and timeframe, providing fertile ground for triggers listed in this report.

The following are key issues that, if not resolved, could undermine confidence in the electoral process and provide an environment conducive to violence: as outlined in the legal section above, there is no known roadmap to appoint the Election Commissioners<sup>119</sup>, and there is no procedure to ensure the selection is non-partisan;

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<sup>116</sup> A decision needs be made by Nepali criminologists how to categorize and separate criminal acts and electoral disputes. In 2008 the DEAN P/EVER project adopted a methodology to map 'any violence (harm) or threat of violence (harm)' but found it difficult to compare or separate political from electoral violence. In practice, DEAN P/EVER recognized the former merged into the latter as the electoral cycle progressed. DEAN P/EVER *Final Report* (2008), Section 3.3 'Methodology', p 12

<sup>117</sup> See, for example, NEOC, *Comprehensive Report* (2008), and the 24 pages in 'Section II: Pre-Election Setting – A Synopsis of Representative Incidents', pp42-65

<sup>118</sup> ECN, *Strategic Plan of the Election Commission of Nepal: 2009-2013* (2009)

<sup>119</sup> The terms of the three current Election Commissioners expire by January 2013, and there are two more posts including the CEC that have been vacant since 2009.

there is a high turnover of ECN permanent staff creating a debilitating loss of institutional memory and capacity between elections; there will likely be a gap between Commissioner appointments that will leave the ECN Secretariat open to government influence, and new Commissioners will also likely need several months to be briefed and become operational; when in place, the current rule for the Commission to decide by consensus will undermine timely and effective decision making<sup>120</sup>; and, with no clear election announcement mechanism, there has not been an official and accepted declaration, preventing the ECN from formally initiating election preparations and securing an election budget. This could undermine some of the operations suggested in this report that might allow the ECN to enforce electoral rules from day one.<sup>121</sup> Although systems are in place to restrict undue influence on the ECN, in the current climate the reliance on the government is likely to be detrimental to timely electoral preparations, as well as ECN capacity, independence and enforcement.

Three other critical capacity and independence gaps are the ECN's three district-level decision-makers during the elections: District Electoral Officers (DEOs), Returning Officers (ROs), and Presiding Officers (POs). In many cases, DEOs are junior and new at the beginning of each electoral cycle; institutional memory loss is systemic, given the mobility of civil servants, however in this critical pre-election period the DEOs are solely responsible for convening political parties and performing key leadership, education and confidence-building roles. With no ROs in place<sup>122</sup>, DEOs are primarily responsible for conducting election planning, which includes electoral security preparations, with more senior civil servants and security commanders. It is unrealistic to expect them to lead election security planning, so they rely on being invited into District Security Committees. Although the team was briefed that security sector election planning is already somewhat advanced at the national level, no such invitation is known to have been extended to DEOs to commence planning with the 75 District Security Committees. An additional structural gap in the ECN is the absence of an ECN regional structure to parallel the government regional offices, which have authority to coordinate regional security planning.<sup>123</sup>

Finally, there was extensive commentary from interviewees about the weaknesses of Returning Officers and Presiding Officers. These electoral staff are engaged temporarily, with ROs in place for around three months to administer each constituency election, and POs in place for one week before polling to administer each polling center. Interviewees (including ROs and POs) stated that they lack capacity to manage complex electoral processes, they lack confidence or empowerment to enforce the rules entrusted to them, and there is a frequent perception that some exhibit partisan leaning. Most ROs interviewed complained that security agencies provide insufficient support during the elections, they have limited

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<sup>120</sup> While there is no law to decide by consensus, the practice has been established in the past, based on the Election Commission Act (2007), article 4.1.

<sup>121</sup> The ECN is not fully independent of the government of the day, given its reliance on the Ministry of Finance for an election budget, and the rest of the government for other resources: staff such as police and teachers, services such as procurement, assets such as transport and communications, and facilities.

<sup>122</sup> RO appointments only follow the election announcement, the receipt of the election budget, and ECN recruitment and deployment process.

<sup>123</sup> In this pre-election period, the five DEOs located alongside each government regional office would be invited to join election security planning.

involvement in security planning and enforcement, and they are heavily dependent on the local administration for resources. Notwithstanding, by regulation and by practice, they are jointly responsible with MoHA/Nepal Police officers for election security, and they are solely responsible for the conduct of the election at the constituency and polling center levels. If unaddressed, these weaknesses will hamper effective electoral violence prevention and mitigation.

*‘Political parties must be part of the solution in mitigating election violence.’<sup>124</sup>*

All-Party Meetings – Umpiring with *sambad* (dialogue): Once the current impasse is resolved and the election is formally announced, the ECN will need to be the primary umpire and regulator of political parties. The standard mechanisms in Nepal for the ECN to engage with parties are All-Party Meetings (APMs) convened in headquarters by the CEC and in each district by the DEO/ECN and then the senior District Returning Officer, when they are appointed.<sup>125</sup> This APM underpins electoral-violence prevention and management, and was one of the key forums for dialogue, negotiation and mediation, building trust and confidence with and between the parties throughout the CA election period. APMs not only contributed to the ECN’s monitoring of the CoC,<sup>126</sup> but also created space for parties to monitor each other.

With interviewees expecting parties to not let competitors ‘get away with it’ to the extent of the 2008 peace process election, the role of APMs to filter serious from frivolous complaints may increase. Three weak elements of APMs that would need to be addressed are: the lack of seniority of many DEOs, limiting their convening power and authority to mediate between elderly political party leaders and power-brokers; the lack of DEO technical knowledge on how to organize and facilitate dialogue; and the limited ECN headquarters backstopping (accompaniment) to support DEOs perform the party dialogue, monitoring and coordination functions.

Interviewees working in the peacebuilding space also encouraged the ECN to work with existing peace-building mechanisms in Nepal. The official and most visible element of Nepal’s peacebuilding infrastructure is the MoPR.<sup>127</sup> MoPR oversees Local Peace Committees (LPC), which are all-party mechanisms and with Civil Society Organization (CSO) membership, created at the district level. The effectiveness of LPCs has been very mixed, and reports indicate the limitations with many committees. Some, however, are known to be very effective, and functioning LPCs should be included (and not duplicated) by the ECN in its own political party dialogue through APMs. A newer mechanism is the Collaborative Leadership and Dialogue project that is promoting consensus-building and sharing conflict prevention tools among government officials, political party and civil society leaders, working at the district level and in Kathmandu.<sup>128</sup> Similarly, various other community level

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<sup>124</sup> One of the final recommendations in the DEAN P/EVER, *Final Report* (2008), p44

<sup>125</sup> APMs are distinct from the all-party mechanisms also working at the local level in place of elected local representatives, and with MoPR.

<sup>126</sup> ECN, *Code of Conduct on Election to Member of the Constituent Assembly, 2064* (2007), Article 29 ‘Implementation and monitoring of codes of conduct.’

<sup>127</sup> This ministry is largely focused on DDR and compensation issues, but have limited staff dedicated to multiple peace-related themes.

<sup>128</sup> These are supported by UNDP’s Conflict Prevention Program. Others supporting mediation and dialogue include The Asia Foundation, DFID supporting the Madhesh Mediation program and UNICEF supporting para-legal programs.

mediation programs including the Madhesh Mediation program operating in East and Central Madhesh and para-legal committees across the country also could contribute on it.

The new biometric digital Voters List: The introduction of biometric voter registration is one of the key reforms undertaken by the ECN since the 2008 CA election. The new system, rolled out nation-wide from 2009 to 2012, enhances the accuracy of the list by capturing basic citizen information, photographs and fingerprints. Biometric technology directly contributes to greater integrity of the electoral process, preventing multiple, fake and underage voting, and adding a layer of security to the accuracy of the list. Additional reforms that should positively improve and modernize electoral administration (and undermine historical triggers for violence) include: registration for out-of-district voting; establishing a continuous voter registration system; adding registration desks at passport offices, prisons, army camps, cantonment and factory areas; deploying joint mobile registration teams, combining voter registration with the citizenship certificate; and adding registration desks at District Administration Offices and Area Administration Offices where citizenship certificates are issued by MoHA. Two outstanding issues are the incomplete issuance of the Citizenship Certificate, and the national identity card has yet to be issued.

The *potential triggers* of violence that remain are not unexpected, but are nonetheless, serious threats, in particular when combined with gaps in the Terai and a future election on federalism and identity-based politics between parties with small win/lose margins.<sup>129</sup> Those potential triggers include: the fact that solid data on the gaps does not exist, so best-guess estimates are projections of deaths, of youth now at voting age, of migration and other factors since the 2001 Census,<sup>130</sup> combined with MoHA data on citizenship certificate issuance, and ECN voters list data; in this context the ECN estimates five million eligible voters remain to be registered;<sup>131</sup> they also estimate one million eligible voters do not yet have a citizenship certificate; another estimate puts the overall gap of eligible citizens who are not on the voters list at 2.2 million, few of whom are likely to be enfranchised;<sup>132</sup> in the last two years there has already been violence in the Terai and other areas on the eligibility of some groups to receive a citizenship certificate, a requirement of voter registration;<sup>133</sup> there has been a low response from political parties to motivate their supporters to register; there is low voter education and awareness, especially in less-accessible areas, so voters and eligible candidates not on the voters list may only learn they cannot run for office or

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<sup>129</sup> For more analysis on outstanding voter registration issues see: Eckstein and Sharma, *Review of the UNDP electoral support project for institutional strengthening and professional development for the Election Commission of Nepal*; The Carter Center, *The Second Interim Statement on the Election Commission of Nepal: Voter Register with Photograph Program*, 7 July 2011, pp 5-7; and, The Carter Center, *The Third Interim Statement on the Election Commission of Nepal: Voter Register with Photograph Program*, 12 January 2012, p. 1

<sup>130</sup> UNHCR is soon to do a survey in the low areas and will extrapolate statistics nationally. The question about citizenship wasn't asked in the 2012 Census.

<sup>131</sup> This is from data shared during an ECN meeting with political parties in October 2012.

<sup>132</sup> This extrapolation calculates: 17.5 million voters on the voters list in 2008, now expected to be 10.8 million, with possibly 13-13.5 million residing in the country who are eligible citizens over 16 based on projections from 2001 Census data. Interview with Voter Registration expert, October 2012

<sup>133</sup> This was formalized by the Supreme Court ruling in April 2011.

vote when it is already late in the electoral process;<sup>134</sup> errors in the voters list on addresses and PC allocation have been found; and there remain political, ethnicity and gender-based disagreements on citizenship certificate requirements.

*“The EC has taken tough measures to modernize the electoral system... [and] is working to introduce electronic voting machines.”<sup>135</sup>*

Electronic Voting Machines (EVMs): The ECN first piloted EVMs in one constituency during the 2008 election and in six by-elections that followed, with support from the Election Commission of India (ECI).<sup>136</sup> Similar to the introduction of the Biometric Voters List, the EVM was introduced to improve the voting process, to address persistent proxy voting, counting inaccuracies and malfeasance in past elections. If the ambition to mitigate electoral malfeasance is realized then the EVM and Voter List combination could see a manifest improvement in the confidence of voting, over time. This has the potential to reduce visible violence and intimidation associated with polling fraud and inaccuracy. Improved confidence in the integrity of polling and counting could reduce complaints and the violence that has accompanied rejection of official ECN results. Indications are that, to date, key political parties have accepted in principle, and support, the rollout of the EVM, including for the next election.

Although most interviewees were positive about the EVM idea and optimistic about the rollout, there was limited knowledge about specifics.<sup>137</sup> Many noted numerous potential triggers, some of which reflect lessons internationally when rolling out a brand new technology nation-wide;<sup>138</sup> for EVMs in Nepal every voter and polling staff would need to understand the new technology, have confidence in it, and operate it accurately. In a highly contested election in Nepal, the challenges might be expected to multiply and lead to modified forms of electoral violence in response to the new technology. Another scenario is that it triggers more pre-election violence (the violence moves upstream) when parties calculate they have less change of rigging polling and counting. In any case, mitigation strategies and advanced planning that anticipates these risks can reduce exposure to them.

*Potential triggers* included:<sup>139</sup> if an election is called at short notice with an incomplete legal framework, or the government delays the release of the election

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<sup>134</sup> As an illustration how such unexpected events can derail elections, and the measures taken to keep the last electoral process on track, just before the nomination day in 2008 it was revealed that one of the key Maoist leaders was missing from the voters list. The Maoists stated they would not proceed without his candidacy. On nomination day an ordinance was promulgated to qualify the candidacy for any political party's nomination, even if he /she were not registered as a voter, a requirement in the law for otherwise.

<sup>135</sup> The Kathmandu Post, 'EC asks parties to clear up on polls', 10 October 2012

<sup>136</sup> The long history of collaboration between these institutions was recently solidified for another five years in ECN and ECI, *Memorandum of Understanding for Cooperation in the Field of Electoral Management and Administration* (2011)

<sup>137</sup> Interviewees generally lacked knowledge on which EVM machines will be bought, and how, when and where they will be introduced. There is also a lack of knowledge in Kathmandu that EVM is electronic voting, not a ballot paper replacement.

<sup>138</sup> See, for example, a discussion on new election technology and EVM in OSCE, *Vienna Meeting Final Report: Challenges of Election Technology* (2005)

<sup>139</sup> Some of these issues were discussed in an ECN-convened meeting with all registered political parties on 10 October. See quotes in The Kathmandu Post, 'EC asks parties to clear up on polls', 10 October 2012

budget, there could be a rushed nation-wide EVM roll-out (less than six months) leading to incomplete or inaccurate EVM deployment<sup>140</sup>; if a political actor seeks to discredit EVMs by spreading rumors and misinformation about their reliability and secrecy; if a partial EVM roll-out is required, confusion with EVMs deployed in some constituencies and paper ballots in others; if insufficient training leads to polling staff incorrectly setting up and operating the EVM, causing unrest if polling booths cannot open and voters cannot vote; if there is low voter information coverage and understanding from illiterate voters on how to vote with the new machines; when there are close election contests (small margins) and losing candidates and supporters turn violent<sup>141</sup>; unless EVMs with a paper audit trail in a separate unit are used, if the EVM is destroyed at the PC or in transit, or candidates and supporters lose confidence in the result when they cannot verify or challenge the result, or to monitor a chain of custody to compilation centers.<sup>142</sup>

### 3.4. Electoral integrity: Observers, media, CSOs and internationals

With the ECN undertaking may initiatives aimed at improving the integrity of elections since 2008 through the between-elections period, most of the other actors have only recently re-engaged on electoral issues. Two recent reports highlight the key role of observers, media, CSOs and internationals in promoting elections with integrity, and the beneficial impact that can follow for peaceful and open political competition, reduced violence, and accepted results.<sup>143</sup> In the course of the interview four themes emerged among those four actors as it related to violence prevention and mitigation: neutrality, capacity, coverage and coordination. A further topic the assessment team recommends be explored is the use of technology to report electoral violence, for example, SMS for flash mobs, and you tube to post incidents of violence. While the mitigation section mentions these under the ECN/Nepal Police, any of these groups could utilize social media tools to improve real time reporting of incidents, and to monitor case investigation and follow through.

Observers: In general, interviewees reflected on the positive role that domestic and international observers have and should play in building confidence in a fair, competitive and open electoral process, and to undermine conditions conducive to

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<sup>140</sup> It is understood the ECN could chose to put two machines in one Polling Booth each time a FPTP or PR election had more than 64 candidates or parties, or to revert to paper ballots and ballot boxes in those cases, as India does. The capacity of one standard machine (or control unit) as configured in India is 4 ballot units, each catering to 16 election participants, making the maximum capacity of one machine 64 candidates or parties. ECI policy is to use paper ballots where there are more than 64 election contestants, rather than attempt to automatically or manually combine multiple control units. See: [http://eci.nic.in/eci\\_main1/evm.aspx](http://eci.nic.in/eci_main1/evm.aspx). There are currently 99 registered parties in Nepal.

<sup>141</sup> On the question of accuracy, Indian election monitoring organization VeTA reported a 5% shortfall in votes between the paper audit trail and the EVM counts at an ECI trial of new EVMs in July 2012 in Delhi (see ([http://www.indianevm.com/ticker\\_detail.php?id=172](http://www.indianevm.com/ticker_detail.php?id=172)); during the 10 October meeting with the ECN, the NC leader Man Bahadur Bishwakarma told the meeting ‘that electronic voting would help make the polls relatively free and fair. “However, we are not totally convinced that the EVMs are error-free,”’ The Kathmandu Post, ‘EC asks parties to clear up on polls,’ 10 October 2012

<sup>142</sup> For a recent report on the mitigation effect of the paper receipt and other security and chain of custody measures, see the report on the National Electoral Council of Venezuela, The Carter Center, *Carter Center Study Mission Pre-Election Report, Venezuelan Presidential Election* (2012)

<sup>143</sup> Report of Global Commission on Elections, Democracy and Security, *Deepening Democracy* (2012); and Norris, *Why electoral malpractices heighten risks of electoral violence* (2012)



violence. Specifically this includes preventing electoral manipulation and fraud that might trigger violence, reporting visible and invisible violence to the ECN and Nepal Police when it occurs, and following up on specific cases until adjudication has occurred. Observers can provide vital voices and authoritative statements when losing candidates contest legitimate election results. There is deep experience with observation across Nepal, but challenges include high turnover, and a questionable balance between the quantity of observers deployed and the quality of observation.

Past elections have shown that observers can undermine instead of buttress efforts of the election and security authorities, and – in some cases – directly contribute to violence. Most of the 2008 observer reports in the bibliography contain analysis on this topic. Interviewees discussed noncompliance of the observer CoC, low quality observation, and political bias. A central risk to observation efforts is simply inadequate coordination between groups,<sup>144</sup> preventing a collective voice and allowing political actors to use the reports least critical of them. Some risk factors apply more to domestic groups (political bias, inadequate transport and communications) and others to internationals (lack of country knowledge and language). As noted in the gender section above, the team found inadequate coverage and analysis in 2008 reports on violence directed at women, even though it appears many more women were engaged in observation than were employed as permanent or temporary staff in the ECN or Nepal Police.

General risk factors for all observers presented by interviewees included: a lack of Long Term Observers (LTOs) covering each phase of the electoral process from candidate pre-selection to by-elections; an over-emphasis on polling day reporting; unequal deployment coverage, and inadequate coverage of historically violent districts; a lack of continuity in each polling center, allowing intimidation to take place, for example, in the afternoon lull (the “PM syndrome”); a lack of informed and in-depth coverage of individual incidents, because of low capacity or because observers are intimidated by perpetrators; a lack of knowledge of criminal and electoral laws and responsibilities of different authorities; a lack of follow-up to monitor how authorities investigate and adjudicate each violent incident; a lack of incident and evidence-sharing between groups; and a lack of message coordination between groups (competing for limited media sound bites).

Media: The media has a key role to play to publicize and deter fraud and violence, and to provide credible, timely and accurate information about it to the public. A key role of the media in reporting electoral violence is to communicate facts, and to present, analyze and contextualize those facts in an accessible format for the public. In the assessment of both the DEAN P/EVER project and the report on media monitoring by the Press Council of Nepal, that effect was broadly provided in 2008,

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<sup>144</sup> There have been a variety of observer coordination efforts tried since the 1990s, with historically high domestic and international observers and observer groups deployed in 2008. For a survey of the 1999 election and previous coordination efforts see UNDP Nepal, *The Coordination and Support of International Electoral Observers* (1999), and NEOC, *Observation Comprehensive Report* (2008), p121

with media generally reporting objectively and in remote constituencies acting as a deterrent to potential perpetrators who would fear being reported.<sup>145</sup>

Media also has a role in creating an environment for constructive dialogue, to shape the psychology of voters, and encourage citizen-centered discourse to undermine the “win-at-all-cost” culture.<sup>146</sup> Media coverage, particularly radio, is strong in Nepal, and this is a key medium to effect such change. Guided by the first-of-a-kind CoC and monitoring mechanism through the Press Council, Nepal<sup>147</sup> it played a positive role in 2008 CA election. However, inflammatory language, rumor and misinformation, political bias (partisan and state media) and language complexity are some of the potential threats and challenges associated with and posed by the media. It is desirable that media coverage is consistent throughout the election period in terms of overall reporting, as well as coverage of individual incidents.

CSOs: Beyond their role as domestic observers, CSOs in Nepal have been key partners in the peace process and in each electoral process. A complex web of organizations at national, regional and local levels have performed roles such as voter and civic education, and the DEAN P/EVER project in 2008 was made up of a network of CSOs. A key question is whether an equivalent DEAN P/EVER project to monitor electoral violence will be initiated for the next election or whether observer groups will need to perform that standard of monitoring and reporting as an additional observer task. In general, many interviewees commented that CSO involvement and credibility has been undermined in some cases by noncompliance to their own CoC, and political alignment and bias, including preferential support to some political actors (resources).

Given their proximity to political actors at national and local levels, in the next election CSO positioning and messaging on federalism and identity politics could directly or indirectly escalate or mitigate violence. National and local CSO leaders could seek to quickly put their organizations on the side of prevention and mitigation. Priority, for example, could be given to add a voice to the pre-electoral and campaign periods which are usually dominated by an almost unilateral flow of communication from politicians to the public (where the public flock to political rallies and per definition these rallies are exclusive and combative). Civil society could use their convening power to reverse the one-directional flow by summoning politicians of different parties to *their* (civil society's) meetings..<sup>148</sup>

The International Community: While interviewees discussed and a recent book reflects extensively<sup>149</sup> on lessons from the role of the international community before, during and after the 2008 CA election, the scope of extent of international engagement will be significantly curtailed in the next election. Considering just the

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<sup>145</sup> DEAN P/EVER, *Final Report* (2008), p43 and Adhikari, Pokhrel, *Campaign 2008: A Public Report on Media Monitoring for Nepal's Constituent Assembly Polls* (2008)

<sup>146</sup> Kishore Nepal, 'The nails of media dialogue', *Nagarik News*, 12 August 2012

<sup>147</sup> ECN, *Code of Conduct on Election to Member of the Constituent Assembly, 2064* (2007), Chapter 4

<sup>148</sup> Such an approach has been used in Guyana where media reported on the meetings and ‘on stage the politicians could not risk tearing into each other for fear of being exposed as the “trouble makers”.

Momentum was slowly built and the language of cohesion, dialogue and non-violence became more and more part of the everyday discourse.’ EVMA correspondence with interviewee, November 2012

<sup>149</sup> Nearly half of the chapters in von Einsiedel et al., *Nepal in Transition* (2012) review the role of internationals in the peace process and the 2008 CA election.

UN, in the post-UNMIN years Nepal has hosted important UN capacities under the leadership of the Resident Coordinator, including the ESP and peace-building projects. Considerable reporting and analysis continues to be publicly available.<sup>150</sup> However, the next election will experience significant drop-off in terms of the UN's 2006-2008 diplomatic, human rights, technical and material support. At the time of the 2008 CA election the Security Council mandated and the General Assembly resourced UNMIN with more than 1,000 national and international staff nation-wide, including 186 arms monitors, five regional offices, and significant public information reach.<sup>151</sup> The UN's integrated monitoring and reporting system was used extensively by national and international actors and brought together political, security, electoral and human rights analysis.

The UN, under Nepali leadership, performed a great deal of confidence building, dialogue and outreach. UNMIN analysis also fed, and was used by, UN Security Council and other Member States who provided bilateral political and diplomatic support to the process. Finally, the Nepal Electoral Expert Monitoring Team conducted five visits from June 2007 to May 2008, reporting to the ECN, UN Secretary General and the Security Council, making recommendations on improvements to the electoral process as it unfolded.<sup>152</sup>

Key questions for the international community in this phase include: How can monitoring of the political and electoral process be ramped up, and then analysis fed to the responsible national authorities?<sup>153</sup> How to ensure the action of each country is based on a shared analysis, and ultimately works to support (accompany) national actors not only in Kathmandu, but also in different regions and districts? Is there an appropriate role for internationals in supporting the integration of Nepal's electoral security information management (noting the UNMIN role above, and that the 2008 DEAN P/EVER project was entirely USAID/IFES funded)? How can donors overcome challenges in taking risks in the political and security spheres, to coordinate their actions under national leadership and UN facilitation, and also to support longer-term institutional (re)building?<sup>154</sup> Important anti-violence public statements were also made by international organizations during 2006-2008,<sup>155</sup> and it is critical these are timely, calibrated, and accurate.

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<sup>150</sup> See, for example, *Field Bulletins* at <http://www.un.org.np/resources/field-bulletins> and *Monthly RCHCO Reports* at <http://www.un.org.np/resources/situation-update>

<sup>151</sup> CIC, *Annual Review of Political Missions 2011* (2011), 'Nepal Mission Review', pp87-91

<sup>152</sup> UN Nepal Electoral Expert Monitoring Team, *5<sup>th</sup> and Final Monitoring Report*, 5 April-8 May 2008

<sup>153</sup> '[The international community] supported Nepal's CA election and called it free and fair, but its monitoring of the post-election constitutional and political process has been weak.' Dev Raj Dahal, *Elections and Conflict in Nepal* (2010), p1 and pp 18-20. Also, in the analysis of one international, the current climate between internationals is one of 'polite diplomacy, but an absence of a shared analysis and vision and a commitment to work both strategically and tactically towards the empowerment of local actors', EVMA Interview, October 2010

<sup>154</sup> For a critique on international assistance, see: World Bank, *World Development Report 2011: Conflict, Security and Development, Overview*, April 2011, pp23-28

<sup>155</sup> See, for example: The Carter Center, *Press Release: Carter Center Urges an End to Election-Related Violence in Nepal* (2008); and multiple press statements by the UN Security Council, Secretary-General and Special Representative of the Secretary General archived here - <http://www.un.org/apps/news/infocusRelarch.asp?infocusID=126&Body=Nepal&Body1=>

The team does not believe electoral violence should become a driving theme of all international support, but it presents a sufficient danger to the legitimacy of the electoral process that it should be a component of their strategy. There should be a supportive and preventive role for Nepal's two large neighbors, adapting their 2008 role to anticipate the new threats. Internationals – like nationals – face the same challenge to begin preparations now even though an election has not been officially announced. One particular area the international community should focus on urgently is to be a key partner and funder for voter education and domestic observation, and to promote a high quality of both, targeting violence-prone districts.

### **3.5. Beginning a continuous anti-violence campaign**

*'...public education is key to developing intolerance to election violence within society',<sup>156</sup>*

The final issue is perhaps one of the most important, and the most achievable. There was consensus in interviews of the need for a pro-active anti-violence public awareness campaign. Interviewees advised that the campaign be planned immediately, to have messages ready when the election is called, and to have materials (posters, flip charts, and scripts) available on time. The campaign could target different communities at three levels: national, regional and local. The campaign could serve two purposes: to change the behavior of potential perpetrators, and to empower the public to expect rules-based and peaceful political competition. The campaign should empower the parties and the public to prevent and report malpractice when they see it.

While the ECN and Nepal Police were generally deemed the most important actors to lead and develop messages for a national campaign (with CSOs and the media as the key delivery mediums), political party leaders and their cadres were the single-most important group to influence. It is primarily their responsibility to set a positive tone for peaceful political competition before and during the campaign. Political parties and their supporters should be convinced they will win more votes by campaigning for peaceful elections, and they should promise publicly that they will campaign non-violently and prevent their cadre and supporters from behaving that way.

As a starting point, two known target groups for messaging are the perpetrators and the victims of electoral violence identified in the DEAN P/EVER Report 2008 (see data at Annex 3, Figures 3.3 and 3.4). Based on the re-alignment of political parties and non-state actors described in this report, new analysis should be conducted urgently by the ECN and MoHA to identify new most likely victims and perpetrators. The DEAN P/EVER data mapped visible violence, so additional analysis will be needed to map invisible violence. The susceptibility of psychological violence on women and youth should be identified.

Although the ECN and Nepal Police need to exert leadership to manage the campaign, an inclusive process of message development should be launched with active political party participation, in every district countrywide. This would increase the chance that all actors get on-board the campaign, and it would raise awareness and set positive expectations. Other factors could be considered in the campaign: the campaign should commence immediately, given tensions are already high, calls to demonstrate and

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<sup>156</sup> One of the final recommendations in the DEAN P/EVER, *Final Report* (2008), p44

reject results of an election are in the public domain, and national and international fundraising for illegal activities is likely already underway; and the campaign should begin positively, but also strongly, on the policy to strictly deal with criminal and electoral cases from day one.

A great deal of messaging was done in the 2008 electoral process on electoral security and preventing violence, but mostly in the context of the peace process. While the broader education campaign on the election system and process was well organized and coordinated, anti-violence messaging was not systematic, was dispersed among many different state and non-state, national and international actors, and was reactive to the unfolding peace process. The venues for this messaging varied from political party leaders and APMs, to the candidates. MoHA convened a series of election-related meetings at national, regional and district levels with the participation of the minister, secretary, chiefs of security agencies (national, regional and district) and CDOs. The Chief Election Commissioner and each of the four other Commissioners visited districts, spreading anti-violence messages and providing moral support to security officials as well as creating a positive election environment. The international community was very vocal, including Security Council members, but especially UNMIN and OHCHR. The next election will confront new actors and new challenges, and the voice of the Nepal Police will be especially critical in the campaign. Some successful examples of national or regional campaigns led by the police were discussed with interviewees, for example on trafficking, and more recently against crime common during Dashain.<sup>157</sup>

#### **4. Matrix of Seven Recommended Mitigation Strategies (game-changing)**

In this final section the team has outlined seven critical mitigation measures that emerged from the assessment aimed at preventing and managing electoral violence. Each of the sections matches to a sub-heading in sections 2 or 3. In keeping with the Terms of Reference at Annex 1, specific actions and the possible role of specific actors are included in the recommendations. The timeframe for recommended action is divided into immediate, medium and longer-term (I/M/L). Actors to take action are also listed (see abbreviations table) with the first actor generally the one who might be expected to lead or facilitate the action.

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<sup>157</sup> Himalayan News Service, 'Anti-crime messages on mikes', 11 October 2012

#### 4.1. Creating space for peaceful and accountable political parties

No.	Mitigation Title	Mitigation Action	I/M/L	Actors
1.	<b>Political Parties to commit to APMs</b>	<p>a. The ECN should re-commence convening, and political parties (PPs) should actively participate in, regular and structured All-Party Meetings (APMs) in each district. APMs should be the center of gravity for all formal electoral and political “process” issues, and could also be forums for <i>sambad</i>, and informal troubleshooting. Political party leaders should provide regional and district training on how their cadre and liaison officers should positively engage in APMs. ECN headquarters should provide clear guidance on the objectives of APMs to party cadre and DEO/ROs alike, provide training on best practices, share innovations from one district to another, and then DEO/ROs and political parties should collectively set a rolling monthly agenda.</p> <p>b. The ECN should consider ways to ensure appropriate authority and rank to facilitate the meetings in historically violent districts from now until Returning Officers are in place.</p> <p>c. The ECN should consider all measures that made some APMs effective in 2008, for example: ensure transparency by inviting media and observers to all meetings; share minutes of the meeting with all PPs and other invitees; engage with (and don’t duplicate) existing MoPR peacebuilding and dialogue mechanisms; ensure coordination between APMs and District Security Committee (DSC) participants, periodically inviting security sector representatives to APMs; and sending regional or headquarter delegations periodically to assist running meetings in districts experiencing the threat of violence and / or difficult criminal or electoral investigations of PP members, especially candidates.</p>	I/M	ECN, PP Liaison Officers, NP, MoHA / CDOs
2.	<b>ECN monitoring and support to PP activities</b>	<p>a. In the short term, select a few (at least 3-5) highly contested and violent constituencies based on past and recent experience and form pilot watchdog groups in each. Members could include CSOs, media, PPs, and security officials. The group could highlight breaches of the CoC and praise compliance.</p> <p>b. Identify and create a pool of expert dialogue facilitators, ready to deploy rapidly in small</p>	I  M	ECN, Media, CSO  ECN,

		<p>teams in the pre-election period, to work with APMs, DSCs and effective LPCs.</p> <p>c. Increase transparency of PP electoral activities by targeting specific party activities to monitor and report on, such as: internal ticket selection competitions, development of party manifestos, campaign schedules, and political party financing. Increase confidence in measures for PPs to monitor each other, and increase capacity of CSOs and media to act as watchdogs of political parties.</p> <p>d. Encourage political parties to practice joint campaigns (joint mass meetings, community to community, facilitated debates on issues, etc.) to develop a culture of non-violence, and promote issues-based competition.</p>	<p>M/L</p> <p>M</p>	<p>MoPR ECN, CSOs, PPs</p> <p>ECN, PP, CSOs</p>
3.	<b>Review campaign management</b>	<p>a. A special project should be initiated by the ECN to discuss with PPs and the security sector how to improve the quality of campaign management. The objective should be to reduce the violence in that phase, addressing specific types of violence (murder, kidnapping, battery, clashes between party cadres and armed groups).</p> <p>b. The project should set two objectives: to promote issues-based high-quality public debate and democratic principles such as freedom of movement, speech and assembly; and at the same time, publicly state some benchmarks, for example, that all campaign violence recorded by DEAN P/EVER in 2008 should be reduced in the constituency, across all types of violence.</p> <p>c. The ECN should identify districts with a history of both competitive elections and campaign violence, and compare their experiences to districts with a history of competitive elections without violence. Improve understanding of mitigation by and within political parties (how they control cadres), by the security sector (NP and APF regulation of campaign events, deployment of crowd control, arrest and investigation of perpetrators) and the ECN (monitoring of political party compliance with the CoC).</p>	I	ECN, PPs, MoHA, CSOs



#### 4.2. Security agencies and ECN Integration – From planning to response

<i>No.</i>	<i>Mitigation Title</i>	<i>Mitigation Action</i>	<i>I/M/L</i>	<i>Actors</i>
4.	<b>Integrating election security in two phases</b>	<p>The ECN and MoHA could consider to outline two election security phases that account for MoHA's national security responsibilities before an election is called, and the shift to the ECN's Constitutional responsibilities after the election is called:</p> <ol style="list-style-type: none"> <li>Phase 1 – MoHA-led integrated assessment and planning phase, culminating in one ECN-endorsed electoral security strategy and draft budgets for all entities;</li> <li>Phase 2 – ECN-led integrated electoral security management and response, when joint monitoring, assessment, prevention, mitigation and response are in place.</li> </ol>	I	MoHA, ECN
5.	<b>Local electoral violence desk review and report</b>	<ol style="list-style-type: none"> <li>The ECN and MoHA should form a working group of several staff each, tasked to take 2-3 weeks to analyze the current conditions for local violence compared to the 2008 CA election, for example comparing MoHA analysis of the 2008 elections with UN and observer data, and with the district-by-district breakdown in the DEAN P/EVER Report (2008), Figures 7 and 17.</li> <li>The working group could initiate two parallel reviews: (i) task all districts (CDOs, District Police Chiefs and DEOs) to collectively review the 2008 data and report on current conditions, based on a simple template provided by the working group; (ii) and, conduct focus group discussions (FGDs) in a collection of districts with a history of competitive elections and violence, and some with competitive elections and little to no violence (perhaps avoiding the districts this team visited). Questions could include: whether certain kinds of violence predominate in particular phases of the electoral cycle; the likelihood the direct and proximate causes of violence in 2008 are present now, and what are new threats.</li> <li>The group would submit a report of lessons from 2008 and more detailed mitigation actions appropriate for the next election. Through this process the ECN may learn the benefits of appointing a professional security adviser to their staff to act as the focal point on security issues, liaising and building personal relations with the security sector.</li> </ol>	I	MoHA, ECN

6.	<b>Integrated monitoring and reporting systems</b>	<p>a. In parallel to the desk review, ECN and MoHA technology experts should collaborate to recommend to their leaders how best to integrate information systems, to have one integrated network feeding electoral violence and electoral complaints into one system, which is then used to inform response and follow-up.</p> <p>b. In conducting the review, national experts should first consider existing MoHA and ECN tools and information systems, and then investigate international experiences. International examples include the International IDEA Election Risk Management (ERM) tool that appears the most sophisticated package to date, the USAID Security Assessment Framework, the Mexican Electoral Commission experience, and ideas in the UNDP conflict prevention handbook. See Section 1, ‘international perspectives’, and resources in the Bibliography. Those and other sources should be studied for improving the use of technology in violence monitoring and reporting, for example social media and SMS, CCTV, you-tube and GIS or Google mapping.</p> <p>c. The experts should transfer available and non-confidential data to the new system including: the UN’s 2007-2008 electoral violence data; the DEAN P/EVER 2008 data; NP, APF and NID data.</p>	I	ECN, MoHA
7.	<b>Integrated and timely budgets and planning</b>	<p>a. Ministry of Finance (MoF) should be invited to improve electoral security budgeting, to give ideas how to structure budgets more consistently across agencies, to integrate budget assessments, and facilitate cost sharing. A principal objective at the start should be to provide a record of expenditure at the end of the electoral process, to publicly announce the ‘cost of the election’ and the ‘cost of election security.’</p> <p>b. Using analysis from the local violence desk review above, the ECN will need to prepare assumptions and scenarios on the electoral process,<sup>158</sup> and MoHA assumptions and scenarios about electoral security.</p>	I	MoF, ECN, MoHA

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<sup>158</sup> The ECN should also ensure the plans include expected steps in the electoral process that have a bearing on electoral security, for example: the expected and legislated timeframe between phases, the number and location of registered political parties, the number and location of polling centers, issues with new technology to be used, physical and mobile security needs of sensitive materials, statistics/maps on highly competitive past elections, and on CoC complaints, criminal EDR cases and petitions.





		<p>MoHA/ECN database (see information management above); consider time-limits for police investigation and AG filing for those cases, and time-limits for Court adjudication.</p> <p>b. Shift the burden of proof to the defendants (alleged perpetrators), not the state.</p> <p>c. Urgent EDR legal reform on criminal cases: increase party and candidate financing cap to be more realistic; review and increase penalty to match the context; if PPs cross the barrier of the election cap, then link that offence to the anti-corruption law, and then automatically, to enforcement to those agencies (CIAA, etc.).</p>	M/L	MoLJ, AG, ECN, PPs
12.	<b>Revise EDR legal framework</b>	<p>a. If the Constitutional framework for the election allows it, then a full EDR overhaul should take place as envisaged.</p> <p>b. If that cannot take place, maximum changes should be made to simplify electoral justice and to empower the ECN, Nepal Police and judiciary. Strong pro-active enforcement at the very start of the electoral process should be upheld.</p> <p>c. In addition to capping election costs, legal provisions are needed to report and monitor the source of funding, to define the sources of donations (who can and who can't) and how much any donor can contribute to election costs.</p>	I	ECN, PPs, MoLJ, AG
13.	<b>Review, advertise and enforce CoC</b>	<p>a. Review and revisit the CoC to make it realistic to the current context. The document should be consulted with PPs to test it for a number of weaknesses: Does it embody principles of being sensible, reasonable and enforceable? Can all clauses that have no history of enforcement be removed? Can the burden of proof be moved to the perpetrators (as per anti-trafficking and corruption cases)?</p> <p>b. At the same time review how to greatly improve (and test) awareness of the CoC among all stakeholders, and enforcement by authorities, specifically: establish a system to map CoC complaints and record each case through to conclusion (see information management above); periodically publish the data publicly; link CoC punishment to legislation, increase punishment for key offenses and make the adjudication time-bound; hold specific training for all DEOs, ROs and POs on their CoC responsibilities, and test</p>	I/M	ECN, PPs, MoHA, AG

		<p>them; have DEOs and ROs provide workshops for PP candidates and cadres at all levels; before candidate nominations (as soon as the election is formally called) host a public signing ritual with media present, signed by all leaders at the national level, then follow it with ceremonies in every district with PP district chiefs and liaison officers (those who attend APMs); on the day of the final list of nominated candidates, all ROs conduct a ceremony with a public CoC signing by every candidate, using ‘children’s voices’ in that ceremony.<sup>161</sup></p> <p>c. To support ECN enforcement, link ECN action with other actors, such as the Anti-Corruption Commission Body (CIAA), to take up anti-corruption cases especially on election expenses and money-laundering; increase accountability of the ECN so that the ECN is seen to be responsible to disseminate, monitor and enforce the CoC.</p> <p>d. Consider revamping Monitoring Teams but in more of an advisory role to the CEC, and supportive of DEO/ROs, but not with the authority to penalise.<sup>162</sup></p>		
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#### 4.4. Securing ECN independence and capacity, and managing new technology

<i>No.</i>	<i>Mitigation Title</i>	<i>Mitigation Action</i>	<i>I/M/L</i>	<i>Actors</i>
14.	<b>ECN capacity and independence</b>	<p>a. The Government of Nepal and political parties should ensure the urgent and non-partisan appointment of Election Commissioners. Likewise they should ensure a timely and adequate election budget is provided to the ECN.</p> <p>b. The ECN and GoN could consider putting in place a regional ECN structure for the next election, at the appropriate seniority. For the longer term, they could consider different models (based on future state restructuring) that would provide space for the ECN at the</p>	<p>I</p> <p>M/L</p>	<p>GoN, PPs, MoF, ECN</p> <p>ECN, GoN</p>

<sup>161</sup> Such an approach was successful before Guyana’s 2006 elections: ‘A highlight of the ceremony was the voices of children, invisible to the audience, reading out short messages they had composed themselves on what they expected for their future from political leaders.’ UNDP, *Elections and Conflict Prevention* (2009), p 72

<sup>162</sup> For training and capacity building on criminal and electoral justice cases, see mitigation above under electoral security and justice

		<p>central level to focus on strategy, research and policy, and the technical and operational details are delegated to the new structures at the field level. This approach can be facilitated with a core ECN permanent electoral staff, focused on high quality headquarters and field staff, with comprehensive professional development, and broad comparative election experience.</p> <p>c. The ECN should provide more comprehensive training for ROs and POs to manage elections at the constituency and polling center levels, including on electoral security and justice. The ECN could also pilot expanding RO and PO recruitment by inviting applications from ex-officials (retired), graduate students, and other professionals.</p>		
15.	<b>Managing new electoral technology</b>	<p>a. <i>Citizenship Certificate and Voters List</i>: to address the gap in eligible versus registered voters, the ECN should use the pre-election period (regardless how long/short it is) to rollout alternate strategies to accommodate (enfranchise) missing eligible voters. The GoN should give top priority to issue a Citizenship Certificate to potentially eligible voters who are yet to receive one.</p> <p>b. <i>EVM</i>: The ECN should consider the pros/cons of a phased implementation and rollout of EVM, focusing on traditionally accessible and violent constituencies. They should invest heavily in professional project management, polling staff training and voter education to ensure a well-managed and well-advertised rollout.</p>	I/M	ECN, GoN, PPs

#### 4.5. Empowering women in politics – in parties, as voters and in institutions

<i>No.</i>	<i>Mitigation Title</i>	<i>Mitigation Action</i>	<i>I/M/L</i>	<i>Actors</i>
16.	<b>Empowering women as political actors</b>	<p>a. <i>Women in Parties</i>: PPs should ensure: that more women are given leadership roles in parties, both elected by internal PP elections and selected in key national and district leadership positions; that women are always present proportionally in PPs candidate selection committees; that more women are pre-selected in both PR and in FPTP seats; and that those seats are competitive for that party.</p>	I/M	PPs





#### 4.6. Other actors – impartiality, coverage and coordination

No.	Mitigation Title	Mitigation Action	I/M/L	Actors
18.	<b>Observers</b>	<p>a. <i>CoC</i>: The ECN should work with observer groups to re-promulgate and strictly abide by the observer CoC. Consider increasing the powers of the ECN in enforcement, to enforce accreditation standards and for the ECN to vet organizations with a record of partial conduct.<sup>164</sup> With many domestic observer groups already members of the Global Network of Domestic Election Monitors, domestic observers should collectively follow the advice of the Global Commission on Elections Democracy and Security and abide by their global principles.<sup>165</sup></p> <p>b. <i>Invest in LTOs</i>: Observer groups should be encouraged (and funded) to invest in quality rather than numbers, in particular in long term observers, and in particular with better coverage of the most competitive and historically violent districts.</p> <p>c. <i>Stronger coordination</i>: To ensure the best coverage and quality of in-depth reporting on conditions for and incidents of violence, develop stronger observer coordination mechanisms (a secretariat) and information sharing among and between domestic and international observers and the ECN.</p> <p>d. <i>For polling day</i>: Develop strategies to overcome the “PM syndrome”, the absence of observers in polling centers in the late afternoon when fraud and intimidation may occur; ensure all observers receive pre-deployment training on how to anticipate, monitor and report on security threats and incidents, responsibilities of security actors, criminal and electoral law, and how security coordination mechanisms should function.</p>	<p>I</p> <p>M</p>	<p>ECN, Observer groups</p> <p>Observer groups, ECN</p>
19.	<b>Media</b>	<p>a. Several measures to improve the orientation of the media to prevent and mitigate electoral violence are similar to those for observers: to increase coverage of high-risk</p>	I/M	ECN, MoIC,

<sup>164</sup> Along the lines of the Election Commission Act, Article 28, and / or using the powers to issue orders in Article 44.

<sup>165</sup> Members are here: <http://www.gndem.org/members>; Report of Global Commission, *Deepening Democracy* (2012), p8

		<p>constituencies; to follow individual cases from the incident, through investigation, arraignment and adjudication; to improve the implementation of the media CoC, to continue past practice on monitoring the CoC, and ensure a robust training and capacity building program on both the CoC and on electoral security and justice law and mechanisms is in place. The training program should have a module on media investigation, understanding and analyzing electoral violence for timely and accurate reporting, and on impartial reporting.</p> <p>b. Additionally, the media should allocate fixed ECN media time, to allow dissemination of key electoral messages, and fixed and dedicated time for the anti-violence messaging described below.</p> <p>c. The media should themselves use, and support others using social media for the anti-violence campaign, and to report and to monitor violence. Media could be more ambitious in improving the quality of electoral politics by de-emphasizing the focus on leadership cult and undemocratic practices within political parties. Instead they could encourage and directly assist the public to enter into safe spaces for <i>sambad</i>, and media leaders could use their status by facilitating political dialogue <i>without reporting on it</i>.</p> <p>d. The media should target the barriers to women in politics and violence against women. This could include airing programs on the voices of women, the barriers they face in political representation (in particular pre-selection) and the violence they face in communities during the campaign and around polling.<sup>166</sup></p>		Media
20.	<b>Local CSOs</b>	<p>a. CSOs should improve their self-regulation by greater commitment to follow the spirit of the (non-binding) CSO CoC. They should use their access and high trust in communities to advocate strong community-based responses to psychological violence, and be equally active in helping the anti-violence campaign be based on culturally and region-specific messages.</p> <p>b. National and local CSO leaders could use their convening power to summon politicians</p>	I/M/L	CSOs, ECN, SWC

<sup>166</sup> See, for example, Dharma et al., *Campaign 2008*, Press Council Nepal (2008), p10

		<p>of different parties to <i>their</i> (CSO) meetings. Politicians would respond to a public agenda, answer questions about their commitment to competing within the rules, and with media coverage to be on the record as advocates for non-violence.</p> <p>c. CSOs are also well placed to raise awareness on preventing and investigating gender-related electoral violence, and to hold the institutions to account in following through on the gender-sensitive measures listed above. CSOs could consider similar research to that conducted by SAP/International IDEA in 2008.</p> <p>d. Likewise, CSOs should contribute to the urgent discussion to weigh the benefits of another initiative along the lines of DEAN P/EVER project. They should at least consider the reservoir of experience is brought forward from the groups and 480 individual monitors (locally based focal points) who participated in the 2008 DEAN P/EVER project.</p>		
21.	<b>The International Community</b>	<p>a. The international community should shift to a collaborative and empowering approach, underpinned and driven by ongoing and honest dialogue about what the new tasks are, how they can assist Nepalese and how they themselves as an international community can improve coordination and share analysis.</p> <p>b. The international community should discuss with the ECN and the government the confidence building measures necessary to support (accompany) the electoral process and political party dialogue.</p> <p>c. Neighboring countries could review the positive mitigation steps taken before and after the 2008 CA election, including via existing cross-border coordination mechanisms. Discussion could include whether the timeframe of border closure in 2008 was too long or too short for the current circumstances, and how to better prevent triggers such as movement and influence of armed criminal groups, including in the early period when internal political party candidate competition and selection begins, when candidates may be looking for illegal money and muscle from cross-border allies.</p> <p>d. All members of the international community should support ECN leadership in each of their four levels of electoral management coordination: (i) Diplomatic coordination; (ii) Donor coordination and basket fund management; (iii) Election, technical and policy</p>	I/M	International community, ECN, GoN

		<p>coordination; and, (iv) Operational and thematic working groups.</p> <p>e. In addition to existing development partner programs, the international community should discuss with ECN and MoHA the urgent aspects of their mitigation strategy which could benefit from donor funds, and as well ensure adequate funding for domestic and international LTO efforts, and any CSO effort to monitor and report electoral violence.</p> <p>f. International expertise could also be useful to lend comparative knowledge in how other countries have introduced new technology and mitigation techniques.</p>		
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#### 4.7. Begin a continuous anti-violence messaging campaign

<i>No.</i>	<i>Mitigation Title</i>	<i>Mitigation Action</i>	<i>I/M/L</i>	<i>Actors</i>
22.	<b>Start continuous messaging in all mediums</b>	<p>a. <i>Convene messaging workshops:</i> In parallel to the integrated security assessment, the ECN and MoHA could task their public outreach experts to co-host a series of workshops (national and regional, with state and non-state actors) to brainstorm appropriate anti-violence messages. Messages could include who is responsible for different aspects of preventing and mitigating violence (MoHA, security agencies, judicial system, ECN), as well as what the public should do (volunteer in peaceful politics, report violence, vote for peaceful political parties). Invitees could include political parties, Nepal Police and APF, Judges and AG staff, CSOs and local media.</p> <p>b. <i>Creative tailored messages:</i> The campaign could consider the following to improve the inclusiveness and the quality of the campaign: a special effort should be made to engage political party leaders, party spokespersons and media liaisons at national and district levels; several experts who were involved in well known campaigns – for example on trafficking – could be invited to present their lessons on what has worked in other national campaigns; the campaign should make a special effort to target political parties</p>	I	ECN, MoHA, all

		<p>and the threats undermining women's participation in politics, and to convince the "16%" men and women that women's participation is vital<sup>167</sup>; the ECN could invite media leaders to spearhead thinking on how to make best use of existing mediums to deliver the messages; likewise several social media and messaging (advertising) experts from the private sector could be involved to help develop the most relevant lessons from the 2008 electoral process and to brainstorm key anti-violence messages that will have the most impact in the current political environment; and comedians could be engaged to make light of a range of very serious and sensitive topics.</p> <p>c. <i>Youth leaders drive anti-violence message</i>: The anti-violence strategy should engage youth leaders, youth candidates and members in each political party, and it should begin by bringing them onboard to help design the messages. A series of FGDs, with support from groups already working with youth leaders and cadre, should be considered. The program should commit to use social media extensively, with messages from youth leaders for youth. Special programs should be developed (via an All Party Youth Leader Mechanism) to give those leaders access to candidates from other parties, and to network with other youth wings at national and local levels. A series of regional and community-level workshops on their role in anti-violence should be run.</p> <p>d. <i>Start the first phase of the campaign with a focus on sambad</i>: Without waiting for all decisions on the future election, develop a plan now to use the existing outreach capacities of ECN, MoPR, MoHA, Nepal Police and the APF. Priority pre-election messaging could include how dialogue within and between parties could be improved,<sup>168</sup> and how political parties decide candidates (i.e. in pre-selection PPs should promote peaceful candidates who follow the CoC).</p>		
23.	<b>Increase ECN capacity</b>	The ECN should consider employing a team of professional voter/anti-violence education officers in each district working under the DEO (or at least one team per	M	ECN, GoN

<sup>167</sup> See ANFREL, *Final Report* (2008), p39, that in a survey '84% of Nepalis expressed support for women making their own decision on election day.'

<sup>168</sup> For example, explore how 'dialogue' is understood – *Bad bibaad* (debate), *barta* (talks) and *sambad* (dialogue) – emphasizing how important *sambad* is.

		region to be deployed as needed) under the command of the ECN voter education department, but jointly supporting ECN/NP anti-violence campaign efforts.		
24.	<b>Civic education</b>	<p>a. The ECN and its partners could be more ambitious over the longer term to address some of the underlying factors depleting confidence in peaceful electoral politics, and encourage <i>sambad</i> as a democratic governance norm. This could involve outlining a national civic education strategy on responsive and democratic governance and peaceful politics. This could lead to the development of a creative and diverse package of messages to be used in different mediums and in many forums, including schools.</p> <p>b. The BRIDGE electoral violence module could be one of several modules. The package could be tailored for use in, for example: induction training for new ECN, government and security sector staff; to integrate into existing CSO community-based training; to give to informal community based organizations; to be used for any type of election (national, state, local).</p>	L	ECN, all

## 5. Annexes



## **Annex 1. Assessment Team Terms of Reference**

### ***Mission: Electoral Violence and Mitigation Assessment***

#### **I. Purpose of the Assessment**

Recognizing that effective electoral security is critical to ensuring a safe and secure electoral environment, the project is working to enhance ECN capacity to anticipate, prevent and manage electoral violence.

As part of this support, the project is seeking to carry out an electoral violence assessment that 1) maps out the existing processes and institutions, relevant legislation, stakeholders and potential triggers for violence and 2) identifies specific actions to prevent and mitigate electoral violence. Given the critical role of government agencies, security providers, non-government actors including media, civil society and political parties, the assessment is expected to be multi-agency focused. The assessment should provide information to all key stakeholders on the potential for conflict and their role in preventing and mitigating conflict.

#### **II. Objective of the Assessment**

Through the electoral violence assessment the project seeks to support ECN in identifying, assessing and managing election violence risks. The specific objectives of the assessment include:

- a) Identify and profile potential electoral conflict and violence
- b) Propose program strategies and activities to prevent, manage and mediate this conflict
- c) Recommend a monitoring and evaluation framework

#### **III. Scope of the Assessment**

The team will be required to assess the electoral security environment and recommend interventions to prevent and manage potential electoral violence in the upcoming elections in Nepal. The assessment team has the following principal tasks that should be examined as it plays out over the electoral cycle:

- Identification of electoral violence prevention planning objectives and priorities
- Identification of historical conflict factors, tactics and types of incidents and locations and intensity of electoral violence
- Analysis of the context in which the next set of elections will take place in Nepal (i.e. social, political, security, economic risk factors)
- Stakeholder analysis focusing on both state and non-state stakeholders
- Recommendation on programming for state and non-state stakeholders including the international community on preventing and managing electoral violence; programming measures should address, among others, measures for electoral legal reform, electoral security administration capacity, security forces' training programs, and civil society peace education campaigns
- Establishing a monitoring and evaluation framework for the recommended programming interventions
- Enhancing capacity of key electoral stakeholders on their role in electoral violence prevention

#### **IV. Methodology**

As part of the assessment, the team is expected to conduct desk review and consultations with key stakeholders, both non-state and state actors. The team is expected to apply the following approaches:

- Desk review of relevant documents (project reports, violence monitoring reports from 2008 election, media reports, etc.)
- Briefing and debriefing sessions with ECN and ESP
- Interviews with the election commission, security providers, judiciary, political parties, civil society organizations, media, youth groups, relevant ministries and the international community
- Field visits as deemed appropriate

#### **V. Deliverables**

The assessment team is expected to provide the following deliverables:

- Start of mission briefing on proposed methodology, design and work plan
- A draft assessment report within 15 days of start date
- A final comprehensive assessment report within 25 days of start date of sufficient detail and quality, taking on board comments and with annexes as required
- An exit presentation to ESP Project Board on findings and recommendations
- A workshop with key electoral stakeholders from state, non-state and the international community to share findings and recommendations

The reports to include, but not be limited to, the following components:

- Executive summary
- Introduction
- Description of the assessment methodology
- Context analysis
- Electoral violence prevention planning objectives and priorities
- Recommendations on programming interventions
- Monitoring and evaluation framework
- Annexes as required

#### **VI. Implementation Arrangements**

To facilitate the work of the assessment team, UNDP-ESP will appoint an experienced staff person with background knowledge on election violence in past elections. The ESP will also provide information and guidance to the assessment team in their analysis of the historical risk factors that can become triggers of violence in the upcoming elections in Nepal. In addition, ESP will assist in developing a detailed agenda, organize meetings and facilitate field visits as necessary.

Key background material will be sent in advance and will be reviewed by the team prior to the commencement of the fieldwork. ECN and ESP will brief the assessment

team upon arrival on the objectives, purpose and output of the assessment. An oral debriefing in-country by the review team on the proposed work plan and methodology will be done and approved prior to the commencement of the review process. The team will undertake their assessment based on consultations with the advisory group, interviews undertaken, discussions and consultations with all relevant stakeholders and review of available reports and background material. As a minimum indication, the team should consult with the election commission, political parties, CSOs, media, youth groups, security providers, development partners, and other key government stakeholders. ECN and ESP will provide guidance in identifying, contacting and arranging for discussions, meetings with the stakeholders.

The ECN and ESP will also facilitate the organizing of a workshop during which the assessment team presents its preliminary findings and recommendations and seek input from key stakeholders on best practices in implementing violence prevention activities in a post-conflict environment.

## **VII. Timing and Duration**

The assessment will take place over a period of 25 working days (with at least 2 weeks in Nepal).

## **VIII. Composition of the review team**

- International Election Security Expert
- Senior National Elections Advisor
- Senior National Governance Specialist

## Annex 2. Team Schedule and List of Interviewees

Figure 2.1: Team Schedule

<i>Date</i>	<i>Meeting Details</i>
24 September	Team commenced work with introductory meetings and briefings with ECN and ESP/UNDP
24-29 September	Individual meetings and focus group discussions in Kathmandu
29 September – 1 October	Field visit to Dhanusa and Mahottari Districts, individual meetings and focus group discussions
2-5 October	Individual meetings and focus group discussions in Kathmandu
6-7 October	Field visit to Dhading District, individual meetings and focus group discussions
8 October	Half-day workshop: <i>Preliminary Findings on Electoral Violence and Mitigation Assessment</i> , Gokarna Forest Resort
9-11 October	Final meetings and drafting of report outline
12 October	Exit debriefing on report outline with ECN and ESP/UNDP
28 October	Submission of version 1 Draft Final Report

Figure 2.2: Summary of interviews

<i>Interviewees by location</i>	
Kathmandu	118
Dhanusa	107
Mahottari	27
Dhading	22
	<b>274</b>

<i>Interviewees by group<sup>169</sup></i>	
Academic	6
Civil society and private sector	32
ECN and Women Commission	32
International community	32
Judicial sector	30
Media	5
Political parties	39
Security sector	33
Voters	65
	<b>274</b>

<sup>169</sup> These groupings are inexact, noting numerous interviewees have diverse backgrounds.

Figure 2.3: List of Interviewees<sup>170</sup>

No.	First Name	Last Name	Title	Organization	Location	WS
<b>Academic</b>						
1	Mr.	Bhogendra	Jha	Professor	R.R.M. Campus	Dhanusa
2	Mr.	Surendra	Labh	Professor	R.R.M. Campus	Dhanusa
3	Mr.	Anil	Kumar Sah	District President	TUTA,R.R.M.Campus,Janakpur	Dhanusa
4	Mr.	Dhruba	Kumar	Professor	Tribhuvan University	Kathmandu
5	Mr.	Vijay	Kant Karna	Professor	TU Kirtipur	Kathmandu Yes
6	Mr.	Surendra	K. Mahato	Advocate		Kathmandu Yes
<b>Civil society</b>						
7	Ms.	Radhika	Sapkota		Focus Nepal	Dhading
8	Mr.	Sitaram	Adhikari		INSEC	Dhading
9	Ms.	Muna	Simkhada		NJK Dhading	Dhading
10	Mr.	Arjun	Prasad Khatiwada		Prathush dainik	Dhading
11	Ms.	Gyatari	Khatiwada		WHRD	Dhading
12	Mr.	Dipak	Bahadur K C	Chairman	Community Mediation Center	Dhanusa
13	Ms.	Manju	Mahato	Community Mediator, Bahedabela VDC	Community Mediation Center	Dhanusa
14	Mr.	Jiwachha	Mahato	Community Mediator, Naktajhij VDC	Community Mediation Center	Dhanusa
15	Mr.	Vijay	Datta	Associate Professor	Human Rights (Bhuuija JNK)	Dhanusa
16	Mr.	Sunil	Kumar Mallik	Chairman	MINAP Janakpur	Dhanusa
17	Mr.	Ram	Charitra Sah	District President	NEOC	Dhanusa
18	Ms.	Urmila	Yadav	District Secretary	NEOC	Dhanusa
19	Mr.	Kamal	Sah	District Treasurer	NIDC	Dhanusa
20	Ms.	Rekha	Jha	Community Mediator, lawyer	PRONEP, Janakpur	Dhanusa
21	Ms.	Munni	Devi Das	Social Activist	PRONEP, Janakpur	Dhanusa
22	Ms.	Punam	Chaudhari	Community Leader, Women's Rights	PRONEP, Nepal	Dhanusa
23	Mr.	Debendra	Thakur Sila	Community Mediator, lawyer	SIC, Janakpur	Dhanusa
24	Mr.	Uday	Nepali	President	DEAN	Kathmandu
25	Mr.	Subdhayak	Shah	Project Coordinator	DEAN	Kathmandu Yes
26	Mr.	Udaya	Bahadur Bohara		FNCCI	Kathmandu Yes
27	Mr.	Sanjeeb	Ghimire		Freedom Forum	Kathmandu Yes
28	Mr.	Homa	Kanta Chaulagain		HURPES	Kathmandu Yes
29	Mr.	Subodh	Pyakurel	President	INSEC	Kathmandu
30	Mr.	Shyam	Yadav		LSC	Kathmandu Yes
31	Mr.	Surya	Prasad Shrestha	President	NEOC	Kathmandu
32	Ms.	Sharmila	Karki	President	NGO Federation	Kathmandu
33	Mr.	Krishna	Pradhan	President	NLS	Kathmandu Yes
34	Mr.	Arjun	Kumar K.C.	Investigation Director		Kathmandu Yes
35	Ms.	Anita	Sapkota	Lawyer		Kathmandu Yes
36	Mr.	Shobhakar	Budhathoki	Security Analyst		Kathmandu Yes
37	Mr.	Ramesh	Lamsal	TRN		Kathmandu Yes
38	Mr.	Hari	B Basnet			Kathmandu Yes
<b>ECN</b>						
39	Mr.	Ramkrishna	Aryal	District Election Officer	ECN/ Dhading District Office	Dhading

<sup>170</sup> The team met with many interviewees more than once: only the first meeting is shown in this table. 'WS' refers to attendees of the 8 October EVMA Workshop. 'Yes\*' indicates those attending the workshop who were also interviewed separately.

40	Mr.	Ram	Kumar Sharestha	Presiding officer (CA election)	Neelkantha H.S.S.	Dhading	
41	Mr.	Govinda	Prasad Pandit	Presiding officer (CA election)	Neelkantha H.S.S.	Dhading	
42	Mr.	Nabaraj	Sharma	Presiding officer (CA election)	Neelkantha H.S.S.	Dhading	
43	Mr.	Bishnu	Silwal	Presiding officer (CA election)	Neelkantha S/ Campus	Dhading	
44	Mr.	Ram	Bilas Thakur	Presiding officer (CA election)	District Agriculture Development Office,Dhanusa	Dhanusa	
45	Mr.	Ramseh	Prasad Sah	Presiding officer (CA election)	DP	Dhanusa	
46	Mr.	Kapil	Aryal	Account Officer	ECN/ DEO Dhanusa	Dhanusa	
47	Mr.	Santosh	Kumar Raut	Computer Operator	ECN/ DEO Dhanusa	Dhanusa	
48	Mr.	Janaki	Karna	District Election Officer	ECN/ DEO Dhanusa	Dhanusa	
49	Mr.	Jitendra	Kumar Thakur	Presiding officer (CA election)	FD	Dhanusa	
50	Mr.	Ram	Dayal Mahato	Presiding officer (CA election)	Janaki Secondary School ,Janakpurdham	Dhanusa	
51	Mr.	Manoj	Kumar Thakur	Presiding officer (CA election)	Sri Janaki Secondary School, Janakpur	Dhanusa	
		<i>DEO</i>	<i>Dhanusa</i>		Visit to Dhanusa DEO	Dhanusa	
52	Mr.	Neel	Kantha Uprety	Acting Chief Election Commissioner	ECN	Kathmandu	Yes
53	Mr.	Dolakh	Gurung	Election Commissioner	ECN	Kathmandu	
54	Mr.	Dr. Ayodhee	Yadav	Election Commissioner	ECN	Kathmandu	
55	Ms.	Usha	Nepal	Former Election Commissioner	ECN	Kathmandu	
56	Mr.	Maheshwor	Neupane	Joint Secretary	ECN	Kathmandu	Yes
57	Mr.	Madhu	Prasad Regmi	Joint Secretary	ECN	Kathmandu	Yes
58	Mr.	Sharada	Pd. Trital	Joint Secretary and Spokesperson	ECN	Kathmandu	Yes
59	Mr.	Arun	Jha	Legal Officer	ECN	Kathmandu	Yes
60	Mr.	Gyan	Darshan Udas	Secretary	ECN	Kathmandu	Yes
61	Mr.	Rishiram	Bhusal	Section Officer	ECN	Kathmandu	Yes
62	Mr.	Bhola	Dahal	Section Officer	ECN	Kathmandu	Yes
63	Mr.	Chandra	Kanta Poudel	Under Secretary	ECN	Kathmandu	Yes
64	Mr.	Suman	Ghimire		ECN	Kathmandu	Yes
65	Mr.	Kailash	P Subedi		ECN	Kathmandu	Yes
66	Mr.	Komal	Prasad Dhamala	Executive Director	ECN/EEIC	Kathmandu	Yes
67	Mr.	Mahamuni	Acharya	Admin Chief		Kathmandu	Yes
68	Mr.	Awani	Mainali Bhattarai		National Women Commission	Kathmandu	Yes
69	Ms.	Pinky	Ray	District Election Officer	ECN/ DEO Mahottari	Mahottari	
70	Mr.	Ramnarayan	Raut	Assistant DEO	ECN/ DEO Mahottari	Mahottari	
<b><u>International community</u></b>							
71	Mr.	Youvraj	Acharya	Project Coordination Officer and Liaison	UNDP/PBRU	Dhanusa	Yes
72	Ms.	Diana	Garcia Alcubilla	Governance Program Manager	Delegation of the European Union to Nepal	Kathmandu	Yes
73	Ms.	Enora	Marenne	Political Advisor	Delegation of the European Union to Nepal	Kathmandu	
74	Mr.	Jiwan	Subedi	Political Affairs Officer	Delegation of the European Union to Nepal	Kathmandu	Yes
75	Ms.	Diana	Gracia		EU	Kathmandu	Yes
76	Mr.	Alan	Wall	Country Director	IFES	Kathmandu	
77	Ms.	Nilu	Basnet	Deputy Country Director	IFES	Kathmandu	
78	Ms.	Samhita	Malla	Programme Officer	IFES	Kathmandu	Yes
79	Ms.	Leena	R. Tamang	Country Director	International Idea	Kathmandu	Yes
80	Mr.	Magngjae	IM		KOICA	Kathmandu	Yes
81	Ms.	Neelam	Thapa		KOICA	Kathmandu	Yes
82	Mr.	Tarikul	Ghanj	Consultant to NDI	NDI	Kathmandu	Yes

83	Ms.	Anamika	Rai	Sr. Program Officer	NDI	Kathmandu	Yes
84	Mr.	Sadhu	Tamang	RRMO	RMO	Kathmandu	Yes
85	Mr.	Sumit	Sharma Sameer	Programme Officer	The Asia Foundation	Kathmandu	Yes
86	Mr.	Kiran	Chapagain	Democratic Governance Specialist	UN DPA Liaison Office	Kathmandu	
87	Mr.	Yohn	Medina-Vivanco	Head	UN DPA Liaison Office	Kathmandu	
88	Mr.	Robert	Piper	Resident Coordinator	UN Nepal	Kathmandu	
89	Mr.	Remi	Van Doorn	Field Officer Coordinator	UN RCHC Office	Kathmandu	
90	Mr.	Lach	Fergusson	Peacebuilding Adviser	UN RCHC Office	Kathmandu	
91	Mr.	Duane	Berian Clifford-Jons	Risk Management Officer	UN RCHC Office/SDC	Kathmandu	
92	Mr.	Umesh	Upadhaya	IT/UNV	UNDP	Kathmandu	Yes
93	Ms.	Pragya	Bashyal	Program Analyst	UNDP	Kathmandu	Yes
94	Ms.	Shoko	Noda	Country Director	UNDP Nepal	Kathmandu	
95	Mr.	Jorn	Sorensen	Deputy Country Director	UNDP Nepal	Kathmandu	
96	Mr.	Chris	Spies	Consultant	UNDP PBRU/CPP	Kathmandu	
97	Mr.	Dennis	Curry	Peacebuilding and Recovery Specialist	UNDP PBRU/CPP	Kathmandu	
98	Mr.	Peter	Barwick	Senior Advisor / Programme Manager	UNDP PBRU/CPP	Kathmandu	Yes
99	Mr.	Andres	Del Castillo	Chief Technical Advisor	UNDP/ESP	Kathmandu	Yes
100	Mr.	Kundan	Das Shrestha	Deputy Programme Manager	UNDP/ESP	Kathmandu	Yes
101	Mr.	Prabhat	Kumar	GIS Officer, support to EVMA	UNDP/ESP	Kathmandu	Yes
102	Ms.	Najia	Hashemee	Technical Advisor	UNDP/ESP	Kathmandu	Yes
<b><u>Judicial sector</u></b>							
103	Mr.	Dev	Kumar Giri	District Attorney Officer	District Attorney Office	Dhading	
104	Mr.	Sahadev	Pd. Bastola	District Judge	District Court, Dhading	Dhading	
[20]		<i>Members</i>	<i>Bar Association</i>		<i>20 members, Dhanusa Chapter</i>	Dhanusa	
105	Mr.	Prakash	Shrestha	Appellate Court Attorney	Appellate Court Attorney Office	Dhanusa	
106	Mr.	Parameshwor	Parajuli	District Attorney	District Attorney's Office	Dhanusa	
107	Mr.	Balbhadra	Bastola	District Judge	District Court	Dhanusa	
108	Mr.	Thakur	Sharama	District Judge	District Court	Dhanusa	
109	Mr.	Mahesh	Pd. Pudasaini	District Judge #1	District Court, Dhanusa	Dhanusa	
110	Mr.	Shyam	Krishna Mallik	Chairman	Nepal Bar Association, Dhanusa Chapter	Dhanusa	
111	Mr.	Binod	Kumar Pokharel	Attornacy	Attorney General Office	Kathmandu	Yes
112	Mr.	Man	Bahadur Aryal		MoLJ	Kathmandu	Yes
<b><u>Media</u></b>							
113	Mr.	Sita	Ram Prasad Barma		FNJ Dhading	Dhading	
114	Mr.	Ram	Aashish Yadav	District President	FNJ Dhanusa	Dhanusa	
115	Mr.	Shiv	Gaule	President	Federation of National Journalists (FNJ)	Kathmandu	
116	Mr.	Taranath	Dahal	Ex-president	FNJ, Freedom Forum	Kathmandu	
117	Ms.	Manchala	Jha	Lecturer T.U. and Freelancer	National Dailies	Kathmandu	Yes
<b><u>Political parties</u></b>							
118	Mr.	Sherbahadur	Bhandari		CPN-Maoist	Dhading	
119	Mr.	Tirtha	Silwal		CPN-ML	Dhading	
120	Mr.	Guru	Prasad Burlakoti		CPN-UML	Dhading	
121	Mr.	Shivanidhi	Khanal		CPN-Unified	Dhading	
122	Mr.	Representative			NC, Dhading	Dhading	



123	Mr.	Nanda Prashad	Kapari		Rastriya Jansakti Party	Dhading	
124	Mr.	Mohan	Kumar Shrestha		Rastriya Prajatantra Party	Dhading	
125	Mr.	Ram	Bhahadur Bhandari		UCPN (Maoist)	Dhading	
126	Mr.	Dipak	Yadav	District in charge	CPN-Maoist	Dhanusa	
127	Ms.	Rita	Sinha	District member	CPN-Maoist	Dhanusa	
128	Mr.	Roshan	Janakpuri	Secretary	CPN-Maoist, Mithila Rajya Samiti	Dhanusa	
129	Mr.	Ram	Chandra Pandit	District Vice-Chairman	CPN-UML	Dhanusa	
130	Mr.	Chandeshwa	Purbe	UPCN (Maoist) Health Sector	In charge- Mithila State Committee	Dhanusa	
131	Mr.	Shree	Lal Mahaseth	Secretary	NCP-United	Dhanusa	
132	Mr.	Komal	Kanta Jha	District Secretary	Nepali Congress	Dhanusa	
133	Mr.	Birendra	Lal Karna	President	RJP	Dhanusa	
134	Mr.	Parameshwor	Sah	Co-Coordinator	TMLP	Dhanusa	
135	Ms.	Rita	Jha	District member	TMLP	Dhanusa	
136	Mr.	Debendra	Yadav	District President	TMLP-Nepal	Dhanusa	
137	Mr.	Asarfi	Bhinabar Yadav	Party Convention Member	UCPN (Maoist)	Dhanusa	
138	Ms.	Pampa	Bhusal	Former CA member	CPNM	Kathmandu	
139	Mr.	Ek	Raj Bhandari	Lawyer and Former CA Member	CPNM	Kathmandu	
140	Mr.	Dr. Shiva	Jee Yadav		MJF Nepal	Kathmandu	Yes
141	Mr.	Jayaram	Yadav	Former CA member	MPRF	Kathmandu	
142	Mr.	Upendra	Yadav	President	MPRF	Kathmandu	
143	Mr.	Top	Aslami		National Janmukti Party	Kathmandu	
144	Mr.	Ratna	Joshi		NCP United	Kathmandu	
145	Mr.	Laxman	Ghimire	Senior Leader, Former CA Member	Nepali Congress	Kathmandu	
146	Mr.	Shanker	Bhandari		Nepali Congress	Kathmandu	Yes
147	Mr.	Ram	Pd. Prajapati		NWPP	Kathmandu	Yes
148	Mr.	Sushil	Shrestha		RPP Nepal	Kathmandu	
149	Mr.	Laxman	Lal Karna	Co-President	Sadhvaba party	Kathmandu	Yes
150	Mr.	Indra	Deo Mishra		TMDP	Kathmandu	Yes
151	Ms.	Staya	Pahadi	Former CA member	UCPNM	Kathmandu	
152	Mr.	Khim	Lal Devkota	Lawyer and Former CA Member	UCPNM	Kathmandu	
153	Ms.	Sapna	Malla	Lawyer and former CA Member	UML	Kathmandu	
154	Mr.	Pradeep	Gyawali	Senior Leader, Former CA Member	UML	Kathmandu	
155	Mr.	Rabindra	Adhikari	Former CA member	UML	Kathmandu	Yes
156	Mr.	Narendra	Pokharel		UML	Kathmandu	Yes
<b><u>Security sector</u></b>							
157	Mr.	Subarna	Thapa Magar	SP	Armed Police force	Dhanusa	
158	Mr.	Hari	Krishna Upadhyay	Chief District Officer	MoHA / District Administrative Office	Dhanusa	
159	Mr.	Dijan	Kumar Piya	Lt Col	Nepal Army (BNCOR)	Dhanusa	
160	Mr.	Purushottam	Kandel	Superintendent of Police	Nepal Police / District Police Office	Dhanusa	
161	Mr.	DSP			APF District Chief	Dhading	
162	Mr.	Ram	Sharan Poudel	DIG	Armed Police	Kathmandu	Yes
163	Mr.	Rishav	Bhattarai	AIG	Armed Police Force	Kathmandu	
164	Mr.	Jeevan	Kumar Thapa	AIG	Armed Police Force	Kathmandu	
165	Mr.	Krishana	Tamang	AIG	Armed Police Force	Kathmandu	
166	Mr.	Narayan	Babu Thapa	DIG	Armed Police Force	Kathmandu	
167	Mr.	Sailendra	Khanal	DIG	Armed Police Force	Kathmandu	
168	Mr.	Puspa	Ram K C	DIG	Armed Police Force	Kathmandu	

169	Mr.	Ram	Saran Paudel	DIG	Armed Police Force	Kathmandu	
170	Mr.	Rohit	Thapa	Ex AIG	Armed Police Force	Kathmandu	
171	Mr.	Kosh	Onta	IGP	Armed Police Force	Kathmandu	
172	Mr.	Rajesh	Shrestha	SSP	Armed Police Force	Kathmandu	
173	Mr.	Umesh	Mainali	Former Home Secretary	Ministry of Home Affairs	Kathmandu	
174	Mr.	Navin	Kumar Ghimere	Secretary	Ministry of Home Affairs	Kathmandu	
175	Mr.	Sanker	Pd. Koirala	Spokesperson / Joint Secretary	Ministry of Home Affairs	Kathmandu	
176	Mr.	Pradip	Raj Kandel	Under Secretary	Ministry of Home Affairs	Kathmandu	Yes
177	Mr.	Sudheer	Shrestha	Brigadier General (VVIP flight)	Nepal Army	Kathmandu	Yes
178	Mr.			Colonel	Nepal Army	Kathmandu	Yes
179	Mr.	Bishma	Prasai	AIGP	Nepal Police	Kathmandu	
180	Mr.	Nava	Raj Dhakal	AIGP	Nepal Police	Kathmandu	
181	Mr.	Gopal	Prasad Bhandari	DIG	Nepal Police	Kathmandu	Yes
182	Mr.	Binod	Singh	DIG	Nepal Police	Kathmandu	
183	Ms.	Kiran	Bajracharaya	DSP	Nepal Police	Kathmandu	
184	Ms.	Kiran	Rana	DSP	Nepal Police	Kathmandu	Yes
185	Mr.	Rajendra	B. Singh	Ex AIG	Nepal Police	Kathmandu	
186	Mr.	Ravi	Shrestha	Ex AIG	Nepal Police	Kathmandu	
187	Mr.	Kuber	Singh Rana	IGP	Nepal Police	Kathmandu	
188	Ms.	Basundhara	Khadaka	Inspector	Nepal Police	Kathmandu	Yes
189	Mr.	Prakash	Aryal	SSP	Nepal Police	Kathmandu	

#### **Voters**

[40]	<i>Voters</i>	<i>Polling Location, Tulshiya VDC</i>	<i>40 members of local community</i>	Dhanusa
[25]	<i>Voters</i>	<i>Polling Location, Shree Sahodawa School</i>	<i>25 members of Sahodawa VDC community</i>	Mahottari

### Annex 3. DEAN P-EVER 2008 Electoral Violence Data<sup>171</sup>

Figure 3.1: Election Violence (Pre-Election) – Number of Incidents by Month

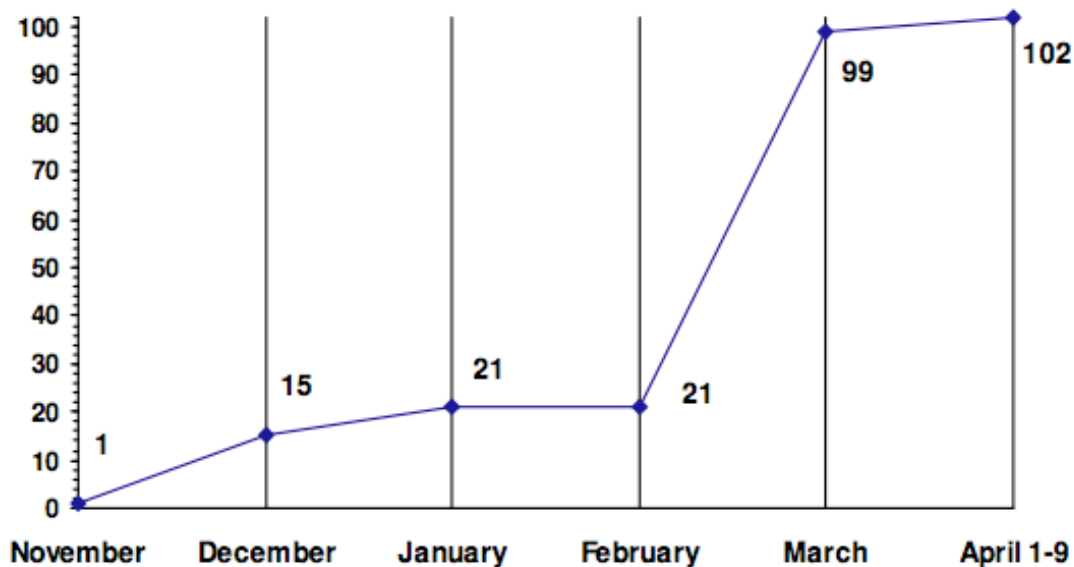
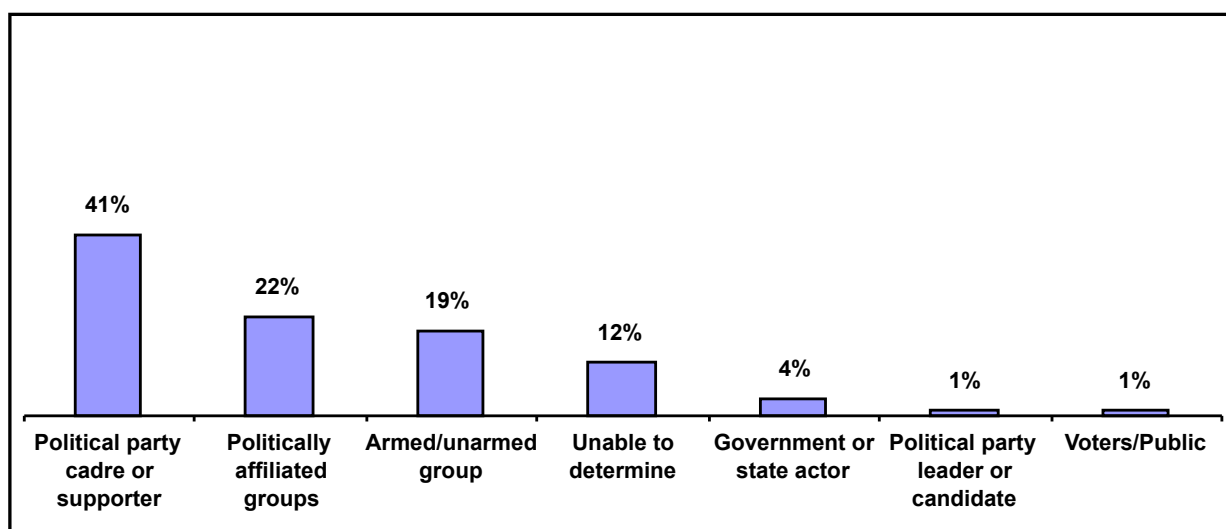


Figure 3.2: Perpetrators of (visible) Pre-election Electoral Violence



<sup>171</sup> See DEAN P/EVER (2008), pp21-30

Figure 3.3: Victims of (visible) Pre-election Electoral Violence

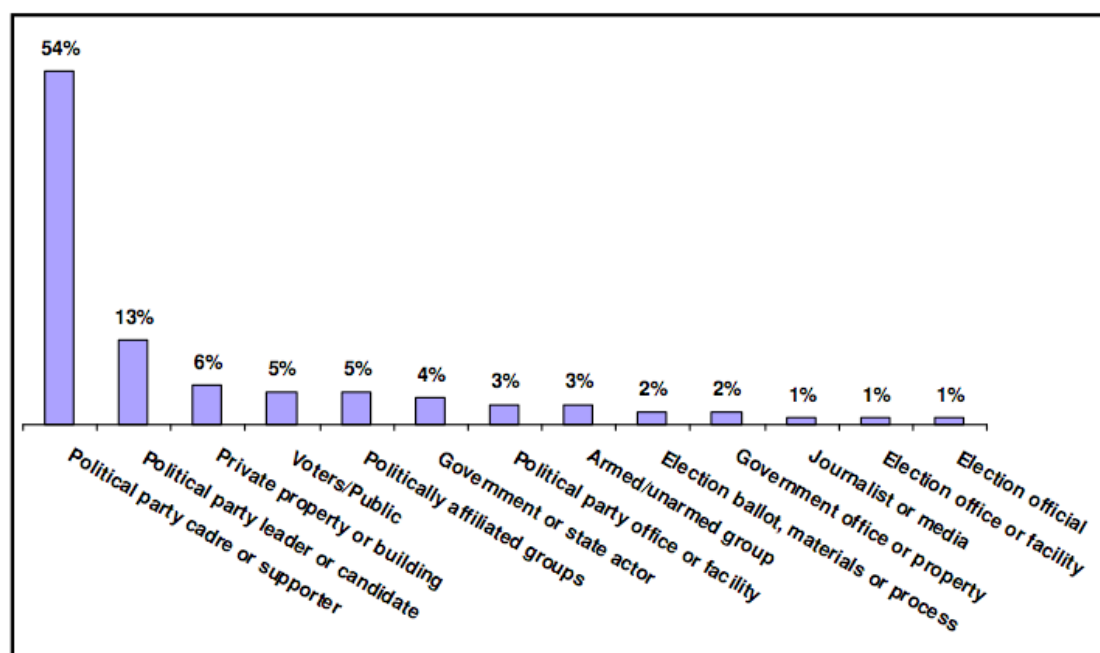
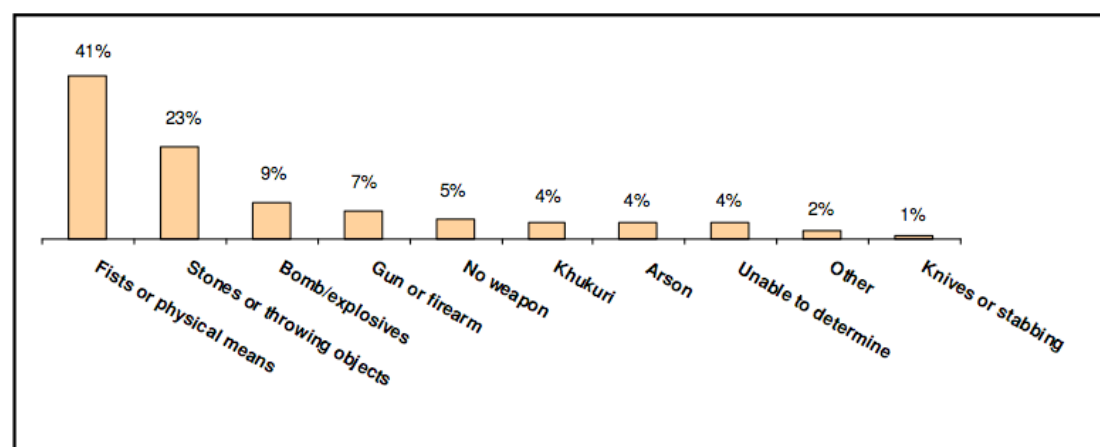


Figure 3.4: Methods of (visible) Pre-election Electoral Violence



## Annex 4. UN 2008 Electoral Violence Maps

Figure 4.1: Bandhs / Blockades January to June 2008

### NEPAL: Reports of Bandhs / Blockades - 1 January to 30 June 2008

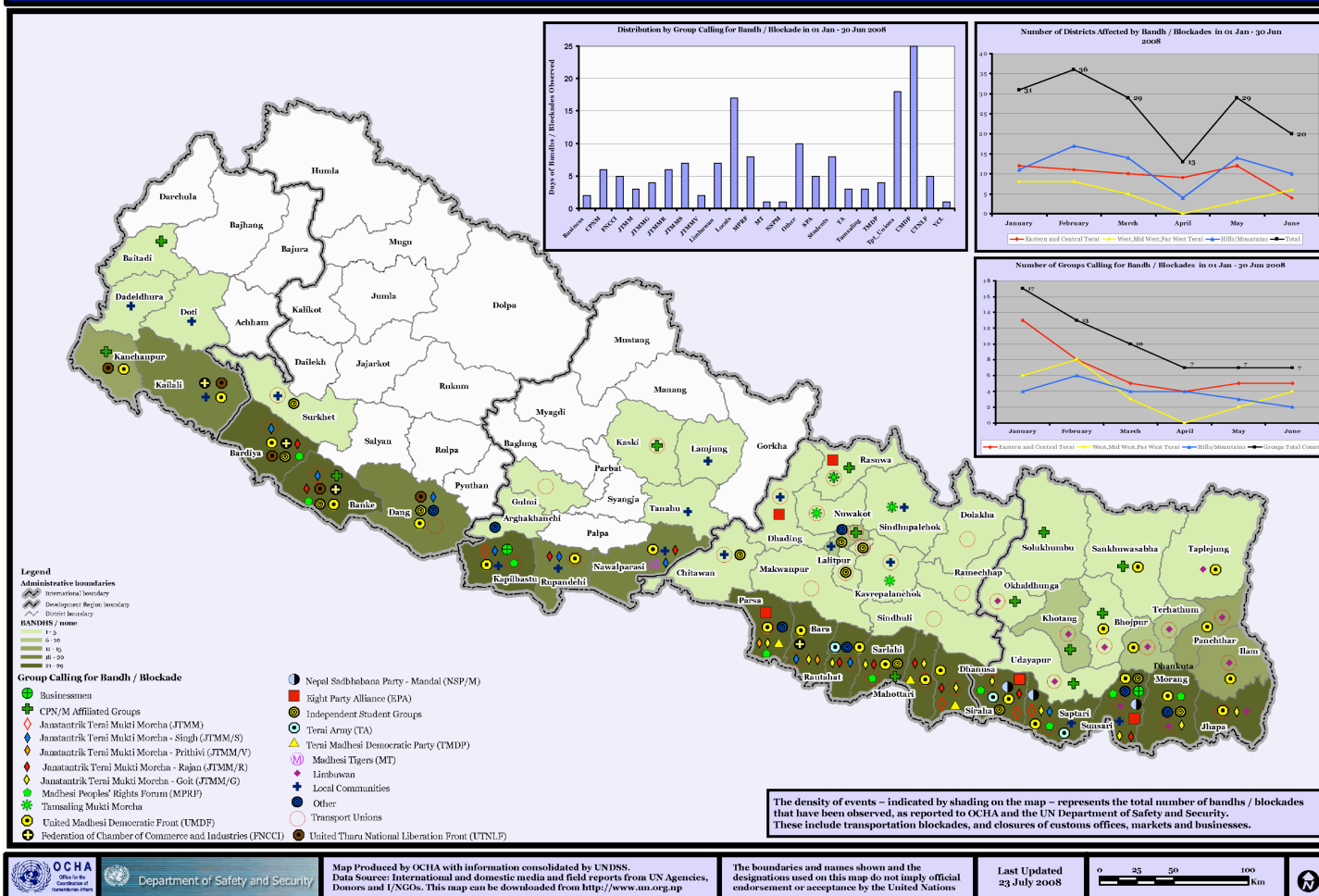
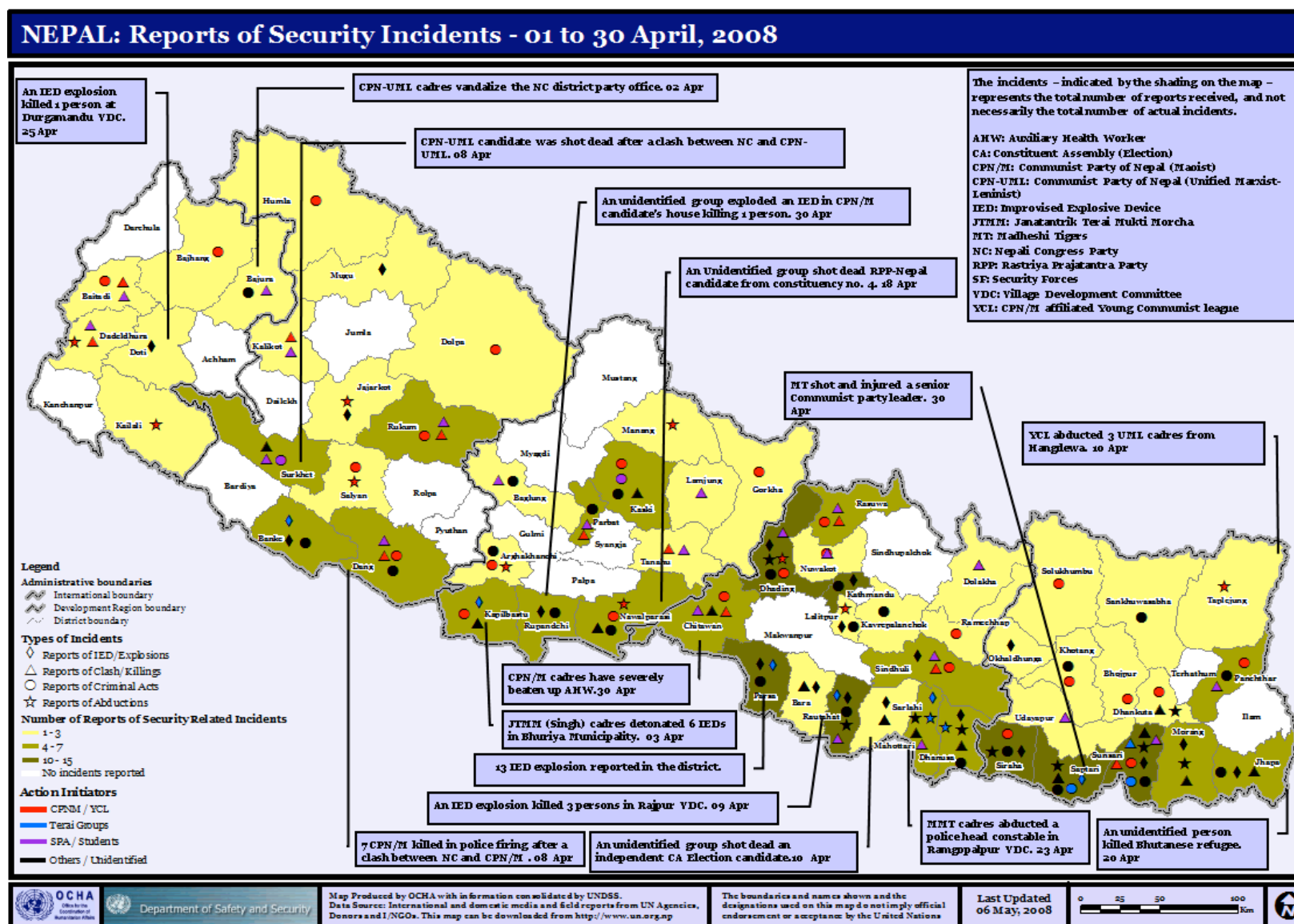
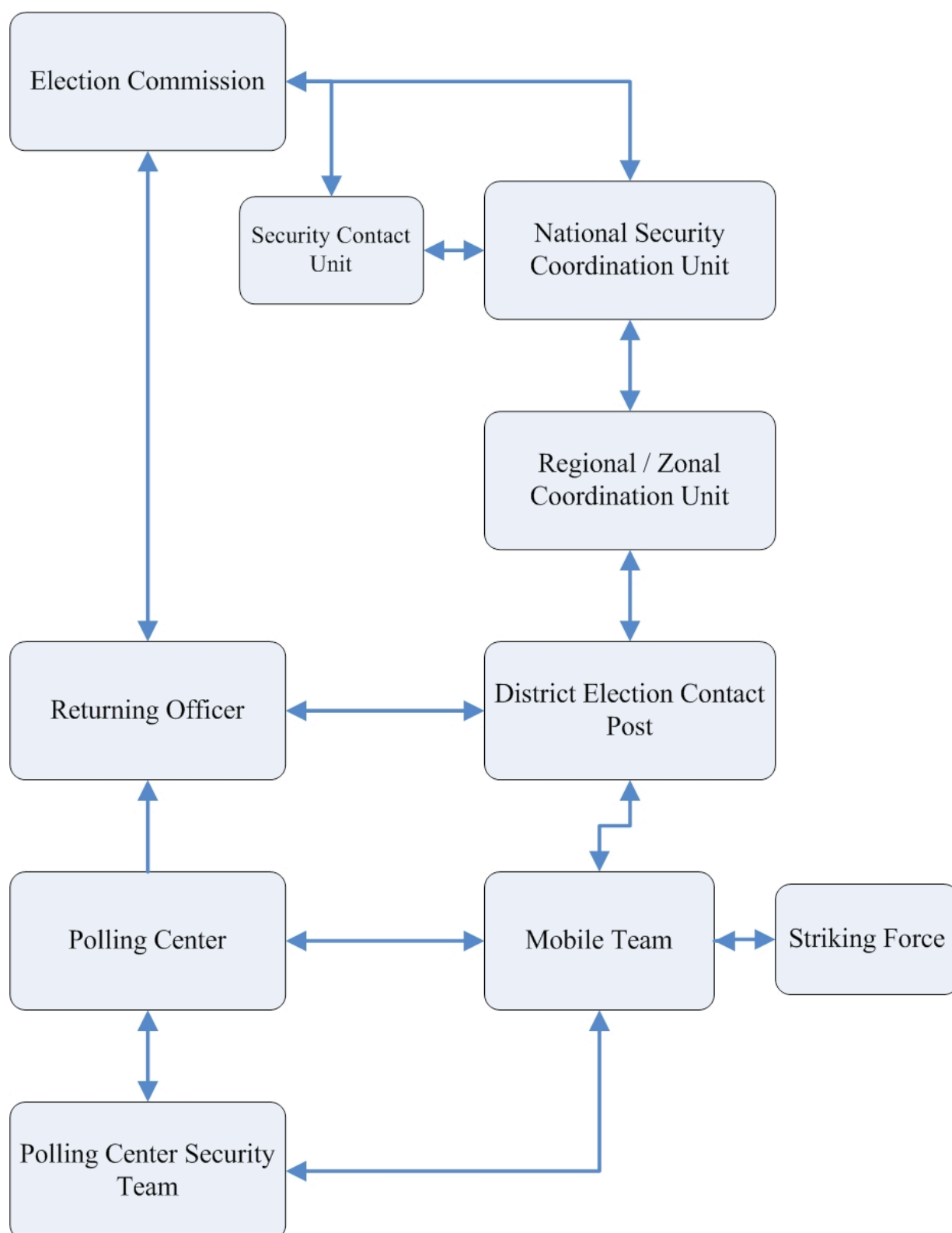


Figure 4.2: Security Incidents Nation-wide, April 2008



## Annex 5. 2008 Electoral Security Coordination Mechanisms<sup>172</sup>



<sup>172</sup> Translated from ECN, *Constituent Assembly Member Election Report: 2063-2066* (2009), p238



## Annex 6. The Gender Dimension – Violence against women candidates<sup>173</sup>

Figure 6.1: Perpetrators of (visible) Violence Against Women CA Candidates

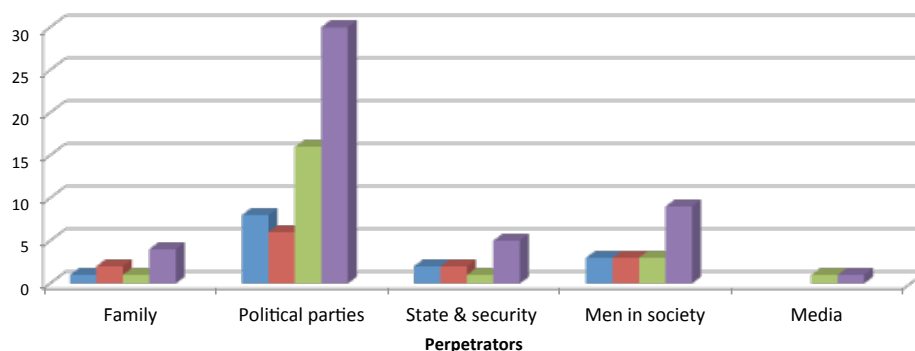
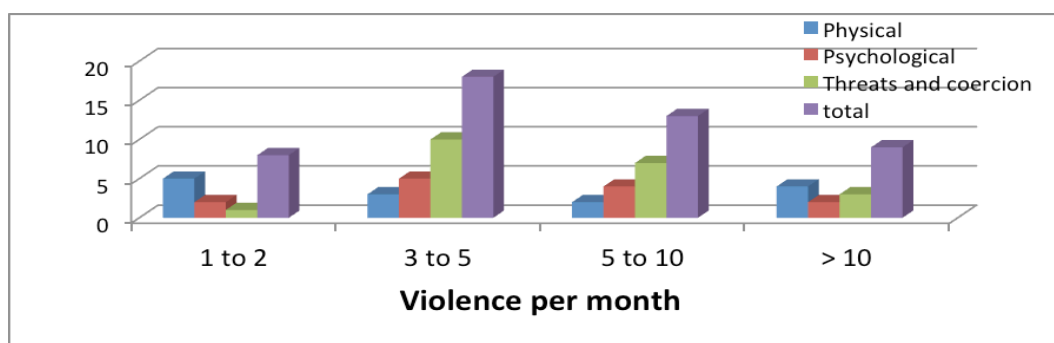


Figure 6.2: Frequency of (visible) Violence Against Women CA Candidates



<sup>173</sup> These statistics are from SAP, International IDEA, *Nepal 2008 Research Report: Analysis of the Elections from the Perspective of Representation and Violence Against Women* (2008), p37

## Annex 7. Available 2008 ECN Data on Complaints and Petitions<sup>174</sup>

*Figure 7.1: 2008 Post-Election Dispute Management*

<i>No.</i>	<i>Subject</i>	<i>Number</i>	<i>ECN Decisions</i>	
			<i>Voting annulled</i>	<i>No action required</i>
1	<i>Ballot Box damaged</i>	10	6	4
2	<i>Election affected due to protests/clashes</i>	3	3	0
3	<i>Booth capturing</i>	31	3	28
4	<i>Voters intimidated/stopped</i>	1	0	1
5	<i>Malpractices in votes counting</i>	2	0	2
6	<i>Corrupt practices</i>	10	0	10
7	<i>Others</i>	7	0	7
<b>Total</b>		<b>64</b>	<b>12</b>	<b>52</b>

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<sup>174</sup> ECN, *Constituent Assembly Member Election Report: 2063-2066* (2009), pp268-272, unofficial translation

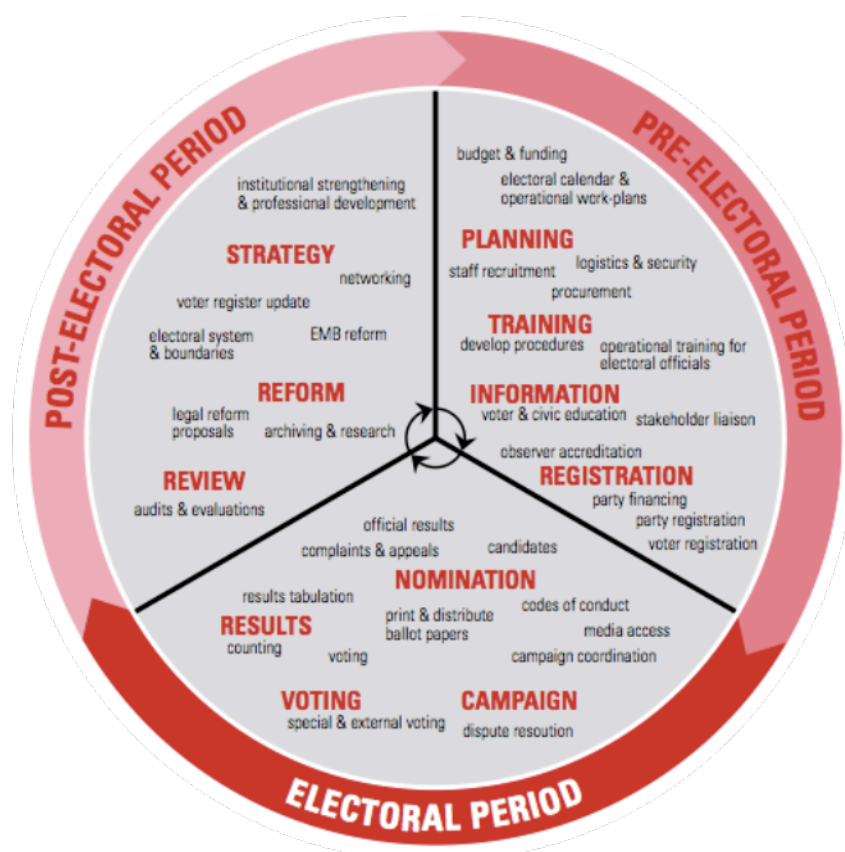
*Figure 7.2: 2008 Election Petition Cases Filed from FPTP seats*

<b>No</b>	<b>Complainant Name</b>	<b>Constituency where complaint lodged</b>	<b>Subject of Complaint</b>	<b>Opposition Name</b>	<b>Date of Complaint</b>
1	Birendra P. Yadav	Parsa, 5	Re- election after annulling the voting and counting due to booth capturing	ECN et al.	2065/1/12
2	Rambabu P. Yadav	Bara, Constituency No. 1	Re- election and re-counting after annulling the voting, counting, election result.	ECN et al.	2065/1/8
3	Hitbahadur Tamang	Nuwakot, Constituency No. 2	Annul the election	ECN et al.	2065/1/10
4	Debendra Kumar Yadav	Mahottari, Constituency No. 6	Election result differed due to counting of illegal votes	ECN et al.	
5	SitaRam Bhandari	Mahottari Constituency No. 6	Declare the winner after annulling the election and recounting the ballot	ECN et al.	2065/1/10
6	Surendra Chaudhari	Parsa, Constituency No. 4	Annul the election and conduct re-election at G.U. U.Ma.V. Pokhariya polling Center	ECN et al.	2065/1/15
7	Khagraj Batta et al.	Dhadeldhura	Annul the election and conduct re-election	ECN et al.	2065/1/16
8	ManiBhadra Sharma et al.	Baglung, Constituency No. 2	Re- election after annulling the voting and counting due to booth capturing	ECN et al.	2065/1/16
9	Kawan Sen Rai	Sankhuwashabha Constituency No. 1	Annual the election	ECN et al.	
10	Shantiman karki	Shindhuli, Constituency No. 1	Annual the election	ECN et al.	2065/1/18
11	Jangilal Ray	Sarlahi Constituency No. 5	Annual the election result	ECN et al.	2065/1/20
12	Devkaran P. Kalwar	Nawalparashi, Constituency No. 6	Annul the election and conduct re-election	ECN et al.	2065/1/23

*Figure 7.3: 2008 Election Petition Cases Filed from PR seats*

<b>No</b>	<b>Complainant Name</b>	<b>Subject of Complaint</b>	<b>Opposition Name</b>	<b>Date of Complaint</b>
1	Rakesh K. Gupta et al.	Dismiss the election result	ECN et al.	2065/2/5
2	Shyamsundar Gupta et al.	Dismiss the election result	ECN et al.	2065/2/8
3	Punne Bajra Lama et al.	Dismiss the candidate nomination	ECN et al.	2065/2/5
4	Anandi Devi Sigh	Dismiss the election	ECN et al.	2065/2/8

## Annex 8. A Generic Electoral Cycle<sup>175</sup>



<sup>175</sup> International IDEA, *Electoral Justice Handbook* (2010), Figure 2, p 8

## Annex 9. Bibliography

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