PRELIMINARY ELECTION OBSERVATION REPORT CONSTITUENT ASSEMBLY ELECTION APRIL 10, 2008

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Executive Summary

This interim report is intended to provide a snapshot of the observation reports compiled thus far by the Democracy and Election Alliance Nepal (DEAN). It will be submitted to the Election Commission and other interested Nepali and international organizations. A final report will be completed by DEAN in the days following the completion of the voting process; it will include detailed recommendations and more information on the election campaign, the pre-election period, and the broader political context of the 2008 elections. DEAN thanks all those who have contributed to the drafting of this report, and encourages submissions that will improve the final report.

Nepal's historic Constituency Assembly elections were observed by DEAN, a non-partisan alliance of citizens who came together to safeguard the integrity of the election process. The overall conduct of the elections was assessed as satisfactory by DEAN, when the transitional nature of the country's situation is taken into account. Election day was competently managed and largely peaceful. There were numerous flaws in the process that cannot be overlooked, including widespread violence and intimidation in the pre-election campaign period; the impact of these negative events on the overall standard of the election cannot yet be assessed. This report is based on reports from 9,393 volunteers from across Nepal.

The election system was complex, with gaps in the standards for reporting election day information. The proportional representation system allows too much power to rest in the hands of party leaders, who can pick their favorites, (while respecting the various quotas) from any of the names on their party's closed-list.

Political party campaigns ranged widely in terms of organization and effectiveness; in nearly forty percent of the country many parties were restricted in their activities, or prevented from campaigning altogether. Political and election violence was monitored by 480 DEAN long-term observers from 26 Nov 2007 to April ninth, 2008, in 223 out of 240 constituencies. Two hundred and forty one incidents were recorded in 51 districts, with 33 people killed, 81 kidnapped and 890 injured. The lengthy pre-election period saw a substantial number of constituencies with a poor security environment; intimidation and threats were widespread and, through DEAN's pre-election monitoring, citizens in around ten percent of country reported being "fearful" about the security environment. Numerous incidents and irregularities were observed on election day, ranging from improperly administered polling centers, to centers captured by one of the political parties. The day was marred by disturbing and sometimes tragic events, including four deaths reported to DEAN, and many cases of injuries and intimidation. Some of these incidents led to re-polling, in 106 affected polling centers. Two DEAN volunteers were injured in the course of carrying out their election day responsibilities.

Security in most areas on election day was satisfactory, when viewed across the country and in the context of a post-conflict election; the deployment of police and temporary police played a major and generally positive role. Participating political parties agreed, prior to the election, on a Code of Conduct that was only partially observed: despite all-party committees established to implement the Code there were many violations. The Election Commission failed to use its powers to enforce the Code; this tolerance for illegality has marked the last two years and contributed to an atmosphere of impunity that encouraged law-breaking by political parties and other actors. But the weakness of the election laws, and the reluctance of

the government and security forces to enforce laws that were seen as politically sensitive, made it harder for the EC to live up to its mandate.

The Election Commission (EC) is to be commended for elections that were, by and large, technically well executed under difficult circumstances. Large numbers of voters were processed by election officials in a mostly orderly manner. The patience and bravery of all Nepali citizens who stood good-naturedly in line waiting to vote, who participated as activists or candidates for political parties, or who took part in a multitude of civil society voter and civic education efforts, including election day observation, is to be commended. DEAN is proud to work alongside the EC, and Nepal's political parties and civil society organizations, in the project to create a new Nepal.

1.   Background

1.1 Introduction

The April 10, 2008, Constituent Assembly (CA) elections were an important event for the Nepalese people and a crucial step toward inclusive democracy and a peaceful new Nepal. Fifty four political parties contested, including the Nepali Congress (NC), the Communist Party of Nepal-Unified Marxist Leninist (UML), the Communist party of Nepal-Maoist (CPN-M), the Nepal Workers and Peasants Party (NWPP) and the Rastriya Prajatantra Party (RPP). New parties that emerged during the upheavals of the two years since the April People's Movement joined the fray, including the Madhesh Janadhikar Forum (MJF) and the Tarai Madhesh Loktantrik Party (TMLP).

The mixed election system was approved in 2007 and combined First Past-the-Post (FPTP) and Proportional Representation (PR) ballots. The 601 seat CA will consist of 240 members elected by FPTP, 335 members by PR, and 26 members appointed by the Cabinet.

A total of 3,948 candidates, including independents, contested under the FTPP ballot and 5,701 run under the PR system. There were 9,821 polling locations and 20,888 polling centers in all 240 constituencies.

1.2 DEAN and the CA Elections

The Democracy and Election Alliance Nepal (DEAN) was established in June 2007 to safeguard the political rights of the people and to advocate for free and fair elections. DEAN is dedicated to the support of political reforms and to engage marginalized people in the mainstream of politics. DEAN deployed 9,393 volunteers nationwide supported by a secretariat in Kathmandu, three regional offices, and 480 focal points who had also served as long-term Constituent Assembly election observers since September 2007. DEAN receives technical support from the National Democratic Institute (NDI) and IFES, and financial support from USAID.

DEAN is a non-partisan, volunteer based alliance of the Nepal Law Society (NLS), the Federation of Community Forestry User Groups (FECOFUN), and the Nepal International Electoral Forum (NIEFO). NLS has observed elections in Nepal in 1991, 1994 and 1999. FECOFUN is the largest Nepali community based organization, with close to half a million members across the country. NIEFO has expertise in international election planning, design, implementation, and observation; its members have conducted elections with the United Nations in Cambodia, East Timor, Iraq, and other countries.

1.3 Methodology

Long-term observers
Long-term observers (LTO) visited constituencies and polling locations on a daily basis over a period of four months. They observed and completed checklists before compiling monthly field reports that were entered into a regional database. Long-term observation was conducted in 223 out of 240 constituencies and a monthly national report was released. Long-term observation began on November 26, 2007 and concluded on April 9, 2008.

Political/Election Violence Education and Resolution (P/EVER)
Using a network of 240 trained constituency-based Focal Points and its 75 trained District Coordinators, DEAN has been gathering information since November 2007 on incidents of political/election violence[1], potential violence, tension levels and peaceful activities throughout preparations for, on and after the April 10th Constituent Assembly Elections. Through the P/EVER Project, DEAN has published its findings in four reports[2], released from January to April, which are intended for use by local and national stakeholders such as political parties, election officials, security officials, government officials and the public to help them prevent and reduce political violence and tensions in Nepal.

Election day and counting
Election day observation was conducted by observers present from 0600hrs until 1800hrs in polling locations identified by the Election Commission and who completed checklists throughout the day.

- Separate long-term, election day, and counting checklists were developed

- A 137-page DEAN Election Observation Manual was developed for use by 558 Regional and District master trainers, who went on to train 12,000 election day observers. The manual contained election laws, the code of conduct, an overview of the election system as well as instructions for using checklists

- A 35-page election observer handbook was developed for use by election day observers

- Master trainers went through a three-day and election day observers a one-day training program. Over 12,600 short term and long term observers completed the programs, and received certificates in recognition of their work.

2. Legal Framework and Constituent Assembly Election Procedures

On January 15, 2007 the Legislature-Parliament proclaimed the Interim Constitution 2007 (2063 B.S.). The Interim Constitution includes provisions for the holding of the CA elections (Section 7, articles 63 to 83). The Interim Constitution has been amended three times. The third amendment increased the number of CA members from 497 to 601, which may make the Assembly difficult to manage and to afford.[3]

Laws passed by the Legislature-Parliament under the Interim Constitution include the Constituent Assembly Member Election Act 2007, the Election Commission Act 2007, the Election Offence and Punishment Act 2007 and the Voter Registration Act 2006. The

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[1] Within the violence monitoring methodology, "political violence" and "election violence" refer to any violence (harm) or threat of violence (harm) that is aimed at any person or property involved in the political or electoral process during the monitoring period. An "incident" of violence refers to any act that: 1) has specific victim(s) and perpetrator(s) and occurs within a limited time or location; 2) meets the definition of political or election-related violence; and 3) has been "verified" by monitors using at least two different sources of information. Monitors' sources of information include interviews with eyewitnesses of violence, election officials, security officials, political parties and members of the public; and the media.

[2] Nepal P/EVER Report #1 (26 November – 31 December 2007); Nepal P/EVER Report #2 (1-31 January 2008); Nepal P/EVER Report #3 (1-28 February 2008; Nepal P/EVER Report #4 (29 February – 25 March 2008). Please find them online at: www.nepalelectionportal.org or www.deannepal.org.

[3] Advocate Bhimarjun Acharya, " Implementation of Constituent Assembly Act, 2064 and Challenges " Paper presented during the interaction program on the topic 'Workshop on Election Laws for Constituent Assembly Election' organized by Democracy and Election Alliance Nepal (DEAN) on August 13, 2007.

Election Commission then enacted the Political Party Registration (for the purpose of elections) Rule 2007, the Rules Relating to Electoral Rolls 2007, the Regulation Relating to Election of the Member of Constituent Assembly 2007, the Code of Conduct for Constituent Assembly Election 2007, the Guidelines for Observers for the Constituent Assembly Election 2007 and the Guidelines for Constituent Assembly Election 2007.

To Constituent Assembly Member Election Act 2007 includes requirements that political parties accept the principle of inclusion, guarantee candidacy for women and other disadvantaged groups, and provide special considerations for smaller parties, among other conditions. Article 63(4) of the Interim Constitution encourages political parties to be inclusive while selecting first-past-the-post (FPTP) candidates and mandates strict quotas for women, Madhesis, Dalits, oppressed and indigenous groups, backward regions, and 'others', while preparing their 'closed-list' of candidates to be elected through proportional representation (PR).[4] While Nepal's election system includes many progressive elements there are many serious flaws:

a. Article 63(5) of the Interim Constitution obliges all political parties to guarantee that at least one-third of their total candidates, under both the FPTP and PR systems, are women. This encourages the candidacy of women, but it does not guarantee their election. An examination of the FTPT lists fielded by all contesting parties' shows 16 fielded no women at all and the average of women candidates across all parties was only 10.25%.[5] While fifty percent of all candidates to be elected by each party under the PR system are to be women the total will likely be less than fifty percent; parties electing only one member will not be obliged to give their sole seat to a woman.

b. The provision for the group known as 'others' was intended to ensure that smaller communities not covered by the other quota groups, for example Muslims, would be represented. But the Legislature-Parliament interpreted the definition to refer to the generally privileged Brahmin and Chettri castes who have dominated Nepal's politics in the past.

Article 63(3) of the Interim Constitution provides for the nomination of 26 CA members by the Cabinet, on the basis that they have 'contributed to the nation', but there are no further criteria set. In a pre-election deal with Nepal Federation of Indigenous Nationalities (NFIN)[6] on Aug. 7 2007, the government promised that the eight ruling parties will make provisions for at least one seat for every single group 59 minority groups[7]; if a group does not win representation through the FPTP or PR races they will be appointed to one of the 26 seats but it is unclear what will happen if more than 26 groups are left unrepresented.

The Interim Constitution includes no provisions for the inclusion of youth; the Maoists appear to have benefited from the lack of attention given this issue by other parties: the average age of their candidates elected under the FPTP system is below forty.

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[4] The party list must contain an equal number of female and male candidates; if the list contains 101 candidates or more, it must be in proportion to the quotas as following: 31.2 per cent Madheshi; 2. 13 per cent Dalit candidates; 37.8 per cent oppressed and indigenous groups; 4. 4 per cent from backward regions. Backward regions are listed as: Achham, Kalikot, Jajarkot, Jumla, Dolpa, Bajhang, Bajura, Mugu and Humla districts; 30.2 per cent candidates belonging to other groups (those not included in the first three groups). Women must be proportionally represented within each group: 50 per cent.
[5] Ed. Subhadayak Shah, DEAN Monthly Bulletin, Year 1, Vol.7, March 2008, DEAN.
[6] The umbrella group of indigenous nationalities representing 59 minority groups.
[7] Ramji Komren, NEFIN Council Member

c. The Constituent Assembly Member Election Act 2007, Clause 7 (sub-clause 8) details the restrictions on political parties nominating candidates for the PR election while Article 11 provides discretionary power to round up, or down, the PR quotas by up to ten percent. This, along with the right of the political parties to select their winning PR candidates from anywhere within their 'closed list', diminishes the right of citizens to cast an informed vote. Some parties have pledged to choose candidates from the top of their lists, and to work down, there is no legal requirement that they do so, offering greatly increased power to party leaders throughout and after the election.

d. Many contested the election while still on the government payroll, in violation of the law. The political parties violated Clause 18 of the CA Election Act 2007, which forbids those holding an office of profit from standing for election; in practice the law was not upheld. Similarly, Clause 19(G) states that any person found guilty in the report of the Probe Commission (into the failed suppression of the 2006 People's Movement), cannot contest the CA Elections. But the Probe Commission did not declare any person guilty or guilty, so the provision is meaningless.

Article 67(1) states the deposit to be provided by political parties for submitting the names of candidates for the PR system is Rs. 10,000; this implies that politics is a business, not profession. Won't these sorts of provisions incline political parties toward corrupt practices? Won't they also deprive smaller parties and individuals with limited resources from participating in the elections?

The provision of Rule 7(9) of Political Party Registration (for election purpose) Rule 2007 is also against the value of principle of democracy because it needs at least 10,000 signatures of voters attached with the application for the registration of a party. Similarly, there is no basis to verify the signatures of the voters. The technical part about the verification of signature is not scientific because the EC only verifies the electoral rolls, but does not verify the signature, which does not know of its authenticity. Thus, if signatures can not be verified then such rules should be deleted. It will also be difficult for new political parties to garner such signatures and register a party for which they want to form an organization. This type of provision does not fit within the values and principles of democracy.

The provision of not submitting the bills and receipts (Election Commission Act 2007, Clause 15, sub-clause 4) by employees, who are deployed by EC for the election related activities, is against the principle of good governance.

e. The final decision on the registration of a political party rests with the Election Commission (Clause 20 and 27), which violates the right to appeal.

f. According to the Constituent Assembly Member Election Rules and Regulations 2007 (Rule 29-1) polling officials should ask voters for details such as name, age and address after they have entered the polling station; this should be verified against the electoral roll and the polling official is permitted to ask the voter to produce written documents or identification to prove their identity. DEAN observers in Kathmandu, Lalitpur and Morang districts had observed that the polling officials did not follow the CA Member Election Rules and Regulations 2007 as directed.

g. The electoral framework was deeply flawed, with many unable to vote because voter registration ceased in late 2006; many new Nepalese, who became citizens following protests in the southern Tarai region in early 2007, were similarly disenfranchised.

3. Pre-Election Observation, CA Election process (Dec.1, 2007–March 25, 2008)

DEAN conducted long-term election observation from Dec. 1, 2007 until March 25, 2008. During that period DEAN published three reports, shared with many stakeholders including the Election Commission, to support preparations for the best possible elections process. The December 2007 report was published during in the first week of January and covered 223 constituencies. The January report was made public during the first week of February, 209 constituencies were covered, while the third report, covering February and March, was published in the first week of April and covered 210 constituencies.

DEAN's long term observation effort was complemented by the P/EVER program, which is documented separately in this report. In some cases numbers reported by the two programs differ slightly, reflecting the different methodology and time periods used to collect and analyze data.
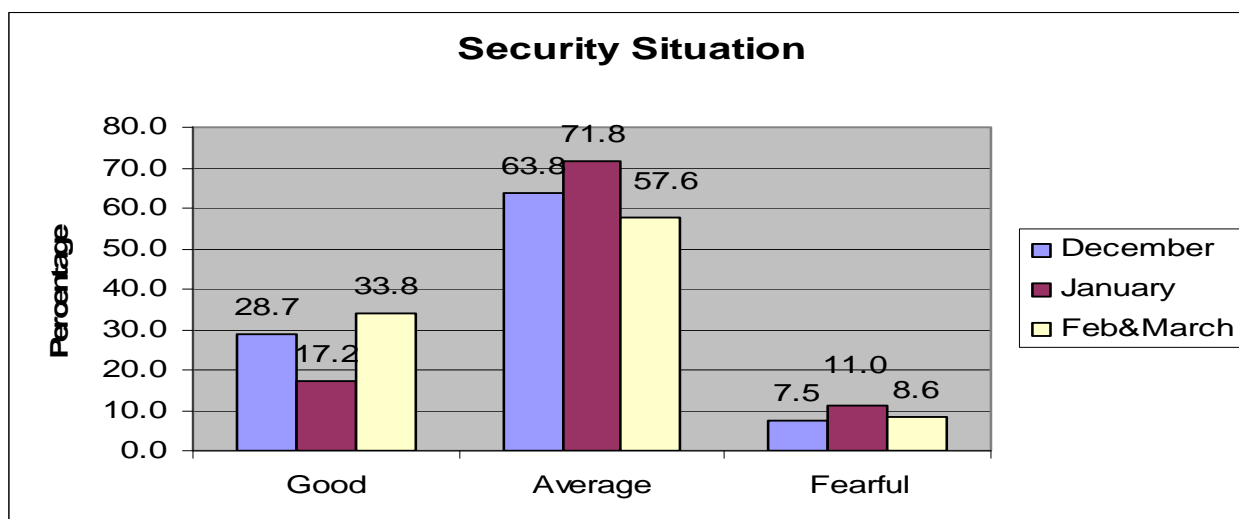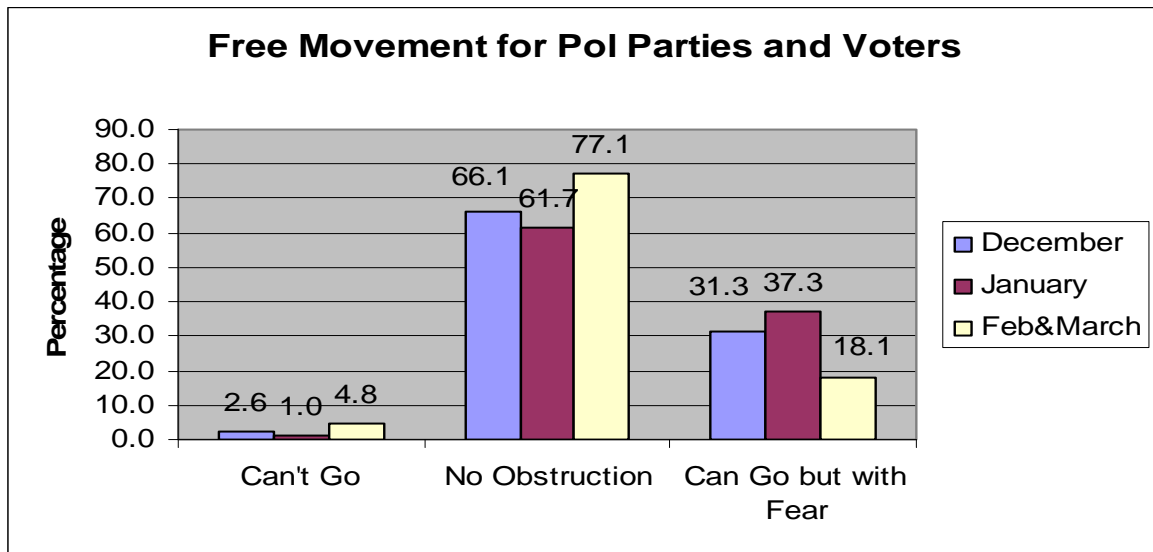

3.1 Security

December 1-31, 2007
Twenty six constituencies in the Central and Eastern regions reported serious security threats to the voters, two in the Central region were not accessible to campaigning political parties during the period while seventy in the Central and Eastern regions were accessible with some security risks. One-third of the country's population stated they were not confident about the security provided by the government and at least partially blamed major political parties for the deterioration of the security situation.

January 1-31, 2008
Fifty three constituencies were reported as not having an appropriate security environment and nine were not accessible to political parties and their supporters. A further 43

constituencies were accessible but with a high level of risk for campaigners. The public continued to blame the government and the political parties for the poor security situation.

Free Movement for Pol Parties and Voters

February 1-March 25, 2008
Twenty constituencies reported being 'fearful' during February and March 2008; 12 were assessed as dangerous to visit while 43 constituencies were accessible but had security risks.

3.2 Campaign activities

December 1-31, 2007
Most (76%) constituencies reported minimal election related activities by political parties or civil society organizations. Over 90% of all constituencies reported that the political parties had yet to start their campaigns.

January 1-31, 2008
In 110 constituencies political parties began campaigning, including door to door visits and rallies.

February 1-March 25, 2008
One hundred and eighty nine constituencies reported campaign activities.

3.3 Voter Education Process

Voter education had been postponed when elections June and then November 2007 elections were cancelled. Voter education was adversely affected by armed groups, especially those operating in the Central and Eastern Tarai.
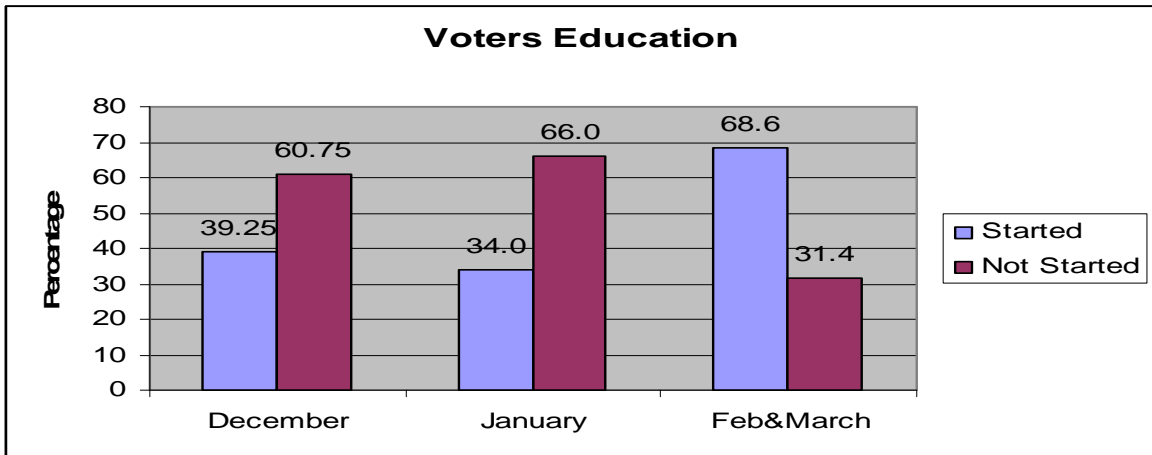
Voters Education

Observation conducted during the last week of March indicated nearly 70 percent of all constituencies were covered by EC delivered voter education materials.

4. Election Related Violence

### 4.1 Pre-Election Period, November 26 to April 9

Between November 26 and April ninth DEAN documented 241 incidents of political and election violence in 51 districts, resulting in 33 deaths, nearly 890 wounded[8], and 81 kidnappings. These numbers reflect data from every constituency in Nepal, but the efficiency of the DEAN network, as well as logistical and security challenges, affect the data. All incidents have been verified by at least two sources of information; together they depict the trends of violence.

Incidents increased dramatically before election day, with twice as many occurring between March 26 and April ninth as in the previous four-week reporting period. This is a common pattern in election violence around the world – incidents increase right up to election day. However, in many countries election day itself is calmer, and fewer incidents of violence occur. Yet in Nepal, the opposite occurred – more incidents (64) occurred *on* Election Day than in the first four reporting periods.[9]

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[8] In some incidents, the number of wounded was estimated and exact number could not be confirmed.
[9] A smaller number of election day incidents were reported by DEAN's election observers, as reported in section 7.6 of this report, due to observers' restriction to polling locations; the additional incidents took place away from polling locations.

Figure 7.1: Number of Incidents of Political and Election Violence by Reporting Period
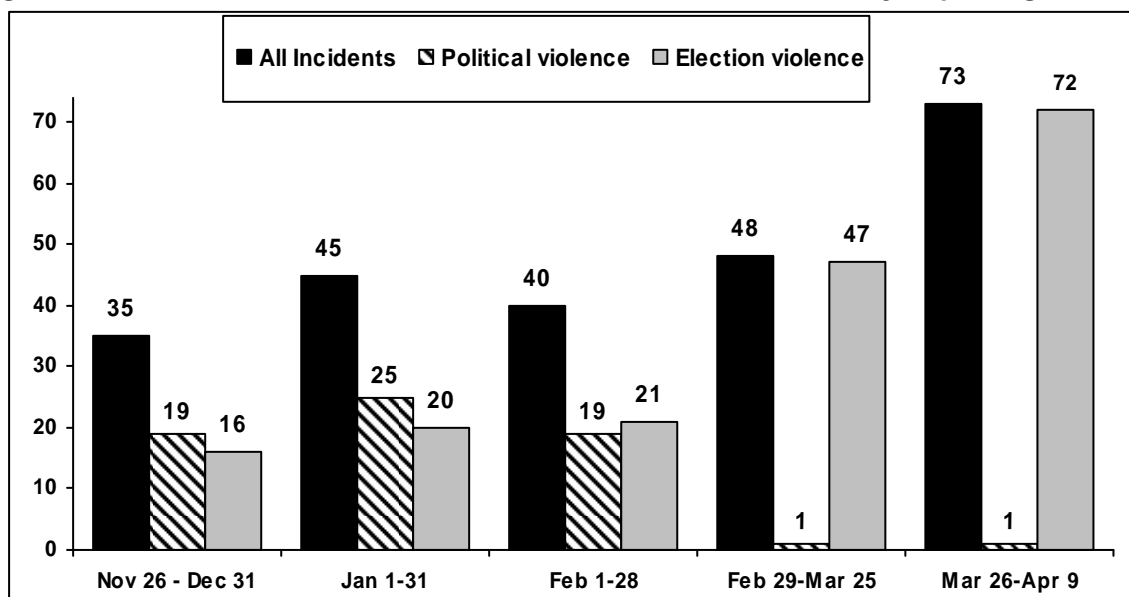
This increase reflects a change in perpetrators and perpetrator motivations. The number of political party leaders, cadres, and affiliated groups rose in proportion to other perpetrator types and frequent perpetrators of political violence such as the Tarai based armed groups, notably the JTMM-JS and former JTMM-Goit, committed more violence as election day neared.

Early in the pre-election period violence was concentrated, and, in December and January, was mainly limited to Tarai districts. This changed as the election approached, with more variety in the number and location of districts experiencing political and election violence. Between November and December 17 districts reported violence; by the end of the pre-election period 51 districts had done so (Figure 7.2).

More pre-election violence occurred in the Tarai[10] (58 %) than outside (42%). During January and February the vast majority of violent incidents (78% and 85% respectively) occurred within the Tarai, reflecting the clashes between police and Madhesi groups during the general strikes or *bandhs* staged in support of Madhesh rights and autonomy. When an agreement was signed between the Madhesh parties and the government, making an election more likely, election violence increased elsewhere and the regional gap narrowed.

During the pre-election period, Saptari reported nineteen pre-election incidents, the highest of any district, and the second-highest number of deaths, with five election related fatalities (Figure 7.2). Dang reported only two incidents, but seven deaths – the highest of any district. All occurred in one incident, when YCL cadres attacked NC candidate and former minister Khum Bahadur Khadka immediately before election day. Police intervened, and in the clash seven YCL members.

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[10] DEAN identifies the following 20 districts as being in the Tarai belt: Jhapa, Morang, Sunsari, Saptari, Siraha, Dhanusa, Mahottari, Sarlahi, Rautahat , Bara, Parsa, Chitwan , Nawalparasi, Rupandehi , Kapilbastu, Dang, Banke, Bardiya, Kailali and Kanchanpur.

Rautahat saw the most wounded (190) of any district, while Parsa and Dhading saw 85 and 51 wounded, respectively; most stemmed from clashes during the February *bandhs* and curfews. The most kidnappings occurred in Baglung, with 35 people abducted.

**Figure 7.3: Types of Perpetrators, % of all Perpetrator Types**
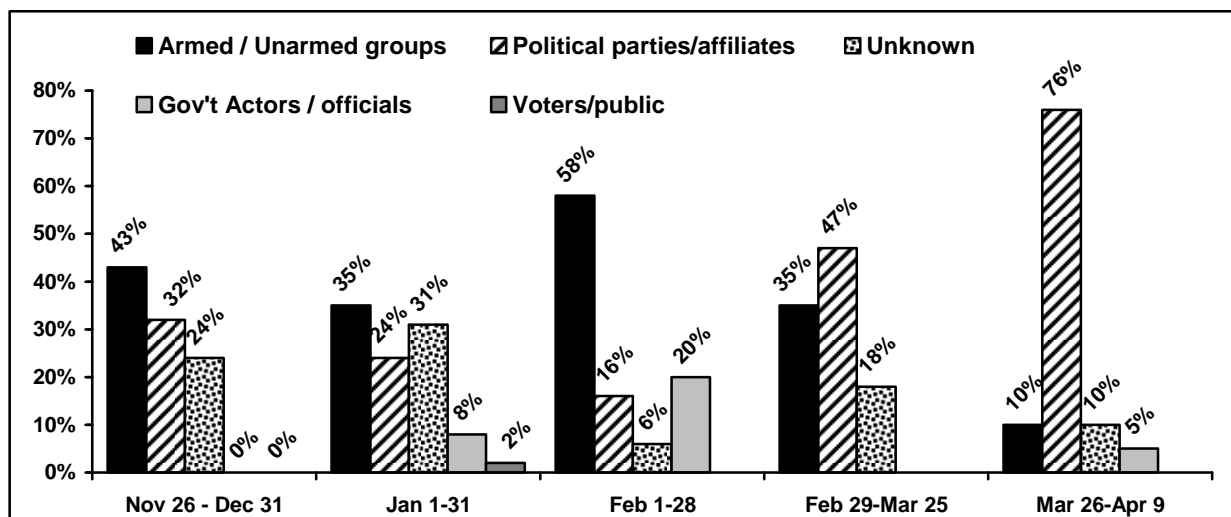
During the pre-election period, perpetrator types varied depending on the political situation. Between late November and February the situation in the Tarai was more unstable and the election date was uncertain until mid-January. As seen in Figure 7.3, until March, perpetrators were most often armed/unarmed groups, not officially affiliated to registered political parties, who have various agendas for the future of Nepal. These include the JTMM-JS, the Madhesi Morcha, the Madhesh Mukti Tigers, etc. However, it also includes a few groups such as the Tharu Klayankari Samiti, which is nonviolent, and the Limbhuwan Rajya Parisad which does use violence but is not a Madhesi group. Further breakdowns on these groups can be found in the individual and final P/EVER reports.

From March to election day political party cadres, leaders, or affiliated groups became the most common perpetrators of violence. During the pre-election period political parties/affiliates represented 44% of perpetrator types overall, surpassing the armed/unarmed groups, who made up 33% of the total.

Of the political parties and affiliated involved, the CPN-M and its Young Communist League represented 58% of party perpetrators (31% CPN-M, 27% YCL), the CPN-UML and its affiliates 20%, and the NC and its affiliates, 11%. Incidents usually involved party cadres attacking others; some incidents involved cadres attacking others from the same party.

The most common victims during the pre-election period were political party leaders, cadres, and members of affiliate groups. Other types of victims varied; overall there were many different victim types affected by violence, the types of perpetrators who committed the violence came from a smaller range of backgrounds.

**Figure 7.4. Types of Victims, % of all Victim Types**
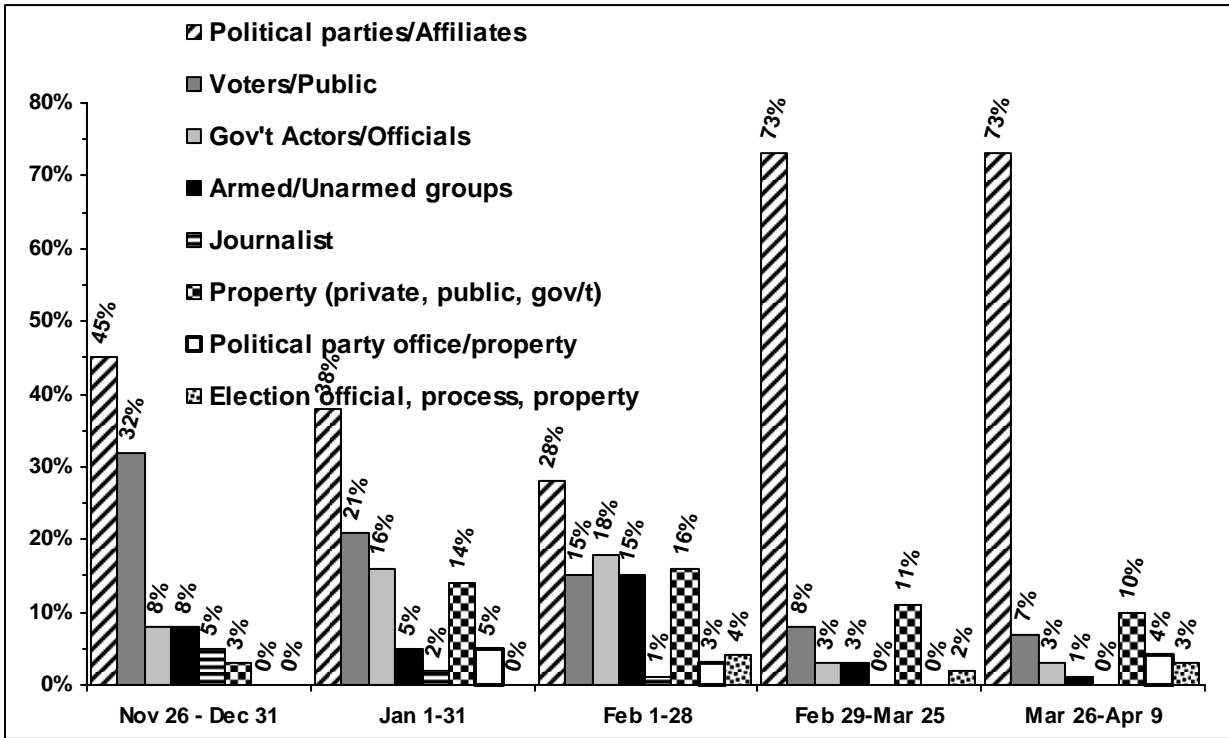
In the first reporting period, through the end of December, the public was often targeted by armed groups through bombs, forced donations, or other acts of intimidation. During the increased unrest in the Tarai government actors (mostly the police) became victims, more property was damaged, and the general public continued to be a significant target. With the signing of the agreement between the Madhesh parties and the government, violence increased between all parties as the elections. Political parties and affiliates represented 73% of all victims during March and up to the day before the election. UML leaders, cadres and affiliates represented 26% of the victims, Nepali Congress cadres, and their affiliates 28%, and CPN-M/YCL leaders or cadres were victims in 31% of the reported incidents (CPN-M: 14%, YCL: 17%). Several kidnappings were committed the day before the election to prevent rivals from voting.

4.2 Election Day Observation

Polling was a technical success; the vast majority of polling locations were free of reported violence. Turnout was slightly lower than previous elections, around 60% according to preliminary statements. However, significant violence marring the process in many areas, and according to the latest reports from the Election Commission, polling was postponed or results rejected in 106 polling centers across 21 constituencies. DEAN Focal Points, individuals who have received specialized training to report on election violence, recorded 64 incidents in 24 districts which resulted in four deaths, 112 injuries, and eight kidnappings.

Focal Points documented 25 incidents that led to postponement of elections in 10 different districts. 17 other instances were reported regarding interference with voting, while the election process continued in 11 districts. Siraha and Baglung each reported five incidents which led to election postponement. Fifty-eight percent of all incidents occurred in Tarai districts, including 41% of incidents involving interference with voting.
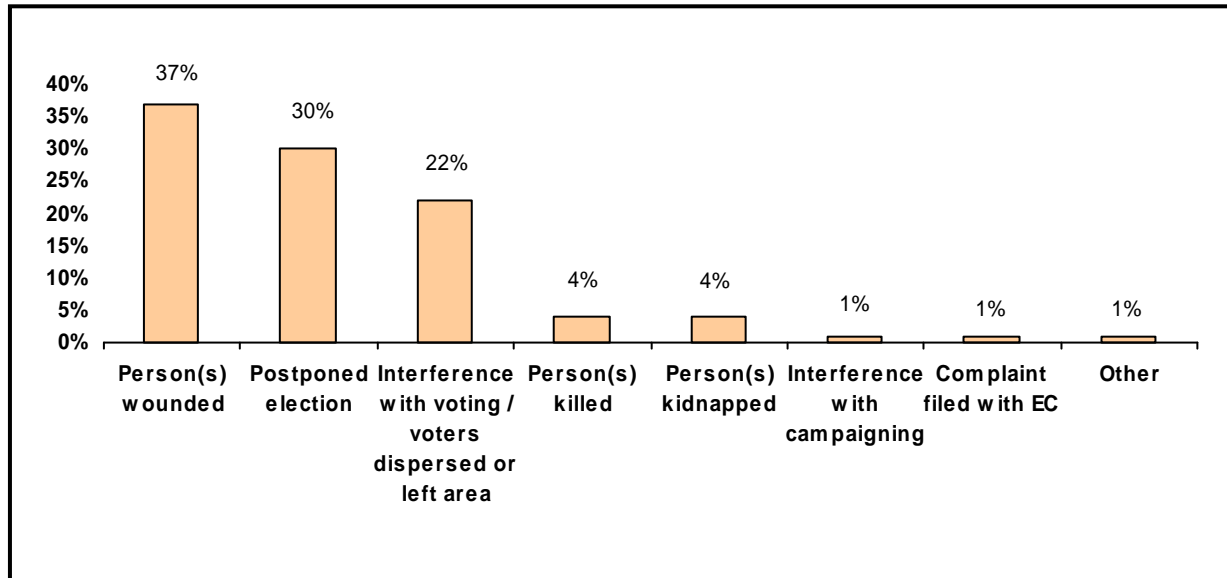
Election day violence involved physical assaults by party rivals, group clashes, booth capturing, intimidation and controlling ballot boxes to either defraud the vote or to 'rescue' the ballot box from others attempting to defraud the vote; there were several reports of the destruction of supposedly corrupted ballot boxes by those claiming to guard against fraud. Among all reports 37% involved injuries, 31% the postponement of election, and 22% included interference with voting. In many cases, postponements were required because the ballot box or ballots were damaged.

Figure 7.6: Election Violence Perpetrators (% of total number of perpetrators)
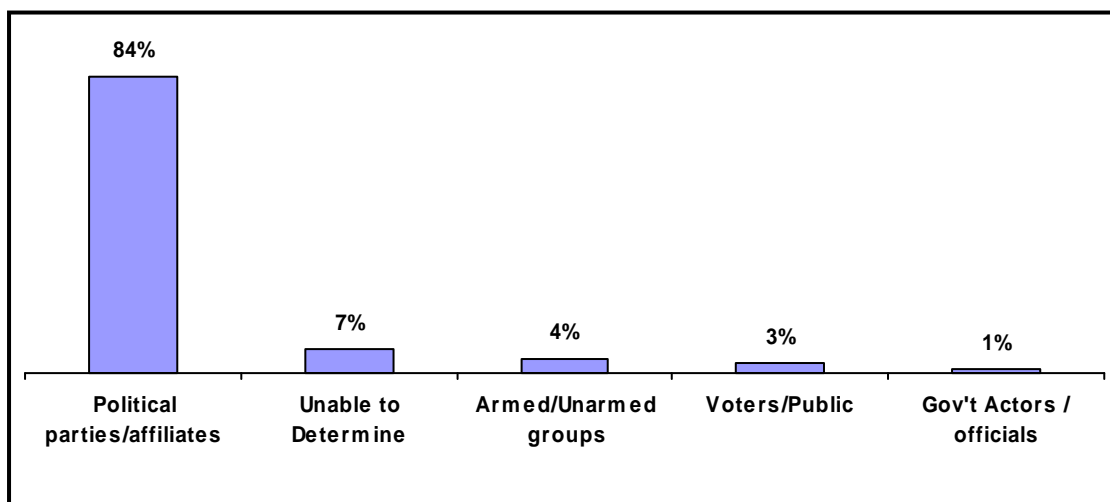
Eighty four percent of election day violence perpetrators were political party leaders, cadres, or affiliated groups. The main victims were also other party leaders, cadres, or affiliate groups (at 33% of all victims), as well as the election process itself (33%), and voters (29%). One type of violence, for instance between parties, would usually lead to another, such as an

interruption in the polling process, increasing the impact of many incidents. Only one incident of a journalist being victimized was reported, where journalists in Kavre were intimidated from taking pictures by Young Communist League cadres.

Figure 7.8: Election Violence Victims Identified (% of total number of victims)
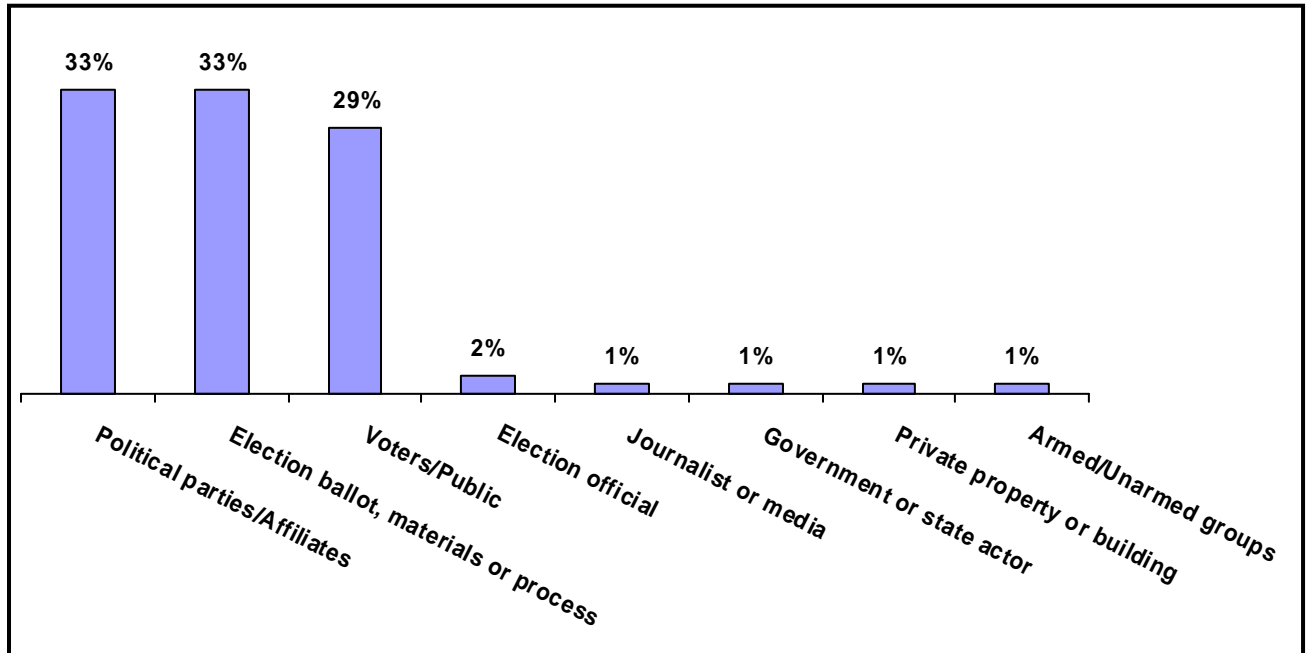
4.3 Post-Election (April 11-13)

Post-election flashpoints are likely, as results are released and parties react to winning and/or losing. Focal Points will continue to monitor, and DEAN will hold several dialogues with stakeholders in the post-election period, to discuss patterns of violence and prevention measures in the coming weeks and months.

Between April 11 and 13 DEAN reported four incidents of violence, in Kaski, Dolakha, and Nuwakot districts, resulting in 1 death and 21 injuries. Two incidents involved CPN-M/YCL attacks on the NC, and two others by the Maoists against the UML. DEAN monitors are working to verify other reported incidents.

4.4 Conclusions, November 26 to April 13

Overall, there were 309 incidents of reported election and political violence between November 26 and April 13. Thirty-seven people died, over 1,000 were wounded, and 89 were kidnapped.

An election, at its core, is supposed to be a means to peacefully resolve political competition. Ideas, policies and parties contest the vote, they do not engage in combat. However, in Nepal, political leaders, supporters, armed groups, and even police have resorted to violence to resolve their differences. Unfortunately, violence is all too common in transitional democracies. DEAN will continue to support the search for Nepali solutions through recommendations, engaging stakeholders in dialogue, and continuing analysis of election and political violence in Nepal.

5. Political party campaigns

The CA elections brought the parties of the Seven Party Alliance[11], the CPN-M and many others, old and new, to the forefront, using campaign tools including manifestoes, mass meetings, pamphlets, door to door programs and media campaigns.

With the elections twice postponed many people were not sure until the last day whether the election would take place on April 10; the political parties conserved their energies and began their campaigns very late (see section 3.2 of this report for details).

Party campaigns failed to follow the Code of Conduct in many instances, many were prevented from reaching voters because of obstruction an threats against party candidates and cadres, some of whom were beaten, by the cadres of other parties. There were also incidents of bombing, shootings, and many demands for 'donations'. Cumulatively this had a pronounced and negative effect on the election process, and on election day security.

Most violations of the Code of Conduct were by the CPN-Maoist and the YCL, mostly targeting the candidates, cadres and supporters of the NC and UML. The Election Commission warned political parties and the candidates against violations of the Code, including incidents of beating and threats, but no action was taken against any perpetrator, even when the guilty party was clearly identified.

The election Code of Conduct, which imposed limits on publicity materials and fixed sizes for pamphlets and other materials, resulted in a less-festive election than those seen in the past. But the limits, observed by most parties with the notable exception of the CPN-M, which built ceremonial arches and ignored limits on campaign materials, drastically reduced the price of campaigning; had the rules been universally enforced they would have had a positive effect on the equality of the campaign.

6. Election Commission Code of Conduct and Major Violations

The Election Commission, using powers provided by the Election Commission Act 2007 (clause 28), issued codes of conduct for the political parties, candidates and representatives, government employees, and the media. In order to ensure transparent elections and to manage the conduct of the concerned stakeholders, the 'Constituent Assembly Member Election Code of Conduct 2007' was issued. The major points relating to the political parties are paraphrased as follows, and edited for clarity in English:[12]

6.1 Publicity (Propaganda)

- Only dignified and polite language should be used
- Posters, wall paintings and banners should not be used as election propaganda
- Posters should not be pasted on private houses, their walls, on shops or in other places without the prior permission of the owner

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[11] SPA members are: Nepali Congress, Nepali Congress-Democratic, Communist Party of Nepal-Unified Marxist Leninist (UML), United Left Front, People's Front Nepal, Nepal Workers and Peasants Party, Nepal Sadbhavana Party. In September 2007, two Nepali Congress parties merged, effectively turning the seven-member alliance to a six-party alliance. Increasingly, the SPA is now used to refer to the six parties plus the Communist Party of Nepal-Maoist.
[12] Constituent Assembly Member Election Code of Conduct, 2007, Election Commission, Kathmandu, Nepal

- Opposition election posters or election signs should not be destroyed, crossed out, unplugged, torn or replaced by pasting one's own poster
- Possession of arms, explosives, chemical substance, poisonous materials, sticks, spears, knives, and any other harmful weapons should not be exhibited, used or cause to be used, during election campaigning.

6.2 Processions and mass meetings

- Mass meetings and processions should not hinder public movement
- Political parties, candidates or their supporters should not hinder the processions or mass meetings organized by their opponents
- Processions, rallies, mass meetings and canvassing are only allowed between 7am and 7pm
- Before conducting a procession, rally or mass meeting 24-hour notice must be provided to the local administration about the time, date, route and place. The pre-determined route cannot be changed without prior permission from the local administration
- Two or more political parties or candidates cannot organize a procession, rally or mass meeting at the same place, time, or use the same route
- Torch rallies and processions with arms are prohibited
- Participation of children is prohibited while conducting any kind of procession, rally or mass meeting; children cannot be used or caused to be used in such processions, including other election related activities
- Political parties or organizations affiliated with them are prohibited from campaigning from 48 hours prior to polling day until the end of the polling process.

6.3 Using influence and creating obstacles

- Nobody should use any kind of fear, threat, terror, menace, force or any sort of inducement to agitate or cause to agitate officials associated with the election or to prevent responsible persons from maintaining peace and order
- Nobody can be compelled to vote, or not caused to vote, using fear, threat, terror, menace, force or through the offer of inducements or the taking of a religious vow
- Nobody can use any kind of fear, threat, terror or menace to stop any candidate from election campaigning
- Any sort of action disrupting the election should not be done or caused to be done
- Any party or candidate can make a verbal or written request to the local administration if any person or group creates an obstacle to their campaign. Candidates, cadres or supporters should not take action on their own initiative
- No obstacles should be imposed to prevent or induce voters to vote or not to vote
- No party or candidate or his/her representative or cadres or any person should take control of a polling station, or capture or destroy ballot boxes and/or ballot papers

- No money or goods may be offered to voters
- Feasts and alcohol should not be offered as an inducement to voters.

6.4 Obligation and responsibilities

- Criticisms should be limited to the policies and programs of opposing parties and candidates
- Cadres and supporters should be fully informed about the Code of Conduct and should abide by it. If there are any violations the related political party or candidate should take responsibility
- Acts, regulations, orders and directives should be followed completely throughout the election
- Any kind of printed material related to any political party or candidate should not be present at polling stations; if such material is present the responsible political party or candidate must remove it prior to the start of voting. However, voter's awareness materials provided by the Election Commission can be displayed
- Nobody should wear any kind of election sign, dress, cap, sticker, logo, bags, etc. that depict candidate or party logos or symbols, etc, on election day
- Nobody can destroy, overwrite, add to, delete from, or paste over posters or other related voter education material distributed by the Election Commission.

6.5 Election Commission Code of Conduct and Major Violations

The election Code of Conduct was not followed by some political parties, candidates, party agents and cadres.[13] During the pre-election period the CPN-M and its sister organization, the YCL were accused of most violations, usually obstructing the campaigns of other parties, threatening their representatives and/or beating them. The NC, UML, and RPP were the most common victims, although all those parties engaged in violations of the Code in some locations. In the Tarai, the Samyukta Janatantrik Mukti Morcha (Goit) and other armed groups exploded bombs, burned property, abducted people, used firearms, and extorted money.

Other violations included wall paintings, graffiti, and extortion. Collecting 'forced' donations was most often reported in the Tarai, with the CPN-Maoist and armed groups the most commonly named perpetrators. Little detailed information is available on this subject, because victims fear for their lives and property if they discuss the matter. In Dhankuta, the teachers from primary, secondary and high schools had to pay 'supportive fee' which had been pre-fixed.

Party funds were collected from businessmen, security personnel, teachers, school principals and other well-wishers. The UML and CPN-Maoist also collect membership dues and other donations from their cadres; Nepali Congress collected funds from its own candidates.

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[13] *Long-term Election Observation and Election Violence Education and Resolution (EVER) Reports, March 2008*

Violations during the pre-election period were most commonly seen in Morang, Saptari, Siraha and Dhankuta in the Eastern Region; Ramechhap, Dolkha, Sindhupalchowk, Kavrepalanchowk, Rasuwa, Kathmandu, Dhading, Mahottari, Sarlahi, Rautahat and Parsa in the Central Region; Gorkha, Arghakhanchi and Myagdi in the Western Region; Dang, Banke and Rolpa in the Mid Western Region; and Dadeldhura and Darchula in the Far Western Region. Irregularities continued on the election day.

- On March 1 an NC cadre in Rupandehi was shot and killed by Janatantrik Madhesi Morcha (Goit group); on March 23, in the same location, an election rally organized by the RPP-Nepal was obstructed by an unknown group; three were injured.
- On March 3 the house of NC candidate Krishna Man Shrestha was bombed by Janatantrik Madhesi Morcha (Jwala Singh) in Banke.
- On March 6 a bomb went off near the house of an NC cadre in Bara.
- On March 8 UML cadres in Ramechhap were attacked; candidate Devshankar Poudyal and 13 others were injured.
- On March 8 in Sindhupalchowk two RPP cadres were injured.
- On March 8 election rallies organized by the NC and the UML in Paanchthar were obstructed by the Limbuwan Autonomous State Council.
- On March 12 in Bara a UML candidate was shot and killed by Janatantrik Madhesi Morcha (Jwala Singh)
- On March 13 an unidentified group in Chitwan damaged the RPP office with a bomb.
- On March 13 and 14 in Sunsari there were clashes between the NC and the MJF; 12 were injured.
- On March 14 in Udayapur a candidate of the Churebhavar Ekata Samaj was abducted.
- On March 16 a bomb placed by Madhesi Mukti Morcha went off in the compound of a school in Parsa; two students were injured.
- On March 19 the same group detonated a bomb in the main market of Birganj.
- On 17 March an unidentified group in Bardia threw stones at a vehicle used by the UML; the next day eight UML cadres were injured in a clash with the Maoists.
- On March 17 and 18 in Rasuwa a UML meeting was attacked by the CPN-M; many cadres were injured after being pelted with stones. The attack continued after the police arrived.
- On March 18 in Banke the Rastriya Janamorcha candidate, Kamal Prasad Adhikari, was killed either by Janatantrik Madhesi Morcha (Jwala Singh) or the Maoists.
- On March 18 an unidentified group shot and killed a district member of the CPN-Maoist in Rolpa.
- On March 18 a bomb went off in Sunsari, placed by the Janatantrik Mukti Morcha.
- On March 21 the house of Govinda Singh, an RJP candidate in Saptari, was set on fire by an unidentified group. Another unidentified group abducted an RPP candidate, releasing him on the condition he withdraw his candidacy.
- On March 21 MJF cadres obstructing an election rally were fired on by Nepal Police, injuring one.
- On March 18 an unidentified group blasted a bomb outside the District Office in Morang.
- On March 19 a Sindhupalchowk UML cadre was abducted by the CPN-M.
- On March 19 NC cadres in Makwanpur were beaten, and two were abducted.
- On March 19 cadres of the Janatantrik Madhesi Morcha (Goit Group) in Saptari attacked a Maoist cadre and burnt his motorcycle.

- On March 19, 20 and 25 there were clashes between YCL and UML cadres in Dhading, with 16 injuries. On March 20 in Dhading Maoists attacked a UML meeting, injuring four. On 22 March in Bajhang, Maoists threatened to kill Ramesh Bahadur Bhandari, a Nepali Congress cadre.
- On March 19 and 20, the Samyukta Janatantrik Mukti Morcha detonated three bombs, at Pokhariya Bazaar and two nearby buildings. An unidentified group set off an explosive device close to a petrol station.
- On March 22 two were injured in a clash between NC and Maoists in Tanahu during a mass meeting.
- On March 22 in Kapilvastu an unidentified group shot and killed a Maoist cadre, on 23 March a Janamorcha candidate was abducted by cadres of Samyukta Janatantrik Morcha.
- On March 23, YCL obstructed the election campaign of Nepali Congress candidate in Nawalparasi. On the same day in Baglung the cadres YCL cadres abducted an RPP-Nepal supporter, releasing him after two hours.
- On March 23 two persons were abducted by the Maoists in Saptari, and released after two hours.
- On March 23 Maoists obstructed a UML rally in Ramechhap.
- On March 24 in Rautahat, a UML candidate and his supporters were threatened by Madhesi Janadhikar Forum cadres, who insisted he withdraw his candidacy.
- On March 25 Maoists injured a UML cadre in Rautahat
- On March 25, YCL in Nuwakot beat a UML candidate, demanded Rs. 50,000 and threatened to torture him if their demand was not met. On the same day Maoists damaged the UML party office in Dhading; at midnight on March 26 Dhading YCL attacked candidate and supporters of Nepali Congress.
- On March 26 clashes between NC and Maoist cadres in Solukhumbhu mass injured two.
- On March 28 Maoist and YCL cadres obstructed an UML election program; six were injured.
- On March 31 the candidate of Nepali Congress and his supporters were threatened to stop their campaign.
- On March 29 two were killed and two injured in Morang, in a bomb attack on a mosque launched by the Nepal Defense Army.

7. Election Day Observation

The Democracy and Election Alliance Nepal (DEAN) deployed 9,393 observers in all 75 districts and 240 constituencies of Nepal.

Deployment of DEAN observers by Regions and Districts for CA Member Election 2064
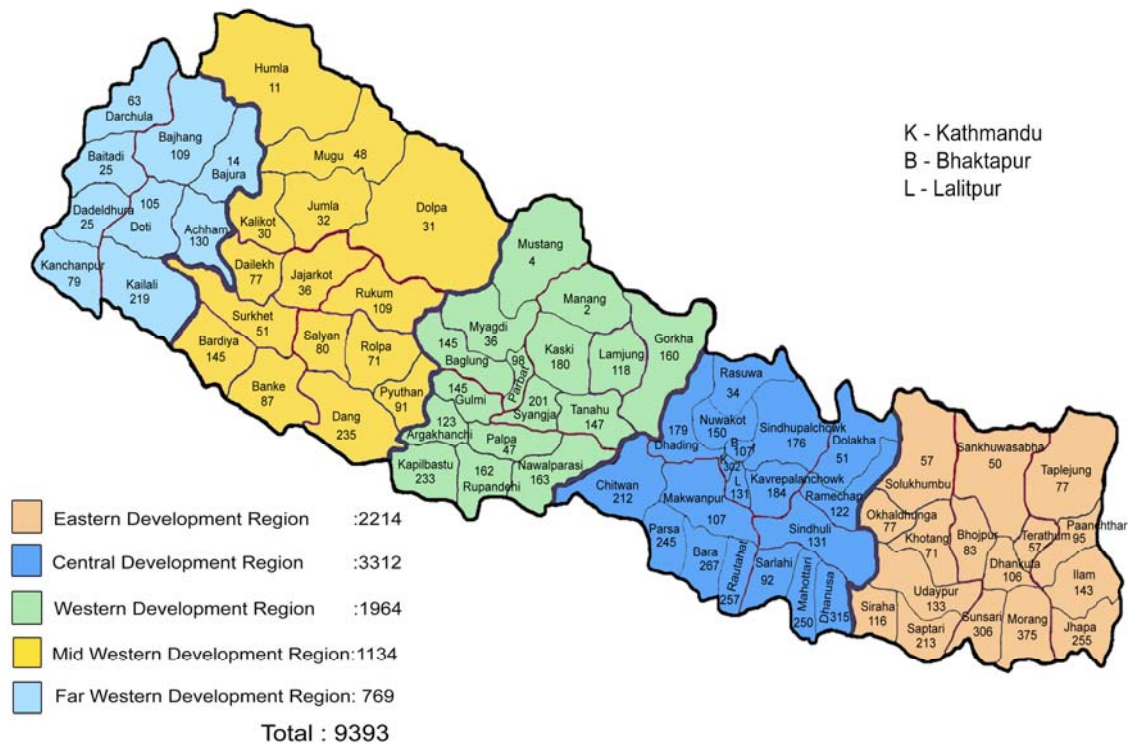
DEAN provided training to all observers at their respective constituency; training was conducted by 558 trained Master Trainers. Of the total 12,000 observers selected by DEAN for accreditation, 22% were prevented from serving because they did not have the minimum academic qualification (School Leaving Certificate) required by the Election Commission. In remote areas it is difficult to find citizens with the necessary qualification which, it should be noted, is not required of party polling agents. Where it was impossible to recruit graduates DEAN applied a literacy test to ensure volunteers were able to perform their duties as an election observer. Sadly, the EC refused to recognize these volunteers, who were therefore prevented from playing a constructive role in the election.
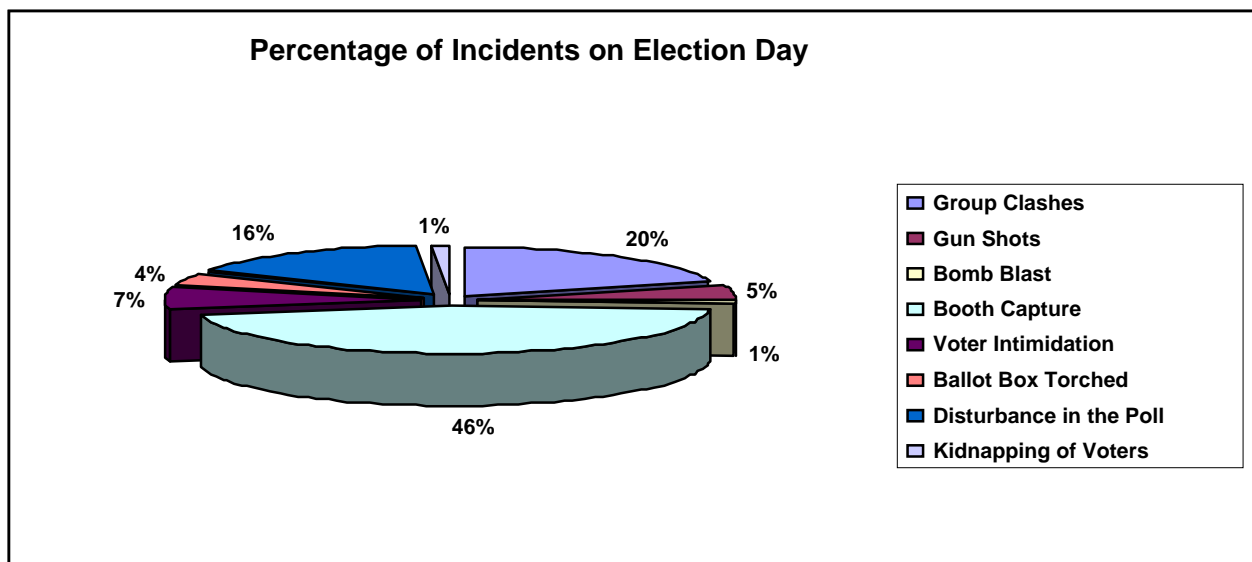
7.1 Election day security

A relatively peaceful election process was observed in 36 districts by DEAN volunteers on election day. Thirteen minor incidents were observed, while twenty two districts experienced serious incidents. Polling was cancelled in at least 106 polling centers due to irregularities including killings, the capture of polling centers by political parties and affiliated groups, explosions, gun shots, and the destructions of ballot boxes and other polling materials (see Annex-1 for details).

DEAN observers reported four deaths on election day, in Sarlahi, Sunsari, and Mahottari districts. In Sarlahi, independent candidate Shambhu Prasad Singh was shot dead by an unidentified group between 1400 and 1600 in constituency six in Gadhiya Village Development Committee (VDC), near the Janata Primary School polling center. Ganga Das

of the Tarai Janatantrik Forum was killed in a clash between Nepali Congress and Forum supporters in the Murtha VDC of Sunsari, near the Bal Krishna Higher Secondary School polling center. Two people were reported killed in Mahottari district. In Parsa Pataiya VDC in constituency three, near the polling center, Nepali Congress cadres opened fire from inside a vehicle after it had run over Pradhumna Kapar, who died on the way to hospital. Sadbhavana Party cadre Bishwa Nath Thakur was killed by a UML cadre armed with a knife in Ratuali VDC in constituency two. Thirty-one people were reported wounded on election day during clashes between party supporters. Thirteen group clashes, three cases of gun shots, one case of a ballot box being torched, one bomb blast, five cases of voter intimidation, thirty two cases of booth capturing, one case of a voter being kidnapped and eleven other cases of poll disturbances, were observed by DEAN volunteers on the election day (Annex-1). These reports should be considered a sample of incidents that took place and not a final number in any instance: while killings attract regional or national attention intimidation and vote buying may be undetectable five meters away.

Two DEAN volunteers, Ms Priyanka Kumari Sharma of Mahottarai-3, and Hem Bahadur Buddha Thapa of Jumla were injured while carrying out their duties on election day.

Percentage of Incidents on Election Day

Legend:
- Group Clashes
- Gun Shots
- Bomb Blast
- Booth Capture
- Voter Intimidation
- Ballot Box Torched
- Disturbance in the Poll
- Kidnapping of Voters

Values shown: 20%, 5%, 1%, 46%, 7%, 4%, 16%, 1%

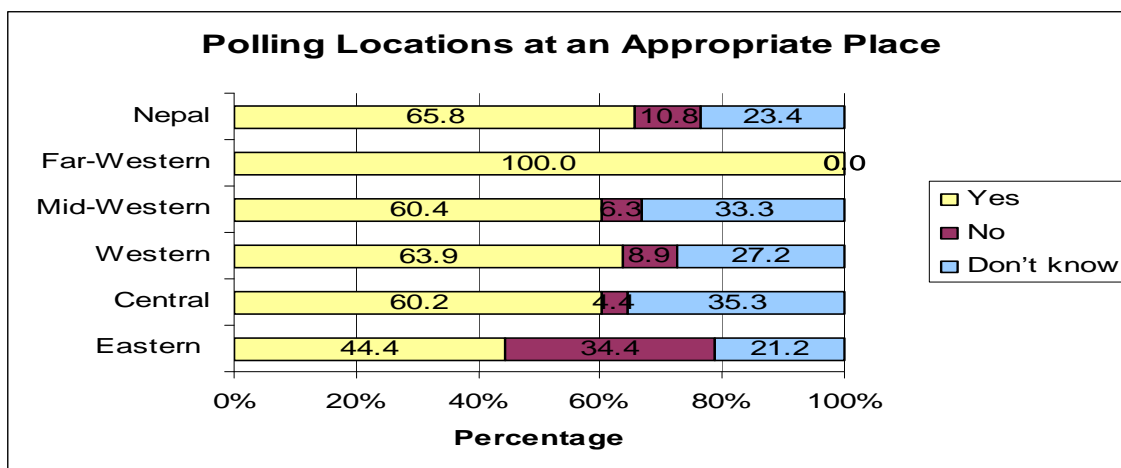## 7.2 Access to polling locations by DEAN observers

Access for observers was generally good but DEAN observers were denied entry to the Samudayak High School polling station, located in Morang's Amardaha VDC, and to the Sabae High School polling center in Udayapur's Sundarpur VDC, by polling officials. After complaints were lodged with the EC by DEAN's Secretariat, observers were allowed to enter the polling centers within 25 minutes.

7.3 Turnout

The average turnout in DEAN observed polling centers was 59.39 percent. The highest turnout was 90 percent at a center in Rukum; the lowest was 43 percent in Baitadi. In the 1991, 1994 and 1999 elections the national averages were 62, 65 and 68 percent respectively.

7.4 Polling location management

Some polling locations were observed by DEAN volunteers as being located close to main roads and even within temples (Naxal Bhagabati Bahal temple in Kathmandu-4, and Bhadra Kali temple in Kathmandu-1 are two examples). Ten percent of the total locations appeared inappropriate while management of the polling centers was observed as generally satisfactory. In some locations the outer compound of the centers was not sufficiently secure.

Polling Locations at an Appropriate Place

Region	Yes	No	Don't know
Nepal	65.8	10.8	23.4
Far-Western	100.0		0.0
Mid-Western	60.4	6.3	33.3
Western	63.9	8.9	27.2
Central	60.2	4.4	35.3
Eastern	44.4	34.4	21.2

Percentage

7.5 Election day processes

Despite some anomalies, such as no voters casting ballots in Saptari's Trikoul VDC, the election process was completed per the election calendar. The major concern noted by DEAN volunteers was the failure of polling officials to verify the identity of voters; this took place in many districts, including Kathmandu and Lalitpur. When a voter enters to vote he/she was directed to a Election Commission polling personnel who, after asking the voters name, calls it out, along with the page number and serial number of the person in the voters' list. Unless a party polling agent objected polling officials did not ask for any verifying documents from the voters. The CA Member Election Procedures says that the polling center Returning Officer or his/her authorized polling official will verify voters' identification documents. But in many centers party agents, and in many cases polling agents from a single party, had a more decisive role than election officials in deciding who could and could not vote.

7.6 Overall conduct of the elections

DEAN will compile a detailed report on the election process in its final report on the 2008 Constituency Assembly elections, which will be submitted to the Election Commission of Nepal and the public by mid-May 2008.

8. Complaints and Responses by the Election Commission

During the electoral process the EC mobilized investigation and monitoring teams to follow violations of the Code of Conduct. The Code (clause 87 and annex-4) includes provisions for written complaints to be lodged with the District Election Officer, the Election Officer's Office, with the monitoring team or with the Election Commission. Many complaints were registered regarding violations of the Code, including claims that the election was not free and fair manner; many were made by political parties, their candidates and supporters. On election day complaints were made in 12 districts regarding non-compliance with the Code ,

including Sarlahi, Mahottari, Baglung, Dhading, Rautahat, Saptari, Siraha, Nuwakot, Arghakhanchi, Dailekh, Nawalparasi and Chitwan. Prior to election day complaints were made in relation to allegations of campaign obstructions, beatings and clashes in Ramechhap, Rasuwa, Kavre and Banke districts.

Election day complaints noted 'irregularities', 'ballot box stolen', 'some party agents not permitted to observe' and 'voters stopped'. These complaints were made by principally by UML and the NC, and were mostly directed against the Maoists. Complaints were alos lodged against the Nepali Congress and the UML, accusing them of booth capture, and, in some Tarai districts, complaints were made against the MJF.

On the basis of these complaints elections were postponed in 106 polling centers in 21 constituencies. The elections were canceled based on the complaints, recommendations and suggestions provided by monitoring teams comprised of senior civil servants (Secretary Level), polling officers and mobile teams deputed in the districts. Re-polling completed by April 19, with voting also taking place in two constituencies where it had been canceled prior to election day, due to the deaths of candidates.

9. Observation and Counting of the Ballots

The counting of ballots is underway. DEAN observation reports on the counting process will be included in the final report. Initial observations indicate discrepancies between ballot boxes at the counting centers and the tallies recorded at the end of election day.

10. Parallel Vote Tabulation (PVT)

For the first time in Nepal, DEAN is conducting parallel vote tabulation (PVT) through its national network across the country. The objective is to reduce errors in vote tabulation and transcription. At the time of writing DEAN has received vote tallies from 150 constituencies. This process can build trust in the Constituency Assembly results in case the EC results are disputed. DEAN will present the results in a graphical format to increase public understanding of the results. Analysis of the results will be based on official results published by the Election Commission in each district.

11. Conclusion

The historic CA elections were completed relatively peacefully. But many pre, election day and post-election incidents were observed across the country. Many areas need to be improved by the Election Commission, and by key players including the political parties. Codes of conduct, once agreed to, must be abided by and violations must be punished. The best way forward is to enforce electoral law effectively, without discrimination, regardless of the violator. While political considerations are important in furthering the peace process, they should not facilitate the creation of a culture of impunity that will create further problems for Nepal's fledgling democracy in the months and years to come.

12 Recommendations

Election observation is pivotal in any democratic political process DEAN suggests the following recommendations, based on its observations of the CA election process to date:

Major recommendations

- Clashes between party cadres and the intimidation of one party by another was commonplace; many deaths and injuries resulted, but no arrests or criminal processes were initiated. Many parties did not abide by the Code of Conduct, during the pre-election period or on and election day. Party graffiti was not removed, despite the insistence of the Election Commission.

  In future elections parties that violate the law, the Code of Conduct, or any regulations or rules must be punished without fear or favor, according to the law and not political calculations.

- In many instances the verification of voters' identity did not take place according to the law.

  In future elections the correct process for verifying voters' identity must be followed, and the role of party polling agents be reduced.

Other recommendations

- The CA Member Election Act 2007 (clause-7, sub clause-8) allows parties to 'adjust' the names for their closed-list candidates for the PR election by up to ten percent, likely reducing the number of candidates elected from the various quotas. This violates the principles of proportionality, and should be changed for future elections.

- Registration of a Political party according to Election Act 2007-7(I) states that a party intending to register with the Election Commission to contest elections is required to submit ten thousand signatures. But the Election Commission has no mechanism to verify the signatures of the voters; rules that have no scientific basis should not be imposed on future processes.

- Party leaders should educate cadres on the expected timing of the announcements of the results, and stress procedures for filing complaints or seeking other legal redress for any grievances.

- Security forces should remain on alert, and cover post-election rallies for supporters and celebratory rallies without bias. Routes to and from such events could become sites of violence and should be patrolled.

- Civil society groups and community leaders should disseminate information on re-polling and the timing of results, etc. Peace events and public statements against the use of violence should continue.

- Local authorities in areas where re-polling will take place should convene local meetings with political party, law enforcement, civil society, and election official representatives to discuss election day problems and measures to prevent them during the re-voting.

- Coordination by international and national election observer groups was lagging. Coordination between the groups could increase the effectiveness of all in providing an independent voice to safeguard future elections; premature statements by any group should be avoided.